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ACCESS TO JUSTICE

In their contribution to the *Texas Bar Journal* ["Justice For All," March 2013], Presiding Judge Sharon Keller and Jim Bethke point out that Texas statutes provided for appointed counsel in non-capital criminal cases long before *Gideon v. Wainwright*, citing an 1857 statute. I would add that legislative concern for adequate legal representation can be traced back even further—to the first judicial acts of the Republic of Texas. In December 1836, lawmakers imposed mandatory pro bono requirements on all Texas attorneys in both criminal and civil cases. The same statute that established basic operating procedures for the Republic's district courts provided that "in case any defendant in any case, either civil or criminal, shall swear he is too poor to employ counsel, the court shall appoint him counsel, who shall . . . attend to the same, without any fee or reward." As a side note, the first litigant to benefit from the statute may have been Mrs. Sam Houston. Though Eliza Allen Houston never appeared to answer Sam's suit, the judge appointed pro bono counsel to represent her before granting Sam a divorce on April 8, 1837.

James W. Paulsen
*South Texas College of Law
Houston*

LETTER OF NOTE

Thanks so much for republishing Roland Boyd's "21 Steps: How to Succeed as a Lawyer" [March 2013]. I didn't have the pleasure of knowing Mr. Boyd, but I knew his son Bill, to whom he wrote the letter. Bill followed his father's advice and became

a lawyer's lawyer and the ultimate professional. In my view, this article and Stephen W. Comiskey's pocket-book of bullet points, *A Good Lawyer* (republished in the 2003 *Texas Bar Journal*), should be given to every new law student, reviewed every year, and then reemphasized at the time of licensing. Maybe then there would be hope for the business of law to return to the profession of law.

Al Ellis
Dallas

SKIPPING SCHOOL

I was surprised on two counts to read President Buck Files' summary opposition against the two-year law school proposal that has been getting some traction lately. ["The Importance of the Third Year," March 2013]. First, I wonder of the propriety of our president encouraging the members of the bar to "aggressively oppose" such a concept without undertaking any attempt to gauge the opinion of the members of the bar, as a whole, to see how they may view the issue. Second, President Files's opposition appears to be solely predicated on the assumption that a graduate of a two-year law school would be "less educated," and therefore somehow less competent, than a graduate of a three-year school. Where is the empirical basis for this opinion? Proponents of a two-year program point to the relative uselessness of the third year—where typically more "coasting" than learning is done—as the exact reason for dispensing with it in favor of an "apprenticeship" program that would actually teach practical skills. Wouldn't a hands-on program, which would be less expen-

sive than another year of largely meaningless classroom study, render equally, if not more, competent attorneys? Doesn't this issue call for more consideration and discussion by our president and bar rather than dismissing it out of hand?

Marty Schexnayder
Houston

Despite the title of the piece, nowhere is the "importance of the third year" explained or even discussed. Instead, an analogy is put forth based on the false premise that additional years of law school automatically equate to more-educated and better lawyers. This analogy begs the question by presuming the result it is supposed to prove—the "importance of the third year." By this analogy, why not extend law school to five years, or ten? The answer is that there reaches a point of diminishing returns (I would argue somewhere right around the end of the second year of law school) whereby the minimal benefits of the additional year are massively outweighed by the additional debt burden. In fact, the third year may be an outright negative to society, as the additional debt incurred by law students limits their opportunities to take jobs that they might otherwise consider.

Lance Leisure
Houston

President Files opposed the proposal in New York to allow students to take the bar exam and enter practice after two years in law school. He mistakenly supposes that the third year is indispensable to professional

competence. The three-year degree was fashioned at Harvard in 1870 to elevate the social status of those holding Harvard Law degrees. Many Harvard students looked at the third-year curriculum and left without a degree.

Harvard understood that great lawyering does not require prolonged formal education. It awarded an honorary Ph.D. to Thomas Cooley, who had a year of elementary school and a year in a law office before moving to Michigan at the age of nineteen and hanging out his shingle. He moved on to be the Michigan Supreme Court clerk, then its chief justice, then the founding dean of the University of Michigan Law School, then the author of the leading works on constitutional law and on torts, the president of the American Bar Association, and the designer and founding chair of the Interstate Commerce Commission regulating the nation's railroads. Cooley "read the law" and became perhaps the best lawyer in America.

It was still an option to read the law when I entered the profession in Texas in 1955. The applicant who scored the highest grade on the bar exam that I took spent time in a law office. In three days he wrote legal opinions on many diverse examination problems, but he had paid no law school tuition. It would have cost him \$50 a year to attend the University of Texas Law School from 1952 to 1955. I went to Harvard and paid \$600 a year in tuition.

In the 20th century, the bar began to favor requiring three years of study. The concern was not the competence of lawyers but the status of our profession: if medical students were required to stay for four years, maybe lawyers should stay for three. Benjamin Cardozo and Henry Stimson, two of the wisest and best 20th-century lawyers, skipped the third year, took the New York Bar Examination, and become famous for their good professional judgment.

The requirement of three years was imposed in many states in the second half of the 20th century. But it is not universal. Many California lawyers are graduates of two-year programs in that state. Reliance is placed on a rigorous licensing examination to assure a reasonable measure of professional competence. There is no evidence that California lawyers provide poorer professional service than Texas lawyers.

Requiring three years made more sense in 1963 than it does now. The price of all higher education in the United States increased as a consequence of the 1965 federal law guaranteeing the repayment of loans to students. In real dollars, taking account of inflation, the price of higher education is now about five times what it was when that law was enacted. The money is spent on elevated academic salaries, extended administrative services, and reduced ratios of students to teachers at all levels. "Higher" education keeps getting higher in price.

As a result of this elevation of the price, the requirement of three years is increasingly discriminatory. The offspring of working class families often leave law school with substantial debts that they cannot repay from their earnings as rookie lawyers. For many, their prospective careers are ruined.

If our profession wishes to remain open to members who come from impecunious families, it must face the reality that three years of law school is unnecessary. I urge the bar and the Supreme Court to address the issues promptly.

Paul D. Carrington

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Durham, North Carolina*

EXCEPTION TO THE RULE

I was shocked by the February 2013 Opinion No. 623 of the Professional Ethics Committee of the State Bar of Texas [March 2013]. Unless

there is an exception to the rules, the described conduct of a lawyer making the first call to the client is a violation of the rules and the barratry statute. The committee should have so ruled.

I see nowhere in the rules where there is an exception for "real estate agents." If a real estate agent's client wants a recommendation of a lawyer, there is no problem with the agent giving a recommendation (provided he is recovering nothing of value from the lawyer for the recommendation), and there is nothing to prevent that real estate agent's client from making the first call to the lawyer. This process is what is contemplated by the rules and avoids all questions of barratry or rules violation.

I have never met a case-running lawyer yet who does not claim he was asked by someone to have him call the prospective client. The lawyer described in Opinion 623 is asking for trouble! I believe the committee should withdraw its opinion and revisit the question with a more realistic view of the world.

It is a shame there is not a period for lawyer comments on proposed committee opinions before the final opinions are published. There should be.

William R. Edwards

Corpus Christi

Editor's Note:

The *Texas Bar Journal* has received letters questioning its decision to print "The Top 10 Things I Wish Someone Had Told Me When I Began Practicing Law," by Travis Ketner that appeared in the March 2013 issue. Mr. Ketner has previously been disciplined by the State Bar. He is now active and in good standing. Mr. Ketner currently makes presentations to young lawyers, which allow them to use his previous experiences to avoid making the mistakes he made in his own career.