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MUCH ADO ABOUT NOTHING— THE J. D. MOVEMENT

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"When I use a word," Humpty Dumpty said,
... "it means just what I choose it to mean
—neither more or less."
"The question is," said Alice, "whether you
CAN make words mean so many different
things."
"The question is," said Humpty Dumpty,
"Which is to be master—that's all."¹

IN A RECENT ARTICLE appearing in *The Student Lawyer Journal*,² Dean John G. Hervey of the Oklahoma City University School of Law presented what—on first reading—appeared to be a very well documented argument in support of the uniform awarding of the Juris Doctor (J.D.) as the first degree in law. There can be little quarrel with Dean Hervey's statistical abstracts which he uses to build the central thesis of his article. The importance of this information to support his sweeping generalities is to be severely questioned. The position of the American Bar Association is also eminently clear.³ But, however, the chief contention of this present article is that the "J.D. Movement"—inspired primarily by Dean Hervey—is a superficial and shallow endeavor to upgrade the status of the legal profession and of certain law schools.

Although the "image" of the general profession as well as the law schools needs to be strengthened,⁴ the uniform awarding of the J.D. degree is not, at this particular time, the proper remedy to pursue. Rather, the development and improvement of the standards for the work done for the basic law degree should be of first and primary consideration.⁵ Once this has been accomplished, the graduate of law school will be a stronger member of the bar and the bar, itself, will then become a stronger and more effective

profession with the general "image" of the law schools in turn being strengthened.

The Semantic Confusion

There is, admittedly, semantic confusion surrounding the LL.B. and the J.D. and this Dean Hervey aptly observes.⁶ A large part of the confusion could be, and indeed is, dispelled when a simple explanation is given by the individual who finds himself in a prospective job situation where he, or his employer, feels confused by either his possession or non-possession of the J.D. Most interested and sophisticated people, although perhaps amused by the historical backwardness of the J.D., are capable of understanding that some schools award it as the first professional degree, while others prefer to award it on the basis of a specified grade average, completion of a research problem, etc.

The isolated example of the Minnesota College Board failing to understand or appreciate a prospective teaching candidate's LL.B. degree as opposed to the J.D. from the standpoint of basic starting salaries is not sufficient proof for Dean Hervey in his broad statement that *widespread* discrimination exists in favor of the holder of a J.D. degree.⁷ The additional citation from the Department of the Air Force Officers Personnel Manual wherein a two point differential in code numbers is assigned to a J.D. holder as opposed to an LL.B. recipient is not totally convincing either of the Dean's position.⁸ For, in a brochure entitled, *Federal Government Job Opportunities for Young Attorneys*, (published by the American Law Student Association) the detailed job qualifications for attorneys in the Department of the Air Force and in the Judge Advocate General Corps are listed, with the LL.B. being specifically noted as a requisite, and not the J.D.⁹ It is also stated that a

good academic record or class standing is important.

Dean Hervey points strongly to the inequities that he feels exist between J.D. holders and non-J.D. holders in governmental service. "The holder," quoting the Dean, "of the J.D. degree 'gets there firstest with the mostest,' both in salary and rank, because uninformed governmental agencies, perhaps unwittingly, discriminate against holders of the LL.B."

The governmental agencies who follow this policy are not enumerated, however. If the agencies are truly *uninformed*, then it would seem that an explanation as to the policies for either granting or refusing to grant the J.D. should be tendered by the individual who finds himself confronted with a situation where an explanation is needed.

It is interesting to note that in the Department of Justice, of the approximately 1,075 attorneys employed in 1965, no more than 60 had J.D.'s, one had an S.J.D., two an LL.M. and one a M.P.L.¹⁰ Of the approximately 205 attorneys employed in the Department of Labor in 1965, only 9 had J.D.'s¹¹ A letter received from the United States Civil Service Commission revealed, "We are not aware of any higher pay or preference that is being given to law school graduates having the J.D. degree over those with the LL.B. degree."¹² From these figures, it is manifestly clear that the J.D. degree holders are not so highly venerated as Dean Hervey would suggest. If agencies within the federal government really prized the J.D. degree holders, it would be a fair presumption to make that active, aggressive recruitment for such holders would be undertaken and that the number of employed lawyers holding a J.D. would be much higher than those with LL.B.'s. Such is obviously not the case, however, from the above figures. Again, the basic premise may be reiterated: employers evaluate a prospective employee, not by the name of his degree, but from an evaluation of his grade index and the caliber of the law school from which he graduated.

Another very interesting fact is that in the *Federal Government Job Opportunities for Young Attorneys* booklet, a complete listing of positions and their corresponding requisite qualifications reveal nowhere a J.D. requirement. In fact, the term "J.D." is only used *once* in the entire brochure!¹³ Under the Department of Labor job qualifications, in order to obtain a GS-5 rating, the applicant must have an "LL.B. or equivalent (e.g. J.D.)." Most of the other federal departments usually stress the need for the applicant to be in the top 20 or 25% of his graduating class, have a good academic record or experience of some length in the field.

Next, Dean Hervey observes that the young lawyers in the Armed Services who only have an LL.B. "suffer" psychologically as a result of being addressed as *Esquire* instead of *Dr.* Again, no documentation is offered for this very weak consideration.¹⁴ Not one letter from one who suffers is mentioned.

"The image of the law school" would be heightened as a result of the uniform conferral of the J.D. degree and the whole profession would be upgraded in the eyes of the *public*.¹⁵ Both these points would lead the reader to believe that the underlying theme of the "J.D. Movement" is directed toward a search for increased status. This is fine, but the *image* of the profession can and must be strengthened, it is contended, by making the law schools substantively stronger and more stable rather than relying on a change in the wording of the law degree.

Dean Erwin N. Griswold of the Harvard Law School recently stated that he considered the J.D. Movement to be, ". . . unwise, unsound, and undesirable."¹⁶ He observed further that, "It strikes me as a sort of self-serving effort to lift oneself by his own boot straps. We would do better, I think, to improve the standard of work done for the basic law degree, and to extend understanding of the nature and calibre of that work."¹⁷ Perhaps the most decisive step along these lines would be for *all* law schools to raise their standards sufficiently high enough for admittance into membership in the Association of American Law Schools. Presently, there are 110 members of the Association.¹⁸ The American Bar Association, however, lists 136 approved law schools and 25 schools which are not approved, with seven more having only provisional approval.¹⁹

The ABA and AALS Standards Compared

The Articles of Association of the Association of American Law Schools state that before a school may be admitted to membership it must maintain: 1) Admission regulations which are designed to exclude applicants who are inadequately equipped for law study; 2) Academic requirements that demand satisfactory scholastic attainment throughout at least three years of full-time or four years of part-time law study in residence before the first degree in law can be earned; 3) Equal opportunities in legal education without discrimination or segregation on the ground of race or color; 4) A faculty of high competence and suitable size, vested with primary responsibility for determining institutional policies. Here, the approved Association policy states that the very heart of a successful program of legal education lies in a faculty composed largely of *full-time* teachers; 5) Institutional relationships that give appropriate range to the law faculty's judgment concerning the law school's opportunities as well as needs; 6) Conditions which are conducive to the faculty's effective discharge of its scholarly responsibilities; 7) A comprehensive curriculum and a sound educational program; 8) A library adequate for research activities and for the curriculum. On this point, the Association policy states that as long ago as 1957-58, the median number of volumes in member schools' libraries was 44,000 while the "lowest" school had 22,500 volumes,

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and twenty-two schools had collections above 100,000 at that time; 9) An adequate physical plant; and, 10) A strong financial structure which enables a consistent quest for excellence and a steadfast fulfillment of the obligations of membership.²⁰

The minimum standards imposed by the American Bar Association for law school certification require: 1) As a condition to admission at least three years of acceptable college work, except that a school which requires four years of full-time work or an equivalent of part time work for the first professional degree in law may admit a student who has successfully completed *two* years of acceptable college work; 2) The students in the particular school to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course equivalent in the number of working hours, if they devote only a part of their working time to their studies; 3) The school to provide an adequate library for its students. This is interpreted as meaning a library of not less than 15,000 well-selected usable volumes; 4) The school to have among its teachers a sufficient number giving their entire time to the school in order to enable personal acquaintance and influence with the whole student body. This provision has been interpreted to mean that the number of full-time instructors should not be less than one for each seventy-five students or major fraction of such number—provided, that in no case shall the number of full-time instructors be less than three in number; 5) That the law school not be operated as a commercial enterprise and, further, that the compensation of any officer or member of its teaching staff in no way depend upon the number of students or on the fees received, and 6) The school to possess reasonably adequate facilities and maintain a sound educational policy.²¹

Status of Schools Awarding J.D. Degree

In 1965, the total enrollment in American Bar Association approved Schools was 59,744 while the total enrollment in non-A.B.A. approved schools was 5,313—making a total enrollment figure in all schools of 65,057.²² 74.89% of the students in approved schools were in full-time programs of study during 1965,

while 23.72% of the students in approved schools were enrolled in part-time evening classes and .39% of the students attending A.B.A. approved schools were enrolled in part-time programs in full-time schools, however.²³ Of the unapproved A.B.A. schools, 87.45% of the students were enrolled in evening classes, 12.18% were enrolled in morning classes and .38% were enrolled in an extended part-time program of morning hours.²⁴

Dean Hervey lists 27 schools which have adopted the J.D. degree as the first professional law degree.²⁵ Eight of the twenty-seven schools are not members of the Association of American Law Schools.²⁶ Of the four additional schools proposing (considering) the adoption,²⁷ two are not members of the Association.²⁸ Thirteen out of the twenty-seven schools comprising the Hervey List are night schools,²⁹ with five being solely evening schools³⁰ and the other eight having both day and evening classes.³¹ Of the four schools considering the adoption, two are exclusively night schools.³²

While Dean Hervey's list of schools who had already adopted or are planning the adoption of the J.D. looks most impressive at first glance, it is seen immediately from the above breakdown that the so-called "Movement" is *spearheaded* by schools who are not members of the Association and are evening schools. No disparagement by any means is directed at these schools. However, the point which is sought to be made is that it would be well for the schools to achieve the highest educational certification before endeavoring to achieve "instant" status by clamoring for the J.D. degree.

The View of other Schools

The University of Chicago and Northwestern University School of Law are the two leading examples of schools who have long awarded the J.D. degree as the first degree in law. Yet, although the origin of the LL.B. goes back to the days when no prior college work was required for admission to a law school, and thus the bachelor's degree was an appropriate recognition on graduation,³³ today there would no longer appear to be any historical justification for the awarding of bachelors' degrees since a baccalaureate degree is necessary to gain admittance normally to an approved law school in the Association.

It is extremely interesting to observe that Harvard Law School has used only the LL.B. for 148 years and has no thought of changing the degree to a Juris Doctor.³⁴ The historical or social evolution of the bachelor's degree in law has little importance and deep significance to an argument pointing up its outdated nature and utter uselessness and stressing the need for uniform J.D.'s particularly when one considers the nationally recognized prominence of Harvard's Law School and of its policy in awarding nothing but the LL.B. degree. While open to debate and

(Continued on Page 26)

Much Ado About Nothing . . .

(Continued from Page 10)

discussion in some circles, Harvard is generally regarded as the number one law school in the country. Its activities are viewed with interest and even "awe" at times. The alarming fact that Harvard grants only an LL.B., then, naturally causes much consternation to the leaders of the J.D. Movement who would seek to convince the other law schools that the J.D. is definitely "in" this year.

The recognized position in legal education that both Chicago and Northwestern enjoy may be attributed to their select standards of admission, long standing membership in the Association, fine libraries, developing curricula and top caliber, productive faculties. As noted previously, once a school has attained all of these "qualities of greatness" then nothing should prevent it from adopting the J.D. degree as the first degree in law.

The University of Michigan has awarded a J.D. degree to those graduating seniors who have a B average. The LL.B. is granted, conversely, to those students who have a cumulative index of below B. Many schools follow the policy of making the J.D. an "honors" degree and most employers are aware of the policy. Michigan will, however, consider in the very near future the feasibility of adopting the J.D. degree as the first degree in law.

What Difference Would The J.D. Make?

If a uniform J.D. were awarded, another standard for recognizing excellence would have to be given. The *specific* grade index would, undoubtedly, have to be weighted more heavily. For example, if a C student were to be granted a J.D. and a B student from the same school were to be granted a J.D. also, would this degree mean the same to an interviewing prospective employer? Obviously no. It is safe to presume that upon knowledge of the grade index or class standing, the employer would—all other matters considered equal—seek to employ the B student. What particular advantage has fallen to the C student who clutches in his hand a precious J.D. degree?

Carrying the example still further, what can a young law graduate from a small, part-time or night school which is not a member of the Association of American Law Schools and does not have a good or national reputation expect to come his way in job offers merely because he has a J.D. degree when he comes up against another J.D. degree holder from a nationally recognized or good law school who has a similar grade index? Would more doors be opened to him with a J.D. than would ever have been if he had only obtained an LL.B. degree? Unfortunately, here

again, the prospective employer will look to the *law school's* reputation in his hiring procedure and final evaluation. The graduate of the more prominent law school will most likely obtain the position—with or without a J.D. Good lawyers come from "ill equipped and poorly staffed law schools"—but they come in spite of the school and not because of it.³⁵

Acting Dean Charles W. Joiner of the University of Michigan Law School stated that although one may be helped in initial employment opportunities by graduating from a prominent law school with a J.D. degree, the graduate will soon prove his value on his *own* merit³⁶ regardless of whether it be in practice, teaching, business or governmental service. The mere designation of a law degree as being an LL.B. or a J.D. does not play as crucial a part in one's career as many might believe. Graduation from a good law school, recognized as such by the profession and, for that matter, governmental agencies, keen individual motivation and well developed legal reasoning abilities and research skills may be thought of as the keys to success.

Dean Leon H. Wallace, of the Indiana University School of Law, noted that he was unconvinced of the great significance attached to the present "J.D. Movement."³⁷ In fact, he observed that for graduate lawyers who go into the practice, the J.D. has always seemed rather meaningless.³⁸ The Dean went on to relate that, "In thirteen years of active practice I never had a client ask me what kind of a law degree I had or even indicate any interest in it. Even though I have had my diploma framed on the wall of my office, I doubt whether it would have generated much client curiosity."³⁹

Bayless Manning, Dean of the Stanford University School of Law, observed, interestingly enough, that his faculty had not discussed the "J.D. Movement" in any respect and that he further had no particular comments to make concerning the matter.⁴⁰ No position has crystalized at Columbia University School of Law regarding this matter either.⁴¹

William W. Cook, the donor of the magnificent Law Quadrangle at the University of Michigan Law School in Ann Arbor, stated in his will of August 8, 1929, that the character of the legal profession depended on the *character* of the law schools themselves and that the character of the law schools would in turn forecast the future of America. This statement is still most correct today and it is a true awareness of its meaning which should be inculcated into the hearts and minds of all legal educators. Strong productive *full-time* faculties, greater emphasis and realization of lawyer skills employed in legal education,⁴² stronger and up-to-date curricula, more effective teaching techniques, better research libraries, higher admission standards for some of the less prominent schools and *complete* certification of the law schools by the Association of American Law Schools

would be "character-building" attributes which would greatly strengthen the stature of legal education. After this has been accomplished, then, and only then, should the uniform adoption of the J.D. as the first degree in law be considered by all law schools. •

FOOTNOTES

1. ALICE THROUGH THE LOOKING GLASS 94 (1946).
2. Hervey, "Law School Graduates Should Receive 'Professional Doctorates' . . . Time For A Change From LL.B. to J. D. Degree," 10 *Student Lawyer Journal* 5 (June, 1965).
3. The appropriateness of the J.D. as against the LL.B. degree, as the first professional degree in law, was considered by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the February, 1964, Meeting and later formalized in a resolution presented to the Section at its annual meeting on August 21 and adopted unanimously. The resolution recommended for all approved law schools favorable consideration of the conferral of the J.D. degree on those students who successfully completed the program leading to the first professional degree in law. For the complete text of the resolution see, 1965 A.B.A. Rev. L. Ed. 21. The American Law Student Association at its 1964 Annual Meeting in August, also adopted a resolution in support of the J.D. degree for those law graduates who had previously received an undergraduate baccalaureate degree.
4. See generally, Harno, LEGAL EDUCATION IN THE UNITED STATES (1953); Blaustein, "What Do Laymen Think of Lawyers," 38 A.B.A.J. 39 (1952); Cantrall, "Law Schools and the Layman: Is Legal Education Doing Its Job?" 38 A.B.A.J. 907 (1952); Vanderbilt, "The Future of Legal Education," 48 A.B.A.J. 207 (1957); Cooper, "Preparation for the Bar," 15 J. Legal Ed. 300 (1963); Frank, "A Plea for Lawyer Schools," 56 YALE L. J. 1303 (1947); Landman, "The Curriculum for the Law School," 47 A.B.A.J. 156 (1961); Cavers, "Legal Education in Two Calendar Years," 49 A.B.A.J. 475 (1963); Griswold, Joiner & McClain, "Legal Education: Extent to Which 'Know-How' in Practice Should be Taught in Law Schools," 6 J. Legal Ed. 295 (1954); Hand, "Have the Bench and Bar Anything to Contribute to the Teaching of Law?" 24 Mich. L. Rev. 466 (1924); Smith & Paul, "Where are the Men of the Law?" 70 Case & Comment 10 (Sept.-Oct. 1965); Gellhorn, "The Second and Third Years of Law Study," 17 J. Legal Ed. 1 (1964); Freeman, "Legal Education: Some Farther-Out Proposals," 17 J. Legal Ed. 272 (1965); Roberts, "Performance Courses in the Study of Law: A Proposal for Reform of Legal Education," 36 A.B.A.J. 17 (1950).
5. Personal letter from Dean Erwin N. Griswold of the Harvard Law School, September 20, 1965.
6. Hervey, op. cit. *supra* note 2, at 7, 8.
7. *Id.*, 7.
8. *Id.*, 8.
9. Federal Government Job Opportunities for Young Attorneys, 30, 32 (1965).
10. 1 Martindale Hubbell Law Directory 676-682 (1965).
11. *Id.*, 682, 683.
12. Personal letter from Mr. Sam Loff, Chief, Standards Division, United States Civil Service Commission, December 7, 1965.
13. Note 9, *Supra*, at 54, referring to the Department of Labor.
14. Hervey, op. cit. *supra* note 2, at 8.
15. *Id.*, 27.
16. Personal letter from Dean Erwin N. Griswold of the Harvard Law School, September 20, 1965.
17. *Id.*
18. Association of American Law Schools, Information Pamphlet, 22-24, June, 1965. It is to be noted, however, that the Ohio Northern University School of Law was admitted as a member of the Association December, 1965.
19. 1965 A.B.A. Rev. L. Ed. 4-20.
20. Note 18, *supra*, at 5-12.
21. 1965 A.B.A. Rev. L. Ed. 26, 27.
22. *Id.*, 20. The editors of the Review caution the readers to bear in mind that eight of the unapproved schools did not report their enrollment figures and thus the actual law school population was higher than the reported figures show. Generally, the unreporting schools have been part-time evening schools.
23. 1965 A.B.A. Rev. L. Ed. 19.
24. *Id.*
25. Emory University; University of Oklahoma; University of Tulsa; University of Missouri; University of Missouri at Kansas City; Washburn University of Topeka; St. Louis University; Creighton University; Washington University (St. Louis); University of Akron; University of Cincinnati; Cleveland-Marshall Law School of Baldwin-Wallace College; University of Kansas; University of Toledo; Franklin University; Chase College; Western Reserve University; Ohio Northern University; South Texas College of Law; California-Western University; University of San Diego Willamette University; American University; University of South Dakota; St. Mary's University; State University of New York at Buffalo; Drake University. See Hervey, op. cit. *supra*, note 2.
26. University of Tulsa; University of Akron; Cleveland-Marshall Law School of Baldwin-Wallace College; Franklin University; Chase College; South Texas College of Law; California-Western University; University of San Diego. Association of American Law Schools, Information Pamphlet, 22-24, June, 1965.
27. Ohio State University; Oklahoma City University; William Mitchell College of Law and the University of Tennessee. See footnote 2, *supra*, at 5.
28. Oklahoma City University, William Mitchell College of Law. Association of American Law Schools Information Pamphlet, 22-24, June, 1965.
29. Emory University; University of Tulsa; University of Missouri at Kansas City; St. Louis University; University of Akron; Cleveland-Marshall Law School of Baldwin-Wallace College; University of Toledo; Franklin University; Chase College; South Texas College of Law; University of San Diego; American University; St. Mary's University. 1965 A.B.A. Rev. L. Ed. 4-16.
30. University of Akron; Cleveland-Marshall Law School of Baldwin Wallace College; Franklin University; Chase College; South Texas College of Law. 1965 A.B.A. Rev. L. Ed. 4-16.
31. Emory University; University of Tulsa; University of Missouri at Kansas City; St. Louis University; University of Toledo; University of San Diego; American University; St. Mary's University. 1965 A.B.A. Rev. L. Ed. 4-16.
32. Oklahoma City University; William-Mitchell College of Law. 1965 A.B.A. Rev. L. Ed. 10, 13.
33. Personal letters from Dean Phil C. Neal of the University of Chicago Law School, September 27, 1965, and from Dean Ivan C. Rutledge of the Ohio State University College of Law, September 28, 1965.
34. Personal letter from Dean Erwin N. Griswold of Harvard Law School, September 20, 1965.
35. Smith, "The Role of the Modern Law School," 38 Fla. Bar J. 980 (1964). See generally, Kanner, "A Responsibility to Raise Standards and Accommodate Increased Enrollment," 38 Fla. Bar J. 988 (1961); Harno, LEGAL EDUCATION IN THE UNITED STATES 176, 177 (1953).
36. Personal Interview with Acting Dean Charles W. Joiner, The University of Michigan Law School, Ann Arbor, Michigan, September 17, 1965.
37. Personal letter from Dean Leon H. Wallace of the Indiana University School of Law, Bloomington, Indiana, October 3, 1965.
38. *Id.*
39. *Id.*
40. Personal letter from Dean Bayless Manning of the Stanford University School of Law, September 29, 1965.
41. Personal letter from Edward F. Kent, Vice Dean, Columbia University School of Law, New York, January 10, 1966.
42. A prominent jurist, Honorable Chief Judge William E. Steckler of the United States District Court of the Southern District of Indiana, recently expressed his great alarm and surprise at the lack of practical preparation which many young lawyers have when they practice in his court. Personal Interview with Judge Steckler in Indianapolis, Indiana, September 28, 1965.