CHANGE OF POLICY OF KENTUCKY LAW JOURNAL

For several years it has been the policy of the Kentucky Law Journal to supply copies of the Journal to members of the Kentucky Bar Association free of charge. Owing to a recent ruling of the Post Office Department affecting law reviews throughout the country and owing to the very great increase in the cost of printing and publishing the Journal in its present form and size, it has become necessary that the past policy in regard to free subscriptions be discontinued and henceforth a charge be made to members of the Bar Association. A reduced rate of two dollars a year will be made to members of the Association. Those who wish to have their names continued on the mailing list should send their subscriptions to the business manager at once.

LAW TEACHERS AND RESEARCH

The remarkable and almost predominating influence exerted by law school professors in the restatement of the law undertaken by the American Law Institute, suggests that the teaching of students to become *juris prudentes* is not the sole function of law school faculties.
First, it seems rather probable that the day is nearly departed for the writing of treatises by practicing lawyers. There are, of course, some splendid treatises, like Tiffany on Real Property and Freeman on Judgments, and others, written by men who did not devote all or most of their time to teaching. But the text books and longer treatises of the future will, without much doubt, be prepared by college professors. One chief reason is that a practicing lawyer cannot and usually will not take the time to prepare his material down to the last detail. Greater accuracy, a more extended horizon, a broader grasp and fuller knowledge is constantly being demanded. Other fields of the law are calling for the sort of work that Professor Williston did for Contracts and Dean Wigmore did for Evidence.

Second, the trial judges, as well as the members of the highest courts of appeal find their time more than consumed with the volume of litigation coming before them. How are they to devote time to that most engrossing of all matters—the better administration of justice between man and his fellows? The greatest opprobrium of the criminal law today is its delays; the endless motions and technical objections raised by lawyers, thru which criminals hope finally to escape the toils of the law. The most serious defect of the civil law, as distinguished from the criminal law, is its uncertainties. The enormous waste caused thereby to the people of this and other commonwealths, mounts to thousands and even millions of dollars annually, not to mention the inconvenience and distress. To meet precisely these embarrassments the American Law Institute was established. It is a remarkable fact that every reporter of the subjects so far undertaken for restatement—namely, Contracts, Conflict of Laws, Agency, Torts, Criminal Law, Trusts and Property, is a college professor. Dean Pound has well pointed out that members of law school faculties have a permanency of tenure unknown in this country, to judges and others directly interested in the law. For that reason, and the freedom, and lack of bias resulting therefrom, the simplification and restatement of the law is being largely entrusted to them. The investigation of the sources, history, and workings of the common law, and how the law operates in the social order, is at least one of the tasks of the teacher. The highest courts of the land, and particularly the Supreme
Court of the United States, are using articles written in the various legal periodicals and citing them as the basis for their opinions.

The theory, the purposes, the materials of the law must be worked over. Many are the cases in the reports of the various Anglo-American jurisdictions where improper and unjust results have been reached by the courts because they have seized upon formulae and so called rules inapplicable to the particular state of facts, and built thereon a body of law. Such misconceptions are as inevitable as the mind of man is fallible, and must be exposed and set right.

The functions then, of the law teacher, are clear. The emphasis which must always be placed upon good teaching must not exclude research. Both successful teaching and intellectual life require it.

LAWYERS AND MORALS

Under this heading in the February, 1927, issue of Harper’s Magazine, Newman Levy of the New York City bar points out in rather convincing fashion the discrepancy between the legal code of ethics and the actual practice at the bar. He holds that the important question which a lawyer has to decide at the outset of every professional undertaking is how far he may properly go in representing a client. He rejects the declaration of Lord Brougham in the defense of Queen Caroline that “an advocate, by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world, that client and none other.” Mr. Levy insists that the bar must recognize its public obligation as a ministry of justice. “The abstract ethical beliefs of a community may approach the splendid ideals imposed by the churches and the schools; its ethical conduct can never rise above that of its lawyers.”

The illustrations with which Mr. Levy sustains his criticism of the bar may be studied with profit by the lawyers of the nation. Among them may be mentioned the plot by which a lawyer made it appear that an absent witness had suddenly walked into court with a suit case, which he ascribed in his argument to the jury as the work of Divine Providence or an evening paper, whereas he knew that the witness had come to town in answer to
his own long-distance telephone call. A distinguished counsel in cross-examining the mother of the defendant in a matrimonial action forced from her the admission of an unfortunate lapse from virtue in her youth. The ostensible purpose of the cross-examination was to impeach the credibility of the witness, the real purpose was to besmirch the plaintiff and create atmosphere. Another distinguished lawyer denounced a witness as a scoundrel and unfit to practice law, and was afterwards forced by the judge to apologize for his remarks. Eminent lawyers have delayed the machinery of the law for years on behalf of oil magnates or ex-cabinet officials who were their clients. Leaders of the bar have fought for "special tax legislation or special tariff legislation on behalf of some powerful corporation regardless of the economic consequences to society at large."

These illustrations are symptomatic of a callous disregard of the rights of other people (not clients) and of the public at large. However much certain lawyers may have accustomed themselves to such conduct, it is submitted that there are large numbers of practicing attorneys who recognize a higher morality than these examples portray. Certain it is that the ideals of the modern law school do not countenance a slavish client-serving in defiance of the rights of witnesses or of the public generally or of the cause of justice broadly considered. Mr. Levy holds that high educational qualifications will not necessarily mean a higher morality, but in spite of the glaring examples he has cited, it must be hoped that the effect of college and law school training with the emphasis on truth, justice and the scientific aspects of the law will be a quickened conscience and a new sense of public obligation on the part of those who minister in the temple of justice.