Junior or Interlocutory Admission to the Bar

By Lloyd N. Scott
Secretary of the New York Joint Conference on Legal Education

The central idea of the Junior Bar under the original plan is that of an interlocutory admission to the bar with a probationary practice period to determine fitness for final admission. Final admission under present practice comes immediately after educational training, and the Character Committee does not have an opportunity to pass upon the capacity of the candidate to meet those real professional problems which, for the rest of his professional life, he will be expected by the public to discharge. The actual legal work handled by the candidate during, say two to five years of practice as a junior attorney, would be the basis of the determination. The object would be to determine whether the assembled qualities of education, culture, professional responsibility and moral understanding of the candidate make a man of such a standard as can be entrusted with the administration of justice and the transaction of legal business; and also as to whether he has developed bad professional habits, which, if not corrected, will bring discredit upon himself and the profession.

One of the best ways of accomplishing this would be to require the junior to keep a diary of his professional activities, so that at the end of the two to five year period, he could refer to it, and on examination, describe the legal work which he had done without the use of names of his clients. If on this examination it developed that he had not practiced according to the Code of Ethics of the American Bar Association in essential particulars, and that he very inadequately handled the legal work which had been entrusted to him and he was manifestly unfitted to serve the public, he would not be allowed to continue to practice. Under the Junior Bar plan he would, for a period of two to five years, be drilled in practicing according to the Code of Ethics of the American Bar Association. This would, no doubt, ever afterwards influence his professional attitude toward problems that are now only touched on in the law schools. The second examination would not be directed at the candidate's understanding of the law, or of those moral qualities which are now covered by Character Committees on the first admission, but rather to a determination at an early date of the candidate's methods of conducting professional matters, and cause the stopping of mildly unethical practices, and to eliminate from the

profession those who are bringing such public disrespect on the bar that it is in danger of losing its position as an honored profession.

SUMMARY

1. Junior, or interlocutory, admission to the bar for two to five years with the right to practice in all courts and engage in all other legal work during that period.

2. A determination at the end of two to five years of the following:

a. Has the candidate conducted his legal work and pecuniary transactions in a satisfactory and business-like manner?

b. Has he followed the Code of Ethics prescribed by the American Bar Association in the conduct of his professional activities?

c. Does he speak and write English accurately and with a knowledge of the value of words, so that he might be entrusted with the drawing of wills, agreements and other legal papers?

d. Do his methods of conducting his legal business need modification to safeguard his future, and so as not to bring disrespect on the profession?

e. Do his assembled qualities of education, culture, professional responsibility and moral understanding make the man of such a standard as can be entrusted with the administration of justice and the transaction of legal business as befits an attorney and counsellor at law?

Professional conditions are not the same in all states of the Union, and different states may have different methods of accomplishing the above. Some may find it expedient to grant the interlocutory admission for two to five years and make it final unless protests are filed against the candidate. Other states may find it essential to have a positive second character examination at the end of the two to five year period, and determine these matters positively, and still other states may find it most expedient to simply shift the burden of proof at the end of two to five years from the candidate to the courts. An obligation would be on the candidate during the interlocutory period to positively show that he had practiced according to the above requirements, as evidenced by professional sponsors or a certificate from the judge of a court, and after that period the burden would shift to bar associations and courts to prove that he had positively committed a breach of professional ethics of such gravity as to warrant disbarment.

Since the original idea for a Junior Bar was published in the *Panel*, a publication of the Association of Grand Jurors of New York County, in

June, 1929, in an article by the author of these paragraphs, it has developed in several different directions which seem to be an outgrowth of the original idea. In some places, it has taken the form of associations of young practitioners. In others, the name "Junior Bar" is associated with courses for the instruction of young lawyers at bar associations. In some law schools it means the organization of senior students and young practitioners under the guidance of a mature member of the bar.

The incorporation in the plan of the self-governing idea has recently been developed. It has been used in universities for a long time, viz.: the self-governing student body.

The young practitioner does not welcome being judged by older practitioners, who may or may not be practicing ethically, but would have less objection if he were passed upon by his contemporaries. A scheme by which contemporaries of a young practitioner would determine his fitness to practice after a certain definite interval, would have the advantage of also allowing the young lawyers to organize, if they saw fit. In this way, the benefits from the youth movement would accrue to the legal profession and made effective in giving to the profession the benefit of youthful ideals of conduct, as it is now in other organizations.

There has been suggested, therefore, an Auxiliary Character Committee made up of contemporaries of young practitioners selected by the courts from each yearly class and giving graduates of each law school adequate and/or proportionate representation on the Committee. This type of Committee would have an influence, no doubt, in breaking up the propagation of bad ethics by a few older practitioners, as young practitioners would not be obliged to work for an unethical practitioner in order to secure his support at the time of final examination into fitness. We now find that in many cases unethical practices are propagated by older practitioners employing in their offices young practitioners before they know what it is all about. They become apprenticed to bad practices and are developed along lines followed by the older practitioner. If the determination of whether a man had been practicing in accordance with the ethics of the American Bar Association were placed on an Auxiliary Character Committee of young practitioners, the young practitioner would realize that his fate would not be in the hands of an employer and his friends whom he might distrust, but be afraid to take issue with. Older unethical practitioners would not be able to coerce young practitioners.

There has been some objection to incorporating this idea as perhaps it is moving too rapidly and encumbering the central idea of the Probationary Bar Movement, which, of course, is to have a point fixed at two or five years distant from the date of admission at which the professional

conduct of the practitioner will be reviewed. It is not expected that very many will be censored or dropped, and it will be more in the nature, at first at least, of a point at which the practitioner will have to stop, look and listen and see whether he is doing what he should do in the conduct of his practice and if he is doing anything wrong, be told about it before it is too late. No doubt, practitioners who are doing things that are slightly unethical, or which are bad practices from a business standpoint, will be gainers in their after-careers, by being obliged to eliminate practices that might be disastrous to them as they grow older. It does not mean that the practitioner will necessarily be dropped, but if he is not keeping the proper custody of his clients' money; if he is working in an ambulance-chasing organization or a bankruptcy racket; or acting as an attorney for a nest of professional criminals; he will know that at the end of five years he will be put on the carpet, as it were, and have to disclose the situation, and on such terms as may be decided upon, either immediately cease the practice, or be dropped from the roll of attorneys. Under present practice, he may go on with unethical practices until he is brought up with disbarment proceedings. These, of course, place the burden on the complainant. Under the Probationary Bar system, the burden would be upon the attorney to show ethical methods of practice, in accordance with the Code of Ethics of the American Bar Association.

The mere fixing of a time when an attorney must justify himself after being admitted to practice, would be most salutary in cleaning up the dark spots in professional conduct of the bar. We all know how difficult it is to get people to complain to grievance committees and go through all the difficulties of prosecution—many times where they have limited means and limited time to devote to these matters; and the fixing of a date where the attorney himself must justify himself should be very salutary.

As stated above, it is not thought that many at first will be dropped, but all who have not practiced in accordance with the best interests of the community will have to modify their methods of practice, or discontinue at the bar.

The Federal Courts in New Jersey have now introduced the Probationary Bar in the United States District Courts there. The writer had occasion to see a certificate of admission of an attorney to the United States District Court of New Jersey; the certificate definitely stated the probationary period for which he was admitted.

We understand that in New Mexico the Supreme Court authorized certain changes in its rules, one of which institutes the conditional bar there for new attorneys. Indiana, Kansas and North Dakota have also

been interested. In New York State the idea is a live one, although nothing definite has as yet been determined upon.

The consensus of opinion seems to be that the method should be kept as simple as possible, and provide that a young practitioner, in order to continue practice after two to five years, shall file a certificate showing that he has practiced in accordance with the ethics of the American Bar Association during the probationary period.

Once the plan is adopted and used vigorously, it should have a very salutary effect on the ethics of all practicing at the bar.

Report on Auxiliary Character Committees

The proposed plan of action for the Character Committee of twenty-five, of which Mr. Scott speaks in the foregoing article, is discussed in detail in the following report submitted to the New York Joint Conference on Legal Education.

Your Committee submits for consideration the following amendments to the Rules of the Court of Appeals of the State of New York for admission of attorneys and counselors-at-law:

Auxiliary Character Committee and Probationary Period

The Appellate Divisions in each Judicial Department shall appoint annually, as hereinafter provided, separate and distinct from the existing Character Committees, a character committee of twenty-five for the Appellate Division, First and Second Departments, and five for each Judicial District other than the First and Second Appellate Division Departments, from and for each yearly class admitted to the bar after August 1st, 1934, to pass upon the character and fitness of that yearly class. Said Auxiliary Character Committee shall hold office for five years, and/or until its duties, as herein defined, are completed and its members shall be chosen on a proportionate basis from the graduates of law schools in each district admitted to the bar in the five previous years. Vacancies therein shall be filled from time to time by the Appellate Division in each Judicial District represented in said Department.

Within ninety days of the expiration of five years from the date of admission to the bar, each member of the bar desiring to continue practice shall apply to the Auxiliary Character Committee of his or her yearly class in the Judicial District in which he resides and/or practices, for a certificate of character and fitness.

Said applications shall be in writing, and in such form as the Appellate Division of that Judicial Department shall prescribe on recommendation of the Auxiliary Character Committee. The Auxiliary Character

The Human Side of It

The following letter, received by the chairman of an important board of bar examiners, is so intense, so dramatic, and so obviously sincere that it is deserving of publication. It will doubtless find an echo in other stories of hardship and struggle to which many bar examiners have listened.

New York,
January 14, 1934.

Dear Friend:

It is unusually hard to explain why this letter is written; a psychological thought, however, will help the reader to understand my sincere, humble, feeling towards such a benign man as you. Forgive this brief missive, but do not forget it—its friendly relationship!

Last Sunday, I left Baltimore in hopeless despair; the mind, morbid; the body, feverishly ill; the heart, numb—a preparation for degeneration; a state of a living dead! The aforementioned became more acute because I was idle. New York, perhaps, since it is a strange city, an enormous city, would also swallow me.

Since my first failure, last November's Bar, I became a recluse; saw no one, talked to no one,—socially isolated and spiritually degraded. My hope, my life's dream, was dramatically shattered in June, when again I failed.

The first failure entrapped me in a few weeks of ceaseless crying. Night and day tears automatically rolled down the cheeks. The second failure just wrapped me in a state of numbness. It drove me into a hospital, and, like in books, even the doctors could not understand my condition.

You see, dear Sir, if I were to tell you 1/6 of my young life, you would and could understand the whys and hows. I then decided to see you personally. It was like a child facing his master—afraid to go near him, until he decides to touch the master—see if the latter is really a human being. When I entered your office I was scared to death. I, a nobody, daring to talk to such a master! But your pleasing smile soon entangled me in sunshine. I felt at home. I kept on saying unto myself, "Sure he is a human-being; I need not be afraid. Why, he is as friendly as anyone could be."

When I left your office some drab, ugly mask seemed to disappear. Again I was myself—again my dreams, my ideals urged me onward. Forward!

But my poverty was so (and is) great that waiting for the results of the examination cooled my passion. I merely kept on saying to myself: "God, oh God, if I—if I fail? Death! Yes, death."

I knew any day now the results will be out. I was afraid to face the gloomy, tortured look of my father, sisters and brothers—and, hundreds of friends. So, I left Baltimore and figured, if I failed in the Exams, to end it all in a strange city. Just disappeared, that's all.

Dear Sir, do not think me to be a coward, please. Life: I was born in Ostrow, Poland. For five years, life was good to me. We weren't wealthy, but we did earn a nice livelihood, et cetera, and we were happy. Out of the unknown, 1914 reached out and the plague of war was on. I was then five years old. One brother was fighting on the Russian Front, another on the American, and a third, about 16 or 17 years old, playing the game of hide and seek from the Germans. We were forced to wander from the village. It was burned and pillaged. Wandering then, as Gypsies, we (God, oh God) lost our mother, brother and a sister. They died an unwanting death. To tell you of our hunger, starvation and torture in the world war is useless. You know it!! Armistice!..! Everybody was happy—but not Poland. Just as soon as the Germans evacuated, Poland, through its Generals Pethera, Haller and other fiends, carnaged the poor innocent Jews. Life became miserable. The aftermath of the war was a million times worse than the war. Famine, pogroms, carnage, cold-blooded murders and robbery. Our American brother got in touch with us, spent every penny he possessed and brought us to America. We reached Ellis Island, May, 1920.

Except in Hebraic learning, I was absolutely ignorant of education; not even knowing what 2 plus 2 equaled. I began my schooling in the 1st grade, at the age of eleven. Time passed. The family was struggling to earn a living, so at the age of 14, in the sixth grade I left school. But something in me cried: "Education! Education!" After working a year I made a comeback in school and graduated from Junior High School, No. 40, with high honors.

Completing City College I desired so much to go to a University but had no funds. I went to New York, got a job as dishwasher in a summer resort and earned enough for my 1st year's tuition. I entered the University of Baltimore. From then and on through University I worked every summer in hotels, as waiter, bus-boy and Bell-hop in the Catskill

Mountains—earning on the average of $300 per summer. Paying $175 to the school and clothing left me only a few dollars. A sister of mine, brothers, friends came to my rescue and helped me financially. During the day I would sit in the Court House and at night listen to lectures. The family was proud of me! I was the 1st one in our Family to reach such heights.

But my two Bar Exam failures placed me back where I started from. I was lost . . . a flop! I cried my eyes out. "God, oh God, why has Thou forsaken me?!"

Then I met you and your kind, congenial face. Your talk gave me courage again. I studied diligently—hoping, hoping, hoping.

This Thursday, January 11th, about 2:30 P. M., opening my sister's door, I saw her cry. She grabbed me around. "Joseph, Joseph, Joseph."

"Why, Esther, what's wrong. Has anyone —?"

"You . . . You passed the Bar Exam!"

I collapsed.

"Here is a telegram from brother Sam."

I snatched the same, read it and here is what it said:

"Congratulations. Best wishes for the future. Your life should always be as happy as it will be when you receive this telegram. *You have passed the Bar.* Father brought the message to me with eyes full of tears and we all cried for joy."

Now, dear Sir, you understand why I am writing this letter, why I am so thankful. If I ever forget thee may my mind forget its owner; may my heart stop beating!

Naturally, for the next few years life will not be so rosy; nevertheless, I am already a happy young man. I have no contacts, no connections with meritous law firms. But the ice has been broken and I am on my way forward. God has not forsaken me and once given the opportunity I will strive with all my energy to realize my ambitions.

Again, and again I want to thank you for the courage you gave me. Maybe it is foolish of me to write such childish contents, but I must show my appreciation, my sincere, humble thanks, to such a well-known lawyer and man.

Forever a friend—

The Privilege of Reexamination in Professional Licensure

By Bernard C. Gavit*
Dean of Indiana University School of Law.

Last fall The National Conference of Bar Examiners (which was formed under the auspices of the American Bar Association) at its annual meeting considered the problem of reexaminations for admission to the bar. In that connection it occurred to me that the bar examiners might learn something from the medical examiners. I made, therefore, some inquiry as to the rules and practice upon the subject from a number of medical examining boards. The results gave unusual point to Dogberry's dictum to the effect that "comparisons are odorous".

The inquiry was limited to the more populous states where the problem in legal circles is particularly acute. But I found that apparently the medical examiners had, even there, no problem as compared with the law examiners. I found no state which had a rule limiting the number of reexaminations for a medical license although there may be some.[1] The number of failures is, however, comparatively small, the lowest figure I received being 5% and the highest 25%. The statistics of the American Medical Association disclose that in 1932 7.6% of the applicants for medical license failed the state board examinations. In view of the fact that some of the boards examine osteopaths and others, the average of failures seems to be something less than 5% when the applications for medical licenses alone are considered. Practically all of those failing on the first examination succeeded in passing a second or third examination, and rarely, if ever, were as many as five or six examinations given. This seems due to two factors. First, the number of failures is so small that it is possible to give some individual attention to those applicants who fail and to adequately supervise their further necessary training. Second, a great deal of elimination goes on before admission to the examination is granted so that only those who have already demonstrated some considerable ability are dealt with by the examining boards.

The comparison with the situation in the bar examining field is startling. In the New York medical examination, for example, from 5% to 10% fail the first examination. In the New York bar examinations the

*Address delivered at Annual Congress on Medical Education, Licensure and Hospitals, Chicago, Illinois, February 12, 1934.

[1]Discussion of this paper brought out the fact that at least eighteen states limited reexaminations to two.

board fails 50% at each examination under what it, not without a sense of humor, designates as a "flexible pass mark", but which might more appropriately be termed an "inflexible pass mark". In other words the board there divides the class in two; it passes the top half and fails the bottom half. The average of failures at bar examinations, including first-timers and repeaters, for the United States for the year 1932 was 55%! That result is rendered more painful by the further fact that ultimately in the neighborhood of 90% of those who took the examinations for the first time will succeed at a subsequent examination in passing and being admitted to the bar. Of original candidates taking their first examination in the years 1922, 1923 and 1924, in New York, 95% have passed; in Pennsylvania, 93%; in Illinois, 86%; and in California, 83%. The total number of admissions also is clearly too large. The number of admissions to the medical profession is annually only between 55% to 60% of the number of admissions to the legal profession.

It is thus apparent that the medical profession is years ahead of the legal profession on the subject of licensure. The reasons are not hard to find. The medical profession has succeeded in eliminating to all practical purposes, the commercial medical school. But last year there were 185 organized law schools in this country, and in the neighborhood of 55% of those schools must be classified as commercial schools. They enroll slightly over half of the law students. The American Bar Association ten years ago established a minimum standard for admission to the bar of two years of college and three years of law school work. The dividing line between the schools meeting or bettering that very minimum standard and those which do not meet it is pretty much the line between the commercial and the non-commercial schools. It is an obvious judgment that it is impossible to keep one's heart and mind in the atmosphere of idealism and his hand in the cash register at one and the same time. At least ten new law schools were organized during 1933,—all of them commercial, making no pretense of meeting any standards.

One of the more "odorous" of the comparisons is that whereas with about half a dozen exceptions the doctors have succeeded in imposing a standard of two years of college work and graduation from an approved medical school as a prerequisite for admission to the medical examination, lawyers and judges have succeeded in establishing a similar standard in only a single state! (It is but fair to say, however, that several other states do approximate this minimum standard.) In view of the fact that in a considerable number of states the courts have the power to make the rules as to admission to the bar it is very apparent that they have not strained themselves in their efforts on the subject.

The medical profession has something more than a vocal belief in its place in society and the professional character of its members. A minimum of learning and character development is actually accepted as an essential point of departure. On the other hand the bitter truth is that the legal profession is still given to talk. It is confused by the difficulty of actually choosing between its vocal standard which makes of the lawyer an aristocrat of learning and character, and the vicious American dogma of equality which makes every moron a potential lawyer. Standards for admission to the bar lose their vitality in the sentimental glamour of an unreal philosophy as to social existence and human nature. The only gain which is worth while now is an actual acceptance by the legal profession of its theory as to the superiority of lawyers, and a will to impose the necessary standards on applicants for admission to the bar. In a pioneer society the governmental and social structure could stand the strain of the "self-made" man. Many believe that our modern more complicated structure cannot even stand the strain of the self-made business man. It should be apparent to all that the superiority of lawyers is a relic of the past unless the modern race of lawyers is both theoretically and actually superior and that indeed social progress cannot longer be asked to put up with mediocre lawyers.

I have spoken of the "superiority of lawyers". It is not for the purpose of being facetious. The truth is that since Chief Justice Marshall wrote into the federal constitution the doctrine of the supremacy of the courts, which doctrine gives the courts the final judgment on all individual and governmental activities, we have a constitutional acceptance of the superiority of lawyers. The doctrine of the supremacy of the courts is based on the lawyer's belief in his own superiority; he alone is qualified to finally direct our experiment in democracy. It remains to be seen whether he is willing to face the fact that anything more than a verbal superiority depends on the broad and deep learning and moral and social achievements of the lawyer in action in modern society.

The problem of reexamination is very pertinent, for the bar examination is the only mechanism we have at present which may possibly filter out *some* of the undesirables. It is obviously inadequate. The past results, where some ninety percent of all applicants, regardless of their original preparation, succeed in finally passing, demonstrate that the minimum of a formal legal education required by the best of bar examinations is indeed a minimum, for it can be acquired successfully by almost anyone regardless of his scholastic and social background, if he be *persistent*. Despite the lawyer's pride in what he is pleased to call his acquisition of the power of "legal reasoning" it is apparent that, at least as tested by the

present bar examination, "legal reasoning" seems to be composed of a rather narrow formal knowledge plus a mediocre system of logic.

Medicine and law again part company, for medical training and licensure include clinical experience. A very few states require a short clerkship for final admission to the bar, but only after the formal bar examination. Indeed it seems that law schools will never be able to finance and conduct any extended clinical experience for law students on a parity with medical school training in their own hospitals although a slight beginning has been made in a few schools. The practical difficulties seem insurmountable, and indeed the obvious solution seems to be a law office training following formal instruction supervised by the schools.

It becomes increasingly clear that the best of bar examinations is an inadequate tool in solving the problem of admission to the bar. Any *ex post facto* determination of a candidate's fitness is unjust to the candidate; any strictly formal examination is unjust to the public and the bar. Professional character can not be developed or measured but slightly in any such haphazard way. When we realize that professional character consists of a broad and deep learning plus a socialized point of view it is clear that it cannot be left to chance. The problem must be passed on to the schools, as it has been in the medical world. The commercial law school must go; law schools must impose stringent standards under the administration of bar examining authorities.

But in the meantime we must struggle with the bar examinations and make them as effective as possible. The problem is immediate and cannot wait for the "best possible" solution.

The most effective immediate prophylactic is a limitation on the number of reexaminations permitted for each applicant. About one-fourth of the states now have some such limitation, although the number of repeater examinations allowed is too high, being often as many as six or more. No one has suggested that such a limitation would be illegal. I know of no case where the question has been raised but it seems apparent that the regulation can easily be sustained. All that is necessary is that there be found for it a reasonable basis in present and past experience and a reasonable expectation that it will serve the purpose intended.

On that score it is an obvious judgment that such a regulation is reasonable. We are already committed to the view that there should be a dividing line between those qualified and those not qualified to practice law or medicine, and pushing the line up a little to exclude those who

fail three examinations for license is, based on past experience, a most liberal dividing line. Like all lines it looks, and is, arbitrary, but it would certainly have the effect of keeping out those more clearly improperly prepared and at the same time of improving the preparation of those who undertake the examination. Of itself it would tend to force students into the better law schools for experience demonstrates that on anything other than an antique bar examination the graduates of the standard law schools enjoy a percentage of 85-100% of success in passing the first examination and almost without exception succeed in passing a second or third examination.

The most persuasive argument in favor of some such uniform limitation is that it effectively places a penalty on the applicant who is so willing to get by on the barest minimum; who is so anxious and willing to offer the least in exchange for a license to practice. I cannot escape the conclusion that the applicant for a public license as a member of a learned profession who is willing to apply for a license without the preparation which is commonly accepted as the minimum standard *ipso facto* demonstrates his unfitness for the license. He wishes the public authorities to certify that he is learned (in the best sense of that word); that his moral fibre is far above average; and that he has that capacity for disinterested social action which is the very essence of the concept of professional character. It's no good talking about law and medicine being professions unless we mean by that that our ideals of conduct forsake the immediate personal gain for a social value. And unless we mean further that in the field of action the supposed professional man has at least an even chance of choosing the latter in preference to the former. There is no positive guarantee for that result, but that it is impossible of conception and attainment unless the foundations of character be properly laid is more than obvious. The applicant who wishes a certificate as to those qualities who has none of them condemns himself. He certainly demonstrates that it is questionable if he ever will, even under the best of conditions, measure up to any decent standard of professional conduct. My own observation is that the young men who are willing to give the most in exchange for a license to practice are the ones we are later to count on most, and that those who are willing to give the least at the start of their professional career continue on the same plane throughout the balance of their lives.

The easiest task in the world is to fashion the ideals of a "rugged individualism"; the next easiest task is to attain those ideals in every day life. But true professional ideals and conduct are quite different things. Experience amply demonstrates that the best indication of a man's future

is his past and present; that professional ideals and conduct cannot be left to chance; and that certainly they are not attained in the market places of a cheap and abbreviated education. The doctrine of "caveat emptor" has no place in legal or medical education, nor in the standards for admission to practice.

I do not forget that a great many students are imposed upon by the sales talk of commercial schools. But the fact remains that we need not be too concerned over those whose powers of perception are somewhat limited and who ultimately seem satisfied with a mediocre training; particularly if we offer them a fair opportunity of success after their limitations are pointed out to them.

With good grace we can certainly draw the line against the applicant who fails three times. My opinion is that the privilege of reexamination should, in the usual case, be limited to two repeater examinations. Good men with adequate preparation are likely to fail their first examination. They are ill, or nervous, or too confident. Men from good schools sometimes fail because they have been led to believe that their education is so superior that a reexamination as to their knowledge is something of a superfluity. They do not review their early work with the result that they fail to pass. Two additional examinations ought to, and do, take care of that group.

Those who fail because of inadequate preparation are certainly sufficiently warned by their first failure, and the common experience of a large group of others with similar preparation, so that a second and third trial seem all that can honestly be required.

A lawyer is certainly in no position to give much advice to the medic on this subject. Medical standards for admission to examination for a license are so high that the problem of reexamination after failure is relatively unimportant. I suppose, however, that there are some few who could still profitably be finally eliminated by the state medical examinations. There would seem to be no harm, and indeed all indications are that positive benefits would result, if medical reexaminations were limited to two in number. Certainly in the legal field it is a necessary expedient, for until the legal system turns to the elimination of the poorer grades of lawyer material through the standard schools some elimination must be effected through the state bar examinations. At present the elimination is negligible. Nor does the system sponsor the standard or superior rather than the inadequate law school and character training. Something could be gained along those lines, however, by the simple expedient of curtailing the privilege of reexaminations.

In re: "The Human Side of It"

Boston, Massachusetts, March 16, 1934.

Mr. Will Shafroth,
Denver, Colorado

Dear Mr. Shafroth:

I have read with much interest the letter in the March issue of THE BAR EXAMINER from the candidate for the bar. This, of course, represents in very poignant fashion the situation which has led some persons here in perfect sincerity to endeavor to stop any advancement in the qualifications of admission. But let us look at it from the standpoint of the public. In the first place, the letter shows in its own wording that the great reason for the applicant desiring to become a member of the bar was social prestige. He says "The family was proud of me. I was the first one in our family to reach such heights." But, while this is an honorable ambition, it is not necessarily for the interests of the public that it should under some circumstances be gratified.

In the next place, while the present applicant had a much more thorough general education than prevails with us in Massachusetts, he does not say what happened to him either in City College or in the University of Baltimore, or what record he made there, although apparently he left the high school with honors. If he were really a good student at the City College and the University, it is somewhat queer that he could not have got into the bar before his third attempt.

Lastly, he made two attempts at which he was unsuccessful, and I think it is a reasonable inference that he did not probably more than get by on his third attempt. As he has now entered the bar, and to that extent fulfilled his ambition, there is more that lies ahead of him. As he says he has no contacts and no connections with law firms, it is a question whether in an already overcrowded profession he really has done anything more than embark upon a career which satisfies at the outset his ambition but in which he is probably destined to failure. Of course he may be the exception and may make a very worthy success, and one would naturally hope so after reading his pathetic letter. At the same time it seems to me that the chances are very much against him and that in a profession, overcrowded as I have said, the public really has no particular need for his services. He probably would do much better if he pursued a business or commercial career.

This sounds very unsympathetic, but there are many examples that bear it out.

Very truly yours,

GEORGE R. NUTTER,
Chairman, Committee on Legal Education of the Bar Association of the City of Boston.

Supreme Court of Louisiana Declares Its Power Over Admissions

In the recently decided case of *Ex Parte Lester Richard Steckler and Hilary Joseph Gaudin,* (not yet reported), the Supreme Court of Louisiana in an opinion by Chief Justice O'Niell passed on the right of two graduates of a law school to be admitted to the bar without passing the examination prescribed by the Supreme Court Examining Committee, as required by an act of the legislature in 1924 and a rule of the Supreme Court. The petitioners in this case contended that the statute and the rule of court were unconstitutional in denying the right of a holder of the degree of Bachelor of Laws from Tulane University to practice law without further examination. The claim of the petitioners was founded on an act of 1855 providing that the degree of Bachelor of Laws conferred by the Board of Administrators of the University of Louisiana should authorize the person on whom it was conferred to practice law in that state and that this right was preserved to graduates of Tulane by contract entered into between the State of Louisiana and the Board of Administrators of the Tulane Education Fund.

The Court denied this contention and, in refusing a license to the petitioners by virtue of their law school diplomas, upheld the right of the court to control admissions to the bar in the following forceful language:

> "The power to prescribe ultimately the qualifications for admission to the bar belongs to the judicial department of the government of the state. And each of the three departments of the state government is forbidden to exercise any power properly belonging to either of the others. That is one of the fundamental rules in our form of government, and is safeguarded in the Constitution of the United States, and in the constitution of every state, and has been vouchsafed in every constitution this state has had, except that of 1868. Const. of 1812, art. 1, Sec. 2; Const. of 1845, art. 2; Const. of 1852, art. 2; Const. of 1864, art. 4; Const. of 1879, art. 15; Const. of 1898, art. 17; Const. of 1913, art. 17; Const. of 1921, art. 2. That phase of the question before us shows that the provisions of Rule XV of the Supreme Court Rules is valid, whether Act 113 of 1924 should be declared constitutional or unconstitutional. It is admitted judicially—almost if not quite universally—that the prescribing of the ultimate qualifications for admission to the bar is a judicial function. The legislature may, in the exercise of its police power, and in the performance of its duty to protect the public against imposition or

incompetence on the part of persons professing to be qualified to practice the so-called learned professions, fix minimum qualifications or standards for admission to the bar. But the courts of justice have, besides that interest, another and special interest, in the character and qualifications of the members of the bar,—who are considered in this country as officers of the courts. In fact, a proper administration of justice depends as largely upon the conscience, competence and conduct of the members of the bar, as upon the work of the men on the bench. The inherent power of the supreme court to admit or disbar attorneys at law may be aided and regulated by statute, but it cannot be thereby frustrated or destroyed. In re: Richards (Supreme Court of Missouri), 63 S. W. (2nd Series), 672. In support of the proposition that the legislature in the exercise of its authority to fix minimum qualifications or standards for admission to the bar cannot deprive the supreme court of its authority to prescribe the ultimate qualifications, of those who possess also the qualifications prescribed by the legislature, for admission to the bar, we are referred to an appropriate and excellent *Opinion of the Justices,* of the Supreme Judicial Court of Massachusetts, (in 1932), 279 Mass. 607, 180 N. E. 725, 81 A. L. R. 1059, and the decisions cited in the footnote, 81 A. L. R. 1063,—viz: In re Bailey, 30 Ariz. 407, 412, 413, 248 P. 29; In re Day, 181, Ill. 73, 82, 94, 54 N. E. 646, 50 L. R. A. 519; People v. People's Stock Yards Bank, 344 Ill. 462, 470, 176 N. E. 901; Olmsted's Case, 292 Pa. 96, 103, 104, 140 A. 634; In re Leach, 134 Ind. 665, 671, 34 N. E. 641, 21 L. R. A. 701; Hanson v. Grattan, 84 Kan. 843, 845, 115 P. 646, 34 L. R. A. (N. S.) 240; In re Branch, 41 Vroom, 537, 574, 575, 57 A. 431; In re Application of K., 88 N. J. Law, 157, 98 A. 668; In re Bruen, 102 Wash. 472, 476, 172 P. 1152; In re Application for License to Practice Law, 67 W. Va. 213, 218, 67 S. E. 597; Danforth v. Egan, 23 S. D. 43, 47, 119 N. W. 1021, 139 Am. St. Rep. 1030, 20 Ann. Cas. 418; In re Platz, 42 Utah, 439, 443, 444, 132 P. 390; State v. Cannon (Wis.) 240 N. W. 441; Ex parte Garland, 4 Wall. 333, 378, 379, 18 L. Ed. 366; Brydonjack v. State Bar, 208 Cal. 439, 443, 444, 281 P. 1018, 66 A.L.R. 1507."

Editor's Note:—Other articles in THE BAR EXAMINER, giving citations in reference to judicial power over admissions to the bar, are as follows: *Legislative Power Over Bar Admissions* and *Is Admission to the Bar a Judicial or a Legislative Function?,* Vol. I, No. 8, June, 1932. p. 210 and p. 222; *Judicial Power Over Admissions* and *Rule Recognizing Law Study Only in Approved Schools Is Sustained by Connecticut Court,* Vol. II, No. 7, May, 1933, p. 186 and p. 190.

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Only Small Decrease in Admissions

The significant fact regarding the figures for admission to the bar during 1933 (The Bar Examiner, April, 1934, p. 132) seems to be that the depression has had only a very slight effect in reducing the number of successful candidates. There has been a very noticeable tendency to make the examinations harder and better, but the number admitted still remains well above nine thousand. With the increase of first- and second-year law school classes since 1931, the number of admissions is likely to grow to some extent in the next year or two. After a steady decrease in law school attendance over a period of five years, it looks as though the curve has turned upward again. Some comfort can be taken from the fact that the decline in the number of students has been mostly in the poorer schools and that in those institutions approved by the American Bar Association attendance is now less than one thousand below the peak.

An Abler and a Finer Bar

By John Kirkland Clark,*

Chairman of the New York State Board of Law Examiners and Chairman of the Section of Legal Education and Admissions to the Bar of the American Bar Association

Today, more than ever before in the history of the bar, is there need for a survey of the field of its activities, the manner in which that field is being covered and the problem of its personnel. Unfortunately for the profession and the community, the growth of the bar has been all too little regulated and supervised—like Topsy, it has "just growed."

This is not the time nor the occasion to discuss at length the haphazard growth of the legal profession in America from early colonial days to the present. * * * The crying need is for a thorough and intelligent survey of the facts. We know practically nothing as to the extent and nature of the field in which members of the bar are engaged, nor have we any accurate knowledge of the number of lawyers practising and where they are located. The nearest we have come to any scientific correlation has been a comparison of population, gross wealth and census computations as to those giving the law as their occupation.

Obviously, the law "business" has no necessary and in all probability has no real relationship to gross population. It probably has a closer correlation to gross wealth, but it is, in my judgment, far more probable that the correlation should be made between the number of practising lawyers and a factor which is derived from the population, wealth and, most important of all, the group activity or financial and commercial turnover. Other factors, also, of course have affected the situation, and still do—the growth of the railroad, the street car, the automobile—the growth of municipalities—with condemnation proceedings and other legal problems. In other words, in communities like Cincinnati and New York, the amount of work for the profession clearly does not depend upon the number of the inhabitants. There are probably more inhabitants here now than there were five years ago, but no one would for a moment contend that, as a result, there is more business for the lawyers. * * * The volume of work and gross income of the practising lawyers would obviously be, much more naturally, proportionate to the gross income of the community, but ultimately, as I have just said, the volume of business activity will in all probability prove to be the most material factor.

*An address delivered before the Cincinnati Bar Association, February 13, 1934.

To determine what this factor is will require highly scientific research by properly qualified economists. Without some fairly accurate knowledge of the result of these factors, it would seem absurd to try to say that steps should be taken to limit arbitrarily the entry into the bar of new candidates. We cannot tell how many lawyers are needed.

* * * *

An historical study reveals that, just as the general economic situation has been, from time to time, affected by the interruption of the regular trends by war, so the ratio of the number of lawyers to the general population has likewise been affected. * * * From 1910 to 1920, due to the interference of the World War, while there had been a considerable increase apparently during the first five years of the decade, the number of admissions fell off markedly during the war period, so that in 1920 there were only 122,000 lawyers to 105,000,000 population. After the war there came a sharp rise in the number of lawyers, many of the young men in the army having completed their legal education, thousands with governmental rehabilitation aid, and entered the profession during that decade. In 1930 the totals were 160,000 lawyers to 123,000,000 population.

This increase from 1920 to 1930 was so extraordinary and the decrease in business which occurred at the end of the decade was so sharp that the question of overcrowding became acute. Strangely enough, however, in 1930 the percentage of lawyers to the general population was almost identical with what it was sixty years before, and on a *per capita* basis, therefore, there seems little ground for the belief that the present overcrowding, were business normal, would be regarded as excessive.

There can of course be no doubt that during the current period from 1930 to date there has been and is, in the light of all the factors entering into the situation, a superfluity of lawyers. Whether or not there is today a greater number of lawyers even in a center like yours than will be required if, as and when normal business on substantially the basis of ten years ago should be resumed, no one is today in a position to say. My personal judgment is that there is probably an excess of from 10% to 20% in the greater centers like New York, Chicago and Los Angeles—perhaps also in Philadelphia, St. Louis and Boston, and possibly in Detroit, although of course in all of these instances the expression of opinion is merely a surmise.

There is one point involved, however, as to which there is practically universal agreement, and that is that the excess is very largely in the group of those in the lower range both intellectually and in the economic range, based on the extent of service rendered and income earned. Practically everybody agrees that we have too many *poor* lawyers—poor in

intellect, lacking in the proper conception of the functions of the bar and for the most part poorest in the service which they render to their clientele. It is *this* problem which we must face and solve if we are to have an abler and a finer bar.

To appreciate what is required to accomplish the desired result, it may be worth a momentary glance backward to see how different is the bar today, not merely in its personnel but in its activities as well—the kind of legal matters to which the bar is for the most part devoting its attention, and the character of the training, both intellectual and ethical, which is being received by the members of the bar who are being admitted today.

In the first place, as has been universally recognized and widely proclaimed, the activity of the bar today is infinitely more involved with ordinary business, commercial and financial, than was the case fifty or sixty years ago. The formation of great financial and industrial combinations has been accompanied by the creation of large corporation law departments and of great legal offices with 15 to 25 partners and staffs of salaried employees numbering scores of lawyers and many clerical assistants. As has been the case with the great business and financial concerns, in such organizations the work has been departmentalized and the organizations are for the most part collections of specialists.

The most significant factor as it affects the newcomers to the bar is the loss of intimate personal contact between the seniors and the juniors, for in some of these offices, many if not the majority of the salaried lawyers scarcely know some of the partners except by sight. There has therefore come about an almost complete disappearance in a considerable number of such offices of the personal influence of the experienced lawyer upon the neophyte—the effect which a clerkship in a law office in the old days was supposed to and in most cases undeniably did produce upon the embryo lawyer.

During this same period, the process of legal education has likewise been taken out of the hands of the practising lawyer and taken over by men professionally trained to teach the law. Even thirty years ago, at the turn of the century, probably the great majority of those studying law were taught by actively practising lawyers and, in the smaller law school classes then conducted, there was still something of the relationship which existed between the old-time lawyers and the younger men in clerkship days.

Today, with classes ranging in number from 100 to 200 at recitations or lectures, it must be hard for the law teacher to know, even by sight, the majority of the men in his group. The personal relationship is reduced to a minimum and for the most part those giving the instruction cannot

give the benefit of what might be called the personality-absorption which existed in the old law-office training days.

The change in the nature of the matters handled by the majority of lawyers is another factor which has perhaps been too little considered as affecting recent developments. Fifty or sixty years ago, lawyers were known almost entirely for their court work. The young lawyers at the bar met and observed their fellows and their elders, day after day, in court encounters. The juniors at the bar came to know the older and more experienced men, through their court contacts, to an extent which is of course impossible today, partly because of the increased volume of business, but chiefly because the great majority of the members of the bar today in all probability rarely or never get into court.

* * * *

The most significant of these developments insofar as they affect the incoming members of the bar are, however, the basic change in the method of legal education and the disappearance of the old factor of absorption of the knowledge and practice of legal ethics by close contact between the neophyte and the experienced practitioner.

Let us consider the changes in legal education. Up to fifty years ago, only a comparatively small proportion of those coming to the bar had had a complete course in a law school. The success of the old and great law schools of the last century resulted in the starting of scores of schools whose interest was not solely that of legal education but, in part, the making of a profit from the educating of prospective lawyers. Many of them have been and some are still run as commercial enterprises. * * *

The law schools of our day are divided more or less arbitrarily as part-time and full-time schools, by which is meant that in the so-called full-time schools the great majority of the students are making their law studies their primary activity. In the part-time schools, for the most part the students are engaged in supporting themselves and ofttimes other members of their family while at the same time acquiring a legal education. There is no question that in any of the law schools in either class in New York State today it is possible for a capable man in the courses, as now given, to acquire an excellent legal education—an education much more comprehensive and profound than was acquired by any but the most fortunate in the old days of clerkship study. * * *

It is, however, quite obvious that in the great volume schools where there are graduated large numbers of students every year, and probably in some smaller schools, as well, there are, in many cases carried upon the rolls students whose scholarship work indicates, when they have completed the course and are awarded an LL.B., that they are not yet ready

for admission to the bar. This is a situation which, in the minds of many thoughtful members of the bar, calls for immediate attention. * * * Undoubtedly, a considerable portion of those who are "carried through" and awarded a degree, are recognized by their professors as really needing additional instruction before they should be admitted—and yet the appeal of a hard-working boy or girl who has, under difficulties, succeeded in getting a "pass-mark" in all of his courses is one which no man with human qualities can easily withstand.

In my judgment, it is this situation more than anything else which accounts for the fact that so large a proportion of the candidates who take the bar examinations fail in their first attempt. It is a materially different problem for a student to take three or four examinations at law school in courses in which he has had a year's work which he has just reviewed—particularly when he knows that he has a term mark which will probably help carry him through the examination,—than to face a two-day examination covering the entire field of the substantive and adjective law in which the examination, alone, decides.

When the student is called upon to take his final term examinations of his last law school year less than a month before he takes his bar examinations,—if he takes them in June—and when it is realized that the great majority are men and women who are working for their livelihood in addition to the strain of law study, it is perhaps more readily understandable why only 40% or 45% succeed in passing both halves of the examination on their first attempt. Physical exhaustion, nerve strain, the psychological element, all combine at a time like the June examination to interfere with the normal expression by the candidate of his knowledge and ability to enable the examiners accurately to appraise his capabilities.

That this factor is a material one is clearly evidenced by the high percentage of success attained at the succeeding examination by those in New York who have failed only one-half of the examination on the first trial. The result is that by the second examination the great majority of each new group of candidates has been approved as to its intellectual qualities.

There is still a residue of from 20% to 30% who are obviously insufficiently educated and who are required, as a result, to put in from six months to two years more of study before they succeed in qualifying. With them too, new interests in life, the acquisition of experience, even the training acquired in taking the examination two or three times, help to carry them over, so that ultimately at least 90% to 95% are passed.

It will be seen, therefore, that the great problem confronting the bar, as to those who are hereafter to become its members, is the improvement

of law school education and the development of more accurate and effective methods of testing before applicants are admitted to the bar examinations.

* * * * *

It seems but fair for the bar to take a position in forming and exercising a judgment on this subject, because, as I have already pointed out, it is obvious that the law schools are the great factors in governing the quality and to some extent the quantity of the incoming members of the bar, for practically every individual who receives an LL.B. ultimately becomes a member of the bar.

I would not have any misunderstanding as to the valuable work which the law schools are already doing in the service of the bar by eliminating students in the course of their legal education. It would be a very interesting study to find out how large a proportion of those who begin the study of law are eliminated by the law schools themselves because of demonstrated unfitness evidenced by their law school careers.

There is also a degree of protection to which the good law schools of the state are entitled, and that is the elimination of law schools which are not capable of giving the legal education required by our laws. Strangely enough, in this period of depression, there have started up during the past two years in New York City three so-called "one-year law schools", one of which has already, it is reported, died twice. Another of them which claims an arrangement with a university in another state undertakes after one year's instruction here and a fortnight's residential study in the university, to grant its students an LL.B. degree. Another announces in its correspondence that arrangements have been made to enable its graduates to receive an LL.B. Much of the advertising done by some of these schools has approached the borderline of misrepresentation. The danger seems to be chiefly to the few score of the unwary who may think that taking such courses will enable them to become members of the bar in New York, while in fact study in such a law school gains them no credit in qualifying to take our bar examinations.

In Mr. Shafroth's investigation of California law schools last year, he found some similar situations in the "wealth" of law schools in that state. * * *

While some other courses of action have been contemplated, it would seem that the healthy and effective way of dealing with the situation like this is through an enlightened public sentiment on the part of the members of the bar who could without great difficulty convey to those engaged in conducting such enterprises the unworthiness of the undertaking. * * * It is well worth while to check up what our law schools are doing.

This, then, is one of the important problems to which the enlightened and interested members of the Association should turn their attention. We are fortunate in having in New York State an organization started by the New York City Association, participated in by representatives of the State Bar Association, the district bar conferences and the larger local associations, the deans of the law schools of the state, and by the members of the various Committees on Character and Fitness and the State Board of Law Examiners, as "observers." This organization is known as the Joint Conference on Legal Education in the State of New York, and is doing much to bring about an understanding and an appreciation, by its members and the bodies they represent, of the essential elements of the problems involved.

One of the problems which the Conference has been considering with great care is how it may be possible to improve the moral tone of the incoming members of the bar. There seems, unfortunately, to be no practicable way of *eliminating* from the practice the outstanding members whose reputations for ethical conduct are not of the highest but whose reputed incomes are so high as to appeal strongly to many of the incoming members.

* * * *

No more interesting attempt at solution is in process than that which has been operative for the past few years in the neighboring state of Pennsylvania, and I was more than delighted to hear from the President of the Pennsylvania State Bar Association last month that the general impression throughout the state was that much is being accomplished for the common welfare through their preceptorial system.

Now that our tremendous mass of incoming candidates has been somewhat reduced in number as a result of the economic situation and the enforcement of higher standards of pre-legal study, it is certainly worth careful reconsideration as to whether it is not practicable for the other states also to undertake to assign each law student to an older member of the bar of high standards who is charged with the responsibility of making himself thoroughly familiar with the personality of the law student, his mental equipment, his social point of view and his ethical concepts. Our English brethren for generations have felt that the mere process of having the law clerks dine on occasions with those already practising tends to accomplish a result of real value.

If the members of our bar are really serious in their desire to improve its ethical standards, here at least is a method which seems to be worth giving careful consideration and a reasonable trial.

One of the subjects now under consideration by our New York State Conference is a plan whereby the incoming members of the bar shall be

given only a tentative license which shall not be operative after five years unless after a survey of the course of conduct of the probationer during that period his ethical standards as displayed by his practice shall warrant such continuance. This, too, is a proposal which deserves sympathetic consideration and thorough study.

The problems now facing the profession may fairly be regarded as broader and more fundamental than have ever before confronted it—as the report of Dean Young B. Smith, published last week, eloquently points out, as follows:

> "The problems which today confront the nation are largely economic. The ascertainment and explanation of the facts which create the problems are mainly questions of economics. The determination of changes prerequisite to improved conditions is properly a function of the economist. Nevertheless, governmental action looking towards the accomplishment of change has invariably required the aid of law. Thus, the solution of economic problems, through governmental intervention, depends not merely upon the determination of sound social policy, but also upon the intelligent use of law and of administrative agencies.
>
> "The effective use of law and of administrative devices in furtherance of social policies requires the services of men who are not only legal technicians, but who are able to envisage and understand the social problems involved and the manner in which law may be used most advantageously in their solution. The demand for such men in recent months has greatly exceeded the supply notwithstanding the large number of lawyers in the United States. At the same time, the opportunities for lawyers along traditional lines have steadily decreased. This is convincing evidence that legal education during the last thirty years has not properly equipped the members of the present bar to render the kind of service which today is so greatly needed. Of greater significance is the fact that, in all probability, this need will continue indefinitely into the future. With an increasing demand for lawyers capable of rendering such service and a diminishing need for legal technicians of the more conventional type, those responsible for legal education in the United States should give serious consideration to the question whether the law schools of this country are at present providing the type of training that will best equip their future graduates for the kind of work which they will be called upon to do in view of the conditions under which they will live. I do not refer solely to the large number of these young men who inevitably will enter the government service, although their

proper training is a matter of major importance. The needs of the lawyer engaged in private practice also will be affected by the new problems resulting from a reordering of society. The business counselor will be unable intelligently to advise his client concerning his rights and duties unless he understands his client's relations under the new order both to the state and nation and to his fellow man."

In all of these matters in which improvement is universally felt to be desirable, it must be clear to every thinking member of the bar that effective results cannot be brought about except through the intelligent, active and united effort of the lawyers of the community. It is with this objective in mind that this Association, in the coordination movement launched by the American Bar Association, is called upon to cooperate with the national organization, the state associations and other local organizations—and the bar in general—to bring about active and united efforts to accomplish the desired result—an abler and a finer bar.

Analysis of a Michigan Examination

By George E. Brand

Member of Michigan State Board of Law Examiners

Except as to admissions of non-resident attorneys on motion, all applicants for admission to the bar in Michigan are required to pass the written examination of the Board of Law Examiners. Before commencing the study of the law the applicant is required to have successfully completed two years (not less than 60 semester hours or 90 quarter hours) of study in courses for which credit toward a collegiate degree is given. The applicant's legal education may be obtained by attendance at an approved law school or through law office study under the supervision of a reputable attorney. The law school must be one requiring not less than two years' collegiate work as a condition for entrance, must not admit more than a restricted number of "special" students, and must require satisfactory completion of study of legal subjects for three years' (of at least 30 weeks each) full-time attendance, or for four years' (of at least 36 weeks each) part-time attendance. If the preparation be in a law office under an attorney, four years of legal study are required.

The Board of Law Examiners may supplement the written by an oral examination. The subjects to be covered by the examinations, as well as the required grades, rest in the discretion of the Board. The Board is given the power to examine all schools involved.

A Study of Character Examination Methods in Forty-Nine Commonwealths

By Will Shafroth

Secretary, The National Conference of Bar Examiners

Three hundred and ten bar examiners in the United States and its continental possessions spend many hours yearly preparing questions, marking papers, examining applications, and wondering whether, on the somewhat flimsy evidence at hand, they are warranted in accepting or rejecting the multitude of border-line cases which come before them. These men are well aware that the machine they are using is not a scientific ability-detector. They also know that it does separate the sheep from the thorobred goats, unless the latter happen to be of a very persistent strain. And so the tendency is to give the candidate the benefit of the doubt in questionable cases.

This tendency is much more strongly exemplified in the case of character examinations. As a practical matter of fact, an appeal can always be made to the court from a decision of the committee rejecting a man on the grounds of lack of proper moral character. Therefore the board must not only be satisfied itself that a man would not make a proper lawyer, but the evidence must be so tangible that it will also convince an appellate tribunal which is in many cases inclined to be over-liberal. Add to this the known fact that it is extremely difficult to find out anything about a man's character when he is just on the point of starting in to practice law, and you have the final result of a very small number excluded for this reason in a mere handful of states. In New York State, and particularly in New York City, the character committees have worked hard and tremendously conscientiously for years. The net result—four-tenths of one percent of the candidates have been refused admission on this ground. In our largest city, where there is no denying that law is a business instead of a profession to many, forty-eight candidates out of twelve thousand were rejected because they were found not to have the requisite moral character.* On the other hand, in Pennsylvania the

*"The Character Committees of the First and Second Departments, which embrace the metropolitan area in the State of New York, and which are advantaged by personal interview with all applicants, in an endeavor to determine their fitness, refused certification during the six years from 1926 to 1932, to only 48 men, which is less than four-tenths of one percent of the 11,937 upon whom they were called to pass judgment."—Philip J. Wickser, "Law Schools, Bar Examiners and Bar Associations: Cooperation vs. Insulation"—II The Bar Examiner, 6, p. 158.

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Three hundred and ten bar examiners in the United States and its continental possessions spend many hours yearly preparing questions, marking papers, examining applications, and wondering whether, on the somewhat flimsy evidence at hand, they are warranted in accepting or rejecting the multitude of border-line cases which come before them. These men are well aware that the machine they are using is not a scientific ability-detector. They also know that it does separate the sheep from the thorobred goats, unless the latter happen to be of a very persistent strain. And so the tendency is to give the candidate the benefit of the doubt in questionable cases.

This tendency is much more strongly exemplified in the case of character examinations. As a practical matter of fact, an appeal can always be made to the court from a decision of the committee rejecting a man on the grounds of lack of proper moral character. Therefore the board must not only be satisfied itself that a man would not make a proper lawyer, but the evidence must be so tangible that it will also convince an appellate tribunal which is in many cases inclined to be over-liberal. Add to this the known fact that it is extremely difficult to find out anything about a man's character when he is just on the point of starting in to practice law, and you have the final result of a very small number excluded for this reason in a mere handful of states. In New York State, and particularly in New York City, the character committees have worked hard and tremendously conscientiously for years. The net result—four-tenths of one percent of the candidates have been refused admission on this ground. In our largest city, where there is no denying that law is a business instead of a profession to many, forty-eight candidates out of twelve thousand were rejected because they were found not to have the requisite moral character.* On the other hand, in Pennsylvania the

*"The Character Committees of the First and Second Departments, which embrace the metropolitan area in the State of New York, and which are advantaged by personal interview with all applicants, in an endeavor to determine their fitness, refused certification during the six years from 1926 to 1932, to only 48 men, which is less than four-tenths of one percent of the 11,937 upon whom they were called to pass judgment."—Philip J. Wickser, "Law Schools, Bar Examiners and Bar Associations: Cooperation vs. Insulation"—II The Bar Examiner, 6, p. 158.

late Mr. Douglas, former secretary of the board, reported a few years ago that about five percent of the candidates applying in that state were turned back on character grounds.

Yet no one will deny the extreme importance of having a bar that is morally as well as mentally qualified to uphold the standards of the profession. Mr. Chief Justice Hughes, in a recent letter to the Joint Conference on Legal Education of New York, said:

> "I feel that, apart from requirements of technical knowledge, special emphasis should be laid upon the character of applicants for admission to the bar and their application of the standards of professional conduct.
>
> "I realize that this is a matter of special difficulty, but I think that the service and repute of the bar are more likely to suffer from abuses of professional opportunities and sharp practices than from ignorance of legal principles or lack of skill in their application.
>
> "I trust that it will be found possible to devise methods of appraising the qualities of candidates for admission to the bar which will more adequately protect the community from the enterprises of the unscrupulous.
>
> "The best traditions of the bar are of priceless importance, and the maintenance of these is largely in the keeping of those who will participate in your meeting."

I am inclined to think that most of us would agree with this statement. Nevertheless, we do very little about it. The requirement of a certain amount of college education and certain law school training and the passage of the bar examinations in themselves are something of a character test. Besides the democracy and the spirit of fair play which we get in our American colleges, there is also the factor that the persistency and self-discipline which are necessary to acquire either a general education or training in law are likewise character builders.

It is, however, universally recognized that this is not enough. The tremendous difficulty of finding out what a man's character is going to be when he is still immature has probably acted as the chief hindrance. Impressions are not sufficient evidence on which to refuse a man admission to the bar and overt acts of a really reprehensible character are comparatively rare and are difficult to discover.

The National Conference of Bar Examiners has not devoted adequate time or attention to this problem. It is something which needs the careful thought of wise men. The bar examiners themselves are too occupied with the problem of testing mental ability to have time to look thoroughly into character. This is the job of a separate committee and in many states the character examination is organized in this way.

It is a sad fact, and one which is comparatively unknown, that there are at least eight or ten states where the only character investigation made is a perfunctory examination of the formal papers which are required to be filed. Certainly affidavits of two or three friends prove nothing. They may furnish a starting point for getting additional information, but who, outside of the moron, would file an affidavit which was unfavorable to him? In perhaps half a dozen other states no definite procedure is followed, which means that the investigation is generally very cursory. Probably there are not more than a round dozen where the job is properly done.

Recent inquiry from all state boards shows that in only twenty of the states is there any record of definite rejection of candidates for the bar by reason of lack of proper moral qualifications, and the incomplete figures for the last three years show that the percentage of rejection has varied from six-tenths to eight-tenths of one percent of the total number of candidates. It is true, of course, that this does not include applicants who have been discouraged from applying for admission.†

Attention is called to the procedure in Pennsylvania, which is more thorough than that of any other state in the Union. Comprehensive questionnaires must be filed by the applicant, his preceptor, and others at the time of registration for law study, and the applicant must appear personally before the county board at that time. This process is repeated when he has finished his law study and comes up for final examination.

The various states have many different methods of character examination. Some which appear to be bad on paper may not be so because the procedure is carried through by conscientious men who take the task seriously. On the other hand, in some states where the procedure seems to be entirely adequate it may not accomplish anything because of the failure or lack of interest of the examiners. There are, however, a few

† The figures for the twenty states are as follows: 1931, total applicants, 4,910, rejections, 33; 1932, total applicants, 5,268, rejections, 33; 1933, total applicants, 5,587, rejections, 47.

things which can be hazarded as essentials of a proper character examination:

1. There should be separate character committees to which this work is assigned. It is possible to conduct this examination by means of a state committee on character, as is the case in Colorado and Oregon, for example, but the more general method is to have county character committees which can investigate the candidates in their particular sections.

2. The candidate should be required to file a complete questionnaire showing his past residences, business connections he has had, if any, and the names of not less than three attorneys and others whom he gives as references and from whom more information concerning him can be obtained. This questionnaire should be filed with a central agent, such as the secretary of the board of examiners or the clerk of the supreme court, and by him referred to the character committee in the place where the applicant intends to practice, where such local committees exist.

3. In all cases where the candidate is not known personally to one or more members of the character committee, inquiries should be directed to all his references and past business connections. Questionnaires sent to these references will often produce valuable information.

4. Every candidate should be required to appear personally before the character committee, or, in any event, before one or more of its members.

5. In any case where doubt appears as to the character of the applicant, a thorough investigation should be made and, where needed, a paid investigator should be employed.

6. Registration at the beginning of law study should be required of all students studying in the state, and the character examination should be conducted at the time of registration, as well as just before the bar examination. It has proved to be much easier to induce a man not to undertake the study of law if he is not fitted for the profession than it has been to reject him after he has completed his law study.

7. Publication should be made or adequate notification given of the names of candidates for admission.

8. A period of sixty days should be available, within which to make the character examination.

The question of probationary admission to the bar is one which is being seriously discussed. By the new rules in New Mexico, a year's probationary period for all applicants is established there. For some time Oregon has granted a temporary license of two years for foreign attorneys. According to most writers on the subject, this is insufficient and the time should be between three and five years. Mr. Lloyd N. Scott, an early and ardent advocate of probationary admission, has made an interesting suggestion in reference to a committee of contemporary admittees who, at the end of five years, should pass judgment on a candidate in accordance with his record as they know it or have been able to discover it.

The summary of information from the various states (pages 200-1), while "gathered from sources believed to be reliable, is not guaranteed." However, it is fairly accurate and it shows roughly at least the procedure which is used in each state. The following states seem to give a thorough and conscientious examination to all candidates: Colorado, Connecticut, Delaware, Illinois, Indiana, New Jersey, Pennsylvania, Oregon, Rhode Island and Vermont. This list does not purport to contain all of the states where a thorough character examination is made but simply indicates those where the formal procedure as set out in this compilation seems to provide adequate machinery for handling the problem.

It would seem that it might well be one of the objectives of the bar examiners' national association to assist each state in the establishment of a functioning organization which takes seriously the task of finding out everything it can about the candidates who are applying for admission to the bar. The experience of states where this is done shows that outstanding lawyers are willing to give their services to this end. There is a distinct duty on the part of the courts, not only to see that the proper machinery exists, but also to support the findings of these committees when they are justly and fairly made.

While an adequate system of character examination will not bring on the millenium, it is one more step toward a more ethical bar, and therefore it is a step which the profession must take.

Character Examination Procedure for Admission to the Bar

	Investigation Made by	Time of Investigation (Before or After Exam., at Reg. for Law Study.)	Investigation Formal One of Filing Papers	Uniform Procedure Invest. Provided for*	Some Independent Exam. in All Cases**	Personally Interview All Applicants	Names Pub. or Posted or Sent to Members Bar	Reg. at Beginning Law Study Required.
Alabama	State Char. Com.	before		x	x			
Arizona	Board	before						O. S.
Arkansas	Dist. Exam. Boards	after		x		x		
California	Sub-Committees	after		x		F. A.		
Colorado	State Char. Com.	before[1]		x	x	x	x	O. S.
Connecticut	County Char. Com.	reg. and before		x	x	x	x	x
Delaware	Board	reg. and at ex.		x	x	x		x
Dist. Columbia	Board	after		x	x	x	x	
Florida	Board	before		x		x		
Georgia	Superior Ct. Judges	before	x					
Idaho	Board of Com'nrs	before		x	x	[2]		
Illinois	Dist. Char. Com.	after		x	x	x		
Indiana	County Char. Com.	before		x	x	x		
Iowa	Clk. S. C. and Atty. Gen.	before	x					O. S.
Kansas	Board	reg. and at ex.	x			F. A.	x	O. S.
Kentucky	Dist. Char. Com.	before				x		
Louisiana	Board	reg. and before	x					O. S.
Maine	Board	before					x	
Maryland	County Char. Com.	reg. and before		x[3]		x	x	x
Massachusetts	Board and Bar Assns.	after		x		x	x	
Michigan	Board	before	[4]					O. S.
Minnesota	Board	before		x	x		x	O. S.
Mississippi	Board	before						
Missouri	Board	before	x					
Montana	Atty. Gen. Dept.	before	x				x	
Nebraska	Board	reg. and before		x	x		x	x
Nevada	Board	before		x	x			
New Hampshire	Supreme Court	at time of ex.	x					

New Jersey	County Char. Com.	18c bef. 3 aft.[5]	x	x	x	x		O. S.
New Mexico	Board	before	x	x	x			O. S.
New York†	Dist. Char. Com.	after	x	x	x	x		O. S.
North Carolina	Board	before	x			F. A.	x	
North Dakota	Ch'm. St. Bar Board	before	x	x				O. S.
Ohio	County Bar Assns.	reg. and before	x	x				x
Oklahoma	Dist. Admn. Com.	reg. and before	x	x	usually			x
Oregon	3 Members of Board	before	x	x	x	x		
Pennsylvania	County Boards	reg. and before	x	x	x	x		x
Rhode Island	Board	reg. and after	x	x		x		O. S.
South Carolina	Board	before	x					
South Dakota	Com. of State Bar	after						x
Tennessee	Bd. and Bar Assn. Com.	before	x	x				
Texas	Bar Assn. Com.	before	x					x
Utah	Board	before	x	x		x		
Vermont	Board Sub-Com.	before	x	x	x			O. S.
Virginia	3 Attys. of County Ct.	before		x		x		
Washington	Bar Assn. Com.	reg. and before						O. S.
West Virginia	Cir. Ct. or Attys.	before		x	x			
Wisconsin	Board (S. C. on F. A.)	before	x					O. S.
Wyoming	Board	before				x		

*Under this heading those states have been listed where from the rules it appears that the names of candidates are referred to a committee, a board, or a member thereof, whose duty it is to inquire into the character of the applicants, either by writing to their references or otherwise, and not merely to make a check of the formal papers which have been filed.

**Under this heading states have been listed where it appears that there is an independent examination of the character of the applicants other than personal interview and correspondence with references furnished by the candidate.

†Procedure listed is that given for the First Department (New York City).

[1]And after if necessary.

[2]Members of the board try to talk to applicants during the examination.

[3]Only as to law students in the state.

[4]The state as a whole has no definite procedure. The Detroit Bar Association is now investigating applicants in Wayne County.

[5]18 counties, before; 3 counties, after.

Abbreviations: F. A.—foreign attorneys; O. S.—office study; Reg.—Registration.

How the States Investigate Character

ALABAMA

A separate state committee, known as the Committee on Character and Fitness and composed of the President of the Board of Commissioners of the State Bar of Alabama and two lawyers appointed by him, meets approximately a month before the bar examination date to pass upon the qualifications of all applicants. Each applicant must be approved by a majority of that Committee, and an inquiry regarding him is made of the Commissioner in his city or locality.

The applicant files with his petition the names and addresses of his former or present employers and the affidavit of two practicing attorneys as to his character. He may be required to appear in person. An attorney from another state seeking admission on motion must furnish proof of present and continuous good standing at the bar of such other state.

The applicant may appeal from an adverse decision at any time within six months, such appeal to be held and acted upon at the next meeting of the Board of Commissioners of the State Bar.

ARIZONA

The State Board of Law Examiners conducts the character investigation before the bar examination. The secretary sends out inquiries to various sources, and if any doubt arises as to the applicant's character, the matter is referred to the entire Board for action. A personal interview may be required, in which case it is given before the bar examiners as a unit.

An applicant for the bar examination must state his occupation and residence in detail for ten years preceding and give references from whom such statements can be verified. He must furnish three references as to moral character and his application must be endorsed by a member of the bar of Arizona. Applicants who are members of the bar of another state must furnish a certificate of the officer having custody of the roll of attorneys in that state as to their good standing and also a certificate from the bar association if there is any.

Recommendations for or against admission must be signed by at least two members of the Board.

ARKANSAS

The State of Arkansas has district examining boards for each of the eighteen judicial districts, and these boards must not certify applicants for enrollment until they are satisfied that the applicants are of good moral character. The character investigation is made after the bar examination but prior to sending in the qualification certificate to the Supreme Court and before the examination papers are graded. It consists of checking references furnished by the applicant by writing or interviewing them. The practice of the secretary of the central board at Little Rock is to interview personally each applicant.

The applicant taking the bar examination furnishes the secretary a letter with respect to his honor and integrity, his legal qualifications, his business qualifications, his moral habits and his energy; and an opinion as to his general qualifications to become a lawyer from each of the following classes of persons: a judge of a court of record of Arkansas, a member of the bar of Arkansas in good standing, a practicing physician of Arkansas in good standing, a banker residing in the state, a business man residing in the state, and a school teacher residing in the state.

An attorney from another state is certified by the district board to the Supreme Court in the same manner as other applicants.

If a complaint is filed against an applicant, he is given a chance to appear before the entire board, which passes on the matter.

CALIFORNIA

California has no separate character committee. The investigation, conducted by the State Bar office prior to the bar examination, consists of writing to the character references listed in the applicant's application. If their replies are considered satisfactory, and if no complaint as to the applicant's character has been made, it is assumed that he has good moral character. If there is a complaint, the application is usually referred to a sub-committee, an informal hearing is held with the applicant, and a full investigation follows if this is necessary. From an adverse recommendation by a sub-committee, the applicant may, within ten days after receipt of written notice thereof, apply for a review by the entire Committee of Bar Examiners.

The form of application to take the bar examination requests the names and addresses of present and former employers, of a law professor or attorney well acquainted with the applicant, and of three citizens of

his community. The certificate as to law school study, to be signed by the dean, contains the question, "In your opinion, is the applicant of good moral character?"

An attorney seeking admission as an attorney applicant from another jurisdiction is required to appear before the Committee of Bar Examiners, or before a sub-committee thereof, for an oral examination as to his qualifications and must file with his application a sponsor's certificate signed by a member in good standing in the State Bar of California; a certificate of admission to the bar and good standing of the applicant; letters from each community in which he practiced, such letters to be presented from two judges before whom he practiced, two attorneys in good standing, two clients, and the bar association; a letter from each grievance committee or similar disciplinary body in each community in which he practiced as to whether any charges were filed or proceedings instituted against him; and the names and addresses of all employers and of three references of each community in which he practiced. In addition, his application and supporting papers are submitted to The National Conference of Bar Examiners, which conducts an independent investigation.

(Editor's Note: The State Bar of California is now working on a plan for a more comprehensive character investigation of applicants for the bar examination, and the procedure in respect to them will be changed shortly.)

COLORADO

A separate character committee for the state, known as the Bar Committee and composed of five members of the bar, or a majority of that Committee interviews personally each applicant as a part of the bar examination. Candidates for the bar examination and foreign attorneys who have practiced less than five years must furnish three affidavits regarding their character: (1) of an instructor in the law school or attorney under whom clerkship was served, or both; (2) of a member of the bar in good standing known personally to some member of the Bar Committee; (3) of a person chosen by the applicant.

Foreign attorneys who have practiced five years or more must furnish three affidavits: (1) from an attorney in the community where practice was last conducted; (2) from a business man in that community; (3) from a member of the bar in good standing known personally to some member of the Bar Committee.

The investigation of the law school candidates is conducted by personal interviews. Foreign attorneys are investigated through their refer-

ences and by writing to secretaries of local bar associations, local attorneys, and other sources. If a complaint has been received, an extended investigation is made by correspondence, examination, and special hearings, and at times by personal trips of investigation by a member of the committee or a paid investigator.

Lists of the applicants are furnished the Clerk of the Supreme Court, the clerk of the district court in each county, and the Secretary of the Colorado Bar Association within ten days after the bar examination. These lists are posted for at least thirty days, during which time anyone may file objections to the admission of any applicant. If such an objection is so filed, the Bar Committee makes a further investigation. In the past lists of the applicants and data regarding their education, employment, etc., have been sent out prior to the bar examination to all members of the bar in Colorado, with the request that any information regarding an applicant considered of importance in judging him be sent in to the Secretary of the Bar Committee. This latter practice has been suspended.

CONNECTICUT

Each county in Connecticut has a Standing Committee on Recommendations for Admission, appointed by the judges of the Superior Court and composed of not less than three nor more than five members of the bar of the county. The particular duty of this Committee is to investigate the character and general fitness of students and applicants for admission, whether by examination or on motion. Any person beginning the study of law files with the Clerk of the Superior Court in the county in which he resides, in triplicate, a notice of such intention. The Clerk sends one copy to the Standing Committee and another to the Bar Examining Committee, and also sends twice a year to the members of the bar in the county the names and addresses of such students. The Examining Committee checks up the student's pre-law education. The Standing Committee then makes its investigation, requiring the student to file a questionnaire including the names and addresses of two business men and one attorney. These references also receive very comprehensive questionnaires, to be filled out and returned direct to the Standing Committee. Wherever necessary the Committee makes a special investigation of the student's record, using paid assistants if necessary. The members of the bar in the county are notified by the Clerk of the Court of the names and addresses of such students.

Approximately three months before the examination the student files an application for admission to the bar, including the names and addresses of all former employers and the affidavit of two members of the Connec-

ticut bar of at least five years' standing as to his good character. All applicants for admission, whether by examination or on motion, must appear in person before the entire Committee. Further special investigation is made wherever there is complaint or it is thought advisable.

Attorneys from other states seeking admission on motion furnish two affidavits as to character, etc., of members of the Connecticut bar of at least five years' standing, or a certificate signed by two judges of the highest court of original jurisdiction of the foreign state.

The names and addresses of all applicants for admission by examination or on motion are sent to each member of the bar in the county about sixty days before the examination and are usually published in the newspapers.

The Standing Committee reports its recommendations to the county bar, whose approval is necessary.

DELAWARE

Delaware has no separate character committee, the investigation being conducted by the Board of Law Examiners. Applicants to register as law students file a list of character references and the names of their proposed preceptors. At the same time each preceptor files with the Secretary of the Board of Law Examiners a letter certifying as to the character of the applicant based on an investigation made by him. The Board must be satisfied as to the good moral character of the applicant before it will issue the certificate of registration. The certificate of registration as a law student must be endorsed by a judge in the county where the student registers.

Applications for admission to the bar examination are accompanied by the certificates of the preceptors that the applicants are persons of integrity and good character. An attorney from another state must give a list of references and evidence from the grievance committee of that state that no charges of unprofessional conduct have ever been preferred against him in such state.

The character investigation of law students is made at the time of their registration for law study. The investigation of foreign attorneys is made at the time of their application.

Applications are apportioned among the respective members of the Board for the character investigation, which consists of writing to the references and preceptors, a personal interview, and such other investigation as would seem necessary. This board member reports to the Board

as a whole, after which the Board also gives each applicant a personal interview.

DISTRICT OF COLUMBIA

All applications must be approved by the Chairman of the Committee of Bar Examiners before the bar examination. After the examination the names of the successful candidates are published in the "Evening Star," with a notice to the public that any information tending to affect the eligibility of any of said applicants on moral grounds be furnished to the Committee of Bar Examiners. The Chairman then sends out a questionnaire to all employers and references. When these are returned, the applications and all papers in connection therewith are divided pro rata among the other six members of the Committee. The applicant must then appear before the member of the Committee to whom he has been assigned for personal investigation of his record, and he is not placed upon the list for admission until the Chairman receives a report from the Committee member that the applicant is qualified.

If an applicant who is refused admission on character grounds desires to take his case to the full Committee, he is granted that privilege, is allowed to appear with counsel, and his case is carefully considered. If the report of the whole Committee is still adverse, the applicant may take his case to the Court.

The form used by applicants for the bar examination requests the names and addresses of all employers, the names and addresses of five persons as references, and provides an accompanying certificate of character. In addition to this form, an attorney from another state seeking admission on comity must furnish a certificate from the clerk's office, under the seal of the court, showing that he is in good standing at the bar of that state, and a letter from a judge of a court of record, under the seal of the court, certifying to the good moral character of the applicant, and that, in the opinion of the court, he is qualified for admission in the District of Columbia.

FLORIDA

The State Board of Law Examiners investigates the character of all applicants before the bar examination. There is no separate committee for this work, although the Board may appoint any standing committee or special committee it thinks necessary.

An independent investigation of each applicant's character is made by the secretary and chairman of the Board. In all instances the applicant must appear in person for an interview, at which time he is required

to answer under oath any and all questions as to his character and qualifications. This hearing is generally conducted by some member of the Board. Different members of the Board make inquiries regarding the applicants, particularly in cases where something questionable appears.

The candidate files with his application three affidavits of good moral character signed by persons who have known him for at least five years and who are preferably residents of Florida. He also files a certificate of the attorney in whose office he studied law if he obtained legal training in that manner, and the application form provides for the names and addresses of ten references. A foreign attorney is required to submit a certificate of the clerk of the court of last resort in the state from which he comes as to his good standing and to furnish the name of the present presiding judge of the highest nisi prius court before which he practiced and the names and addresses of the president and secretary of his local, district or state bar association.

GEORGIA

Georgia has no separate character committees and the State Board of Bar Examiners has nothing to do with the matter of investigating the character of applicants. This responsibility is placed entirely upon the judges of the superior courts.

The bar examination, prepared and graded by the State Board, is conducted by the various judges of the superior courts and, before it is given, each applicant files with the judge of the superior court of the circuit in which he is a resident a certificate of two practicing attorneys of the Georgia bar vouching for his character. An attorney from another state furnishes certificates of the clerk and judge of the highest court of that state.

IDAHO

There is no separate character committee. The Board of Commissioners of the Idaho State Bar investigates the character of all applicants before the bar examination, chiefly through correspondence conducted by the Secretary. The Board does, however, have the power to appoint committees. The rules specify that the Board shall make inquiry of at least two practicing attorneys in reference to the character of each applicant. The entire Board passes upon the applications and supporting papers, but the applicant may have the action of the Board reviewed by the Supreme Court.

All applicants give not less than three references and list their employers for the past ten years, and also furnish the names and addresses

of two attorneys either of Idaho or elsewhere. An attorney from another state presents certificates from the highest courts of each of the states within which he has practiced, to the effect that he is still in good standing.

The investigation includes detailed questionnaires sent to the two practicing attorneys who know the applicant and to three or more laymen. These questionnaires also request the names and addresses of three persons of whom the Board may make further inquiry. There is no personal interview but the Board members endeavor to talk with each applicant some time during the bar examination. Also, applicants are required to answer under oath whether, if admitted elsewhere, any charges have been preferred against them, whether they have ever been a party to or involved in civil or criminal proceedings, and to give, if they were ever engaged in business, the names and addresses of their business associates. All character information received from the references is confidential.

If a complaint is filed, the applicant is called to make a further showing.

ILLINOIS

Illinois has a separate character committee for each appellate court district composed of not less than three attorneys and the members of the Board of Law Examiners appointed for the respective district. Inquiries are sent to references, former employers, United States and state's attorneys in the applicant's district.

Each applicant for admission to the bar examination must file with his application the affidavit of three practicing attorneys and a certificate from a court of record in his county. An attorney seeking admission on motion furnishes a certificate from a judge of the highest court in the state from which he comes.

The district committee conducts the character investigation after the bar examination and requires the attendance before it, or a member of it, of each applicant. A file of newspaper reports about students is kept. If a complaint is filed, the committee or a special investigator conducts a hearing; the applicant is not faced by the complainant; and the committee makes its decision from the information presented.

INDIANA

There is a separate character committee for each of the ninety-six counties. Each of these county committees makes a thorough investigation before the bar examination and requires the attendance before it or some member of it of each applicant in that district. The applicant presents to the committee or its member at least three practicing attorneys

of the district to testify as to his character and fitness. If they are unable to attend in person, he may submit their affidavits. If the applicant attended a law school, he may present affidavits from at least three of his law professors or one affidavit from the dean certifying that a majority of his faculty concur in the statement contained in the affidavit. These county committees then make their recommendations to the state board, which may conduct any further investigation it desires. Often local bar associations and attorneys are called upon for supplemental information.

The state is divided into five supreme court districts, and there is one member of the state examining board for each supreme court district. An applicant must be approved by the examiner of the district in which he lives.

The application form provides for the names and addresses of employers and of three references other than those presented to the committee on character and fitness. These employers and references are sent detailed questionnaires regarding the applicant.

A foreign attorney is admitted upon the motion of a member of the bar of Indiana that the applicant is a citizen of the United States, a person of good moral character, and that he has become a bona fide resident voter of the State of Indiana. The application form provides for furnishing the names and addresses of former employers and of three other references. In addition to checking these references, the Board of Law Examiners makes an independent investigation through local bar associations and attorneys in the jurisdiction from which the attorney-applicant comes.

IOWA

Iowa has no separate character committees. Every application for admission to the bar must be filed at least ten days before the bar examination and must be accompanied by a certificate of a judge or clerk of the district court of the county in which the applicant resides as to his moral character. An attorney from another state furnishes a certificate of a judge or clerk of the district court of the county in which he intends to practice.

The character investigation, conducted before the bar examination, consists of examining and approving the application by the Clerk of the Supreme Court and the Attorney General. No additional inquiry is made unless something questionable develops, in which case a further investigation is made under the direction of the Attorney General's office.

KANSAS

One seeking to qualify for the bar examination in Kansas by virtue of law office study must register at the time of commencing such study and at that time furnish proof of his moral character and his educational qualifications. The declaration of intent to register includes the names of four or five references.

All applicants for examination must furnish a certificate signed by the judge of the district court and three members of the bar of the county in which he resides. The character investigation of these applicants, made at the time of the bar examination by the State Board of Law Examiners, consists of checking the applications and certificates. Law school men are checked through their deans. When something questionable appears, the Secretary of the Board makes further inquiry and the applicant may be given an oral examination by the whole Board.

An attorney from another state must appear before the entire Board at a preliminary meeting.

The names of all applicants are posted for thirty days by the Clerk of the Supreme Court.

KENTUCKY

The judge and commonwealth's attorney of each of the thirty-seven circuit court districts constitute a character committee. A personal interview before certification of character and fitness is required, this interview being held before the bar examination and being given by either or both of the committee. The committee may require any affidavits or references it desires. The committee then reports to the Board of Examiners on Admission to the Bar. The Board or the Court of Appeals may disapprove this report and take such action as it deems proper.

Each applicant for admission must secure from the committee on character and fitness of the district of his residence a certificate as to his moral character and fitness, and this certificate is spread upon the order book of the circuit court and the original filed with the Board of Examiners. An attorney from another state must obtain this certificate within sixty days prior to his application for admission.

LOUISIANA

Louisiana has no separate character committee, this responsibility being that of the Supreme Court Examining Committee. The investigation of applicants for admission to the bar usually consists of merely seeing that the applicant has filed a certificate of good moral character.

In the case of an applicant graduating from a Louisiana law school and applying immediately thereafter to take the bar examination, this certificate is signed by the law school dean. In other cases, including attorneys from other states, graduates of law schools outside of Louisiana, and instances where a Louisiana law school graduate has failed the bar examination or applies to take it after an examination has been given since his graduation, it is signed by a business or professional man, preferably not an attorney or a judge. These certificates are checked and approved by the four New Orleans members of the Examining Committee. If something questionable appears, the matter is taken up with the entire Committee of nine, and sometimes the applicant is interviewed personally.

An applicant studying law under the direction of an attorney is investigated in the following manner: As soon as he registers for law office study, his name is sent to the member of the Examining Committee or an attorney in his locality, with the request that information be sent in regarding his character. Such an applicant must also furnish the certificate as to character when he applies to take the bar examination.

MAINE

The investigation of the character of applicants seeking admission to the bar in Maine is conducted by The Maine Bar Examiners before the bar examination and consists of checking the application and supporting papers through correspondence conducted by the Secretary. There is no separate character committee. Each applicant must file with the Secretary of The Maine Bar Examiners evidence of his good moral character from some practicing attorney in the state of Maine. If the candidate obtains his legal training in an office, he also furnishes a certificate as to his character from the attorney in whose office he studied. An attorney from another state must file a recommendation of one of the judges of the court of last resort of that state.

Notices of applications for examination are published once a week for three successive weeks prior to the examination in some newspaper in the county in which each applicant resides. If a complaint is received as to the character of any applicant, the Secretary of the examining board makes a further investigation. In some cases a hearing is held before The Maine Bar Examiners.

MARYLAND

Maryland has separate character committees, one of ten members for Baltimore City and one of three members in each of the twenty-three counties. The character of each applicant is investigated prior to the bar

examination, and at the time of registration for law study for those pursuing their legal training in the state of Maryland. The investigation consists of a personal interview by one or more members of the character committee and includes a thorough checking of all questionnaires and references. Law students are under continuous supervision until the date of their admission.

A certificate as to habits and character from two reputable citizens and a personal questionnaire are required from each applicant. An applicant receiving his legal training outside the state furnishes a certificate as to character from the member of the bar in whose office he studied or from the president, dean, or instructor of his law school. A foreign attorney presents a certificate of the judge of the state from which he comes or a certificate from two members of the Maryland bar.

As soon as the character investigation is completed, the committee reports to the Board of Law Examiners. If an adverse opinion is filed against an applicant, he is given an opportunity to appear before the Board, to be fully informed, and to answer any charges. If the Board then retains the adverse opinion, the applicant is given the privilege of withdrawing his application; if he does not do so, the Court of Appeals requires him to show cause why his application should not be refused.

The names and addresses of all persons recommended by the Board for admission are published once a week for three consecutive weeks in two daily papers of Baltimore before the day fixed for the ratification of the report of the State Board of Law Examiners by the Court of Appeals. If exceptions are filed, such exceptions are heard and decided by the Court of Appeals or before an examiner appointed for the purpose of taking testimony.

MASSACHUSETTS

In Massachusetts the character investigation is conducted by the Board of Bar Examiners with the assistance of the bar associations, and the Board may appoint committees of the bar to aid in the investigation if it desires. The investigation consists of a check of applicants' questionnaires and certificates of character and a check of the records of the probation office. This work is done after the bar examination and is pursued only if the applicant has passed that examination. If a complaint is received, the Board may employ a lawyer to assist in the investigation.

The applicant files his petition with the clerk of the court of the county in which he studied law, accompanied by the letters of two attorneys and of the attorney in whose office he studied law if he obtained his legal education in that manner. If he attended a law school, he presents

the dean's or secretary's certificate, which includes a statement as to character. A foreign attorney is asked to file a certificate of a court officer as to his good standing at the bar, letters from two members of the bar of the state from which he comes, if possible a letter from a judge of one of the courts in that state, and if possible one or more letters from members of the Massachusetts bar. Inquiries are made from bar examiners or other attorneys of the state from which he comes when this seems advisable.

All applications are referred to the Board of Bar Examiners for investigation. The Board conducts an oral examination of all applicants when their written examination is sufficiently good to warrant it, and at that time asks any questions it desires as to the applicants' attainments, qualifications or character. If the Board reports that the applicant is not of good moral character, and he desires to be heard by the court, a notice is issued to the Attorney General. The court may also order other notices to be given and may designate some suitable member of the bar to appear in court in support of the report of the Board.

When the results of the bar examination are announced, the Board publishes for three consecutive days, in some newspaper of general circulation, a list of the successful applicants and a copy of the list is sent to the clerks of the several courts and to the secretaries of the several bar associations. Recommendations are not filed with the court until thirty days after the first publication. If complaints as to character are made, no recommendation is filed until such complaints are fully investigated or heard.

MICHIGAN

There is no state character committee. The State Board of Law Examiners, relying on the records of the schools and the references in the application, conducts the investigation prior to the bar examination. The Bar Admissions and Legal Education Committee of the Detroit Bar Association recently has been given the duty of investigating all applicants in Wayne County, and it is expected that this plan will be adopted in other localities.

A diploma from a reputable law school has been accepted as evidence of good moral character. Applicants other than those graduating from reputable law schools file letters from their preceptors and from at least two other citizens.

An attorney from another state must present a written recommendation of one of the judges of the court of last resort in that state and a certified copy of all papers submitted upon his application for admission

in the state from which he comes. He is usually interviewed by a member of the Board, which body has three months in which to make an independent investigation as to his qualifications.

The Board may require further evidence as to good moral character and educational qualifications of all applicants.

MINNESOTA

The investigation of the character of applicants is a responsibility of the Board of Law Examiners, the work being done by the secretary, who writes to all references, employers and others named in the application, makes inquiry in the applicant's own community, and has the names of the applicants published in a newspaper of the local county with a request for information as to their character and qualifications. This is done before the bar examination.

Graduates from approved law schools or students registering for law office study furnish affidavits of at least two attorneys of their communities. The application for permission to take the bar examination provides for the names and addresses of all employers and of three attorneys in Minnesota other than the law school faculty and those furnishing the required affidavits. An attorney from another state files the certificate of a judge of a court of record, affidavits of two practicing attorneys in that state, affidavits of two practicing attorneys in Minnesota, and a certificate of the court of the foreign state that he is in good standing. The application form filled out by the foreign attorney requests the names and addresses of previous employers, of three attorneys residing in each state or country in which the attorney practiced, of three Minnesota attorneys, and of four citizens of Minnesota not related to the applicant.

The applications are approved by the secretary of the Board alone unless some unusual questions arise. Final rejection of any applicant is made only upon the sanction of the Board. If a complaint is filed, there is a careful investigation, and if it is determined that the applicant's fitness is questionable, he is given a hearing.

MISSISSIPPI

Mississippi has no character committee. The investigation, conducted by the Board of Bar Admissions, is made at the time of application and consists of certificates of good moral character from two attorneys of the state and one layman and any independent investigation the Board may desire to make. The Secretary of the Board makes inquiries regarding each applicant, and the character of graduates of the University of Mis-

sissippi School of Law, who are admitted on diploma, is by proof in open court before the Chancellor passing upon the application.

MISSOURI

The character investigation in Missouri consists of the formality of filing with the application a certificate of good moral character from three members of the bar in the applicant's county and from the judge of the circuit court. If the judge does not know the applicant, he certifies that he has learned by statements from creditable persons that the applicant is of good moral character. These papers are checked by the secretary of the Board of Law Examiners. If a complaint is received, investigation is made. In some cases the applicant is personally interviewed by the secretary or by the entire Board of Law Examiners.

The applicant for the bar examination furnishes, in addition to the documents mentioned above, the names and addresses of all former employers and of three instructors with whom he came in personal contact in the last school attended. An attorney from another state furnishes references and files a certificate from a judge of the court of general jurisdiction before which he was practicing at the time of his removal from that state to Missouri. His character is investigated by the Court.

The names of applicants are not published or given to bar associations for the purpose of obtaining information. This plan, however, is being considered for future adoption.

MONTANA

Montana has no character committee. Each applicant for the bar examination must file affidavits of three responsible citizens, two of whom must be members of the bar. These papers are transmitted by the Clerk of the Supreme Court to the Attorney General's office for approval before the bar examination. If they are satisfactory and the applicant is known, there is no further investigation. The Clerk of the Supreme Court has the list of applicants published in some newspaper in the city of Helena at least twenty days before the date of the examination. If a complaint is filed against the admission of an applicant, the investigation is conducted by the Court or Attorney General's department in such a manner as it deems proper. An applicant is sometimes examined orally.

The Attorney General passes on the character of foreign attorneys, and it is required that the Attorney General or one of his assistants shall present all applications to the Court. The Court may order a further investigation of the character of the applicant. Such an applicant must

furnish a certificate of the presiding judge of the highest trial court of record in the state in which he last practiced.

NEBRASKA

The examining board, known as the Nebraska State Bar Commission, investigates the character of all applicants, there being no separate committee for this work. An applicant studying law in this state must register at the time of beginning such study and must include with his registration papers a certificate as to character by a practicing attorney in Nebraska. After this registration, if the Commission at any time determines that the student is unfit or improperly qualified, it may cancel such registration.

The character of all applicants is investigated prior to the bar examination. This is done chiefly through correspondence and publication handled by the Commission's secretary. The Commission writes county attorneys and local bar associations for reports and publishes notices in the Lincoln and Omaha papers. If a complaint is filed, there is no definite procedure but generally attorneys who know the applicant are consulted further; sometimes a hearing is held. If any member of the Commission desires it, an applicant is called in for oral examination.

Every applicant for admission to the bar examination or for admission by diploma furnishes certificates or affidavits of two citizens of good standing in his community and the names and addresses of at least three other persons. An attorney desiring admission on motion furnishes three references, affidavits of two citizens of his present residence, and affidavits of two citizens of his former residence.

NEVADA

The character investigation is made chiefly through correspondence handled by the secretary of the State Board of Bar Examiners and is conducted between the time of application and the return of the examination books. Each applicant for the bar examination furnishes at least two references in each place he has resided since attaining the age of twenty-one and the names and addresses of all employers for the past five years. An attorney from another state submits a certificate of the clerk of the court of the foreign state, a letter from the secretary of the local bar association of the city or county in which he resided, or, if there is no local association, from the state association, and a letter of recommendation of a judge of the court of record before which he practiced.

Each applicant for admission on examination or motion is assigned to a member of the Board of Bar Examiners, who makes a detailed investigation and then reports to the full Board. In investigating an applicant for admission on motion, letters are sent to the character or grievance committee of the applicant's local bar association, to two members of the bar association residing in the applicant's community and not attorneys given by the applicant as references, to the judge given by the applicant as a reference, to the district attorney of the applicant's community, to the board of bar examiners of the applicant's home state, and to The National Conference of Bar Examiners.

If a complaint is filed, the procedure is to correspond with all who might know the facts.

NEW HAMPSHIRE

New Hampshire has no character committee. The work is handled by the Supreme Court at the time of application to take the bar examination, and the certificates and other documents are examined by the Justices of the Supreme Court. The applicant files with the Clerk of the Supreme Court a certificate as to character from two residents of the state. An attorney from another jurisdiction files a certificate from a judge of the highest court in that foreign state. If there is any doubt as to an applicant's character, an investigation is made by the Attorney-General.

If a complaint is filed, the Supreme Court conducts such a hearing or investigation as it deems necessary.

NEW JERSEY

There is a Committee on Character and Fitness in each of the twenty-one counties of this state, consisting of at least three counsellors at law appointed by the Supreme Court justice presiding in the respective county. When the law student commences his office clerkship with a counsellor at law, he is required to file his registration in the office of the clerk of the Supreme Court, who notifies the Committee of that county in which the student is serving his clerkship that said clerkship has commenced. The various character committees are required, by the rules of the Supreme Court, to keep the student under observation during his period of clerkship and until he is admitted to the bar.

All applicants are required to post a notice of intention to take the bar examination in the office of the Clerk of the Supreme Court at least sixty days before the examination. A list of these applicants is sent to the character committee of the county in which they reside. From these

lists the character committees call the candidates before them to examine into their character, general fitness and sufficiency of their clerkship. In eighteen counties the candidates are examined before the bar examination; in the three larger counties the committees only examine those candidates who have passed the bar examination. In the larger counties each applicant is required to fill out a questionnaire and to give several references.

The character committees file their certificates in the office of the Clerk of the Supreme Court immediately upon the completion of their investigation. Each applicant must receive the approval of the character committee before he can be admitted as an attorney.

Applicants upon applying for admission must, in addition to the other proof required, file at least one certificate from a citizen of this state as to his character. A foreign attorney furnishes a certificate from an attorney in the state from which he comes.

The clerks of the circuit courts of the counties are furnished a list of applicants residing in their counties, and these lists are posted in their offices. The names of applicants are also published in a newspaper of the county in which they reside, once each week for two consecutive weeks. The first publication must be at least forty days prior to the bar examination.

NEW MEXICO

This state does not have a separate character committee. The secretary of the Board of Law Examiners makes the character investigation at the time the application is filed, the investigation being independent of the matters stated in the application and consisting of inquiries directed to district bar commissioners, local bar associations, reputable attorneys, and other sources. A further investigation is made at the time of the bar examination if necessary. All applicants, including those failing the bar examination, are interviewed personally before the entire Board, and no applicant is recommended for admission without his personal attendance at a meeting of the Board.

Candidates for the bar examination must include with their applications a certificate by a reputable person as to moral character. Foreign attorneys must furnish three certificates by members of the bar of the foreign state and a certificate of the judge or clerk of the highest court of original jurisdiction in that state as to the period practiced and as to any suspension or disbarment proceedings.

A list of all applicants is sent by the secretary of the examining board to the members of the State Board of Bar Commissioners, and each Commissioner reports on the applicants in his district.

All applicants, those passing the bar examination and those qualifying for admission on motion, are granted a temporary license of one year, at the end of which period, if no valid objection is made, they are given a permanent license to practice law.

NEW YORK

In New York each of the nine judicial districts has a Committee on Character and Fitness composed of not less than three practicing attorneys who are appointed by the respective appellate division. These appellate divisions may require any additional information as to the character of applicants or adopt any procedure which the justices deem proper. The character committees make their reports to the courts after the applicants taking the bar examination have been certified as to their educational qualifications by the State Board of Law Examiners.

The Committee on Character and Fitness of the First Judicial Department (New York City) consists of ten members and its procedure is as follows:

After the names of those resident in the First Judicial Department who have passed the bar examination are certified by the State Board of Law Examiners to the Appellate Division of the Supreme Court, First Department, a notice is published in the New York Law Journal instructing the candidates to file their application papers for admission. Each of these candidates then procures from the office of the Committee on Character and Fitness a comprehensive questionnaire and instructions for filing supporting documents as to his character and fitness. These are filed after the bar examination has been passed; in the case of one serving a clerkship, they are filed as soon as the period of clerkship has expired; if the applicant is an attorney from another state applying for admission on motion, all papers are filed at the time the motion is made.

The questionnaire and accompanying papers are checked and investigated so that when the candidate appears for the personal examination before the Committee, which is required of all applicants, the Committee is fully prepared to conduct the examination. When this personal interview is completed, the Committee files its report and recommendations with the Court. Foreign attorneys are investigated in the same manner as other candidates.

The detailed questionnaire filed by all applicants requires, among other things, names and addresses of all employers, and proof of good moral character of the applicant is required from such employers. The applicant must also file affidavits as to good moral character by at least two reputable persons residing in the City of New York, one of whom must be a practicing attorney of the Supreme Court with whom clerkship, if any, was served, who is personally known to a member of the Committee. Satisfactory proof must be presented covering (a) home life; (b) present and all former employments; (c) present and all former professional or business connections, and (d) such additional proof as the Committee may require.

The instructions to a foreign attorney eligible for admission on motion require a certificate or letter of recommendation from a judge of the highest law court or of the highest court of original jurisdiction in the state where he practiced, a certificate from the clerk of the court, a certificate or letter from the bar association of the state or county in which he practiced, affidavits of at least two reputable attorneys of the place from which he comes, and affidavits of two or more reputable attorneys in the judicial department, one of whom must be personally known to a member of the Committee.

NORTH CAROLINA

North Carolina has no character committee and, in the absence of complaints, the only requirement for applicants taking the bar examination is the filing of a certificate by two members of the State Bar practicing in the Supreme Court as to the applicant's moral character. Foreign attorneys file a certificate of two practicing attorneys of the foreign state and a certificate from a member of the court of last resort before which they practiced, and appear personally before the Board of Law Examiners.

The formality of checking the certificates is taken care of by the Secretary of the Board previous to the bar examination. If something questionable appears, the Secretary consults with the Chairman of the Board and such further investigation is made as seems advisable.

The names of all prospective applicants are published in the daily press over thirty days before the examination.

NORTH DAKOTA

The character investigation, conducted by the Chairman of the State Bar Board, consists of inquiries of three or more attorneys or reputable persons in the applicant's community and also an inquiry directed to the

law school attended. These inquiries are made before the bar examination is given. The applicant is interviewed personally before the entire Board only when some question has been raised as to his moral qualifications.

Every applicant must furnish an affidavit as to his character from at least one practicing attorney and two other reputable persons who are residents of the county in which he resides. If the applicant studied law in a law office, the affidavit of the lawyer is required. A foreign attorney must file an affidavit as to his practice in the foreign state, including the periods of practice, and the names of the judges before whom he practiced, their certificates if obtainable, and affidavits of two practicing attorneys in the foreign jurisdiction as to his period of practice and general fitness.

If a complaint is filed, the applicant is usually called before the entire Board for questioning.

OHIO

The character of applicants for admission to the Ohio bar is investigated by the local county bar associations and committees appointed by them, under the direction of the Supreme Court. A student is investigated before he is registered for law study. A copy of the questionnaire filed by him is forwarded to the county Committee on Applications for Admission to the Bar, consisting of three members appointed by the local bar association president. This committee investigates his character by having questionnaires answered by three citizens of the county not related to the applicant, at least one of whom is not a member of the bar, and from two members of the local bar association committee who have investigated the candidate's qualifications. The Supreme Court determines from the report of this local bar association committee whether the candidate shall be registered for law study.

Within three months before the bar examination, the Clerk of the Supreme Court furnishes these local county bar associations the names of the applicants to take the examination and requests a report as to their character and fitness. There is no prescribed course of procedure. In the more populous counties the questionnaire system is used and all applicants are called before the investigating committee for interviews. If adverse information develops, the committee gives the applicant an opportunity to present evidence in his behalf.

The required certificate of a preceptor for the law student includes a statement that the applicant is of good moral character, as does the "Certificate from Law School." An attorney from another state must

file with his application a certificate of a judge of the court of record in which he practiced, a certificate and recommendation from some Ohio attorney, his certificate of admission, and a certificate as to his educational qualifications.

OKLAHOMA

All applications for admission on motion, for registration, or for permission to take the bar examination must be accompanied by three affidavits of character; only one of the persons making such affidavits may be an attorney. These applications, together with all substantiating affidavits are then referred to the Chairman of the Administrative Committee of The State Bar having jurisdiction of the section of The State Bar wherein the applicant resides. This Administrative Committee makes an independent investigation of the character of the applicant and reports to the Committee of Examiners for The State Bar of Oklahoma. In most cases the applicant is interviewed personally. The Committee of Examiners as a rule follows the recommendations of the Administrative Committees but is in no way bound by these recommendations. There are thirty Administrative Committees throughout the state.

The investigation of students registering for law study is conducted at the time of registration. Another character investigation is made prior to their taking the bar examination. Applicants qualifying under a rule which does not require registration are investigated prior to the bar examination. Applicants for admission on motion are investigated as to character in both their present and former residences and prior to the recommendation to the Supreme Court that they be admitted.

In addition to the affidavits of character from three citizens in the community in Oklahoma in which the applicant now resides, the attorney from another state furnishes (1) a certificate of a trial judge of the court of record in the district in which he practiced for (a) one year, if he is to be admitted on examination (b) the last five years, if he is to be admitted on motion, and (2) a certificate of two active members of the bar in said district.

OREGON

Three members of the Oregon Board of Bar Examiners form a sub-committee and devote their entire time as examiners to the character investigation which is conducted before the bar examination. The applicant, reliable persons in his community and his instructors are interviewed by one or more of this sub-committee, which makes its report to the Board of Bar Examiners. Final decisions are the duty of that body

as a whole. If a complaint is filed, the applicant is given an opportunity to be heard.

Applicants for the bar examination must furnish three affidavits, one from a responsible citizen and two from attorneys. The attorney from another jurisdiction who has practiced at least three years and wishes to be admitted on motion must file a certificate of the presiding judge of the highest trial court in which he last practiced, a recommendation from the president and secretary of the local bar association of the place from which he comes or recommendations from at least three members of the bar where he last practiced. If, after a careful investigation, the Board finds him entitled to admission, he is notified when to appear in court for that purpose.

The foreign attorney is granted a temporary license for a period of two years, at the end of which time he is given a permanent license if no complaints have been filed against him.

The names of all applicants are published in the Oregon Advance Sheets, or such other publication as the court may designate, once a week for five weeks next preceding the regular bar examination.

PENNSYLVANIA

Pennsylvania has county boards in each of its sixty-seven counties. These boards investigate the character of applicants at the time of registration and also prior to the bar examination, the procedure being as follows:

Each applicant for registration as a law student files an application in the form of a questionnaire. In this application he states in what county he expects to practice, the names of at least three citizen sponsors and the name of his proposed preceptor. The State Board then forwards to the proper county board a duplicate application with additional questionnaires to be filled out by two members of the county board and, at the same time, the State Board forwards other questionnaires directly to the preceptor and to the citizen sponsors, requesting them to fill them out, advising them that the information and its source will be treated as confidential, and directing them to forward the questionnaires to the county board. The county board thereupon appoints two of its members to interview the applicant, his citizen sponsors perhaps, and his proposed preceptor. The investigation is not limited to these persons, and original and independent inquiries are encouraged. In some of the larger counties, a private investigator is employed by the county board. Two members of the board then report to the whole county board, and on the basis

of this report, as well as the questionnaires of the citizen sponsors and of the preceptor, the county board votes either to approve or disapprove the applicant and also takes similar action on the preceptor. If the applicant and his preceptor are approved, a report to that effect is attached to the papers and they are returned to the State Board office; and if the applicant has completed his educational requirements, he is then registered by the State Board. Where the county board rejects an applicant on the basis of whatever evidence they have obtained, they are required to file with the State Board a more elaborate report, setting forth with some detail such evidence. The State Board then reviews the negative report and, if found justifiable, sustains the action of the county board.

The applicant has the right to appeal to the Supreme Court from the State Board action, under the Rules of Court; and the State Board report, together with his appeal and brief, is filed with the Court, although no oral argument is heard.

Exactly the same procedure is followed when the candidate comes up for admission, three or more years after his registration. Questionnaires are again forwarded to citizen sponsors whom he is again required to name, and the county board is again asked to make its report. In addition, every candidate applying for the bar examination is required to publish in legal journals or other suitable publication in his particular county notice of his intention to appear for the examination, the notice to be published once a week for four consecutive weeks prior to the bar examination date. Attorneys from other states are likewise required to advertise.

Foreign attorneys are investigated in the same manner as law students but file, in addition, a certificate of the court in which they last practiced that they are in good standing at the bar.

(Editor's Note: The questionnaires for registration of law students, to be filed by the applicant, three reputable citizens, the sponsor or preceptor, and the local examining board were reprinted in I The Bar Examiner, 3, pp. 74-77, January, 1932.)

RHODE ISLAND

The character investigation is conducted by the Board of Bar Examiners at the time of registration and after examination before admission. Proof of good moral character of all applicants for the bar examination is by the affidavits of all attorneys in whose offices the applicant studied law, detailed questionnaires sent to two citizens and also to the attorney with whom the student registered to study law, and by an investigation

of references, etc. Foreign attorneys furnish a certificate of a justice of the highest court in the foreign state or of a court authorized to admit attorneys to the bar, and written recommendations from at least two members of the bar of the foreign state.

The questionnaire filed by the applicant requires the names and addresses of three instructors of the law school, the name of some instructor, professor or officer of the law school with whom the applicant was well acquainted, and the names and addresses of three reputable citizens (two not members of the bar) or three references in each community in which the applicant has lived during the last three years. The questionnaires sent to the citizens include space for reporting the names of intimate associates of the applicant. The affidavit form to be filed by the attorney in whose office the applicant served his clerkship includes a statement that the attorney has particularly informed himself, from reliable sources of information, that the applicant is of good moral character.

The names of all applicants are published in one or more daily papers of Providence for ten days before the examination, with the request that information as to any applicant's character be sent to the Board.

Any complaint as to an applicant's character is investigated as far as necessary by a special hearing conducted by the Board. Inquiries are made and evidence received, often by a special investigator. The applicant may appeal to the Supreme Court for a private hearing.

SOUTH CAROLINA

In South Carolina the bar examiners investigate the character of applicants before the bar examination. There is no separate committee.

Each applicant is required to furnish certificates of good moral character from at least three reputable members of the South Carolina bar. These and the application are gone over carefully by the Clerk of the Supreme Court, who is ex-officio Secretary to the State Board of Law Examiners. If he finds there is a question regarding an applicant, he refers the matter to the Chairman of the Board, who, in turn, may bring it before the other two board members if necessary to make a decision.

The attorney from another state furnishes certificates from at least three reputable lawyers of South Carolina and, in addition, submits certificates as to his character covering the entire period he practiced in the foreign state. A certificate from the clerk of the highest court of that state, attesting the character and reputation of the applicant, is also required.

All applicants are encouraged to present as many character certificates as they wish to submit. Personal interviews are not required but are often given. If necessary, the Board conducts a private investigation, chiefly through correspondence.

The character of graduates of the School of Law of the University of South Carolina, who are admitted on diploma, is not investigated, the recommendation of a member of the law faculty being considered sufficient.

SOUTH DAKOTA

South Dakota has no separate character committee and the investigation in the past has consisted merely of seeing that each applicant filed certificates from one trial judge and from two or more reputable members of the bar in this or other states who were personally acquainted with the applicant. Recently the Supreme Court has adopted the procedure of sending the names of applicants successful in the bar examination to the incorporated State Bar for an investigation and report as to moral character. This investigation is made by a committee appointed for that purpose.

TENNESSEE

In Tennessee the work of investigating the character of applicants for admission to the bar is delegated to the Board of Law Examiners. Each applicant is required to furnish a certificate of the court of the county in which he has resided, that he has attained the age of twenty-one years and is of good reputation. This certificate is granted by the said county court upon the motion of two members of the bar of that court. An attorney seeking admission on motion furnishes three letters from attorneys or judges of the foreign state certifying that he is in good standing there. All application forms provide for the furnishing of the names and addresses of three references.

At the request of the Board of Law Examiners, each bar association of the state appointed a committee of three local attorneys, called the Committee for Investigation of Moral Character, to assist the Board in investigating the character of applicants. A list of the applicants from the particular locality is sent to the respective Committee, with the request that it make as full an investigation as possible of each applicant and report to the Board. This is done prior to the bar examination. In addition to this, the Board makes all possible inquiries by letter and personal investigation, both at the law school of the applicant and in his com-

munity. If any objection is found, a further investigation is made. Sometimes a personal investigation is made by one of the examiners, who takes the testimony of witnesses.

TEXAS

Committees are appointed by the local bar associations to investigate the character of applicants. This investigation sometimes includes a personal interview. Each applicant is required to file with the State Board of Law Examiners a certificate by the president and secretary of the bar association in his county or, if there is none in his county, then from the county bar association nearest the county of his residence, showing that, upon the recommendation of the committee of such association selected to investigate the character and fitness of the applicant, it finds and represents to the State Board of Law Examiners that the applicant is of good moral character and of good reputation. The State Board may make any further investigation it deems proper, but the certificate of the local bar association is usually considered sufficient. If, however, it has some doubt as to the character of an applicant, it conducts its own investigaation. Letters of recommendation filed with the application are examined by the Board before the bar examination, as is the certificate from the local bar association.

All applicants, including students from outside law schools and attorneys from other states, are required to serve a six-months' clerkship, and the investigation of their character is made in the same manner as in the case of Texas law student candidates.

UTAH

The Board of Commissioners of the Utah State Bar investigates the character of every applicant prior to the bar examination. The application form calls for three references from laymen and two from lawyers. These are sent questionnaires by the State Bar. Every applicant may be required to appear in person before the Board of Commissioners or a committee appointed by it. If a complaint is filed, the applicant is not permitted to take the bar examination until a full investigation has been completed and he is exonerated.

An attorney from another state must submit, in addition to the five references required of all applicants, certificates from not less than two judges of courts of original general jurisdiction wherein he practiced and a certificate from the clerk of the court of last resort in the state from which he comes. If the bar of the state where he practiced is organized,

he must furnish a certificate from the secretary to the effect that he is in good standing there.

The names of all applicants are published in the Utah Bar Bulletin.

VERMONT

The Board of Bar Examiners conducts the character investigation at the time of application to take the bar examination.

Immediately after the time for filing applications has expired, the Board holds a meeting at which all of the petitions for admission, with the supporting papers, are carefully gone over, the educational qualifications passed upon, as well as the character and length of study, and such of them as show a full compliance with the requirements of the rules in that respect are then considered from the standpoint of the character qualification. The names of such of the candidates as are found otherwise qualified to take the examination are divided up and referred to sub-committees of the Board, two members acting with respect to each applicant, and a personal investigation is made by this sub-committee of the candidates' moral character and general fitness for admission.

The practice is followed of not referring the case of any candidate to a member of the Board who lives in the applicant's immediate locality.

The sub-committee calls upon the applicant personally whenever possible, and a thorough investigation is made by conference with the leaders of the bar of the locality and by application to business men and other reputable citizens as to the general moral character and fitness of the candidate. The investigation of the foreign attorney is also made in the locality from which he comes. He must furnish a certificate from the clerk of the highest court of the state in which he practiced showing that he is a member in good standing there and certificates from at least two members of the bar in that state. As soon as the personal investigations are completed, the sub-committees report at a meeting of the Board, at which the qualifications and reports as outlined by the sub-committees are finally passed upon by the full Board.

If adverse information is found concerning an applicant, he is so advised in advance so that he will not appear for the examination.

VIRGINIA

Virginia conducts an investigation as to the character of all applicants for admission to the bar in the following manner:

Each applicant files with the Board of Law Examiners a certificate from the circuit court of the county in which he resides or corporation court of the city, or the judge of either of these courts, as to his moral character. If the applicant has within six months been a student in one of the law schools of Virginia, he furnishes a certificate of two professors as to his character; or he may furnish a court certificate. The names of all applicants who apply for court certificates are posted at the door of the court house, and the court or judge submits the names of the applicants to three attorneys practicing before such court. These three attorneys are expected to make a thorough investigation and report their findings to the court or judge. There is no uniform procedure for this investigation.

WASHINGTON

At the present time Washington is revising its rules as to the investigation of the character of applicants and a definite system will be established shortly. The former procedure was to have applicants investigated by local bar association committees at the time of registration for law study and also just prior to the bar examination.

WEST VIRGINIA

The circuit court of the county in which the applicants reside or local lawyers appointed by the court investigate the character of all applicants in that county before the bar examination. In all instances a personal appearance and a thorough investigation are required by the court, and each applicant must satisfy the court and obtain from it a certificate that he is of good moral character before he is admitted to the bar examination.

There is no uniform practice in the different counties as to the number of references and other data an applicant must furnish. In the majority of cases the applicant is personally known to the court or committee of lawyers and in such instances very little is asked of the applicant. If the applicant is not known, references are obtained and full inquiries are made of them and of others acquainted with the applicant. If a complaint is filed or there is doubt as to a candidate's character and fitness, the matter is gone over thoroughly with the court, the court having final decision.

Graduates of the University of West Virginia Law School who are admitted on diploma, applicants from other states, and attorneys from foreign jurisdictions must follow the same procedure.

WISCONSIN

The character of applicants for admission to the bar of Wisconsin is investigated by the Board of Bar Commissioners between the date of filing the application and the time for the bar examination. There is no separate character committee.

The application form provides for the furnishing of the names of three references and for certificates of two attorneys and of a judge. These are checked first by the Secretary and then passed upon by the Board as a whole. Any complaint is thoroughly investigated before the examination if possible, or after if necessary. Applicants about whom there is some doubt must appear before the entire Board.

The admission of attorneys on motion is handled entirely by the Supreme Court of Wisconsin, and the investigation of this class of applicants is conducted by the court through inquiries directed to state and local bar associations and to reputable attorneys in the jurisdiction in which the applicant practiced. Each foreign attorney must furnish a certificate of a judge and affidavits of two attorneys of the state from which he comes.

WYOMING

Wyoming has no separate character committee. The investigation as to the moral character of applicants is conducted by the Board of Law Examiners prior to the bar examination and is handled by correspondence as far as possible. The names of all applicants are posted in the office of the Clerk of the Supreme Court for thirty days and are also furnished to such newspapers as desire to publish them. Every member of the bar is expected to aid in the investigation by communicating to the court or examiners any information he may have as to an applicant's character. If a complaint is filed or something questionable develops, the Board, through its Secretary, makes such further investigation as it deems advisable.

The application for admission by examination requests the names and addresses of ten references, specifying that five of these should preferably be those of judges or members of the bar, and calls for the certificate of a member of the bar or judge of this state, or, if the law study was pursued elsewhere than in Wyoming, this certificate should be furnished by a judge, attorney, or member of the law school faculty.

The application for the admission of a foreign attorney requests the names and addresses of at least five references, preferably judges or members of the bar, and calls for the certificate of a judge of the foreign state or of two or more attorneys of that state, or a member of the bar of Wyoming.

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After three failures, an applicant will not be permitted to take another bar examination without special permission of the board.

Foreign attorneys will be admitted without examination on the payment of $50.00 provided they have practiced for three years in another state where the standards of admission are substantially equivalent to those in Missouri.

Believe It or Not

The following statements were contained in answers received to the questionnaires sent to states regarding their procedures in investigating the character of applicants.

In answer to the question, "In case something questionable appears in reference to an applicant, what is the procedure?", we received the answer, "No such situation has ever arisen." (This state has some 150 applicants a year.)

In answer to the question as to how many applicants were refused admission on character grounds during the last three years, the reply was, "No such questions have arisen to my knowledge since I became a member of the board." (The secretary has served for years and his state examines between two and three hundred applicants a year.)

One state has rather strict character investigation of students before they are permitted to register for law study, but it makes practically no investigation of foreign attorneys or applicants pursuing their studies outside the state.

Three states which permit applicants from the state universities to be admitted on diploma acknowledge the fact that there is no character investigation of that class of candidates.

In one state the applicant is required to furnish the secretary of the board a letter concerning, among other things, his energy.

The applicants in one state are required to furnish a letter of recommendation from a judge, a member of the bar, a practicing physician, a banker (rule passed before 1929), a business man, and a school teacher.

Putting Young Lawyers on Probation

THE COMMENT OF A LAY SKEPTIC

New York Sun, July 5, 1934

"At a meeting of the Joint Conference on Legal Education in New York recently it was proposed that the bar be purged of discreditable lawyers by requiring all young attorneys to serve two years 'on probation.'

"The difficulty about this plan is that a young lawyer gets so few cases during his first two years that he would have to be judged entirely by his reactions to a square meal.

"The following report by the probationary committee is entirely possible:

"*Luther Blank*—We urge that this young man be given a full membership. In common with thousands of other young lawyers, he had so little business during his first two years that your committee could judge him only by his general appearance asleep in a chair and his reaction to money. His hysteria when shown a dollar by a committeeman disguised as a client was so mild that we think he will be a credit to the bar.

"*John Smith*—We don't know what to say about this young man. After waiting eighteen months for a case he finally got a client who offered him $5,000 to represent him in a fraud case. Mr. Smith refused to take the case until he first ascertained whether the client was a crook or not. Ethically he rates 100 per cent, but we are afraid he would embarrass the older attorneys.

"*Charles Jones*—We asked the young man three questions:

"1—Would you deliberately misrepresent the facts to a court of law?

"2—Would you sacrifice your moral principles for money?

"3—If a client offered you a retainer of $50,000, would you be concerned about the merits of his case?

"The young man skipped the first two questions and answered the third thusly: 'Yes, but for $60,000 I would overlook everything.'

"We favor another two years' probation at least.

"*Edward Brown*—This man opened an office exactly two years ago on probation. We visited him this week and found him so emaciated he weighed less than 100 pounds. We think this prima facie evidence of superior honesty as a practicing attorney, and favor full membership and a plate of hot soup."

The Standards of Medical Education and Qualifications for Licensure

BY WALTER L. BIERRING*
President, American Medical Association

This program as arranged signifies the co-relationship of legal and medical education and further implies that the problems of the practice of law and of medicine are collateral.

It is fitting in this discussion to present the results of some of the efforts of the American Medical Association and allied agencies towards influencing the tendencies of medical education and licensure in this country during the past thirty years.

In order to properly appreciate the difference between the medical teaching and medical colleges of the present day and those of three decades ago, it is necessary to recall that there were then 162 medical schools in the United States, of which more than one-third were of low grade type, commercial in purpose, and of meager equipment in every respect. There was no uniformity in courses of study; some schools required only a high school certificate for admission, a limited number one or two years of premedical college preparation, and only one medical school had an entrance requirement of a degree in arts or sciences.

It will always be to the eternal credit of the medical profession that it exhibited the courage and the vision to recognize the real state of affairs and determined to set its own house in order. This was undertaken and successfully accomplished by the American Medical Association mainly through its Council on Medical Education and with the cooperation of the Association of American Medical Colleges and the Federation of State Medical Boards. By the elimination of certain schools and the combination of others the number was gradually reduced, and at present there are only seventy-seven Class A or approved medical colleges in the United States and ten in Canada, practically all of them being an integral part of a recognized University. In contrast to thirty years ago, all medical schools now require at least two years of preparation in an acceptable college or university for admission, such premedical course to include chemistry, biology, and physics. Of the 4,890 graduates in medicine in 1933, 70 percent had a university degree before entering the medical school.

At the annual session in 1904, the House of Delegates, the governing body of the Association, created the Council on Medical Education, as a

*Presented before Section of Legal Education and Admissions to the Bar, American Bar Association, Milwaukee, August 30, 1934.

permanent committee to collect and publish reliable information regarding medical education, and secure in every way possible the adoption of better educational standards.

The Council originally comprised five members, but has since been increased to seven, one member being appointed each year by the president for a term of seven years. The Council has been fortunate in its personnel and particularly, in its two full-time secretaries, Dr. Nathan P. Colwell, serving the first twenty-six years, being succeeded in 1930, by the present secretary, Dr. William D. Cutter.

As a historical background to the Council's activities it is interesting to recall that when the American Medical Association was formed in 1847 it was specifically stated that one of the chief objectives of the Association was to be the improvement of medical education. For various reasons the accomplishments of the first fifty years were not specially notable. Its first real effective work in that direction began in 1900 when the Association through the Journal under the able editorship of Dr. George H. Simmons began the collection of information regarding existing medical schools which was published in the first Educational Number of the Journal in 1901. The following year the results of State Board Examinations were published as they occurred throughout the year and the number of failures.

The first three years after the Council was established were chiefly devoted to a careful investigation of the conditions in the medical schools of the United States, and in 1906 a personal inspection was made of each of the 162 medical schools then existing.

In 1907 the first classification of medical colleges, based on the Council's investigations, was presented and included in its annual report to the American Medical Association. That classification was not published, but each college was notified of the rating given to it. Schools which were deficient were warned and many of them made needed improvements, consolidated with other schools, or closed their doors. The second classification prepared in 1910 was published simultaneously with the appearance of the report on medical education in the United States and Canada made by The Carnegie Foundation for the Advancement of Teaching.

The Carnegie report was written in such a way that it became news in every part of the land, and aroused in the public mind a more urgent demand for a higher standard of medical education. Its tremendous influence was also due to the fact that it was promulgated by a non-medical body known for its educational studies.

A third school inspection was made in 1913 and subsequently, once every five years to the present time. The voluntary response for improve-

ment on the part of the colleges was noted from the beginning, and with an enthusiasm that was as surprising as it was encouraging. In the period from 1906 to 1920 the number of medical schools was reduced from 162 to 74. These figures are for the United States only and exclude the two-year schools which have no graduates.

It has been aptly stated by Dr. Ray Lyman Wilbur, the chairman of the Council, that the imperious impact of the laboratory on American medical education has been a large factor in the significant changes that have taken place. At the turn of the century, the lecture system was prevalent, the dissecting room and a few microscopes composed at times almost all of the scientific equipment available. Yet out of this system of training came men who have built up American medicine, men gifted in research as in the practical application of medicine. Many of these men sought further training in other lands and coming back with the flavor of an older culture brought the laboratory to the door of every institution. This meant better trained men, expensive instruments, adequate equipment and a lengthened curriculum. As soon as the medical profession grasped the significance of the laboratory in scientific medicine, rapid changes began to take place.

The establishing of medical education on a university basis is the important feature of the present scheme of medical training. During the period to 1920 the teaching of the pre-clinical sciences (anatomy, physiology, bio-chemistry, pathology, bacteriology and pharmacology) markedly improved. By reason of higher entrance requirements, students of much better quality were obtained and above all, teachers trained for this particular work were substituted for the practicing physician whose time was not his own and whose knowledge of laboratory subjects was often rudimentary. Such full-time professors are now members of the medical faculties of the 77 approved schools in this country. The enforcement of higher entrance requirements brought about a reduction in the number of medical students from 25,204 in 1906, to 13,798 in 1920. It was generally recognized that medicine could not be taught by means of lectures, or even by amphitheatre clinics alone, and that students must come into personal contact with patients both in the hospital and the dispensary. All the accepted schools rapidly made provision for practical work in the clinics.

The clinical type of training was further extended by the addition of a fifth or hospital interne year. This has developed so that at present 15 medical colleges require a hospital interneship as a pre-requisite for graduation. While not obligatory in all states, practically all of the 4,980 graduates of 1933 are now serving interneships in approved hospitals.

This further lengthening of the medical course has placed on the Council of Medical Education the additional responsibility of supervision and grading of hospitals as to staff personnel and facilities for interne service. It is now generally recognized that the teaching function of an approved hospital is one of its most important responsibilities to modern society. A list of hospitals providing acceptable interneships was published first in 1914 and annually thereafter. The most recent edition, September 1, 1934, contains the names of 676 general hospitals with more than 200,000 beds and offering 6,204 interneships.

One of the important factors in influencing the tendencies of medical education during the past thirty years has been the annual Educational Conferences arranged by the Council usually held in February, at which representatives of state licensing boards, deans of medical colleges, university presidents and others interested are invited. These conferences, where a full discussion is given to the problems of medical education have formed the best annual index of the changes and progress of medical education and licensure.

Each year in the early fall an Educational Number of the Journal of the Association is published which contains complete information regarding approved medical schools in the United States and Canada, the number of students in each class, graduates, changes in curriculum, hospitals approved for interneships, graduate courses, and much other valuable statistical data.

The rather remarkable accomplishments in improving the entire field of medical education are largely due to the fact that the Council has been able to act as an independent body, operating under a rather liberal budget, disassociated from medical schools, subservient to no special interests and at all times backed by a united and organized profession representing a membership of 100,000 physicians.

Medical training and the practice of medicine have always been closely allied and this relationship finds its best corollary in the evolutionary development of state licensure regulations for the practice of medicine. Both are fundamentally concerned with problems of education.

From the days of the American Colonies to the present, state medical societies or state examining boards have maintained the traditional prerogative that each Commonwealth shall determine the requirements for medical practice within its borders.

In its historical development in this country the medical licensing function has been more precautionary than determinative. For more than a century and a half after the permanent colonization on the eastern sea-

board the license to practice was granted by the teacher, and the only participation of the civil authorities was the registration of this certificate in a court of record. Medicine was taught largely through apprenticeship, the candidate being apprenticed to a physician for a period usually of seven years. After satisfactorily completing the apprenticeship of seven years, the pupil was given a certificate of service and proficiency. This constituted the license for independent practice and, when registered in a court of record, made the holder a legal practitioner of medicine and surgery.

The passing of judgment as to proficiency to practice rested solely with the teacher, who came to be called preceptor, a word signifying both teacher and master. By this method the interests of the public were safeguarded as long as preceptors were educated, competent, and appreciated their responsibility.

With the advent of medical societies, a new mode of regulating medical practice came into being. While medical societies began to appear as early as 1735, they were mostly local and transitory. About the time that the first medical school was founded in Philadelphia, in 1765, the organization of more permanent medical societies began, which had, among other objects, the regulation of medical practice through legislation. The Medical Society of New Jersey was the first to be organized in 1766, and in 1772 legislation was secured requiring examination, and licensure by two judges of the supreme court, with such assistance as they might call, of any persons not at that date in practice in the colony of New Jersey.

From 1781 to 1792 the State Medical Societies of Massachusetts, New Hampshire and Connecticut received charters which conferred on the society full power "to license such as shall be found qualified to practice medicine and surgery." This procedure of licensure, delegated to the four medical societies mentioned, extended to other states, to smaller political subdivisions known as districts, and in some states even to counties.

A hundred years ago the majority of practicing physicians held medical society licenses, frequently called a diploma, and only a minority were medical college graduates. With the formation of sectarian medical societies the licensing function became more complicated, and about 1835 the granting of licenses was gradually taken away from the medical societies and placed under state boards of medical examiners.

In the early procedure the state board required of the candidate a certain period of study under a preceptor before he might appear for examination for license; but in the case of graduates of organized medical schools no examination was required and the diploma, when registered in a court of record, served locally as a license. Later the state boards issued a state license on presentation of the diploma.

Thus, the state board at this early day delegated part of its licensing function to two kinds of educational forces:—first, to medical colleges, relying on their proficiency, and second, to the other less competent type, the preceptor, the latter group being required to take an examination. Great reliance was evidently given to the certificate of the preceptor, as pupils of well known and experienced preceptors were often licensed after a very informal examination. This relation of licensing body to medical school and to the preceptor continued for about a half century.

In 1880 another change occurred as the result of the mass of proprietary medical schools that were being organized. The major incentive for this was that the diploma of any school, no matter how poor, had by statute or custom come to give the right to practice. It then became necessary to repeat the procedure of a century earlier when medical societies were forced to examine the certified pupils of careless and incompetent preceptors as a precaution against inefficient preceptorial training.

During more than two hundred years of colonial and national history of this country, the chief dependence for decision as to the competency of a candidate to practice medicine has rested in the opinion of those individuals or combination of individuals called faculties, who have taught the candidate, and who have had long and intimate contact with him. At various times the licensing function has rested solely with the educational forces, as when the certificate of the preceptor served as a license, and during the greater part of the nineteenth century when the diploma of a medical school automatically secured a license. The supplementary licensing examination that has been instituted had for its motive to determine the capability of the candidate, and to serve as a precaution against general carelessness, occasional incompetence, or willful misrepresentation by the teacher or school.

Recent developments indicate that we are entering on another phase of the evolution of medical licensure. This is the further recognition of the educational aspects of the problem in placing greater responsibilities on the universities to provide a training in keeping with modern scientific developments. The adoption of uniform standards of medical education by approved medical schools has been an important factor in this development.

Forty state boards require two years of college work preceding admission to a medical school. Four states, California, Connecticut, Mississippi, and Pennsylvania require only one year of college, while five states, Delaware, Massachusetts, Missouri, Nebraska, and Ohio are satisfied with high school graduation or its equivalent.

In twenty-five states, by official action, only graduates of Class A medical schools are admitted to the licensing examination, and in a number of others the board exercised its discretionary power in conformity with the Council's classification. It is to be regretted that some states even in small numbers grant licenses to individuals unacceptable to the medical profession, and for which their training is wholly inadequate.

A further modification in the function of the state boards is being advanced by leading authorities in medical licensure and that is to grant a license directly on the basis of graduation from a medical school, which provides an adequate standard of education, and on completion of a satisfactory interneship. Adequate safeguards for the protection of the educational standards can be provided through inspections and visits to the schools by competent observers as well as the addition of a practical test by the licensing board.

The majority of the state examining boards have organized as the Federation of State Medical Boards of the United States which holds its annual session in connection with the Educational Conference arranged by the Council on Medical Education.

The Federation regards as its particular function, (a) the determining of fitness for the practice of medicine, and (b) the enforcement of regulatory measures. It publishes a monthly Bulletin which is a unique publication and constitutes the most reliable reference in medical laws and licensure matters. The Federation sponsored by the American Medical Association has exerted a distinct coordinating influence on medical licensure in this country.

Each year, usually in the spring, the Journal of the American Medical Association publishes a State Board Number dealing with licensure statistics which presents valuable information to medical schools, licensing boards, as well as to the public. The edition of April 28, 1934, indicates that 7,125 licenses were granted in 1933, 5,174 by examination and 1,951 by reciprocity and interstate endorsement.

A new movement to advance the standards of licensure, particularly, the type of qualifying examinations, was inaugurated in the formation of the National Board of Medical Examiners in 1915. Its membership comprises representation from the three Federal Medical Services, the Council on Medical Education of the American Medical Association, the Association of American Medical Colleges, the Federation of State Medical Boards and leading educators in the several fundamental medical sciences, clinical teachers and leading clinicians selected with reference to geographic distribution. A type of comprehensive examination has been developed that is representative of the highest type of medical training. This is divided into

three parts, a written test to be taken at the end of two and four years of medical study and the final Part 3, consisting of a practical or clinical test of four days' duration, taken after the completion of a hospital interne year. The certificate granted for satisfactory completion of this examination is now accepted by 42 states and three territories in lieu of the usual examination required for licensure in the respective states. The certificate is accepted also by the qualifying boards of Great Britain.

The endorsement of the National Board certificate by forty-two states and three territories is a further indication of an increasing tendency to accept educational requirements for licensure on a national basis.

Post Graduate Training and Specialized Practice

During the post war period, and partly because of the war, there has been an increasing demand for post graduate training. Some of this demand comes from the general practitioner in a small community who wants to keep himself up-to-date. There is, however, an increasing demand from the doctor who wants to turn his back on general practice and fit himself to be a specialist. In response to this demand the Council has assumed the responsibility of investigating and listing such institutions and hospitals having the facilities for "refresher" courses or systematic courses of training in the several special fields of medical and surgical practice.

According to the latest statistics 50,333 of the 161,361 physicians listed in the United States, or 32.6 percent, report that they limit their practice or declare a special interest in a specialty. Those who limit their practice constitute 17.3 percent, and those who declare a special interest 15.3 percent of the profession.

This tendency towards specialism often without adequate training, has emphasized the need of establishing definite standards for the proper qualifications of specialists who have passed the scrutiny of their peers. Special boards of examiners have been established in the specialties of ophthalmology, otolaryngology, obstetrics and gynecology, dermatology, pediatrics, and radiology. Other specialties will probably organize similar boards in the near future.

At the 1933 session of the American Medical Association the Council on Medical Education was authorized to express its approval of such examining boards in medical specialties as conform to the standards of administration and qualification formulated by the Council.

Hereafter the names of qualified specialists who have been properly certified by their respective examining board will be submitted to the Council for endorsement and publication as such in the Directory of the

American Medical Association. The value of such certification for the public welfare and the profession will be generally recognized.

New Problems

In the decade and a half since the close of the World War, notable developments have taken place in the teaching of medicine, no less than in other fields of education.

A review of the accomplishments of the Council has emphasized certain inadequacies in medical education. There is a very appreciable gap between the best and the weakest of the Class A schools. Throughout all history the medical profession has shown a marked adaptability to move forward with a changing civilization. To determine whether the medical school and hospital have kept apace with the widening sphere of professional activity makes it necessary to evaluate these changes and consolidate the gains that have been made. The Council on Medical Education and Hospitals has therefore decided to undertake a comprehensive and intensive resurvey of the medical schools of the United States and Canada. This inspection will begin as soon as the schools open in the fall. Special attention will be paid to the qualifications of the faculty and the effectiveness of clinical teaching. These activities of the Council give a further definite promise of bettering the standards of medical practice.

Changing social and economic conditions will continue to influence the practice of medicine, but there are further factors that have an important bearing on the medical practice of the future. Of grave concern is the firm conviction that more doctors are being turned out than society needs and can comfortably reward.

In the recent State Board Number of the Journal of the Association the editorial statement was made, that in 1933, 5,012 new members were added to the medical profession in this country through licensure, while the losses by death for the same period were approximately 3,500.

The present estimated ratio is one physician per 814 of population, which is twice as many as the leading countries of Europe.

According to studies made by the Commission on Medical Education "a reasonably complete medical care can be provided in this country on a basis of one physician to 1,200 persons. That an adequate medical service for the United States could probably be provided by about 120,000 active physicians. According to these figures there are at present a surplus of approximately 35,000 physicians". If the present rate of supply is continued, the number of persons per physician in 1940 will be 760, in 1960 about 730, and in 1980 about 690. It requires no special actuarial philos-

ophy to forecast what such a state will mean to the economic welfare of the future practitioner.

Whether the problems of this new day in medicine will be met by a limitation in the number of existing institutions or the students admitted, cannot be foretold, but it will require real courage to bend the educational processes to the urgent social and economic needs of a changing order.

The last thirty years in medicine have been characterized by remarkable scientific advances, and it is likely that the next thirty years will be as significant in the changed relationships of medical practice. Preventive medicine has greatly modified the life of the doctor, and the physician of tomorrow will be concerned as much with the maintenance of health of his people as to care for them when they are affected with disease.

The Bar Examiner

Index---Volume III

Development of an Adequate Bar Admission Agency

By Leon Green*
Dean, Northwestern University Law School.

A few weeks ago your Secretary said that this meeting needed something like a "cockleburr", or if you do not know what a cockleburr is, then a mustard plaster. At any rate, I am supposed to perform some such function here.

What I say today can not be true for forty-eight different boards of bar examiners. Some statements will be exaggerated, I am sure; others will fall far short of the mark. What I have to say will deal for most part with the larger states, the metropolitan centers, because it is from them that we are getting so many inadequately trained lawyers.

I also want to say that my attitude here is wholly impersonal. Even though I have become a critic of bar examinations in general, yet the people with whom I am most closely associated perhaps are bar examiners, and they are my personal friends and I expect them to continue to be. My criticisms are directed at the present methods of admitting people to practice law. Incidentally, I may say that I think the activities of this Conference have already done more to stimulate thought about the admission problem on the part of the schools and the profession at large than all other activities during the last twenty years, and I should regret very much to see this organization so handicapped by financial difficulties as to be unable to continue its work.

My criticism of the bar examinations is that they are of little value. They do not strike at the heart of the admission problem. In order to sustain this criticism it is necessary for me to indicate to you briefly something of what has taken place in law school training within recent years.

You constantly marvel at the development which has taken place in government and law during the last four or five years. Were you to compare the growth of the law during the last twenty to thirty years, with its development over the past four or five centuries, you would perhaps marvel even more. I can not take time here to indicate this development except merely to say that lawyers today are in large measure

*Address delivered at the fourth annual meeting of The National Conference of Bar Examiners, August 28, 1934.

practicing law which has been developed during the period of the present generation of lawyers.

The development of law schools has almost kept pace with the development of law. This is true from the standpoint of the number of students who are training themselves as lawyers, the number of schools which have come into existence, the expansion of law school faculties, and most marked of all, perhaps in the development of law school curricula. As an example of the expansion in law school curricula I need only suggest to you that when you and I went to law school a single course in Constitutional Law sufficed, a single course in Corporation Law, a single course in Procedure. We had never heard of Administrative Law, and a dozen other large developments which are now found in the curricula of all the better law schools. Today there are three or four courses in Constitutional Law, as many more courses in Administrative Law, Corporation Law, as well as in Procedure. And I may say in addition to these courses you find in many law schools clinic work in *fact* investigation, in preparation of documents, trial and appellate briefs, preparation of opinions on all sorts of problems, many types of work fostered by legal publications, seminars, individual studies, and specialties which were wholly unknown when we went to law school. In other words, the law schools are seeking to train lawyers to practice law.

Briefly, it may be said that the law schools today are training their students not only know the crystallized theories, principles, formulas, and rules as developed by courts, eminent legal scholars and book writers, but through the case method are training them to the end that they can develop and articulate for themselves the principles, theories, doctrines, formulas and rules through which courts do their business. This sort of process develops the power of the law student beyond anything that is known in any other field of education, and gives to the law student an experience with the affairs of the world, vicarious though it may be, which matures him during his years in law school more rapidly than any other period of his life. In other words, the law schools are developing in their students the power to investigate and deal with facts; second, the power to investigate the law and prepare briefs; third, the power to give advice on questions submitted by clients and to write opinions on legal problems; fourth, the power to prepare pleadings and other documents; and fifth, the power to adduce evidence, prepare charges, and make oral arguments.

These are the powers that a lawyer must have in the practice, and it would naturally be thought that any basis of bar admission would take into account the testing of these powers. But nothing of the sort is true, or even approximately true. Bar examinations usually consist of a group

of unrelated, highly compressed, controversial questions calling for quick judgment and general answers. In many instances the questions asked are of no significance whatsoever. In others, while the questions are extremely good, the time allowed for answers is ten or fifteen minutes, a time in which no lawyer, however experienced, would undertake to give any more than the merest curbstone opinion. Moreover, the time for grading such answers as are given is so short as to indicate either that the questions are wholly insignificant, or that the answers required are not supposed to indicate any of the powers of discrimination which the student has developed, or else that the examiners themselves do not give a fair consideration to the answers. I give you one example from Illinois, and let me say here that the Illinois Board of Bar Examiners is one of the best organized in the entire country, and its personnel is made up of the highest quality of lawyers. Yet in July, 1934, there were 649 candidates who took the examination. Sixty-five questions were given, to be answered in a maximum period of fifteen hours. You can make the calculation for yourself. But assuming that there were ten examiners who took ten days to examine the answers (and these assumptions are excessive), and that they worked ten hours a day (which is, of course, longer than anyone can read examination questions and know what he is doing) each examiner had to consider forty-two questions and answers per hour. In other words, in the space of about one and one-quarter minutes a question had to be read, the answer read, evaluated, graded, etc., counting out nothing for smoking time, lunch time, conversations, conferences, etc. I do not have the slightest doubt as to the ability, conscientiousness and fairness of the Illinois Bar Examiners, nor of any other examiners whom I have known. Therefore, the only charge that I would make against them is that what they ask for and what they get is of no practical significance as a basis of testing a law student's power. It is utterly unfair to the student who has to spend three or four years in addition to his college training not to have his powers tested by some fair method. To require him to give snap judgments is in direct opposition to all that he has been taught and to all that an older lawyer taking him into his office would desire.

Of more importance than this, however, is the fact that even the students from the best law schools, in order to pass the bar examination successfully at the first trial, are compelled to spend several weeks and pay considerable money to experts in cram courses. These cram experts specialize in bar examiners' psychology, as well as in bar examination answers. The well trained law school students protest against, and indeed are incensed at the humiliating experience of being taught to answer questions in a way that they know is opposed to everything that will be

expected of them as lawyers. Indeed they must forget much of what they have learned, they must forego the exercise of their powers to discriminate in their answers in order to write a successful bar examination paper. The only justification that can be found for the cram school is the bar examination. It has grown up by virtue of the fact that old questions are repeated from year to year. Some of these questions have gone the rounds for forty years. On that basis also is found the justification for quizzer books. No examiner should ever be guilty of repeating a question.

A further result is that good students are discouraged from undertaking the severe training of three or four years in a good law school. Why not, they say, get a job and attend a proprietary night school where little is required of them, and then before the bar examination take an intensive course in bar passing technique and be admitted on practically the same basis as students from the better schools? Aside from the fact that the universities, which have done their best to develop creditable law schools for the profession, are necessarily discouraged by being subjected to the sorry competition of proprietary schools and cram courses, the better trained students themselves are discriminated against by the very professional agency that should be, if anything, discriminating in their favor. But worst of all, the profession is constantly being crowded by poor recruits. You know and I know that not a few but a great many of the young lawyers now being admitted to the bar are not only unprepared but are unfitted on other grounds for admission. It is bad enough for a few well trained men at every examination to be humiliated by failing a bar examination which is an unfair test of their powers, but it is tremendously more important that this same examination is not keeping out a large number of candidates who should never even be permitted to come to the examination, much less to pass it.

If this is the case, then it seems to me the intelligent thing would be to devise some better means of bar admission. I have elsewhere made suggestions along this line.[1] I can not hope to discuss those suggestions fully with you here, but I want briefly to indicate something of what I have suggested.

Briefly, the proposal is to broaden the powers of bar examiners so that they are in fact boards of bar admission, with full power over the whole process, subject only to the final supervision of the Supreme Court, and under the general observation of the state bar organization. There is no suggestion that the personnel of the present boards should be changed,

[1] I The Bar Examiner, p. 213; American Bar Association Journal, Feb., 1934, p. 105; III The Bar Examiner: "A Comment on Dean Green's Views on Bar Admission" by James C. Collins, p. 75, and "A Comment on a Comment" by Leon Green, p. 113.

except possibly increased. Most boards have a personnel of able and conscientious lawyers, but I would suggest that each board should have a full time executive secretary. I do not have to tell you what such a secretary means to any organization. There are numerous examples. Consider for an instant what Allan Stephens means to the Illinois State Bar Association, what Will Shafroth means to your organization, what William Draper Lewis in a similar role means to the American Law Institute. No organization can function effectively without such a person, call him what you will. The board should further have the power of visitation and supervision of law schools. This is the key to the whole problem. If the law schools are brought under proper control, the question of intellectual attainments of a candidate for most part takes care of itself automatically. What would you want to know about the schools? You would want to know their set-up, to study their curricula, to study their faculties, to study their methods, to know how they recruit their students. You would require them to supply the records which you should need for your office, without cost to you. The board would want a complete record from the day a student applied for admission to the law school until he left the school. The medical people already have provided for this sort of thing. The result would be that when the board discovered the methods used in recruiting the student bodies of many of the proprietary schools especially, and when the board discovered the laxity of admission as well as the laxity of requirements of attendance and study, they would set up such minimum requirements that scores of students who now sail through these schools and are admitted to the bar without much difficulty would never be permitted to study law. Moreover, the law school people would have a group of lawyers in the profession who really understood something about law schools, and who by representing the profession at large could greatly stimulate not only law school teachers but could be of invaluable assistance to students seeking law training, and young lawyers entering their first years of practice.

Such an organization would find no place for the hectic quantity-production, mass examination methods of the present. All admissions would be upon an *individual* basis. The admission of a lawyer is of as much importance as the trial of any case. The first license would be a provisional one. There would be very little difficulty in handling the better students from the better law schools, because the board through its secretary and the knowledge that would be built up on the part of individual members of the board would soon come to know, so far as the intellectual training is concerned, what percentage of students of the better schools could be admitted, provisionally at least, without further examination. But there would still be students who should be subjected

to examinations of various sorts. It would quickly come to be known that students from one school might be weak in procedure, for example, students from another school in commercial law subjects, students from another school in some other subject or subjects. It would be very easy either for these students to be directed to take further work before submitting themselves for a license, or be subjected to such examination as might seem desirable. The secretary could so set up his organization in connection with some good library that he could give a student one or more problems and turn him into the library and simply say, "Now prepare me a brief on this." "Write me an opinion on this." "Here is a set of facts; prepare the advice you would give a client." "Here is another set of facts; prepare certain documents. You have plenty of time." It is clear that the product of the student's work under such circumstances would be more indicative of his powers to practice law than anything now being done. Of course, the methods of admission along these lines would be worked out slowly. It is purely a matter of administration, which is only determined by trial and error.

Assuming that a provisional license is granted to a student, the matter of permanent admission should rest upon his performance as a young lawyer over a period of several years. The burden would be upon the young lawyer to build up a record in the secretary's office which would make it possible for his admission to be considered intelligently. For example, he would be required to make a yearly report on all of his activities as a lawyer. He might give full reports on certain cases that he had handled; reports from his employer, of judges, or opposing lawyers might well be asked. It would soon become known to clients in general that their complaints against young lawyers would be fully considered if they were filed with the secretary of the board of admissions. The record developed over a period of several years would furnish every needed lead for further investigation by the secretary's office. He could send out a record to the discipline committee of the local bar and ask that it give a full report on the candidate involved. In some cases it would doubtless be desirable to call the candidate before the full board in person, where he could be subjected to an examination into his character and fitness. The board would have a record which would give them a basis of examination, whereas at present the examinations for character and fitness must necessarily be at most a formal and ineffective sort.

Again I may say that the development of such a system of admission would be a matter of intelligent administration based upon trial and error. It is a practical, workable idea, and all that is necessary is to make a beginning. Every step taken will indicate what other steps are needed. Certainly with this sort of method of admission, while there would be

mistakes, there would be nothing like the number of mistakes now made. A board so constituted would soon come to have in the matter of admission something of the status of the Supreme Court itself. There need be no fear of unfairness or partiality on the part of its members any more than would be true of any other judicial body. Such a process of admission would automatically be a cleansing process of the entire bar. In other words, inside of twenty or thirty years you would have a bar which would have been put through the strainer. At present a large percentage of lawyers, probably as many as twenty-five per cent, do not practice law after the first five years. Those who did not come up for the final license would be automatically eliminated from the profession. We would have none of these cases which constantly recur of lawyers having gone into some sort of business and failed, and then ten or fifteen years later after they had forgotten entirely their law training and without the benefit of having grown a professional character over the earlier part of their lives, turning to the practice of law, only to become problems for the grievance committees. Moreover, many young lawyers go astray during the first few years of their practice. The rate of infant lawyer mortality is high. The necessity of maintaining a good record over the first few years of practice would save many a young lawyer from developing professional habits which later cause his own downfall and bring dishonor upon the profession as a whole.

These are just some of the things which seem to me worthy of consideration. I want it clearly understood that I am lodging no attack against night schools or against students who find it necessary to get their training at night schools. I give full support to the legitimate night school and I have every sympathy for the young man who must get his training in such a school. The well trained men from these schools are suffering just as much as the well trained men from the better schools. They have just as much to gain from good methods of bar admission as any other well trained young lawyers. Most of the difficulties of this problem can be eliminated at the source. A board of bar admissions well organized can meet these difficulties in a manner which will be fair to everyone—to law students, to law schools, to the profession, and to the public at large. And one of the most attractive phases of the suggestion is that it requires no legislation, no formidable organization. All that is necessary is the approval of the Supreme Court, the general support of the profession, and a willingness on the part of the various boards of examiners to proceed to organize their functions along more comprehensive lines.

I thank you very much for this privilege.

The Work of a Character Committee

A petition was filed with the Supreme Court of Illinois last spring, asking the Court to define the scope of the inquiry which the committees on character and fitness for admission to the bar were charged with making in the state of Illinois. A portion of the brief filed by the Chicago Bar Association in this matter is quoted as being of interest on the general subject of the purpose and methods of character examination.

"Necessity for a Committee on Character and Fitness.

"An increasing number of states are finding it advisable to appoint local committees on character and fitness and to require all applicants for admission to the bar to appear personally before such committees.

"There are special difficulties attending investigation in a district having so large a population as the First Appellate Court District of Illinois. Applicants are usually not known to members of the organized bar and it is, therefore, all the more important in the public interest that a committee should be in existence and in a position thoroughly to investigate the personal history of all applicants. The necessity of undergoing such scrutiny undoubtedly deters persons with bad records from seeking admission to the bar and develops in applicants for admission higher standards of conduct.

"The number of lawyers in the First Appellate Court district has become so great and the continuing influx of applicants for admission,—a large number of them not particularly well fitted for the practice of the profession—creates a problem requiring every resource to be used in meeting it. We do not imply that any arbitrary limitation on the number of applicants should be imposed but the experience of the grievance committee of the Bar Association indicates that when the bar is overcrowded, a strain is placed on the integrity of members of the profession, particularly those not well fitted to meet the economic pressure of the times, that would not otherwise exist. The importance of examinations into the characters of applicants for admission to an already overcrowded bar is great, and the ones best fitted to make such examinations are the members of the bar in the particular locality concerned.

"We are attaching hereto a table which shows, for the period therein designated, the following information about the work of the Committee on Character and Fitness of the First Appellate Court District:

"(a) Number of applicants certified upon first appearance before the committee;

"(b) Number of applicants certified after two or more appearances before the committee;

"(c) Number standing as rejected at the close of the year indicated;

"(d) Number pending on postponement or rehearing at the close of the year.

"An examination of this table, showing that only a small percentage of applicants is finally denied a certificate of general fitness by the committee, might lead to the conclusion that the work of the committee is practically useless in blocking admission to the bar of unfit candidates. We do not believe that this conclusion is sound. The necessity of submitting to the examination undoubtedly stops persons with bad records as to character from attempting to gain admission to the bar. The existence of the committee is also a strong force in deterring improper conduct on the part of persons who expect some day to appear before the committee as applicants for licenses.

"Furthermore, when one considers the almost incalculable harm which a single incompetent or dishonest lawyer can do both to his clients and to the public generally, the keeping out of our profession of but a few such individuals is justification for the arduous labors of the members of the committee.

"Notwithstanding the great sacrifices of time and energy required of members of this committee—something we think might well be brought to the attention of the bar—the members of the Committee on Character and Fitness, past and present, believe that their work is an important enough element in the machinery of admission to the bar to justify the large sacrifice of time and effort which the members of this committee have made.

"That there may be additional powers which should be given to the committee, in order to make its work more effective, is a matter to which we are giving earnest consideration and is a subject upon which we may have occasion to report to the Court at a later time. In the meantime, we are, as already stated, limiting our suggestions to the main point of the petition which is before the Court, whether activities of the committee should be limited.

"Procedure of Committee of First Appellate Court District.

"The committee has adopted rules for the conduct of its business, and it observes the following routine in the performance of its duties:

"(a) It receives from each applicant affidavits of at least three practicing attorneys personally acquainted with the applicant, testifying to the good character and general fitness to practice law of such applicant, setting forth in detail the facts upon which the opinion is based.

"(b) It requires each applicant to fill in and return a questionnaire.

"(c) It causes inquiries to be made in all cases where perusal of the said questionnaire, or where information brought to the attention of the committee, leads to the conclusion that further investigation should be made respecting the applicant.

"(d) It requires each applicant to appear for oral examination, and, if the examination leads the section of the committee which is conducting the examination to believe that a further examination should be had, the applicant is required to appear before the section or the entire committee at a later date, usually a date early enough so that the subsequent examination is completed before the time for certifying the names of successful applicants for admission at the succeeding term of Court has passed.

"(e) No applicant is finally denied a certificate except after full consideration and action by the entire committee. In an ever-increasing number of cases a denial of a certificate occurs only after a hearing before the entire committee, if the applicant requests such a hearing. Shorthand reporters are present at all examinations and the testimony taken is written up before the final denial of any certificate."

Committee on Character and Fitness

FIRST APPELLATE COURT DISTRICT

	1930-31	1931-32	1932-33
Number of new applicants examined	604	627	543
(a) Number certified upon first appearance	453	462	414
(b) Number certified after two or more appearances	107	112	88
(c) Number standing as rejected at the close of the year indicated	20	17	8
(d) Number pending on postponement or rehearing at the close of the year	24	36	33
	604	627	543
Failures on Principles Underlying Constitution			
Failed on 1st examination	111	122	95
Certified on 2nd examination	93	102	71
Certified on 3rd examination	4	1	5
Denied on 2nd examination	-----	7	-----
Denied on 3rd examination	3	-----	3
Pending (to be examined further)	11	12	16
Failures on Fitness and Constitutional Principles			
Failed on 1st examination	9	18	17
Certified on 2nd examination	3	7	6
Denied on 2nd examination	5	3	3
Denied on 3rd examination	-----	1	-----
Withdrawn (Certificate withdrawn and held for further examination)	1	-----	-----
Pending (to be examined further)	-----	9	11

A First Year Bar Examination

By M. R. Kirkwood
Dean, Stanford University School of Law
President of the Association of American Law Schools

If rules now pending before the Supreme Court of California are approved, an interesting experiment in requirements for admission to practice will be initiated. These rules propose that a preliminary bar examination be given at the end of the applicant's first year of law study.

Certain conditions more or less peculiar to the State of California have been the cause of this proposal. It has proved to be very difficult to raise the statutory educational requirements for admission to practice. Thus it has not seemed feasible to require study in an approved law school. Whether because of this or other reasons, the fact is that this state has more law schools than any other state in the Union, and the survey conducted by Professor Horack and Mr. Shafroth in 1933 indicates great differences in the quality of these schools. These gentlemen say in the first paragraphs of their Report:

> "California is to be credited with as wide a variation in its law schools as any state in the Union. Although it only ranks sixth in population, with its 20 law schools it exceeds by a third its nearest competitor, Ohio. It has almost twice as many schools and colleges for training lawyers as has New York, despite the fact that the bar of that state outnumbers the California bar nearly three to one. In excellence, its schools at the top rank with the best in America. It has night schools and proprietary schools that are furnishing as thorough a legal education as some of the country's approved institutions. At the bottom of the list are schools of which no state could be proud.
>
> "There are schools whose purpose is to train young men in the highest ideals of professional responsibilities, there are schools whose ambition does not rise above getting their students to pass the bar examination, and there are some whose moving purpose seems to be to make money for their proprietors."

Further evidence of this variation in quality is indicated by the statistics recently published covering the bar examinations given in August of 1933 and February of 1934. On these two examinations the number passing was approximately 30% of the total number examined. Furthermore, cumulative figures covering all bar examinations in this state between August, 1932, and February, 1934, show that the percentage of graduates from the various California law schools passing the examination

upon their first attempt ranged from 89.3% down to 10%. Only four out of the twenty schools in the state passed 60% or more of their graduates during this latter period. [9 State Bar Journal 147].

This situation is fraught with evil from more than one point of view. With such a small percentage of applicants passing, vigorous criticism is constantly directed at the examining process. This criticism was brought to a head in the autumn of 1933 by the act of the Supreme Court in issuing an order to the Committee of Bar Examiners to show cause why the percentage passing was so small. A full day was given over by the Court to the hearing on this order. It ultimately resulted in the Court's upholding the Committee of Bar Examiners, but it is difficult to explain the situation to the rank and file of the Bar not to mention the public at large.

Of much more consequence, however, is the effect upon the individual applicants. It will be agreed, of course, that the law schools should eliminate students who are obviously unfitted just as early as that fact can be determined. This is the regular practice of the high grade schools. Unfortunately it is not at all the practice in many of the schools of lower standing. In innumerable instances students learn of their lack of aptitude for the study of law only after they have spent three or four years in a law school and then find they cannot do anything with the bar examination. Furthermore, in this state applicants may prepare in offices or by private study. In such cases there is of course no check available to the student until the bar examination.

In view of these facts it has been thought that the State Bar itself should assume some responsibility for checking the quality of the work being done by students preparing for the bar and this proposed first year examination is designed to serve that purpose.

The proposed rule requires that those applicants not exempt must take this examination at the end of their first year of study and until they have passed it they shall only be given credit for one year toward the three year period of study required. The examination will be given on the second Monday of July concurrently in San Francisco and in Los Angeles, and will cover those subjects commonly taught by law schools in the first year. The details of this aspect of the matter are still to be worked out.

Suggestion has been made above that certain students will be exempt. Since the purpose of the proposed examination is to warn students of unsatisfactory progress and since this is a duty which the law schools themselves should render to their own students, the rule seeks to encourage

a proper elimination by the schools themselves. With this in view it is provided that each school shall report to the Committee of Bar Examiners the names and relative standings of all first year law students who have *successfully* completed the first year course therein. Of this group (which it will be noted does not include those eliminated by the school) that percentage shall be exempt from the first year examination which is equal to the percentage of the graduates of that school who during the preceding three years have passed the final bar examination on their first attempt. Thus if 90% of the graduates of School A have passed the bar examination on their first attempt over a given three year period, 90% of the students successfully completing their first year of work in School A will be exempt from the new examination. Conversely if only 10% of the graduates of School B have passed the bar examination on their first attempt over the same period, only 10% of the first year students successfully completing the first year of work in School B will be exempt from the new examination.

The plan is a novelty—so far as the writer is aware it has never been tried elsewhere. It is admittedly an experiment. It is hoped, however, that it may serve as a check on unqualified applicants in a state which does not permit the adoption of more rigid formal educational requirements for admission. At any rate the experiment will be interesting to watch and it is to be hoped that the Supreme Court will make it possible by giving its approval to the new rules.

For the benefit of those interested in the details the proposed rule is set out in full as follows:

RULE VI

"Section 61. Every person seeking admission as a 'general applicant' who is not entitled to exemption from the law students' examination as herein prescribed must, after completion of his first year of law study, successfully pass such an examination before he may receive credit for any law study toward qualification for the bar examination. Upon passing the law students' examination, a person becomes entitled to credit for his first year of law study and for such additional law study as may have intervened between completion of said first year of law study and the announcement of the results of the first law students' examination given following such completion.

"Section 62. An application for the law students' examination must be filed at the office of the State Bar on a form provided by the committee at least two weeks prior to the date of each law students' examination for which the student may present himself unless for good cause in a particular case the committee permits later filing. The application must be accompanied by a filing fee of fifteen dollars ($15.00), one-half of which shall be refunded if the student with-

draws his application prior to the commencement of the law students' examination, or if prior to that time, he notifies the committee that he will not present himself at the examination.

"Section 63. The law students' examination shall be conducted either by the committee or under its supervision or pursuant to its direction each year simultaneously in Los Angeles and in San Francisco, beginning on the second Monday in July. The examination shall be wholly written, or part written and part oral, in the discretion of the committee, and shall consist of such questions as the committee may select relating to subjects ordinarily taught during the first year of law at law schools in the United States. The passing grade shall be seventy per cent (70%) of the highest possible grade.

"Section 64. Proof of exemption from the first-year law students' examination may be filed without cost at the office of the State Bar at any time prior to filing formal application for admission. Students should file such proof as soon as the same is available. To be entitled to said exemption a 'general applicant' must either

"(1) Be within the percentage exemption group (as defined in section 65 of this rule) of his first year law class in a resident law school either in or outside of California, or

"(2) Prove that he began the study of law in good faith prior to May 15, 1934, or

"(3) Prove that he has been admitted to practice law in one of the jurisdictions mentioned in Rule IV hereof, or

"(4) Prove that he satisfactorily completed his first year of law study in a bona fide resident law school either in or outside of California and show cause, to the satisfaction of the committee, why he should otherwise be entitled to said exemption.

"Section 65. On or before the 27th day of June of each year commencing in the year 1935 the registrar (or other appropriate officer designated by the Dean) of each law school, must, for the purpose of determining the percentage exemption group thereof, certify to the State Bar, the names and relative ranking according to their scholastic standings in the first year subjects of all law students at said school who, during the twelve-month period ending on the 27th day of June of said year, have satisfactorily completed the course of study prescribed at said school for first year law students. That percentage of the total number of students in a class so certified from a law school which is equal to the percentage of success of all graduates of said school who took the bar examination for the first time during the three years immediately prior to the first law students' examination following the date of such certification, determines the number of said students constituting the percentage exemption group from said school. Those students not exceeding said number who have the highest scholastic standings in said class certified as provided constitute the percentage exemption group. The percentage of success at said bar examinations shall be determined from the statistics prepared in accordance with Rule XIV hereof."

The Annual Meeting

The largest attendance yet recorded at an annual assembly of The National Conference of Bar Examiners was present in the ballroom of the Schroeder Hotel in Milwaukee on the morning of August 28. Over 75 persons attended this session, among whom were representatives of 26 boards of law examiners. The meeting was generally considered as a very successful one and the round-table discussions the following evening provoked some interesting expressions of opinion.

The first order of business at the main gathering was the report of the secretary-treasurer which was given informally since it was printed in the September Bar Examiner. The treasurer pointed out the financial crisis and stated that, as the Carnegie Foundation grant had already diminished to a point where it was insufficient to support the Conference, methods of financing must be adopted speedily or the organization will have to discontinue the publication of the magazine and lose much of its effectiveness. The treasurer's report showed an estimated balance in the treasury of approximately $700 at the end of the fiscal year on September 16. With an income of $2,000 from the Carnegie Foundation for the coming year, $350 from state donations (figuring this at the same amount as was received last year) and $500 from possible foreign attorney investigations for California, it appeared, he said, that the total estimated income would be only $3,550 to meet expenditures of $4,700 (on the basis of the expenses of last year). The treasurer pointed out that the new plan of the investigation of the character of foreign attorneys by the Conference provided a way out of this difficulty, in addition to performing a valuable public service. He said that if states having an aggregate total of fifty foreign-attorney applicants before next September would turn over to the National Conference the task of ascertaining the past records of those individuals, for the stated consideration of $25 an applicant, the organization could continue to function as at present without curtailment of activities, and he urged every examiner who felt the Conference to be a valuable agency in the bar admissions field to assist in the effort to secure the adoption of this service in his state.

It was announced that a list of books for collateral reading for law students had been prepared by Mr. Stanley T. Wallbank at the request of the Executive Committee. A number of scholars in the law school world and in the profession have been consulted in its compilation, and it should prove of interest and value to lawyers as well as law students.

A nominating committee consisting of Messrs. John H. Riordan of California, Clyde L. Young of North Dakota and James W. Vandervort of West Virginia was appointed by the Chair.

Mr. Charles P. Megan then presented his chairman's report, which is published in this issue. He was followed by Dean Leon Green of Northwestern University who, in speaking on "The Development of an Adequate Bar Admission Agency", criticized roundly present methods of conducting bar examinations and suggested that a greater discretion should be vested in the board, including the power to take into account other facts than just bar examination grades. This address will be printed in our next number. He was followed by Mr. Alexander Armstrong, chairman of the Maryland Board, who read an interesting paper on "After Ten Years as a Bar Examiner: Some Comments and Some Queries."

Secretary Shafroth, in behalf of the Executive Committee, then introduced the following resolution, which was passed by a vote of 12 to 9 after some discussion:

Rhodes Scholar Resolution

RESOLVED that The National Conference of Bar Examiners recommends that Rhodes scholars who have studied law at Oxford University and have successfully passed the examination for degrees in the faculty of law at said university, shall be entitled, for purposes of eligibility, to take the bar examinations of any state in the United States with the same amount of credit on a year-for-year basis as though they had studied at American law schools approved by the American Bar Association.

A further resolution, endorsed by the Executive Committee, was passed, recommending "a thorough study in each state of the technique, methods and procedure of character investigation and offering as a guide in creating machinery best adapted for this purpose those suggestions previously printed in The Bar Examiner (pp. 198-9, July-August, 1934).

Mr. Megan and Mr. Shafroth were re-elected chairman and secretary-treasurer, respectively.

About 35 examiners and law school men assembled for the round table sessions on Wednesday night. Mr. Wilbur F. Denious, of Colorado, presided over the discussion on character examination, and Mr. Ferris M. White, of Wisconsin, had charge of the round table on bar examination technique. The talks by Messrs. Dean R. Dickey of California on the character investigation of foreign attorneys, Oscar G. Haugland of Minnesota on the preparation of questions, James C. Collins of Rhode Island on oral examinations, and Lenn J. Oare of Indiana on the marking of papers, evoked comments from Messrs. McDonald of Missouri, Prentiss of Pennsylvania, Duvall of Oklahoma, McLeod of Wisconsin, Cressy of Connecticut, Riordan of California, Clark of New York, Robinson of Washington, Megan of Illinois and others. Excerpts from these remarks will be printed subsequently.

Check-Up on Migrant Lawyers

From the Journal of the American Judicature Society for August, 1934.

"Sentence suspended on condition that defendant leaves town before tomorrow morning." These police court judgments rendered frequently keep potential misdemeanants on the move. Since they are available to all cities they effect an interchange of undesirables. Much the same sort of thing has been going on in respect to lawyers who are caught in scrapes. California has been a chief sufferer in years past and its State Bar, tightening the fence, found that officials in other states sometimes failed to give complete information concerning migrants; it was enough that they had left "for good."

So it was ruled in California that an applicant for admission who had practiced elsewhere should post a fee of $100 to pay the cost of investigating his past. Then, last January, The Bar Examiner, organ of The National Conference of Bar Examiners, proposed that the Conference should serve the examining boards in all states by assuming the labor of investigation in such cases. The June number of the Journal reports that California is the first state to accept the offer. The expectation is expressed that other states will do likewise, and, by paying a reasonable fee for the service (exacted from the applicant) afford the Conference a steady source of income.

One of the good things for the bar which the future will surely bring will be a thorough check-up on migrating lawyers. It is obvious that investigation can be done more thoroughly by the Conference than by any other means. The Conference will need only to call on its constituent member boards of examiners; authoritative opinions as to the past conduct of migrants will be obtainable, and another hole will be plugged. The work will be financed by fees to be paid by applicants for admission. Those who deserve to be admitted will be protected and will be amply repaid; the others may refuse to post the fee. In New Mexico, several years ago, the State Bar provided for a limited license for one year, during which investigation could be had, and found the rule resulted in discouraging a number of applicants, who moved on to states with lax requirements.

California furnishes us with some further information in the way of the following answer to the question, "What is a per curiam decision?": "A per curiam decision is one written by the Clerk of the Court in a case where the judges, for political reasons, do not want their names to appear."

requirements for an approved law school. It unquestionably complies literally with the great majority of these requirements and substantially complies with the remainder, bearing in mind the different system of education in England and America and the difficulty of comparing a school like Eton with the average American high school. These standards were drawn up to meet peculiarly American conditions, such as commercial law schools, and were never intended to apply to one of the oldest law schools in the world.

It is true that the Oxford man upon his return will have to familiarize himself with the practice, procedure and local statutes of the state in which he seeks to be admitted. However, this is true of most of our outstanding law schools which, so far from training their students to pass the bar examinations of a particular state, pride themselves upon being "national" law schools which emphasize legal fundamentals. Obviously, a man will not offer himself for an examination unless he thinks he is sufficiently well prepared to have at least a reasonable chance to pass it. The bar examinations are becoming more difficult all the time and, therefore, few students will take the examinations unless they attend a cram course or do some private studying before so doing.

The question of the recognition of European institutions, both law schools and medical schools, is usually complicated by the fact that it is difficult to obtain exact information about the nature and quality of the work done in those institutions. In the case of Oxford, however, complete and first-hand information is available from the various Rhodes Scholars practising or teaching law in this country. There is no danger of an annoying precedent being set because the problem of Oxford and the Rhodes scholarships is quite unique. I am sure that a careful investigation on the part of the various bar examiners or The National Conference of Bar Examiners will result in the removal of this present discrimination.

The Citizenship Privilege

"After a two-year fight, Comte Rene A. de Chambrun, great-great-grandson of the Marquis de Lafayette, was admitted to the New York State Bar. Lawyer de Chambrun, Paris-born, was banned from practicing his profession because he had never been naturalized as a U. S. citizen. To prove U. S. citizenship de Chambrun cited before the Court of Appeals a law passed by Maryland's General Assembly in 1784: 'The Marquis de Lafayette and his heirs male forever shall be . . . taken to be . . . citizens of this state'."—*TIME*, April 30, 1934.

We hope by judicious selection after consideration of the questions by all members of the Board to increase the percentage of questions which will permit the student to demonstrate these capacities, and to eliminate undesirable questions.

We are trying to weed out questions which test nothing but memory, such as definitions, questions requiring knowledge of some statute or local rule of law, and the like. Ability to answer such questions correctly does not disclose any particular legal aptitude. The good student may seem ignorant, and the poor student, through some happy accident whereby he has acquired knowledge which enables him to answer such a question correctly, may be overrated.

Where a question does involve knowledge of a statute, we make it a practice to set forth verbatim the provision involved, so that the student need waste neither time nor energy trying to recall the wording of the statute, but may devote his efforts to a logical solution of the problem presented.

Now a few words anent the mechanics of selecting the questions. I have canvassed the Board members, and I find we are pretty well agreed in our methods. Throughout the year we are on the lookout for suitable problems. We pick them from our own cases and those of our associates; we invent them; we pick them from decided cases and from text books. Some of us start by taking a text book or digest and, from an outline of the course, choose the subdivisions in the course, so that the questions given in the examination will strike at different portions of the subject.

Personally, I feel that it is a mistake to choose questions from recently decided cases, recent issues of law reviews, or law quizzers, as has been done. Many students watch the advance sheets, and many more study the quizzers. Such students are likely to recognize the question and write an answer which, at least comparatively, gives such students greater credit than their ability merits.

That, in brief, gentlemen, is a statement of our methods. I would appreciate any comments or suggestions as to further ways and means.

Let's Be Dignified

Bar examination question on Ethics: On what basis would you make a charge against your client?

Hopeful applicant: "I would charge all that the traffic would bear. To undercharge a client lowers the dignity of the profession."

A Drama of Progress in Massachusetts

By George R. Nutter
Chairman, Committee on Legal Education, Boston Bar Association

This drama begins with a prologue which took place in 1915, about a generation ago. At that time the Legislature was supposed to be arbiter of requirements for admission to the Bar. The Board of Bar Examiners of those days prepared a plan for advancing the standards, and went before the Legislature for its enactment. A violent controversy arose, which was finally terminated by the complete rout of the Board of Bar Examiners. In place of any part of their plan, there was enacted a statute which prescribed that anyone who had "fulfilled for two years the requirements of a day or evening high school, or a school of equal grade, should not be required to take any examination as to his general education." Thus the dragon of ignorance was placed in full charge over the field of legal education. The dragon is still there, as the law still stands in General Laws, Chapter 221, Section 36. But now, after a generation, its teeth are gone.

Two years in an evening high school was an absurd requirement; if it had not been serious, it would certainly have been laughable; yet there it stood, apparently a stone wall which no one could climb or get around. Those who were interested in progress felt that it was no part of the function of the Legislature to prescribe requirements, but there seemed to be no way in which this question could arise, and every effort to alter the statute proved of no effect. Then came a happy conjunction of circumstances and efforts. Some years ago, the Board of Bar Examiners prescribed an oral examination, as well as a written one. It was of course apparent that relying entirely upon written examination was really not sufficient, inasmuch as after a given number of trials, practically everybody would be admitted to the Bar, helped on in many instances by professional crammers. That such was the result was well shown by the investigations of the Judicial Council. An oral examination therefore seemed highly desirable.

It speedily became apparent that the Board of Bar Examiners could not conduct both a written examination and an oral examination, if they were obliged to read the answers to all the papers.

They therefore applied to the Supreme Judicial Court for permission to employ readers of the written papers, and this permission was granted. Opposition developed to this step, and a bill was introduced in the Legislature

of 1932, to forbid the Board of Bar Examiners to employ readers, and to compel them to do the reading themselves. As this would cripple the oral examination, this bill was opposed before the Joint Judiciary Committee, by the Board of Bar Examiners, and by the Committee on Legal Education of the Bar Association of the City of Boston; and the Joint Judiciary Committee voted against it. However, when the matter came up in the Senate, the report of the Committee was upset, and the bill was advanced through various stages until it had passed its third reading. At that time, the Committee on Legal Education made an effort to have this whole question passed upon by the Supreme Judicial Court, and suggested that an advisory opinion might well be asked. This motion was passed by the Senate and the whole question was submitted to the Supreme Judicial Court. As a result, the Court handed down an advisory opinion, reported in 279 Mass. 607, in which the Court said that any such bill was unconstitutional, on the ground that it was the province of the Court to determine the qualifications of its officers, although the Legislature could fix minimum requirements. This advisory opinion settled the bill, which was at once withdrawn, and the opinion itself became widely known throughout the country and met with unanimous approval, except of course in those quarters where opposition to progress is expected.

The way was now open for some advance in the requirements and a report by the Committee on Legal Education was made to the Council of the Bar Association of the City of Boston, which contained recommendations with regard to advancing the requirements. These may be summarized as follows:

1. The minimum requirement of general education for admission to the bar should be graduation from a senior day high school, or an equivalent to be decided by the Board of Bar Examiners. Eventually a much higher standard could be adopted, at least the standards recommended by the American Bar Association of two years in college.

2. General education should precede any legal study.

3. A candidate for the bar should have completed a course of three years in a day law school of approved type, and at least four years in an evening law school which would cover the same subjects and devote the same number of hours. It would be well to have a survey of the law schools in Massachusetts.

4. Every candidate should register with the Board of Bar Examiners at a given period prior to coming up for examination. There should be some supervision over his legal studies, and investigation into his character and fitness by a staff of the Board of Bar Examiners in consultation with the instructors in his law school.

5. The Supreme Judicial Court should fix by rule the maximum number of times the candidate might take the examination without special leave of the Court.

6. The whole matter of a junior bar might be investigated.

7. There should be a larger appropriation from the Legislature and the fees might well be increased, particularly for second examination.

8. The Board of Bar Examiners of course should have power to deal with exceptional cases, but the whole matter should be embodied in rules promulgated by the Supreme Judicial Court itself.

And the Committee likewise recommended that the Supreme Judicial Court be asked to appoint a commission to investigate the whole subject and map out a definite plan for increasing the requirements.

The report of the Committee was adopted by the Council. The President of the Association took the matter up with the Chief Justice and, as a result, the whole subject was referred by the Supreme Judicial Court to the Board of Bar Examiners. The Board of Bar Examiners called a conference of the representatives of all the law schools in the Commonwealth, and also the Chairmen of the Committees on Legal Education of the Massachusetts Bar Association and of the Bar Association of the City of Boston. At this conference the Committee on Legal Education of the Bar Association of the City of Boston presented the same recommendations which had been made in its report to the Council of the Association. The whole matter was considered by the Board of Bar Examiners; they drafted certain recommendations upon which a public hearing was held, which was attended by the same representatives as before, and these recommendations were submitted to the Supreme Judicial Court and are now embodied in rules six and seven of the Supreme Judicial Court. These rules may be summarized as follows:

In general education, before beginning the study of law, every applicant must have graduated from a public day high school in the Commonwealth having a four years' course, and an applicant who begins the study of law subsequent to September 1, 1938, must have completed one-half the work accepted for a bachelor's degree in a college approved by the Board. In legal education every applicant must have completed a course of study in a law school having a three years' course and requiring students to devote substantially all their working time to their studies, called a "full time" law school, or in a law school having a law course of not less than four years' equivalent, in which students devote only part of their working time to their studies, called a "part time" law school. The Board of Bar Examiners may determine equivalents to the foregoing

educational requirements, and these requirements are not applicable to persons beginning the study of law before certain dates. No applicant for admission shall be examined more than four times except in special cases, and these rules are given emphasis by being promulgated officially by the Supreme Judicial Court, and not by the Board of Bar Examiners with the assent of the Court.

It will therefore be seen that after a lapse of nearly twenty years, since the unfortunate statute of 1915, the Commonwealth has finally adopted a standard which puts Massachusetts on a level with the leading states.

Of course these rules will have to be worked out in the future, and there is much to be done in the matter of advance. In particular, the whole subject of character and fitness, which was presented in the report of the Committee on Legal Education of the Bar Association of the City of Boston, has not thus far been dealt with.

The drama has therefore not been finished, nor can the drama of legal education ever be finished, and there will never be an epilogue written to it.

For the Judges

Bar examination question: Define judicial notice and give three illustrations of its application.

Skeptical candidate: "Judicial notice means that there are certain facts well know to every thinking person, that even a judge is presumed to know."

A "Neutral Zone"

Bar examination question: A murdered B in C County, this state, near the Canadian boundary, and fled across the border with our state officers in hot pursuit. These officers overtook and seized him on Quebec soil and forcibly took him back without extradition proceedings to C County, where he was indicted and placed on trial for the murder. Can he lawfully be convicted on these facts?

A graduate of one of the foremost American law schools, who passed with a high examination rating, appended to an otherwise perfect answer this information: "There is a 'neutral zone' one hundred rods wide on each side of the international boundary line between the United States and Canada, and a person who commits any crime within that distance of the line on either side of it can be prosecuted indiscriminately in the courts of either country."

We hope by judicious selection after consideration of the questions by all members of the Board to increase the percentage of questions which will permit the student to demonstrate these capacities, and to eliminate undesirable questions.

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borderline cases, that is, those who lack just a few marks of passing and probably those who pass with just a few marks, and review those papers with the board as a whole and get the joint judgment of the members of the board as to each answer. We haven't done that yet. It might be that that is the thing to do.

California Decision Declares Power of Court to Prescribe Requirements

The Supreme Court of California in a decision handed down January 30, 1935, refused to reinstate an attorney who had been convicted of a felony, subsequently disbarred and later pardoned by the Governor.

The case entitled "In the Matter of the Application of Morris Lavine for Reinstatement to The State Bar of California", S. F. No. 15188, was one in which the State Bar opposed the petitioner's application for reinstatement, made on the grounds that the Governor had granted him a full pardon after he had been convicted of attempted extortion and served a term of one year in the county jail.

Under the "pardon statute" it is provided that where a full pardon has been granted, it shall operate to restore to a convicted person all rights, privileges and franchises of which he has been thereby deprived. The court held that such a pardon standing alone and unsupported by evidence of moral rehabilitation is not enough and that insofar as the "pardon statute" made such reinstatement mandatory, it was unconstitutional and void as a legislative encroachment upon the inherent power of the court to admit attorneys to the practice of law. Application for reinstatement must be treated as an application for admission to practice and must be accompanied by satisfactory showing of moral rehabilitation, according to the decision.

Part of the opinion deals directly with the question of the power of the court over admission, and reads as follows:

> [1] The decisions of this court indicate, and they are supported by a wealth of authority from other jurisdictions, that the right to practice law not only presupposes in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust (*Townsend* v. *State Bar*, 210 Cal. 363, 364, 291 Pac. 837), the granting of which privilege to an individual is everywhere conceded to be the exercise of a judicial function. (*Brydonjack* v. *State Bar*, 208 Cal 439. 443, 281 Pac. 1018) This is necessarily so. [2] An attorney is an officer of the court and whether he shall be admitted is a judicial, and not a legislative question. However, notwithstanding the inherent power of the courts to admit applicants for licenses to practice law it is generally conceded that the legislature may prescribe reasonable rules and regulations for admission to the bar which will be followed by the courts. The regulations so prescribed must, as stated, be reasonable and shall not deprive the judicial branch of its power to prescribe additional conditions under which applicants shall be admitted, nor take

from the courts the right and duty of actually making orders admitting them. (*In re Chappelle*, 71 Cal. App. 129, 131-132, 234 Pac 906; *Brydonjack* v. *State Bar*, supra.) In short, such legislative regulations are, at best, but minimum standards unless the courts themselves are satisfied that such qualifications as are prescribed by legislative enactment are sufficient. The requirements of the legislature in this particular are restrictions on the individual and not limitations on the courts. They cannot compel the courts to admit to practice a person who is not properly qualified or whose moral character is bad. In other words, the courts in the exercise of their inherent power may demand more than the legislature has required. (*In re Chappelle*, supra; *In re Bailey*, 248 Pac. [Ariz.] 29, 30; *In re Day*, 54 N E. [Ill.] 646, 650; *In re Opinion of the Justices*, 180 N. E. [Mass] 725, 727; *In re Splane*, 16 Atl. [Penn.] 481, 483.)

[3] These principles are well settled. * * *

The 1934 Statistics

The figures covering admissions to the bar during 1934 disclose some interesting facts. The total number taking the bar examinations in the United States was 17,958, about 400 less than for 1933. The greatest decreases in the number of applicants taking the examinations occurred in California, Massachusetts, New York, North Carolina, Ohio and Pennsylvania, California heading the list with nearly 200 fewer candidates. In Massachusetts the total taking the examinations was decreased by 100; in New York by 170; in North Carolina, by 110; in Ohio, by 90; and in Pennsylvania, by 80. To offset partly these reductions in numbers, New Jersey had 130 more, and Tennessee 90 more, applicants.

The total percent passing for the forty-nine jurisdictions was 45%, one percent less than for 1933. In 1933 there were six states within five points of the percentage for the United States. The 1934 figures show that there are nine states within five points of the 45%. Twenty-four states decreased their percentages; twenty-three increased them. Eight states lowered them more than 10 points; nine raised them more than 10 points. Alabama, California, New York, Ohio and Rhode Island maintained their 1934 percentages within one point of those for the preceding year.

Idaho and Vermont passed all of their examinees in 1934. Tennessee, with its 90 more applicants, raised its percent passing by 15 points to 52% and admitted 268 of the 511 candidates. North Dakota raised its 1933 percentage 17 points to 85% and admitted nearly twice as many to the bar as it did the year before. On the other hand, six states lowered their percentages materially. North Carolina, with its 110 fewer applicants, dropped its percentage 24 points, from 67% to 43%, and admitted but 75 of the total of 173 taking the bar examinations in that state. The other five states to lower the percentages passing by 15 or more points were: Washington, from 72% to 50%; Georgia, from 53% to 32%; Colorado, from 72% to 55%; New Jersey, from 52% to 37%; and Wisconsin, from 72% to 57%.

A Bitter Ender

Question in an oral examination on Ethics: Assume that you are the District Attorney and are prosecuting a man for murder. The circumstantial evidence is strong against the defendant and you have every right to expect a conviction. However, when you have about concluded putting in your case for the prosecution, evidence unexpectedly comes to your office showing the defendant incontrovertibly innocent. The defense attorneys know nothing about this evidence. Would you advise the court and the defense attorneys of the situation?

The candidate being questioned: "I certainly would not."

The examiner: "And why?"

The candidate: "The dignity of the state is so great that when it once puts a man on trial it should go through with the prosecution regardless of consequences less the confidence of the people be shaken."

Kentucky Bar Questions Sold

Board Discovers Leak in Last June Examinations

A very few days after the June, 1934, bar examination for the State of Kentucky, held in Frankfort, it was discovered that the questions had been obtained prior to the examination, and that there was a fairly general traffic in them. The questions are prepared by the three members of the Board, located in different parts of the state, and were printed in Frankfort very shortly before the examination. Following this report, the Board at once instituted a searching inquiry covering all of the more than one hundred applicants in an effort to ascertain the leak, and the extent of the use of the questions. After months of work on the part of the Board, it became fairly clear that an appreciable number of the applicants either had use of the questions, or derived benefit from this use. The next regular examination in December, 1934, was withdrawn by the Court of Appeals of Kentucky, and a special examination was ordered to be held in January, 1935. Fourteen of the June applicants were debarred from taking the January examination, or any other examination for a license to practice law in Kentucky. It was felt by the Board that its action, which was approved by the Court of Appeals, would have a very wholesome effect in any future examinations.

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Washington.....JOHN S. ROBINSON
West Virginia.....J. W. VANDERVORT
Wisconsin.....EDWARD J. DEMPSEY
Wyoming.....N. R. GREENFIELD

California and Florida Get Together--- on the Character Plan

"During the past year The National Conference of Bar Examiners has cooperated with the Committee of Bar Examiners in investigating the character of attorneys seeking admission from other states. This service is a very valuable one and has brought to light a number of cases of flagrant misconduct on the part of some of these applicants, as a consequence of which their admission has been denied."—1935 Annual Report of California Committee of Bar Examiners to Board of Governors.

The Florida State Board of Law Examiners has adopted the character service offered by The National Conference of Bar Examiners, and a number of investigations are now being conducted for that jurisdiction.

Impressions of Ten Years

By Charles H. English*
Chairman, Pennsylvania State Board of Law Examiners

After receiving the invitation of Mr. Shafroth to say something on this occasion, my mind turned naturally to the system used in Pennsylvania for the registration and examination of law students. On reflection, however, I remembered that at the Memphis meeting in October, 1929, this system was discussed with characteristic ability by the then Secretary of our Board, Walter C. Douglas, Jr., now deceased, and that at the Grand Rapids conference in August, 1933, this body was brought down to date by our present Secretary, George F. Baer Appel. It seemed to me therefore rather a work of supererogation at this time to discuss the details of our Pennsylvania system.

It would be rather unusual, however, if after ten years' experience in watching the procession of young men approach the ordeal incident to admission to the bar, one did not have a few outstanding impressions which might be of interest to those in other jurisdictions engaged in similar activities. Experience as a member of a board of law examiners, as in other activities of life, makes us less sure of original impressions. The reactions of the board member in the first instance, as I have observed those reactions on members of our own board, are generally identical. He is filled with sympathy for the student; before his mind's eye he sees the years of preparation preceding the final application for admission to the bar by the student, he visualizes the financial sacrifices of the student's parents, the loss of morale and consequent bitterness because of the thwarting of the student's life-long ambition, he feels also that in the last analysis the placing of marks on examination papers is very much a matter of opinion, and to say the least, an inadequate test of the student's capacity for the discharge of a lawyer's duties.

However, as the years pass the examiner becomes less sentimental. He finds a very considerable number of really poor papers in every examination, evidencing either insufficient preparation or fundamental incapacity in the student. It is amazing the extent to which applicants do not seem able to use even the simplest English in expressing their thoughts, and how hard it is to find out what their thoughts really are. It has been necessary on occasion to resort to the aid of a magnifying glass in order to determine whether the student meant to use the word "in" or the word "on" or the word "or". Although very simple directions are plainly printed at the top of our examination papers to be observed in the writing of answers, these directions are very frequently overlooked or ignored. Under our system four sessions of

* An address delivered at the fifth annual meeting of The National Conference of Bar Examiners, July 16, 1935.

four hours each are allowed for the examination. The student is required to answer only ten questions during each of these sessions. I have been advised by those in charge of our examination rooms that very few of the applicants occupy the entire allotted time. Notwithstanding the importance of the occasion to the applicants, they seem eager to get away. The papers show generally that no attempt is made to allocate the allotted time between the questions. Ten questions divided into 240 minutes allow 24 minutes to a question. It would seem as if the most ordinary intelligence would suggest that the student make some such allotment. The answers show however that the first few questions will be answered too elaborately; there will be evidence of hurry toward the end, and the instances are not unfamiliar where students will simply write after the last two or three questions that they did not have time to answer them. Then there is the type of student appearing at every examination who quarrels with the question, contending that it is not plainly stated and using up mental energy in this way which might well be devoted to careful searching for a correct answer.

Again, the member of the board sometimes wonders about the law schools. In Pennsylvania for a number of years we have followed the practice of having statistics prepared after each examination. These statistics show the number of applicants from each law school, with the percentage of those who failed and those who passed. We go beyond that and even show the treatment of each particular question by every law school graduate. We send these statistics to the law schools in Pennsylvania in the hope that they might be of value in the consideration of whether certain teaching departments are really successful in getting across to the students their particular courses. Some law schools uniformly do better than others. Certain subjects in particular schools seem to be more effectively taught than others. We learn from experience, therefore, that all law school degrees do not have quite the same authority, and apparently that some subjects are better taught than others.

Then again there comes to the mind of the board member the conviction that the public right to competent and honest legal services is paramount; that there is no such thing in the individual as the right to practice law. If he happens to be a member of our Board in Pennsylvania, he will recall the language of an old Act of Assembly (1834 P. L. 333) which authorized the courts of record in Pennsylvania to admit as attorneys "a competent number of persons of an honest disposition" and "learned in the law." He will recall also the decision of Judge Michael Arnold in a well known Pennsylvania case (Maire's Disbarment, 189 Pa. 99) to the effect that by admitting an attorney to practice the court presents him to the public as worthy of its confidence, and if his Pennsylvania memory is still good, he will further recall the severe language of one of our great Supreme Court Justices, Justice Sharswood, to

the effect that "a horde of pettifogging barristers, custom-seeking and money-making lawyers is one of the greatest curses with which any state or community can be visited." Furthermore, he need only look around him at the current public attitude toward his profession. If he is experienced in trial work, observation will have taught him that ambulance chasing in the larger centers is by no means extirpated and that very often there is a singular coincidence between the evidence in a case on trial and some recent decision of an appellate court. If I may malvert an old maxim, "Upon the law the facts arise." All of these things lead to a stiffening of the board member's backbone, until he finds himself like the experienced judge, determined to do his job with an eye single to the main purpose of the job itself, and that is the public welfare. It is not unusual for gentlemen whose activities are mainly political to attempt to exert influence upon board members on behalf of some particular applicant for admission to the bar. A great many lawyers are thoughtless in this respect. May I suggest therefore, because the suggestion is needed, that bar examining committees, especially those engaged in the thankless task of passing upon the character or fitness qualifications, be allowed to perform their duties just as the judges are allowed to perform theirs. It is self-evident that committees such as ours are the mere agents of the courts. We are discharging a highly important judicial function in assisting in the selection of the court's officers. We are therefore entitled to and should receive the same cooperation as do the judges in the administration of justice.

If there is anything in our experience more important than any other, it is the employment of a competent, adequately salaried personnel to look after the examination details. I submit that when a student has put in the time and his parents have spent the money to bring him up to the barrier, he is entitled to careful judging as he makes his final race. In Pennsylvania the State Board of Law Examiners consists of five lawyers in active practice. For my part I should deem it unfair to the applicants for admission to the bar if the members of the State Board, on their own initiative and without assistance of any kind, were to undertake to prepare questions for examination and to mark the papers. We do not have the leisure nor the special training to do either of these things with justice to the student while we are as busy as all of us are in practicing law. Our Board has been in existence since 1903. During all of that time we have never had less than two reasonably well compensated lawyers to prepare the questions and to do the actual work, in the first instance, of marking the papers. One of these men was with the Board for thirty years. Another served for about twenty-five years. At the present time we have four examiners. The oldest of these in experience

has been with the board about fifteen years. No one of them has been with the Board less than five years. All through the year these gentlemen are searching constantly for suitable examination questions. A very considerable part of their leisure time is devoted to reading questions asked by other boards and questions that appear in good law school examinations. They are reasonably well compensated. This is necessarily so because they devote upwards of seven weeks of time after each examination to the marking of papers. It is quite evident that four men working so closely together and conferring so frequently soon get to understand each other's individual slants on legal questions. The Board, however, carefully checks over all of the forty questions which we ask, in advance of each examination, so as to be sure that the questions are plainly stated, not too involved and reasonably in line with the problems ordinarily incident to active practice. In connection with marking of papers, every effort is made to approximate fairness as nearly as is humanly possible. The examiners have a preliminary conference at which a number of the papers are selected at random and discussed so as to determine a standard of value for the different types of answers. Each examiner is then given the same section of ten questions from each paper so that the same mind evaluates the same questions on every paper. The results are then tabulated in the secretary's office which acts as a clearing house. As a consequence, the papers fall into three classes. The first class is composed of those which clearly and definitely are above the passing mark of seventy. The second class is composed of those which just as clearly and just as definitely fall under sixty-five. The examiners then have another and more extended conference at which each paper in what is called the "twilight zone," that is, between 65 and 70, is jointly considered. The examiners then with the secretary confer with the Board and the recommendations of the examiners with regard to the "twilight zone" papers are considered at this joint conference. It has been the practice for a number of years for the members of the Board to check over a number of the papers without having the benefit of the examiners' markings for the purpose of determining the fairness of the examiners' markings. It has been a source of great satisfaction to us after our own markings are compiled and compared with those of the examiners to find how little difference there has been between them. I may say that in examining border-line cases, the Board members do not hesitate to send for the records of the students involved. We recognize the fact that there are many accidental circumstances which might militate against a student in taking his final examination. Instances have been known to us of family bereavement, recent illness, financial anxiety, and factors of that sort which were given as causes for failure in examinations. We gained knowledge of these causes through applications for leave to take further examinations. In considering border-

line cases, we, therefore, look at a student's record in law school. If we find that it has been uniformly good, that he has done his work successfully, that he has a good cultural background, it is easy for us to conceive that his failure quite to reach the passing mark may have been due to one of the factors of which I have just spoken. In such cases we do not hesitate to give the student the benefit of the doubt. I say, therefore, in the light of experience, it is difficult to understand how busy lawyers constituting the Board of Law Examiners can give and mark a fair examination to applicants for admission to the bar without the assistance of a trained personnel of examiners.

Another impression which has become increasingly strong until it is now foremost in my mind is the need for finding reasonably satisfactory tests of fitness for membership to the bar. Our present system was adopted in January, 1928; it has three characteristics. The first is that a student must register with the State Board of Law Examiners before beginning the study of law. At the time of registration he must receive the approval of what we call the local board as to character qualification. These local boards are appointed by the courts having jurisdiction in the 67 different counties of the state. The applicant is obliged under the rule to file a questionnaire containing the names of three citizen sponsors. The State Board forwards to the county board a duplicate of the application with additional questionnaires to be filled out by at least two members of the county board. Questionnaires at the same time are sent directly to the citizen sponsors. They are advised that the information furnished by them will be treated as confidential and they are asked to return the questionnaire to the county board. The county board appoints two of its members to interview the applicant and his citizen sponsors. The investigation is by no means limited. The county board is encouraged to make independent inquiry about the applicant. In some of the larger counties a private investigator is employed by the county board. Two members of the board then submit their report to the entire county board and on the basis of this report, as well as the questionnaire of the citizen sponsors, the county board votes either to approve or disapprove the applicant.

The second characteristic is that at the time he submits his application the applicant must name a preceptor. The preceptor is passed upon by the county board just as is the applicant, and both must be approved. It is the duty of the preceptor to supervise the conduct of the applicant during the time he is a law student. The third characteristic of our rules as to character is that at the time of taking his final examination the applicant must again secure the approval of the local board. Generally this system has worked well. It has been a source of inspiration to all of us to observe the keen spirit of professional service with which these rather trying duties have been discharged by

local boards. The rejections roughly have been in the ratio of about one to seven. Instances have arisen where county boards have conducted the most searching investigations and stood fast in their determination that applicants were unfit to be lawyers in spite of the most persistent pressure from many directions. However, a number of practical difficulties arose in the administration of the rules. The State Board felt obliged to insist that where the county board rejected an applicant because of want of character qualification, the reason must be stated. We were impelled to take this stand because of the language of the Supreme Court rule. Very often members of local boards felt that an applicant was not fit to practice law because of various intangible, but none the less real, reasons difficult to assign. It is not often that a boy of eighteen or nineteen commits a wrongful act upon which the local board could put its finger to prove that he did not have a good character. Nevertheless experienced lawyers on local boards were frequently convinced from the appearance, from the manner, by the environment, of an applicant that he would be anything but a good lawyer. It has been our practice for several years to have annual conferences with the local boards at the annual convention of the Pennsylvania Bar Association. The matter to which I have just referred was made the subject of considerable discussion at such a conference in the summer of 1934. The Supreme Court on October 4, 1934, amended what is known as Supreme Court Rules Nos. 9 and 11 by adding a proviso, substantially identical in each instance, which appears in the following excerpt from Rule 9:

> "Provided further that, where the county board certifies to the state board that an applicant does not possess the necessary attributes of character, the state board, in its discretion may hold a hearing, by a committee or otherwise; to which the applicant, one or more representatives of the county board, and if the state board deem it proper, others shall be invited to attend, so that the state board, before passing on the question whether it shall approve or disapprove the findings of the county board, may interview the applicant personally and hold such other investigation as to it may seem proper. If the State Board approves the findings of the county board and the applicant appeals to this court, and if such appeal is allowed by this court, it may either decide the matter on the record or hear, by committee or otherwise, the applicant and members of the local and state boards, or any of them, as the court may deem best."

It will be observed that the matter of character qualification under the amended rules of the Supreme Court is pretty much in the hands of the State Board, with an appeal to the Supreme Court only when and if the Supreme Court sees fit to grant it. We have had several appeals to the State Board under this rule which have been recently heard and not yet disposed of and therefore cannot properly be discussed.

One of the impressions to which I refer, in the process of seeking the right answer to these various interesting problems, is that possibly we are unfortunate in the use of the word "character" in considering the qualifications of the applicant. It might be better to place the emphasis upon the word "fitness." There is something unpleasant about the phrase "character qualification." The local boards and the State Board are naturally disinclined to say that an applicant does not possess attributes of character in the absence of specific evidence of conduct justifying such conclusion. As I consider, therefore, my own experience in this connection, fitness seems to be a better word, in considering qualifications for admission to the bar, than character. It would be possible, with fitness as the criterion, for a board to decide readily that where there is present such obvious deficiencies as want of directness, shiftiness, evasiveness, bad background and the one hundred and one other things which would satisfy a fair mind that the applicant is not going to make a proper lawyer, to reject him without a lasting stigma upon his reputation. This authority would have to be carefully administered. The American people are not likely to countenance a system governing so important a matter as admission to the bar in which through the expedient of fitness tests the bar might seem to become or to attempt to become a select and privileged class shot through with nepotism and kindred evils.

In Pennsylvania we are simply groping our way with this problem. We feel that we are making progress; none of us are yet sure of the ultimate answer. One of the great values of such conferences as this is the annual interchange of experience of examining bodies. I know of nothing better to suggest now than that we continue working as best we can toward the light with faith in gradual improvement until a system is found governing admission to the bar which will insure to the public a group of lawyers sufficient in training and integrity for every professional task.

Charles P. Megan Receives Important Appointment

United States District Judge John P. Barnes of Illinois has named Charles P. Megan of Chicago as sole trustee of the Chicago and North Western Railway Company, under Section 77 of the Bankruptcy Act relating to the reorganization of railroads. The appointment was confirmed on October 17 by the Interstate Commerce Commission. Mr. Megan, a member of the Illinois Board of Law Examiners, served last year as Chairman of The National Conference of Bar Examiners and he is still on the Executive Committee. He is also President of the Illinois State Bar Association and counsel for the Chicago Bar Association.

Page President Roosevelt

In an examination on Constitutional Law one question required a discussion of the system of "checks and balances." One up-to-date candidate in the course of his answer said that the trouble with that system was there were too many checks and no balances.

Great Scott!

Bar examination question: Name a leading case decided by the United States Supreme Court and state what principle the case established.

One applicant: "The Great Scott case—established the doctrine that the negro was entitled to the same hotel and train accommodations as the white."

Probably Not in Chicago Either

Bar examination question: Give the reasons for the rule permitting dying declarations to be received in evidence.

Candid candidate: "One will not lie in the face of his Maker especially when he is about to meet him. However I do not believe New York follows this rule."

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Virginia.....STUART B. CAMPBELL
Washington.....JOHN S. ROBINSON
West Virginia.....J. W. VANDERVORT
Wisconsin.....EDWARD J. DEMPSEY
Wyoming.....N. R. GREENFIELD

Philadelphia Lawyers Vote for Limitation

A questionnaire sent to 1,760 attorneys of the Philadelphia Bar Association included this query: "Do you approve the principle of limitation of the number of applicants who may be admitted to the Philadelphia Bar each year, such limitation to be prescribed by the Common Pleas Court, the Orphans' Court and the Municipal Court of Philadelphia County?" A total of 1,031 were reported in favor of limitation, compared with 729 against it. Regular members of the Association under the five-year plan voted 151 to 107 in favor; and non-members of the Association voted 401 to 284 in favor. At the meeting of the Association the plan was attacked as un-American and undemocratic and as an admission on the part of lawyers that they could not stand competition. However, since the report on the questionnaire contained no recommendation, it was adopted and a committee was appointed to prepare a plan of numerical limitation for presentation to the Association at a future date.

The Conference Joins the Century Club

The Hundredth Character Investigation Is Completed

The character examination service of The National Conference of Bar Examiners has now been in operation for a year and a half. During that time the Conference has completed investigations of the record and character of one hundred applicants. Eighty-seven of these applicants applied for admission on a comity basis by reason of previous practice of the law in other states, while thirteen were original candidates who were non-residents of the states where they applied.

These cases are sufficient to indicate in a general way the necessity for the kind of service supplied by the national organization. More than ten per cent of the attorney-applicants have been found wanting in the moral character demanded of them by the examining boards and have either withdrawn their applications or been rejected.

The sad fact seems to be that in most states little attention is paid to the record of attorney-applicants seeking admission on motion beyond ascertaining that they are in good standing at the bar from which they come and have presented the necessary number of affidavits from other attorneys. If a man has not been disbarred, it is usual to admit him without much question. The securing of affidavits or letters of recommendation from reputable attorneys has no meaning. There is no lawyer in practice anywhere, whatever his standing may be, who is not able to produce such affidavits from his friends. Too often an unethical attorney can produce such letters from members of the bench. For example, one individual investigated by the Conference had spent some time in a hospital for the insane, had been involved in a case of cheating in law school, and, according to a prominent psychiatrist, was definitely a paranoiac. Nevertheless he was able to present letters from two trial court judges stating that he was fully qualified for admission to the bar.

Thus far eleven states use the service of The National Conference of Bar Examiners in investigating their foreign attorney applicants. California was the first to do so and has been followed by Delaware, Washington, Nevada, Texas, Oklahoma, Minnesota, Missouri, Florida, Utah and Alabama. In Florida all applicants are required to take the state bar examination except those graduating from the state university and two other law schools in the state. The State Board of Law Examiners there has requested the services of the Conference not only in reference to foreign attorney applicants but also in reference to all applicants who are residents of other jurisdictions.

Of the applicants reported on, twenty-four, or almost a quarter of the total, had left New York State. The other seventy-six had been residents in the following jurisdictions: eight in the District of Columbia; seven in Illinois; five

each in Ohio and Oklahoma; four each in Minnesota, New Jersey and Texas; three each in Iowa, Kansas, Nevada, Oregon and Pennsylvania; two each in Louisiana, Maryland, Massachusetts, Missouri, Utah, Wisconsin and Porto Rico; and one each in Arizona, Colorado, Idaho, Indiana, Michigan, Nebraska, North Dakota, South Dakota, Tennessee and Washington. A summary of the origin and destination of the one hundred applicants shows the following distribution:

87 attorneys from other states

57 to California.....13 from New York State (6 from New York City, 3 from Brooklyn)
5 from Illinois (2 from Chicago)
4 from Ohio
3 each from the District of Columbia, Minnesota, Nevada, Oklahoma, Oregon
2 each from New Jersey, Pennsylvania, Texas
1 each from Arizona, Colorado, Idaho, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, Tennessee, Washington, Wisconsin

2 to Connecticut.... 1 each from the District of Columbia, New York City

2 to Delaware..... 1 each from Pennsylvania, Texas

3 to Florida..... 3 from New York State

1 to Massachusetts.. 1 from Maryland

3 to Minnesota..... 1 each from Illinois (Chicago), South Dakota, Wisconsin

6 to Missouri..... 2 each from the District of Columbia, Iowa
1 each from Kansas, Oklahoma

3 to Nevada..... 1 each from Massachusetts, New York City, Oklahoma

6 to Texas..... 2 from Kansas
1 each from the District of Columbia, Louisiana, Missouri, New York City

4 to Washington.... 2 from Utah
1 each from Illinois (Chicago), North Dakota

13 original candidates

12 to Florida..... 5 from New York State
2 each from New Jersey, Porto Rico
1 each from the District of Columbia, Minnesota, Ohio

1 to Texas..... 1 from Texas (admission on diploma from Harvard Law School)

It should be noted that these figures are not strictly comparable, because they do not represent equal periods of time. California, for example, has used the service since June of 1934, while Missouri only adopted it in June of 1935.

The method of investigation has been worked out carefully. Two copies of a rather elaborate questionnaire are furnished the applicant and he must complete them and send them to the board of examiners where he is applying. The board then forwards one copy to The National Conference of Bar Examiners, at 1140 North Dearborn Street, Chicago, Illinois. In some cases these questionnaires are furnished the applicants who send them directly to the Conference. A fee of twenty-five dollars is charged for each investigation and this is paid either by the state board or else the applicant is required to pay it directly himself. In the states where the character investigation is paid for by the board, the admission fee for foreign attorneys varies from twenty-five to one hundred dollars. Missouri, Oklahoma and Texas require the applicant to pay directly to the Conference.

As soon as the application is received in the office of the Conference, letters are written to all references listed by the applicant and an independent investigation is also initiated. The past employment of each applicant is carefully checked and letters are written his previous associates in the practice of law. In many cases Martindale-Hubbell is asked to give any information it has about him, and inquiries are made of credit associations, bonding companies, character committees, members of bar examining boards, bar association officials, judges of the courts before which he has practiced, the dean, professors or classmates if he has attended a college or law school recently, and any other sources from which the Conference believes reliable data may be obtained. If it develops that the applicant has been involved in civil or criminal proceedings, the records are checked. Where it seems necessary a personal investigator is engaged, usually a younger member of the bar, and he interviews personally individuals who are in a position to give facts about the applicant. All information obtained in any way is regarded as strictly confidential and examining boards are requested not to reveal the sources of the information. When all available sources have been checked and all possible data obtained, the report is prepared. The information secured is summarized for the convenience of the examining board to which it is sent, and it is accompanied by the letters received concerning the applicant. If further facts in reference to a particular situation are required, the Conference undertakes to procure them. In certain instances it has arranged and paid for long distance telephone conversations between members of the board and parties having information regarding the applicant.

The average time necessary for completing a character investigation is about five weeks. Every effort is made to expedite the making of reports but,

due to delays incident to correspondence and a frequent need for re-checking, it has been found that this is about the usual elapsed time.

The extent of the investigation varies. For example, it is comparatively simple to check an attorney for a prominent corporation or a high official in the government administration. It is quite true that some cases the state board would be fully as competent to investigate as the National Conference. However, other cases require a thorough investigation in three or four cities and communication with the examining officials of several states, and in these instances it is logical to conclude that a national organization is better able to obtain the necessary cooperation and get the actual facts. There have been specific cases where the Conference has secured from individuals and companies information which they would not reveal to local or state authorities.

The rule has been made that where a state adopts the service, it must agree to submit all its cases of foreign attorneys to the Conference, for the reason that if machinery which is qualified to cope with difficult cases is going to be kept in existence, it must be supported through the funds supplied by requiring that all applicants on a comity basis be examined by the Conference. The cost of conducting the character investigations varies greatly, in rare cases exceeding fifty dollars without including any charge for overhead. Many other cases cost considerably less than the amount paid in. However, the establishment of a competent and impartial agency for conducting an extensive investigation of foreign applicants warrants the support of the organization by every state board. Moreover, the privilege awarded to a foreign attorney applicant, of being admitted to practice on the basis of his previous license, is one for which he should be able to pay. If he cannot, it is true, in general, that he is not a very desirable addition to the bar of the state to which he is coming.

At the meeting of the American Bar Association, held in Los Angeles, last July, a resolution was passed endorsing the service of the Conference and recommending its use by state examining boards. California, where more than half of the hundred applicants have applied for admission, has expressed itself as thoroughly satisfied with the service.*

With a total of about six hundred attorney applicants yearly applying for admission in the various parts of the United States, it is evident that when a majority of the states adopt the plan there will be sufficient funds to finance completely the constructive work of the national organization of bar examiners and also to provide a very thorough and dependable report on every applicant securing admission to the bar in a foreign state.

As a sample of the nature of the investigation, one of the typical character reports is set out. The names, dates, and places are fictitious and the states

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* Cf. "A Statement from the Chairman"—IV The Bar Examiner, No. 11, p. 451; also No. 12, p. 466.

are not given. It should be noted in this report that the applicant, after being admitted in State A, went to State B, secured the endorsement of two members of a county character committee in that state on the basis of letters he brought with him, was admitted to the bar of State B without further investigation, and then went to State C which asked for a report from the Conference, by virtue of which some unsavory features of his past record in State A were disclosed. On receipt of this information, the chairman of the board of bar examiners of State C wrote the applicant requesting an explanation in reference to his actions in the bankruptcy proceeding. In reply the applicant wrote withdrawing his application. He was advised by the chairman that it was for the court, not the board, to authorize the withdrawal of the application and that if no action was taken on or before a certain date the board of bar examiners would file a report to the effect that the character and qualifications of the applicant were not satisfactory.

Confidential Character Report
BY
The National Conference of Bar Examiners

The information given in this report was obtained on the promise it would not be revealed to the applicant or others. It is for the *exclusive* use of the examining authority.

JOHN DOE

The information regarding John Doe shows that he was born on August 15, 1880, that he obtained a Bachelor of Science degree at the University of X in 1901, that he read law three years with various lawyers, 1902-1904 in State Z, and that he was admitted to practice before the District Court of Appeals, Fifth District, on February 6, 1912, in State A. He was admitted to the bar in State B on March 11, 1932.

The report rendered concerning him is as follows:

References given by the Applicant:

O. H. Ryan, Attorney, Saratoga, State A: ". . . We have not personally met Mr. Doe, but know that he was a candidate several years ago for Associate Justice of the Supreme Court of State A, but failed to receive the necessary votes to elect. On the few occasions when his name has been mentioned we have the opinion that Mr. Doe enjoys an enviable reputation. Mr. W. B. Goodman, of Saratoga, knows Mr. Doe personally and we would suggest his name as a reference.

W. B. Goodman, Attorney, Saratoga, State A: ". . . My information relative to this individual is very limited. My personal knowledge of this party is merely that he was a candidate for Associate Justice of the Supreme Court of State A at an election held in this state many years ago, but was

overwhelmingly defeated; this is the only information I have that he was a member of the bar of State A. The brother of this party, W. Y. Doe of this city, has been well known to me for many years, and I know W. Y. Doe, the brother, to be a man of honesty, character and stability. The party here involved visited my office upon two occasions, in company with his brother herein mentioned, and I talked with him generally, but know nothing of his reputation, honesty or associates, nor could I vouch for him in any way."

Office of the Clerk, District Court of Appeals, Fifth District, Longmount, State A: "The records of this court show that John Doe was admitted to the bar of this court on February 6, 1912, on examination; he gave his address as Conover, State A, and stated in his application that he was a graduate of the University of X, 1901, B.Sc., and that he was Superintendent of Schools at Elgin, State A, for the period 1905-1910. He was recommended for examination by E. T. Shuman, an attorney of Longmount, and E. H. Woods, now one of the Superior Judges of this county. I do not know the man personally and know nothing concerning his professional career."

Office of the Deputy Clerk, United States District Court, Eastern District of State A: ". . . The minutes of this Court show that John Doe, Esq., was admitted to practice before this Court, on February 9th, 1912, on motion of E. H. Woods, Esq., and that the said John Doe, Esq., had heretofore been admitted to practice in the Supreme Court of State A."

Independent Information:

Office of Clerk of the Supreme Court, Springfield, State A: ". . . Justice Jones is of the opinion that the name is 'Dowe' and says that the gentleman was known as a building contractor and architect in Brighton, State A, where he developed a rather attractive sub-division with unusual structures for homes. It also seems to be a fact that he was a candidate for Justice of the Supreme Court in 1925 and that he received over one hundred thousand votes out of eight hundred thousand cast for the four candidates. Justice Jackson was the successful candidate, defeating former Presiding Justice Farleyman of the Fifth District Court of Appeal. . . . Without definite information, I gather that Mr. Dowe was not an outstanding lawyer . . ."

James H. Burns, Attorney, Oaklawn (Justice Jackson suggested this inquiry): " . . . I cannot at the present time, recall having met Mr. John Doe, as to whom you made inquiry. If I have contacted him at any time, during my thirty-eight years of practice of the law in this vicinity, it must have been in a very casual matter, and one that has now slipped my memory."

Office of the County Clerk, Austin County, Oaklawn, State A (The Clerk of the Supreme Court at Springfield suggested this inquiry): "I do not recall an acquaintance with John Doe . . . nor do I find that any of the deputy clerks who most frequently contact attorneys practicing here remember him. From the registration records of this County, I find that Mr. Doe was a registered voter here from 1925 to 1929 . . . ."

Judge W. H. Thurman, Superior Court of Austin County, Oaklawn (The Clerk of the Supreme Court at Springfield, suggested this inquiry): "In response to your letter relative to John Doe, will say that I have a very indistinct recollection of the gentleman, but I asked the Secretary to the Judges to see if he could get a line on him. It was found from the records that he ran for Associate Justice of the Supreme Court for the short term of 1930. He employed women to circulate his petition to get on the ballot, and also employed people to check his petition with the registrations, and the parties who did this work claim that he never paid them for their services. I also have an indefinite recollection that he was in some financial difficulty in Springfield, but it is simply one of those hazy recollections of something that you feel certain occurred yet are unable to definitely define. If we learn anything further I will be glad to communicate with you and advise you of it. Your letter states that the information would be treated as confidential, and I trust it will be so treated."

J. M. Waters & Company, real estate, Brighton, State A (Chief Justice Jones suggested this inquiry): "Replying to your favor of the 17th inst. we find this gentleman practiced law in Oaklawn in 1926 and his office was at 404 Tapping Building, and from what we learn he continued practicing there until 1929. He then moved to State B, then to Washington, D. C., then to No. 40 Gardiner Blvd., Beverly, State C. While in Oaklawn he lived at 170 Mountain Avenue. So far as we can learn his record is clean."

E. H. Woods, Judge, The Superior Court, Longmount (this gentleman, together with the Mr. Shuman mentioned, recommended Doe at the time he took the State A bar examination): ". . . I have had no knowledge of Mr. Doe since about 1914. As I recall, he was teaching school at the time he was admitted to practice and continued to teach for some time thereafter. Apparently, he practiced but little if at all in Longmount, as I never came in contact with him in a professional capacity. I have talked with Mr. E. T. Shuman, who joined with me in recommending Mr. Doe for examination, and he confirms my recollection that Mr. Doe left this part of the state within a comparatively short time after his admission. Mr. Shuman stated that he had had no knowledge of Mr. Doe or his whereabouts since about 1914 or

1915. At the time of his admission he was teaching school in Conover, a small town about half way between Longmount and Long View, and was a friend of several of my clients and also of Mr. Shuman's living in that locality."

C. W. Hamilton (very high class attorney of Springfield, son of a former governor of the State Bar of State A). SEE HIS LETTER OF NOVEMBER 16, 1934, attached hereto and made a part of this report.

Office of the Clerk, Court of Appeals, State B: ". . . the name of John Doe appears on our 'Test Book' as having been admitted as an Attorney of this Court under date of March 11, 1932, by petition and endorsed as to character and fitness by A. B. Anderson and M. M. Johnson, members of the bar of this State and residents of this city (Alta). Mr. Doe also presented a Certificate of admission as an Attorney in the District Court of Appeals of State A."

A. B. Anderson, Alta, State B: ". . . In reference to the enclosed letter re: John Doe, I do not know this gentleman and know nothing regarding his character and fitness for the practice of law. I will suggest that you communicate with Hon. William Parker Howes, Jr., Attorney General of State B, 1502 Bedford Trust Bldg., Bedford, State B, and make inquiry of this young man from his office."

Mr. M. M. Johnson, Alta, State B: "Replying to your letter of the 5th inst., and just received, asking for information concerning one John Doe, who was admitted to the Bar of the Court of Appeals of State B on March 11, 1932, I beg to say that I have no recollection whatever of any such party, but I do recall that sometime last year a gentleman came here and introduced himself to me, gave me his card showing that he was a lawyer, stating that he had been admitted to the Bar in various places and wished me to move his admission to the Bar at the then session of the Court of Appeals. As this gentleman was a total stranger to me, I told him I could not do so without having some information from persons of my own acquaintance as to his fitness and qualifications and if I remember correctly, the party in question, whoever he was, produced to me letters from those whom I had required credentials and upon the strength thereof, I moved that party's admission, but whether or not it was Mr. Doe, I do not know, as the name does not sound at all familiar to me. Furthermore, I would say that my action in the case in question was based entirely upon the credentials which he presented to me from reputable lawyers who were my friends and also seemed to have been his. Further, I am unable to state."

Note: We advised both Mr. Anderson and Mr. Johnson that they en-

dorsed and moved Mr. Doe's admission in State B. We asked Mr. Johnson to send us the names of Mr. Doe's sponsors and any other information he might have or remember. He did not reply. Mr. Johnson is a member of the character committee for Sunbury County, State B.

A letter to the Secretary of the State Board of Law Examiners, State B, disclosed no new information, except: "In our system we have very little worth while information regarding lawyers coming from other states. In this particular case State A can probably give you some real facts."

(Original letters were attached to this report.)

Report transmitted
December 5, 1934, to: Chairman, Board of Law Examiners, State C.

November 16, 1934.

The National Conference of Bar Examiners.
Gentlemen:

Re: John Doe

Doe was apparently little known among his fellow members of the Bar in Oaklawn. My office associate, George Nason, who practiced there during the same period Doe was in Oaklawn, never heard of him and one or two other lawyers of standing in Oaklawn, of whom I made inquiries, likewise never had heard of him. The only person in Oaklawn who knew much about him stated that he could think of nothing which was bad enough to say about Doe's character.

In 1926, an involuntary bankruptcy proceeding was instituted against Doe in the United States District Court for the Southern District of State A, Northern Division (No. 13421). Doe filed an answer denying the material allegations of the petition and made a motion to dismiss and the matter was referred to a special master for report. After taking evidence, the special master on October 29, 1925, filed his report in which he summed up the evidence, commenting upon the fact that the defendant was evasive and apparently untrustworthy as a witness, stated that Doe refused to produce any books or records and among other things made the following findings: "Within four months preceding the filing of the petition, the bankrupt has committed acts of bankruptcy in that he has conveyed away property belonging to him, has concealed his property under the guise of stock owned by him and held in the names of himself and his wife pretending (sic) that the same belonged to his children, whereas they actually belonged to him, and has kept his property concealed during said period with intent to hinder, delay and defraud his creditors and that he has maintained, and now maintains, property belonging

to him in the names of his children, his wife, corporations and other persons with the purpose and intent of concealing the same from his creditors." The special master's report indicates that five or six corporations owned a considerable amount of real property in various parts of State A. In most of these corporations Doe and his wife each owned one share of stock individually and the balance of the shares as trustees "without any indication of who the beneficiary was." Doe maintained in the hearings before the special master that his real property came to him by transfer or by inheritance from his mother upon the understanding that it was to be held by him in trust for his two minor children. The report shows that Doe offered no evidence in support of his contention other than his own assertion. This involuntary proceeding apparently never was terminated.

In 1927, Doe filed a voluntary petition in bankruptcy in the same court (No. 14618). The schedule filed by the bankrupt listed over one hundred creditors and stated that the bankrupt had no books or papers of any kind, except some deeds. The total liabilities were $141,015.10. The assets amounted to $159,253.20, of which $158,685.00 worth apparently consisted of the real property title to which stood in the name of several corporations mentioned in the preceding paragraph. The spark that touched off the filing of the petition was apparently the claim of a Springfield attorney, one J. T. Watson, for $1000.00 for legal services rendered not to the bankrupt but to one of the dummy land-holding corporations. So far as I can make out from the papers on file, Doe failed to schedule among his assets the land owned by his corporation but did schedule among his liabilities the debt of the corporation owed to Watson.

On the bankrupt's application for a discharge, Watson and the three creditors who had instituted the involuntary proceeding all opposed the discharge and Judge Herriman referred the matter to a special master for a report. The special master's report is a voluminous one and concludes with findings (1) that the bankrupt had concealed assets, (2) that the bankrupt had made false oath in his schedules (incidentally before a notary public by the name of Roberts to whom the fraudulent transfers had been made) and concluded that the application for discharge should be denied. The special master's report was confirmed by order of Judge Herriman filed September 27, 1927, and the application for discharge was denied.

In view of all the foregoing, I suspended making further inquiries in Oaklawn, assuming that the record in these bankruptcy proceedings should be sufficient for your purposes.

Very truly yours,

(Signed) C. W. HAMILTON.

Cooperation with Law Schools and the Supreme Court

By Alfred L. Bartlett*

Chairman of the Committee for Cooperation Between the Law Schools in California and The State Bar

To understand the problems which confront us in California and the necessity for cooperation, it is necessary to consider the circumstances under which the Committee of Bar Examiners in California is obliged to work. This committee is appointed by the Board of Governors of the State Bar of California. The State Bar Act provides, in so far as the pre-legal education of applicants for examination is concerned, as follows:

> "With the approval of the Supreme Court, and subject to the provisions of this act, the board shall have power to fix and determine the qualifications of applicants for admission to practice law in this state, provided that educational requirements fixed by the board shall not exceed (1) graduation from a four-year high school, or proof satisfactory to the examining committee that the applicant is possessed of the equivalent of a four-year high school education in point of intellectual competency and achievement, . . ."

Inasmuch as the maximum requirements for pre-legal education are so rigidly established by the Legislature, it might seem that that is the body with which we should cooperate. When we consider, however, that the State Bar Act as originally adopted in 1927, gave the power to the Board of Governors of the State Bar to fix and determine the qualifications for admission to practice law in this state, with the approval of the Supreme Court, and that the Legislature later took that power from the Board and passed the statute which I have just read, it can readily be seen that there is little opportunity as yet for cooperation with the Legislature, but rather its attitude forces the State Bar to one of self defense in an effort to preserve that which it now has.

It will be seen from the portion of the State Bar Act which I have read that a greater responsibility is cast upon the Committee of Bar Examiners in this state than is usual, for they must examine practically everybody, regardless of who present themselves for examination. After all, what does the

* One of the papers presented as part of the "Bar Examination Clinic" at the fifth annual meeting of The National Conference of Bar Examiners, July 16, 1935.

phrase "the equivalent of a high school education in point of intellectual competency and achievement" mean, and who is to say that any man of thirty, who has been engaged in an occupation higher than that of a day laborer, has not the intellectual competency and achievement of a boy of eighteen just graduating from high school?

It becomes, therefore, most important that our relations with the law schools be satisfactory and that we work in harmony with the Supreme Court. It is true that there are more law schools in California than in any other state in the Union and it is also true that all of these law schools are not of the highest class. In 1933 The State Bar of California requested Mr. Will Shafroth and Professor H. C. Horack to make a survey of the law schools of California. This they did and the result of their findings is in this book which I have here. I want to compliment those two gentlemen upon as thorough, competent and impartial a piece of work as I have ever seen. The results of this work done by these gentlemen has been somewhat remarkable. Their work was a constructive one and not only pointed out certain defects in the way certain of the schools were operated but suggested the remedy. Most of the law schools have taken this criticism in good part. I was most interested in the report that the dean of one of these law schools made to the president of the university of which that law school was a component part. He set forth seriatim the criticisms which had been made in regard to the school in the report of this survey committee and opposite each criticism he set forth what had been done by himself as the dean of the law school to correct the defects noted. As a result of all this, two of these schools have so improved conditions that they are now on the approved list of the American Bar Association, increasing the number of law schools on this list in California to five.

In order that the Committee of Bar Examiners may benefit by the ideas of the law schools and have a knowledge as to what they are doing, and in order that the law schools may know just what the State Bar is attempting to accomplish and may make suggestions for the improvement of the bar examinations, there has been set up a Committee Upon Cooperation Between the Law Schools and the State Bar. This Committee has on its membership the deans of the law schools of recognized standing in the state, three past presidents of the State Bar, the Chairman of the Committee of Bar Examiners, and a member of the Board of Governors of the State Bar. The committee has had two meetings this year and has given valuable assistance to the Board of Governors in the drafting of a proposed new set of rules under which examinations shall be given, which is now awaiting the approval or

rejection of the Supreme Court. In addition to this committee there is an organization of the law schools of California. This organization meets each year just prior to the convention of the State Bar and always invites to meet with it the members of the Committee of Bar Examiners. This, again, gives opportunity for frank discussion, exchange of ideas and knowledge of each others' viewpoint. The attitude of the law schools of the better class toward the State Bar has been an invaluable aid to the Committee of Bar Examiners in its work. For this genuine cooperation between the Committee of Bar Examiners and the law schools and the mutual benefits resulting, great credit must be given Professor James E. Brenner of Stanford University, the Secretary of the Committee on Cooperation Between the Law Schools and the State Bar. His former experience as an executive officer of the State Bar gave him knowledge of the viewpoint and problems of the practicing lawyer, his experience as an educator, a realization of the academic side of the problem.

The Committee of Bar Examiners reports and makes its recommendations regarding admission directly to the Supreme Court. The rules under which the Committee of Bar Examiners work are formulated by the Board of Governors but must be approved by the Supreme Court before they become effective. It is therefore important that the Supreme Court and the State Bar have a mutual understanding regarding the problems confronting each of them in relation to admissions to the bar. We believe that there is such an understanding at the present time.

In 1933 at the August examination only 31.6 per cent of the applicants passed. The Committee of Bar Examiners therefore moved the admission before the Supreme Court of that number. Shortly thereafter numerous complaints against the Committee of Bar Examiners were filed with the Supreme Court, with the request that the Supreme Court review the examinations and the proceedings of the State Bar in connection therewith. As a result of all this, the Supreme Court issued an order directed to the Committee of Bar Examiners and the Board of Governors of the State Bar requiring the respondents to show cause why an order should not be made requiring re-examination of the examination papers of all unsuccessful applicants in the August, 1933, examination. The respondents in this order to show cause filed a return showing in detail all the steps taken by them in the examination of an applicant; in fact made just such a showing as has been made here tonight, except of course it was more in detail and all of the original records were presented. An oral argument lasting a day was had before the Supreme Court in which the representatives of the State Bar took part, as did also

unsuccessful applicants. This was in addition to the numerous briefs which were filed by the parties and by various interested lawyers and the deans of law schools as *amici curiae*. The Supreme Court made a thorough study of the work of the State Bar in this case, as is shown by their opinion "In the Matter of an Investigation of the Conduct of the Examination for Admission to Practice Law," 87 Cal. Dec. 753. The Supreme Court upheld the acts of the Committee of Bar Examiners in this examination and in fact stated that they would not be willing to listen to the complaint of an unsuccessful applicant unless there was a showing "through fraud, imposition or coercion, or that in any other manner he was prevented from a fair opportunity to take the examinations" and that no such showing had been made in this case. In discussing the question of examinations the court made this interesting statement on page 757 of the decision:

> "In the days when the 'older generation' of attorneys sought admission to practice law in this state, a short oral examination conducted in person by the justices of the Supreme Court, and later by the justices of the District Courts of Appeal, was deemed a sufficient opportunity for the court to determine the qualifications of those seeking admission to practice. The justices were inclined to, and did, give considerable consideration to what, for a better name, was called 'the background' of the applicant's preparation. His opportunity for, and the extent of, his education; his ability and aptitude developed in meeting the oral test; the circumstances and surroundings attending his legal studies and preparation to practice law; these and like matters were taken into consideration by the examiners. Even the personal appearance and other phases of the personality of the applicant were known to have turned the scale in favor of one who was within a narrow margin of failure or success. Such an examination no doubt had its defects, but it afforded one opportunity to which we are willing to subscribe as an essential feature in examining applicants for admission to practice law—a personal contact between the applicant and the examining authority, with the resulting opportunity of supplementing the examination in subjects strictly legal with an inquiry along lines of common sense and with regard to the ordinary activities of life, which may well add to the applicant's other qualifications, and, in connection with those, actually demonstrate that the applicant is qualified to enter the practice of law."

The decision then stated that it recognized the impossibility of following the procedure just suggested with a class of approximately one thousand

applicants but would suggest that in regard to those who came very close to the margin that some such procedure might be followed. This raises an interesting topic for discussion. In the event such a procedure were followed, there would necessarily have to exist the closest kind of cooperation and harmony between the Supreme Court and the Committee of Bar Examiners. It would seem to me that in regard to those border-line cases it would be necessary to give the Committee of Bar Examiners an arbitrary discretion, that the Committee of Bar Examiners should not be required to give any reasons or make any statements as to the basis upon which their decision in regard to those few cases was made. Nor do I believe it could be successfully worked out if the Supreme Court granted any reviews of the proceedings of the Committee of Bar Examiners in such cases. So far no such procedure has been followed, nor has anybody suggested a practical means of carrying out the suggestions of the Supreme Court in the quoted portion of the decision. But there is merit in its suggestions. They should be carefully considered and it is to be hoped that some way will be evolved by which in border-line cases there can be some personal contact between the Committee of Bar Examiners and the applicant.

The Oral Examination

The topic which elicited the greatest interest at the round table discussion following the California Bar Examiners' Clinic at the meeting last August, was the suggestion that those applicants whose papers received a grade within a few points of the required passing mark should be called before the examiners and be orally further examined as to their qualifications and background. The majority of those present appeared to be opposed to this proposal, for the reason that it would eliminate one of the primary assets of written examinations, to-wit: their anonymity, which insures absolute impartiality in determination of bar examination results. The maintenance of secrecy as to the names of those whose papers are being examined eliminates favoritism as well as those activities described by Charles H. English in his paper read at the recent Conference and published last October in this journal, as "mainly political to attempt to exert influence upon board members on behalf of some particular applicant for admission to the bar."

It also appeared to be the opinion of the majority of those present that written examinations were far superior to oral examinations in the matter of determining the qualifications of law students seeking admission to the bar.

Lawyers in the 74th Congress: Their Legal Education and Experience

By John Brown Mason*

Head of the Department of Social Sciences at Colorado Woman's College

"Do we have enough lawyers in Congress?" is a question as justifiable, if not more so, as the common comment that we have too many legal minds in the legislatures of nation and states. And the second question to be asked should be: "What kind of lawyers are they?" As Professor Max Radin of the School of Jurisprudence, University of California, wrote in a recent letter to the writer: ". . . courts are constantly assuming on the part of the legislature specific knowledge of the course of judicial decision. That is highly unlikely to be known to a layman but ought to be known to lawyers. It is, therefore, of real practical importance to know what percentage of lawyers there is in any session of the legislature. It is equally important, it seems to me, to know just what sort of lawyers they are, whether they are or were in active practice and whether their practice was a general one or confined to matters involving large corporate interests."

The present study has been prepared to find the answer to these two questions with regard to the membership of the 74th Congress, as elected in November, 1934. The figures presented are based upon the biographical information contained in the *Congressional Directory*[1] of that Congress and *Who's Who in America*.[2] The data given here are, therefore, subject to the same failings that might be attached to these two sources, even when combined for the sake of the greatest possible correctness.[3]

There are 68 lawyers in the present Senate—exactly the same number as two years ago. The percentage of the total membership is 70.

Senate[4]

	Number of Senators	Number of Lawyers	Percentage of Lawyers
Democrats	69 (60)	55 (51)	80 (85) %
Republicans[5]	27 (36)	13 (17)	47 (47) %
Total	96 (96)	68 (68)	70 (70) %

* Reprinted from Rocky Mountain Law Review, December, 1935.

1 1st session, 1st edition.

2 1934-35 edition.

3 The present study supplements a similar one made by the present writer for the 73rd Congress and published in (1934) 6 Rocky Mt. L. Rev. 155 and (Sept. 1934) 3 Bar Examiner 254.

4 The figures in parentheses in these statistics and below refer to the 73rd Congress. See (1934) 6 Rocky Mt. L. Rev. 155.

5 Including Farmer-Laborites and Progressives.

Of the 435 members of the House, 282 are lawyers, or 65 per cent of the total. This represents an increase in the number of lawyers in the present over the last House of 31, or seven per cent.

House

	Number of Representatives	Number of Lawyers	Percentage of Lawyers
Democrats	322 (310)	218 (191)	68 (62) %
Republicans[5]	113 (122)	64 (62)	56 (51) %
Total	435 (432)[6]	282 (251)	65 (58) %

It will be noted that in both houses we find relatively more lawyers among the Democrats than among the Republicans, both in the 73rd and 74th Congresses. This discrepancy is especially apparent in the case of the Senate.

Mr. James Grafton Rogers, formerly Dean of the Law School of the University of Colorado, and chairman of the committee on legal education of the American Bar Association, in speaking of the educational background of lawyers stated in 1928: "The typical [lawyer] . . . seems to have about one year of slim college work and two years of reasonably good law-school experience . . . It is true that our most successful lawyers in America will show a high average of college attendance . . . Typical lists [of high-grade lawyers] on examination reveal that nearly ninety per cent of the men included were college graduates before they began the study of law."[7]

Information with regard to the education of lawyers in Congress is, therefore, of special interest and comparative value.

Senate

	A.B.	A.M.	LL.B.	LL.M.	J.S.D.	Att'd Law School	Trained in Law Office	Att'd Foreign Univ.
Number of lawyers holding degree of	33(36)	4(3)	35(23)	3(1)	—(—)	13(12)	5(10)	—(—)
Percentage of all lawyers in Senate	49(52)	6(4)	51(33)	3(1)	—(—)	19(18)	7(15)	—(—)

House

	A.B.	A.M.	LL.B.	LL.M.	J.S.D.	Att'd Law School	Trained in Law Office	Att'd Foreign Univ.
Number of lawyers holding degree of	117(90)	12(13)	176(142)	3(2)	0(3)	41(45)	8(20)	5(4)
Percentage of all lawyers in House	41(36)	4(5)	62(57)	1(1)	—(1)	15(18)	3(8)	2(2)

(One lawyer-member of the House had a Ph.D. degree.)

[6] There were three vacancies in the House.

[7] Quoted from the speech of Mr. Rogers on the occasion of his induction as Dean of the Law School, University of Colorado, on March 1, 1928, at p. 15 of the pamphlet.

In comment upon these figures we may repeat what was said in our study of the 73rd Congress as it fits the present situation: "Taking the above quotation [from Mr. Rogers] as a correct description of the education of the typical as well as the 'high-grade' American lawyer, it appears that the average [lawyer-] Congressman differs considerably from both of them. His general college as well as his law school training is much better than that of his 'typical' colleague outside of Congress. The lawyer-Congressman does not, however, quite reach the mark set by the 'high-grade' lawyer, as far as [pre-legal] college education is concerned." We might add that the present Congress possesses a still higher educational average in its membership than its predecessor, especially in regard to legal training.

Certain differences in the education of lawyers in the Senate and in the House are noted. About one-half of the lawyer-Senators but only a little more than one-third of the lawyer-Representatives are graduates of some college, with an A.B. or similar non-professional Bachelor degree. The House is ahead of the Senate in its law school training (62 and 51 per cent, respectively, of its members have LL.B. degrees), though the difference is not as marked now as it was in 1932 (57 and 33 per cent, respectively). The percentage of the holders of the research degree LL.M. is now much higher in the Senate (3 per cent) than in the House (1 per cent) while two years ago it was about even, at the lower figure. The three J. S. D.'s—incidentally all from Western states—which graced the House in 1932 have disappeared from the picture.

The list of the law schools from which Congressmen have graduated is worth contemplating, especially by its Deans and faculty members, as they may be expected to have exercised a great influence on the future lawmakers of the country.

Number of Senators with LL.B. degree from		
Cumberland	3	(2)
Michigan	3	(3)
N. Y. U.	3	(1)
Alabama	2	(3)
Georgetown	2	
Texas	2	
Valparaiso	2	
Columbia	1	
Harvard	1	
Mercer	1	
Wisconsin	1	
Yale	1	

Number of Representatives with LL.B. degree from		
Harvard	12	(7)
Michigan	9	(9)
Columbia	6	
Cumberland	6	(7)
Missouri	6	
Detroit	5	
Mercer	5	(5)
Pennsylvania	5	
Alabama	4	(5)
Georgetown	4	(5)
N. Y. U.	4	
Texas	4	
Wisconsin	4	
Yale	4	

This list includes only those law schools from which four or more Congressmen have graduated, not counting those who attended without finishing the course. They are listed both according to the number of their graduates and alphabetically. Special attention should be paid by all interested in legal education to the important fact that some of the least known law schools have graduated relatively large numbers of Congressmen. In addition to the schools mentioned, 64 other law schools—large and small—have sent from one to three graduates to Congress.

Yale has awarded a LL.M. degree to two present Senators and N. Y. U. to one; and Drake, George Washington, and Texas to one Representative each. One Representative has been a Carnegie Fellow in International Law at Oxford; another a research fellow in law at Yale.

Five lawyer-Representatives (and no Senators) have attended foreign universities: Heidelberg, Munich, Vienna, London, and Clermont in France.

It is worthwhile noting that out of 52 (39) one-time public school teachers now members of the House, 37 (24) have turned from teaching to law. Some of them indicate frankly that they taught only to make some money to go to college or law school. Some report that they "read law" while teaching school, at times through correspondence courses. One lawyer-Representative tells us that he began teaching at the age of 16. Of another we hear that he received a first-grade county teacher's certificate at 14, and that he taught in "writing schools" during the winter in order to earn money to go to college. At 17 he graduated from a college, and at 19 he became city superintendent of schools "on competitive examination." He read a "University of Virginia law course" while teaching in another state. These teacher-lawyer-Representatives have taught for different periods of time, from one to twelve years in length. Six Senators have been teachers, five of them in public schools and only one in a college. Senator Norris worked on farms in the summer and attended district school in the winter; he, too, "taught school in order to earn the means for higher education" and "studied law while teaching." He even taught for one year after being admitted to the bar in order to get money "to purchase a law library." Before Senator Gore of Oklahoma became a lawyer, he taught school, even though he was already blind.

There are a small number of professors of law and deans of law schools in Congress. The present Senate counts two (2) of them, one Democrat and one Republican, and the House nine (6). Senator McNary from Oregon is a former Dean of the Willamette College of Law, while former Governor Arthur H. Moore of New Jersey used to be a professor of legal ethics at the New Jersey Law School. Among Representatives we find former Deans of the Law Schools of the University of Alabama and Richmond College; a Professor of Law at the Mercer Beasley School of Law at Newark, N. J.;

lecturers at the East Texas and St. Louis University Law Schools; and instructors at Drake, Benton College of Law, La Salle College.

A number of lawyer-Congressmen are authors. They include Mr. Cannon, Democrat from Missouri, expert on parliamentary law; Mr. Montague, Democrat from Virginia, author of *Life of John Marshall, Secretary of State* (in *American Secretaries of State and their Diplomacy*); Mr. Ford, Democrat from California, co-author with his wife of *The Foreign Trade of the United States* (used as a college text book). The Republicans in the 73rd Congress who have books to their credit were not re-elected in 1932, for some reason. They were Representative Beck from Pennsylvania, a graduate, incidentally, of a small college and of no law school, who has written on constitutional law and government; Representative Luce from Massachusetts who has published extensively on aspects of legislative work, Mr. Whittley from New York, author of *Law of Arrest,* and *Law of Bills, Notes and Checks;* and Senator Fess of Ohio, author of books in the fields of American history and American political theory. The most promising lawyer-author in Congress is Mr. Keller, a Democrat from Illinois. In 1932 he published his work *Unemployment—Its Cause and Cure.*

How many lawyers in Congress have practiced law? Four members of the House and one Senator state expressly that they have not, and 218 Representatives and 54 Senators that they have engaged in private practice. Three Representatives and one Senator state that their practice was a general one, and ten Representatives and one Senator report practice for corporations. The number of Congressmen who have been corporation lawyers of some sort or another is likely to be larger than these figures would indicate as Congressmen are usually anxious to hide their corporation connections from the general voter. Senator Robinson from Arkansas, for instance, is known to be a member of a firm representing public utility interests but one could not prove that by looking at the *Congressional Directory* or *Who's Who in America.*

Twenty-five Representatives and seven Senators who do not indicate whether they have ever engaged in private practice have occupied public positions of a legal nature, ranging from city attorney to judgeships of various kinds. The number of Congressmen who not only studied law but also practiced it in one capacity or another, private or public, is, therefore: 243 Representatives (out of 282 lawyers) and 61 Senators (out of 68 lawyers), or 86 and 90 per cent, respectively. These are the minimum number of Congressmen who may, therefore, be expected to be familiar, to quote Professor Radin's phrase, with "specific knowledge of the course of judicial decision."

A few lights on the practice of lawyer-Congressmen may be shed in

passing. The Hon. Huey L. Long stated in *Who's Who* that he has "practiced law almost continually while holding pub. office; atty. for state in much pub. utility litigation, and for state bodies and depts. while gov." Representative Emanuel Celler, Democrat, from New York, has included in his lucrative practice work as counsel for the *Butchers' Mutual Casualty Co.* of Brooklyn. Other Congressmen report other distinctive legal experience. One has been counsel for a state league of municipalities, another judge advocate in the army. Two were parliamentarians of the House before they became its members.

The character of public legal work on the part of Congressmen is illustrated by the following list:

House		*Senate*
48(47)	City and/or County Attorney	6(17)
71(97)	City and/or County Pros. Attorney, or District Attorney	3(18)
41(17)	City, County, or District Judge	3(6)
3(10)	U. S. District Attorney	4(4)
5(6)	Assistant Attorney General	1(3)
1(4)	Attorney General	1(2)
1(—)	Judge State Supreme Court	8(8)

Two facts stand out most prominently in this chart: the large number of city, county, and district attorneys who have entered the House, 71 (97), and the Senate, 3 (18), a total of 74 (115) (with some overlapping), and the number of state supreme court judges who have entered the House of Representatives, 1 (—), and especially the Senate, 8 (8).

The impression among students of politics that a vigorous, or vigorous-acting, prosecuting attorney has a splendid opportunity to get his name before the public is therefore substantiated. It cannot be doubted that such a fact constitutes a strong temptation for an ambitious prosecuting attorney to do his sworn duty with an eye to political rewards and promotions rather than to the best of his community. Unfortunately, they have a bad example set for them by a relatively large number of state supreme court judges. Of the nine now members of the Congress, Representative Utterback of Iowa was elected to the State Supreme Court in 1932 and to the House in 1934. Senator King of Utah was appointed to the Supreme Court of Utah in 1894 and was elected to Congress in 1896. Senator George of Georgia was a member of the Supreme Court of his state from 1917 to 1922, and was elected to the Senate that same year. Senator Wagner of New York states frankly that he "resigned to become candidate for United States Senator" to which office he was promptly elected, while Senator Logan of Kentucky was chief justice "which position he held until the beginning of his term as U. S. Senator," to quote his own words. Four other Senators allowed from three

to eighteen years to elapse before changing from their supreme court position to membership in the Senate. Of the supreme court judges in the 73rd Congress, three stated expressly that they resigned to become candidates for the Senate. Senator Borah's recently published opinion on the impropriety of members of the United States Supreme Court being boomed as candidates for president may be extended to state supreme court judges running for the United States Senate or other equally political offices.

In conclusion, we find that the lawyer-members of the 74th Congress represent a picture similar to that of those in the preceding Congress which we had occasion to describe as follows:[8] "The lawyers in both Houses of Congress and both major parties seem to present a fairly accurate picture of a cross-section of our population. Their biographical data show their achievements and sometimes vanities—often by omission of facts as well as by their enumeration. They all belong to one and the same profession but they are not a homogeneous group by any means. There are poor and well-to-do, 'successful' lawyers in Congress; counsels for the underdog and for the powerful corporation. Many have known the hardships of poverty while others have clearly led sheltered lives. Some were immigrant boys, ignorant of the language and customs of their new home, others graduated from fashionable preparatory schools. Among them are machine politicians and servants of vested interests, as well as militant fighters of predatory privilege. Perhaps they constitute, after all, a rather true representation of the American voter and his economic views, rather than a professional clique."

Another Law School Provisionally Approved

At its meeting on December 29, the Council on Legal Education and Admissions to the Bar of the American Bar Association placed in the status of provisional approval the Wake Forest College School of Law, Wake Forest, North Carolina. This school should therefore be added to the Association's list of approved schools, with the notation that the approval is provisional. Under its new policy the Council on Legal Education may give provisional approval to schools now placed on its list. This is intended to furnish an opportunity for reinspection during the two years following the provisional approval in order to make sure that the school is maintaining the standards of the Association. Students from schools provisionally approved are to be considered as though they were from schools fully approved.

[8] (1934) 6 ROCKY MT. L. REV. 155, 160.

Maryland Bar Appeals to Court for Higher Admission Standards

At a hearing held on January 15 at Annapolis, the Maryland Court of Appeals heard representatives of the Maryland State Bar Association and of the Bar Association of Baltimore City on the question of exercising its inherent powers by promulgating a rule raising the standards of education, required as a condition precedent to the study of law, to two years of college education or its equivalent. Both the state and local associations have been unceasing in their efforts to improve the qualifications for admission in Maryland, which state is now surrounded by jurisdictions having a two-year college rule.

Mr. J. Maulsby Smith of Baltimore, chairman of the joint committees on legal education of the two associations, has been active for a considerable period of time and it was fitting that he should introduce the speakers: Mr. Walter L. Clark, former President of the State and Baltimore Associations, and State Senator Ridgely P. Melvin, who sponsored a bill to raise the pre-legal standards, which was defeated in the last legislature.

Mr. Clark made an effective exposition of the law involved and the reasons for raising the standards in Maryland. A portion of his remarks is quoted:

Remarks of Walter L. Clark

The Maryland State Bar Association and the Bar Association of Baltimore City have requested a hearing before this Court, through their joint Committees on Legal Education. The purpose of the hearing is to bring to the attention of the Court the deficiencies in our present system of training persons who are to become members of the Bar and, therefore, officers of the Courts. It has become necessary to take this step because it seems impossible, and probably unconstitutional, to obtain the desired reforms in any other way. Indeed, all other known methods have been exhausted in fruitless endeavor.

* * *

The problem presented to this Court for its consideration and determination may be conveniently presented under two heads:

1. The Courts can demand pre-legal educational requirements, in excess of those fixed as a minimum by the present statutes.

Note: A transcript of the proceedings, giving the full remarks of Mr. Clark and Senator Melvin, is available on request to The National Conference of Bar Examiners, 1140 North Dearborn Street, Chicago, Illinois.

2. The pre-legal educational requirements should be increased beyond the present statutory minimum.

I. The Court Can Demand Pre-Legal Educational Requirements In Excess of the Statutory Minimum

This is largely a matter of constitutional law arising out of our very wise separation of the judicial and legislative authority. We do not contend that the Legislature is inhibited by the Constitution from *controlling its citizens* in their applications for admission to the Bar. We do contend with all the earnestness we possess that the Legislature *has no constitutional power to control the Courts,* and determine who shall be accepted as proper officers of such Courts. The Courts alone have the ultimate right to determine the standards of education, intelligence, ability and character they will insist upon. No legislative enactment can compel the Courts to accept any candidate as a member of the Bar, nor can it prevent the Courts from suspending, disciplining or disbarring any lawyer already admitted. The Legislature has no constitutional right to impose upon the Courts the standards or lack of standards it should deem best, even though it may have the right to prevent persons from applying for admission, who do not possess certain minimum standards.

There is nothing in our Constitution taking away from the Courts and giving to the Legislature the power to determine who shall be admitted to the Bar. There is no warrant in the Constitution for the Legislature's attempt to fix standards of education as it did in Art. 10 of the Code. If the Legislature intended that those standards should be binding upon the Courts, that power belongs primarily to the Courts, has not been withdrawn from their jurisdiction by the Constitution and cannot be taken from them by the Legislature.

On the other hand the Legislature does have a right to determine what its citizens shall do, and can control those citizens by passing a law which will prevent persons from applying for admission to the Bar unless they possess at least the minimum requirements set out in the statute. Beyond this the Legislature cannot go. It cannot tell the Courts by statute that they must admit persons possessing certain qualifications, or must not disbar lawyers who are guilty of certain kinds of misconduct or unethical practices. A mere statement of a few examples should be sufficient to prove the point suggested.

Suppose, as was done in one of the mid-western States, the Legislature should repeal Art. 10 in its entirety and should substitute for it a law that

any citizen twenty-one years of age of good moral character should be admitted to the Bar by the Court of Appeals.

Or suppose a law should be passed that no applicant should be refused admission for character disqualifications, unless he should have been convicted of a crime and have served a term of at least ten years in the penitentiary. To say that our Court of Appeals would be bound by such laws is ludicrous, yet in principle there is no difference. If the Legislature has the power to fix the standards, it has the power to fix all of them, and to fix them as high or as low as the lawmakers desire. Nor would it be limited to standards for admission. The Legislature could conceivably pass an Act which would fix standards for disbarment or disciplinary measures, and if the Courts presumptuously disbarred a lawyer in disregard of those legislative standards, the Legislature could by law compel his reinstatement. This was actually attempted in California, but was, of course, unsuccessful.

The contention of the Committee is in brief this: That even though the Legislature, by virtue of its power over the applicants, may fix minimum educational standards which will prevent the making of an application for admission by a person not so qualified, yet in the end, after the application has been filed, the qualifications are solely for the Court, because the applicant is asking to be made an officer of the Court.

The following cases hold this to be the true rule and are justified by logic, constitutional limitations and common sense. They construe the better reasoned decisions and are in the main from Courts of standing and learning in this country. * * * [Citing Rosenthal v. State Bar Examining Committee (1933)—116 Conn. 409, 165 Atl. 211; In re Lavine (1935)—2 Cal. (2d) 324, 41 Pac. (2d) 161; Ex Parte Steckler (1934)—179 La. 410, 154 So. 41; In re Richards (1933)—333 Mo. 907, 63 S. W. (2d) 672; In re Day (1899)—181 Ill. 73, 54 N. E. 646, 50 L. R. A. 519; In re Bailey (1926)—30 Ariz. 407, 248 Pac. 29; Petition of Splane (1889)—123 Pa. 527, 16 Atl. 481; Rhode Island Bar Association et al v. Automobile Service Association (1935)—179 Atl. 139; Opinion of the Justices to the Senate (1932)—279 Mass. 607, 180 N. E. 725, 81 A. L. R. 1059; and an article by Mr. Henry M. Dowling of the Indianapolis bar entitled "The Inherent Power of the Judiciary," Vol. XXI A. B. A. Journal, 635 (Oct. 1935).]

It seems to this Committee that there can be no possible doubt that this Court has the inherent right to prescribe the educational training, both academic and legal, which candidates for admission to the Bar must undergo. It is just as essential to protect the public from disaster in dealing with well meaning but badly trained lawyers, as it is to protect them from well trained

but unscrupulous attorneys. We attempt the latter task through our Character Committee and Grievance Committee; the first operating before, and the second after admission—but both under the supervision of the Courts.

As this Court has the ultimate determination of the qualification of candidates for admission to the Bar, the Committee urges that its power be made operative by appropriate rules of procedure.

II. The Pre-Legal Educational Requirements Should Be Increased Beyond the Present Statutory Minimum

The practice of law is a profession; it is said to be a learned profession, and is so recognized in most of the countries of the world. The preliminary training for this profession is necessarily severe. Comparisons of our present system with those enforced in England, France and Germany indicate a much higher regard for the professional status than obtains in the United States. Comparisons of the several systems are very aptly made in a monograph published by the Council on Legal Education and Admissions to the Bar, of the American Bar Association in October, 1935, entitled "A Comparison of Qualifications for Admission to the Bar."

The comparison does no particular credit to the American system as a whole. Certainly Maryland with its legal and judicial tradition fares rather badly by comparison with the general training required by a majority of the States of the Union. We quote the following:

"* * * If we take the standard which has been adopted by twenty-eight States, whose lawyers comprise two-thirds of the legal population of the country, we have a two-year course of college education or its equivalent, and in all but two of these at least three years of law study, with a requirement in the majority that the length of the period of legal training shall be increased to four years if conducted in a part-time law school or in an office."

The twenty-eight States are: Colorado, Connecticut, Delaware, Idaho, Illinois, Kansas, Michigan, Minnesota, Montana, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Washington, West Virginia, Wisconsin, Wyoming, Alabama, Massachusetts, Missouri, Nevada, New Mexico, Virginia, North Carolina, Utah, Vermont. There are seventeen States requiring only a high school education. Maryland is in this group. Only four States omit preliminary education. In the four States alone, could the modern and hypothetical Abraham Lincoln be admitted to practice.

It might be enlightening to compare the general education of some of the occupations with that required of law students. Mr. Alexander B. Andrews, Secretary of the Legal Education Section of the American Bar Association, made a study of the qualifications required of teachers in high and elemen-

tary schools, in the forty-four States requiring either college or high school training for law students. In those States none require less than one year of college and most require at least two years before one can teach even the elementary grades. This is preliminary to such training in pedagogy or teaching, as may be required. * * *

For the medical profession the statutory requirements are more elastically drawn (Art. 43, Sec. 120). Only persons who have received a degree of Doctor of Medicine from a college or university having the entrance requirements and standard of education prescribed by the Association of American Medical Colleges (two years of college), or the Intercollegiate American Institute of Homeopathy are permitted to take the examination for a license to practice. Optometrists must have the preliminary scholastic and professional education equal to the standard *prescribed by the Examining Board* (Art. 43, Sec. 318).

Among those occupations for which statutory preliminary educational standards are prescribed, the following may be mentioned: Nurses, the equivalent of high school (Art. 43, Sec. 255); Chiropody, the equivalent of high school (Art. 43, Sec. 370); Dentist, equivalent of high school (Art. 43, Sec. 234, 1935 Sup.); Undertakers, equivalent of high school (Art. 43, Sec. 300, 1935 Sup.); Chiropractic, equivalent of high school (Art. 43, Sec. 383, 1935 Sup.); Architects, equivalent of high school (Art. 41, Sec. 399, 1935 Sup.); Certified Public Accountants, equivalent of high school (Art. 75-a, Sec. 5). * * *

We have set out many occupations and some professions which, by statute or rule, require some college work. None is superior and many much inferior in intellectual attainment to that required of lawyers. The Legislature, however, has rated the profession very much below that class, and has sought to place it on the same educational footing as undertakers' assistants and others referred to. The Bar, and, we hope, the Courts, are not satisfied with the standards the Legislature has attempted to set up. They seek a new preliminary educational standard, asking that it be fixed by this Court in accordance with its constitutional authority. * * *

It is no answer to say that the imposing of higher standards prevents people from being admitted to the Bar who are unable to secure the higher education suggested any more than it would be to say that persons mentally incapable of accepting that much education should be permitted to practice. The damage to the public would be the same in either case. Nor is it an answer to insist that legal education would thereby become too expensive. This State and the country are full of schools in which men may, through scholarships or their own unaided efforts, secure the equivalent of two or even four years of college.

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to the state where he made his first attempt and will secure admission on a comity basis.

The above examples are sufficient to illustrate the proposition which hardly needs illustration, to-wit: that as more and more states adopt higher requirements for admission to the bar, there will be an increasing tendency of candidates with a minimum of general education and law school training to drift to those jurisdictions where they will still have the opportunity of at least taking the bar examinations.

Admission to the Legal Profession in England

By Paul H. Sanders

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The two branches of the legal profession in England comprise some 3,000 practicing barristers and some 16,000 practicing solicitors. There are approximately as many lawyers in Greater New York as constitute the active English legal profession. High standards, coupled with heavy expenses, have served to keep the membership of both groups in that country comparatively stationary.

I. Call to the English Bar

The four Inns of Court in London (Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn) constitute the only gateways through which one may proceed to practice at the English bar. They exercise their control over preparation for admission, and admission through a Council of Legal Education, a joint body made up of five Masters of the Bench (Benchers) from each Inn of Court. The candidate must first secure entrance into one of the Inns as a student which he may do by presenting evidence that he has passed any of several examinations generally equivalent to those given for admission to Oxford or Cambridge, and by furnishing satisfactory character credentials. Usually he is a university graduate or enrolled in a university. He must then "keep" twelve terms and pass an Examination for Call to the Bar before he can receive his "call." A period of "reading in chambers" as a pupil to a junior barrister for a year or more (at a standard cost of $500 per year) is usual before beginning practice, although there is no formal requirement concerning this. The formal requirements alone, however, take up a minimum of three years' time and cost in the neighborhood of $1600 for fees, deposits and government stamps (approximately $700 of this is returnable after call to the bar).

The student "keeps terms" by dining in the Hall of his Inn three nights, if he is a member of certain universities, or six nights, if he is not such a member, during each of the "dining terms" of a year. These "dining terms" consist of four periods of approximately three weeks each, and are designated Michaelmas, Hilary, Easter, and Trinity.

The Examination for Call to the Bar consists of two parts as follows:

PART I

Section I. Roman Law
Section II. Constitutional Law (English and Colonial) and Legal History
Section III. Criminal Law and Procedure
Section IV. The Elements of the Law of Contract and of the Law of Tort

PART II

Section I. Common Law
Section II. Equity
Section III. The Law of Evidence and Civil Procedure
Section IV. A General Paper on the subjects of I, II, and III of this Part
Section V. Real Property and Conveyancing
or
Hindu and Mohammedan Law
or
Roman-Dutch Law

A student may present himself for examination in any or all of the sections of Part I at any time after admission. He must present himself for examination in all the sections of Part II at the same time, at any time after he has kept six terms. Usually the student must satisfy the Examiners in all sections of Part I before being allowed a pass in Part II. Examinations are given three times a year. If a student's papers show that he had no reasonable expectation of passing the examination, then the Council may direct that he not be admitted to another examination until such time as it may determine. Otherwise there is no restriction as to re-examination. Certain Honors, Prizes and Studentships are announced in connection with each examination.

The student cannot be called to the bar before he is twenty-one years old. Preliminary to the call, his name and description is posted in all of the Inns for a short period of time.

The number called to the bar annually runs between 250 and 300. The number passing the Part II of the Examination for Call to the Bar, known

as the "Bar Final," is revealed by the following figures from the 1934 examinations:

	First-Timers	*Repeaters*	*Total*
Examined at the Hilary, Trinity and Michaelmas terms	514	44	558
Passed	284	20	304
Percentage Passed	55%	45%	53%

The professional mortality of the barrister is even higher. According to the Choice of Career Pamphlet on Law, issued by the Ministry of Labor in 1933, there are only approximately 3,000 persons practicing as barristers in Great Britain and Northern Ireland although there are some 10,000 persons in this territory who have been called to the bar.

II. Admission to the Roll of Solicitors

The Law Society controls admission to the Roll of Solicitors. It has arranged years of apprenticeship and three examinations as hurdles for those who would enter these ranks. There are more than five times as many practicing solicitors as there are practicing barristers but in this group also the rigid requirements and the heavy expenses (even heavier than those borne by the would-be barrister) serve to keep it small numerically.

An essential part of the solicitor's training is the period when he is "bound under articles of clerkship" to a practicing solicitor for a period of from three to five years. Before he may be "bound," however, he must either take or be exempt from a Preliminary Examination. This examination is to test the general knowledge of the applicant, and in 1935 consisted of the following subjects:

1. Writing from dictation.
2. Writing a short English composition.
3. (a) Arithmetic; (b) Algebra and Elementary Geometry.
4. Geography of Europe and History of England
5. Latin.
6. Sight translation of any two of the following languages: (a) Latin translation, (b) Greek, (c) French, (d) German, (e) Spanish, (f) Italian.

The graduates of certain universities and those who have passed certain examinations similar to university entrance examinations are unconditionally exempt from the Preliminary Examination. Those who have passed certain other school certificate examinations are exempt if they have included the proper subjects. Each of the three Law Society examinations are given

three times a year. In 1934 the results of the three Preliminary Examinations were as follows:

Examined—452 Passed—233 Per cent passed—51%

The usual period of service under articles is five years. University graduates and those who have been called to the bar less than five years need serve only three years under articles. Those who have acquired a university standing as evidenced by the passage of certain university examinations and those who have attended a full year course at certain approved law schools before being bound under articles need serve only four years. A solicitor is prohibited by law from having more than two articled clerks at the same time. No solicitor may take an articled clerk after he has ceased to practice, and the clerks may not, without permission of the Master of the Rolls, engage in any other employment during their clerkship.

The Intermediate Examination is given by the Law Society in order to enable it to ascertain the progress that is being made by the clerk. The time at which it is taken depends on the length of service in articles. If articled for five years, the clerk may present himself for this examination after two years' service; if for four years, he may take it after eighteen months; if for three years, it may be taken after one year's service. If this examination is not taken within a year after the passage of the half-way mark in his clerkship, it may result in the time of his taking the Final Examination being delayed.

The Intermediate Examination consists of two portions: legal, and trust accounts and bookkeeping. The legal portion is based on some elementary general text announced in the July previous to the year in which the examinations are given. In 1935 the legal portion was on Stephen's Commentaries on the Laws of England. Graduates with law degrees of certain approved schools are exempt from this portion of the Intermediate Examination, though not from the trusts accounts and bookkeeping portion, which is also based on certain announced text-books. These two portions need not be taken at the same time. The results of the 1934 Intermediate Examinations were as follows:

Law:	Examined—1203	Passed—739	Per cent passed—61%
Accounts and Bookkeeping:	Examined—1251	Passed—882	Per cent passed—70%

Before taking the Final Examination the clerk must have attended for one year the law school conducted under the direction of the Law Society or a school approved by the Society. He must also have either completed

his term of service under articles or be in a position to complete the term before the time of the next examination. The subjects of the Final Examination in 1935 were:

1. The Principles of the Law of Real and Personal Property, and the Practice of Conveyancing.
2. The Principles of Law and Procedure in matters usually determined or administered in the Chancery Division of the High Court of Justice.
3. The Principles of Law and Procedure in matters usually determined or administered in the King's Bench Division of the High Court of Justice, and the Law and Practice of Bankruptcy.
4. The Principles of Law and Procedure in matters usually determined or administered in the Probate and Divorce Division of the High Court of Justice; Criminal Law and Practice; Proceedings before Justices of the Peace; and Private International Law.

The results of the Final Examinations for 1934 were as follows:

Examined — 1074 Passed — 640 Per cent passed — 59%

An Honors Examination is open to those who have reached a high enough standard in the Final. On the basis of this examination numerous prizes and honorary distinctions are granted. It is considered to be a distinct aid in securing a good position to stand high in the Honors Examination. After passage of the Final Examination admission to the Roll of Solicitors is a matter of form. The cost of the whole process of training and admission (aside from the cost of private education) will average around $2200, the major portion of which is the premium which the clerk must pay to the solicitor under whom he serves his articles. The cost of this alone may reach $2500, although the average fee is around $1500. Other costs result from examination fees and government stamp duties. The practicing solicitor is required to take out an annual certificate at a cost of $50 per year.

Having gained entrance to one of the branches of the legal profession in England the beginner will find a hard path before him. But he would not find it easy to convince his American brother that it is more difficult than in this country when it is observed that in England there are only about forty-seven lawyers to each 100,000 of the population, which means that the legal population is less dense than in any state in the United States. The United States as a whole in 1930 had one hundred and thirty-one lawyers per 100,000 population, or almost three times as great a ratio as that of England. Alabama comes nearest to the English ratio with sixty lawyers in the same population unit. The District of Columbia has fifteen times as many lawyers proportionately; New York has more than four times as many.

The Drift

With the adoption of a two-year college requirement by twenty-eight states, candidates for admission to the bar who have not had this preparation and who are unwilling or unable to get it are looking toward the jurisdictions which still require only a high school diploma or less. This drift is particularly noticeable along the eastern seaboard where Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware and Virginia present almost a solid phalanx of states in which two years of college education are a prerequisite. When the new requirements in Massachusetts and North Carolina become effective, this tendency will be even more pronounced. As an example of what is happening, the following half dozen cases are cited of candidates who have gone from New York to take their bar examinations in states less well fortified, in the way of qualifications, against the ill-prepared applicant.

Applicant No. 1 went to high school for four years and studied for three years in a law office; he was installation engineer of an oil burner concern for some time and is now the owner of a business installing oil burners and retailing fuel oil.

Applicant No. 2 finished grade school and studied law for two years and two months with the LaSalle Extension University, a correspondence school; he worked for a manufacturer of jewelry and for a radio company.

Applicant No. 3 had one year of college, studied for three years with the LaSalle Extension University and had two years in a law office; he was an electrical contractor.

Applicant No. 4 had one year of college and studied two years and nine months with the Blackstone Institute, a correspondence school located in Chicago; he was a tailor for a time, then a factory worker, and the last occupation he lists is that of notary public.

Applicant No. 5 started out to be an engineer and received a degree in civil engineering from Columbia University. Afterward he turned to the law and took a three-year course from LaSalle Extension University, receiving an LL.B. He has been a sales manager in the advertising business and finally a salesman of real estate securities.

Applicant No. 6 attended the United States Naval Academy for four years and had a year of law at Columbia University, followed by two years with the LaSalle Extension University.

Two recent candidates from Porto Rico come within the same general class. One of these had two years of college work and took a law course at LaSalle Extension University, extending over five years. The other had a high school education, then took a two-year course with the American Correspondence School in Chicago, and studied five years in a law office.

All of the above applicants had either taken a correspondence school course or had studied in a law office. The extent of their preparation may be gauged by the most recent California statistics on the success in bar examinations of law office and correspondence school students. Cumulative statistics over the past three years show that out of sixty-six candidates who were correspondence school products and were taking the bar examination for the first time, only seventeen percent passed. The average for the law school graduates during this same period was sixty-one percent. Figures for the years 1929, 1930, 1931 and 1932 in California show that law office students were only eighteen percent successful during that period.

A recent applicant from Brooklyn, who has studied law with a prominent correspondence school for a year and a half, has announced in his application to take the bar examination that he will receive the degree of LL.B. when he passes the bar examination. His present occupation is "vermin exterminator." Another applicant, from New Jersey, is at present employed as a mechanic with a soup company. He obtained his legal training by a period of study with the LaSalle Extension University over a period of a year and eight months, went to a southern state and took a two-weeks' cram course before trying the bar examination. He had a three-weeks' leave of absence from his job and expected to return to the making of soup if he was unsuccessful in his attempt to become a lawyer. Another applicant from New Jersey, with eight years of grade school, no high school, and the successful completion of courses in contemporary civilization, English composition and business law at a junior college, reports four years of practical experience as office boy and gasoline tester with an asphalt company and clerk for a local relief organization, following which he completed the course at a one-year New York law school.

Another applicant from a one-year law school in New York filed with his application in a southern state the certificate of the dean stating he had pursued the study of law from January 3, 1935 to November 28, 1935; that he would be recommended for the degree of Bachelor of Laws of a certain Georgia law school with which the New York institution is affiliated; and that he was now pursuing the post-graduate course in law being given by the New York institution and would complete that post-graduate course on December 28, 1935.

Recently an applicant in one of the eastern states above mentioned, who had failed the bar examinations in that state, applied for reexamination. He could not qualify under the new educational requirement which the state had adopted, and he is therefore applying in a state farther to the south with less stringent requirements. He has made the statement that when he is admitted there and has practiced a sufficient length of time, he will return

to the state where he made his first attempt and will secure admission on a comity basis.

The above examples are sufficient to illustrate the proposition which hardly needs illustration, to-wit: that as more and more states adopt higher requirements for admission to the bar, there will be an increasing tendency of candidates with a minimum of general education and law school training to drift to those jurisdictions where they will still have the opportunity of at least taking the bar examinations.

Admission to the Legal Profession in England

By Paul H. Sanders

Member of the Texas Bar and
Assistant to the Director of the National Bar Program

The two branches of the legal profession in England comprise some 3,000 practicing barristers and some 16,000 practicing solicitors. There are approximately as many lawyers in Greater New York as constitute the active English legal profession. High standards, coupled with heavy expenses, have served to keep the membership of both groups in that country comparatively stationary.

I. Call to the English Bar

The four Inns of Court in London (Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn) constitute the only gateways through which one may proceed to practice at the English bar. They exercise their control over preparation for admission, and admission through a Council of Legal Education, a joint body made up of five Masters of the Bench (Benchers) from each Inn of Court. The candidate must first secure entrance into one of the Inns as a student which he may do by presenting evidence that he has passed any of several examinations generally equivalent to those given for admission to Oxford or Cambridge, and by furnishing satisfactory character credentials. Usually he is a university graduate or enrolled in a university. He must then "keep" twelve terms and pass an Examination for Call to the Bar before he can receive his "call." A period of "reading in chambers" as a pupil to a junior barrister for a year or more (at a standard cost of $500 per year) is usual before beginning practice, although there is no formal requirement concerning this. The formal requirements alone, however, take up a minimum of three years' time and cost in the neighborhood of $1600 for fees, deposits and government stamps (approximately $700 of this is returnable after call to the bar).

occurred in South Carolina where out of a total of 18 candidates at the May examination only two passed.

Admissions to the bar of the District of Columbia were exceeded in number only in New York and Illinois, in spite of the fact that it ranked only thirteenth in the number of lawyers at the time of the 1930 census.

It is an interesting fact that while the number of examinations given in the United States has shown a very decided decrease in the last four years, the number of new admissions, which includes both those passing examinations and those admitted on diploma, has only shown a comparatively small diminution. The figures are as follows:

	1932	1933	1934	1935
Total number of examinations.....	19,470	18,314	17,958	16,812
Number of new admissions.....	9,340	9,258	9,099	8,971

Indiana and Oregon Raise Standards

And Adopt the Character Plan

Two new states have been added recently to the roster of those jurisdictions requiring two years of pre-legal college education and a minimum of three years of law study. In promulgating these standards the supreme courts of both Indiana and Oregon included a provision raising the admission fees for foreign attorneys, and in both cases the services of The National Conference of Bar Examiners will be employed in making character investigations of the immigrant lawyers.

The establishment of these standards in Indiana marks a victory of great importance which has been secured only after a long and sustained endeavor on the part of the state bar association. It will be recalled that in Indiana the constitution of 1851 contained a provision that every voter, twenty-one years of age and of good moral character, was entitled to admission to the bar. Until 1931 the requirements for admission to the various courts of first instance in the state differed in the respective localities and in many cases the bar examination was only a formality. The first step was to obtain the appointment of a central board of law examiners, which was done in 1931 by the court after the passage of a legislative act giving it the power to regulate admissions to the bar, on the interesting theory that a person who sought admission to the bar without having enough knowledge to pass a bar examination was not of the good moral character required by the constitution.

Later the constitutional provision was repealed, and the way was opened for the establishment of qualifications by the court. The rules recently promulgated provide that students beginning their law study after June 13, 1936, shall have two years of college education, except that office students are required to have only such general education as shall be acceptable to the board of law examiners. These office students must study law for four years in the office of an attorney in good standing. Students who qualify by virtue of study in a law school must secure a degree and the school must be one which, prior to September 1, 1937, meets standards similar to those prescribed by the American Bar Association. This action was taken after a petition had been filed with the court by the Indiana State Bar Association and constitutes a noteworthy advance in admission requirements. Indiana increased its foreign attorney fee from $15 to $40 in order to finance the character investigation by the National Conference.

Oregon, by action of its Supreme Court on April 7, went even farther by refusing to recognize any law study pursued outside of a law school approved by the court, which requirement becomes effective as to candidates applying after July 31, 1940. Two years of pre-legal college education and the successful completion of the regular course of study of at least three years in a law school approved by the court are part of the requirements. No candidate may apply on the basis of office study unless he has registered prior to August 1, 1936. The Oregon fee for admission on motion lawyers from other states was increased from $50 to $75 and the board of examiners has announced it will also use the services of the Conference. There are now thirteen states which have adopted this method for investigating the character of foreign attorneys.

These two states bring up to thirty the total of those which have adopted the requirement of two years of college or its equivalent, effective either presently or prospectively. Over two-thirds of the practicing lawyers in the United States reside in those thirty jurisdictions.

A POSTCARD TO THE CALIFORNIA BOARD

Oakland, Cal, Mar II/36

Bar Ass;
Mill, Bldge; San Francisco, Cal;

Gentlemen___please sent me name of book, to take examinion for Attorney, price, also also inflrmation, regarding rules of examiner's. I thank you,

yours truly, R. L.

Limitation on New York Bar Admissions Recommended

Comprehensive Survey Reveals Overcrowded Condition of the New York Bar

A finding that the bar of New York County is definitely overcrowded and a recommendation that measures be taken at once for further restricting admissions to the bar of the State constitute two important features of the interesting and valuable report of the Committee on Professional Economics of the New York County Lawyers' Association which has just been filed.

The report is the result of a survey of the bar of New York County on which the Committee has been working for two years. From an estimated total of 15,000 lawyers in the County, approximately 5,000 replies were received, a remarkably high percentage of returns and one which, in the opinion of the Committee and experts consulted by them, is sufficient to give a thoroughly dependable sampling and cross-section of the entire field.

The most startling feature of the report is its analysis of the earnings of New York lawyers, which shows that in the year 1933 more than half of the members of the bar of the City of New York were earning less than $3,000 each. The distribution of income is shown by the following table:

DISTRIBUTION BY NET INCOME FROM LAW IN 1933, AND AVERAGE OF 1928-1932

	1933 Income			1928-1932 Income	
Income Group	Number	Per Cent	Percentage Sub-totals	Number	Per Cent
$ 500 and less	282	8.79		21	.86
501 - 999	200	6.23	15.02	93	3.79
1,000 - 1,499	327	10.19		164	6.69
1,500 - 1,999	259	8.07	33.28	179	7.30
2,000 - 2,499	297	9.25		206	8.40
2,500 - 2,999	244	7.60	50.13	184	7.50
3,000 - 4,999	579	18.04		494	20.15
5,000 - 7,499	412	12.84	81.01	400	16.31
7,500 - 9,999	153	4.77		187	7.63
10,000 - 14,999	202	6.29	92.07	210	8.56
15,000 - 24,999	139	4.33		175	7.14
25,000 - 49,999	82	2.55	98.95	102	4.16
50,000 - 99,999	27	.84		29	1.18
100,000 or more	7	.21		8	.33
	3,210	100.00		2,452	100.00
Median Income	$2,990			$4,535	

Since 1933 was a depression year, the average income for the years 1928 to 1932 was also ascertained and was found to be considerably larger, half of the lawyers in those years having incomes in excess of $4,535 as compared with $2,990, the median figure for 1933.

Finds New York Overcrowded

On the subject of overcrowding, the report has the following to say:

"The local bar as a whole is now so overcrowded as to constitute a serious problem to the public as well as to the profession, for the future as well as for the present. Therefore we recommend that admission to the bar should be further restricted.

"(a) This conclusion is inescapable on the record as to New York County, and is apparently applicable also to New York City as a whole, and very likely to the entire State. (It is of course conceivable that some day some method of restriction may be made specially applicable, as required by public need or convenience, to particular localities rather than being State-wide.)

"(b) There may be exceptions, to our general conclusion as to over-crowding, with reference to particular small groups, having special characteristics, within the local Bar as a whole. For example, the local Bar as a whole is overwhelmingly male and white. Yet special considerations may apply to the relative number of women members of the Bar. Similarly special considerations may apply to the relative number of Negro lawyers.

"These small classes are in one sense more or less well-defined, with possible special class sympathy or client-drawing power from equally well-defined sections of the community at large.

"On general principles we should say as to women that they seem to be under-represented in the local profession, and that many impediments, which seem to discourage them as a class in our profession, are unjustified and can be overcome in proper cases; but many of the obstacles in their way, such as the habits of mind of many lawyers and business clients, present special problems beyond our present scope. The figures speak for themselves. * * *

"(e) We believe that insofar as educational standards may be raised, and may indirectly require further financial backing, the profession should work for full and ample supporting scholarships for the most promising applicants, who may be without means, regardless of all other considerations (good character being of course a primary requisite).

"(f) More than half of the profession in New York County are in the income class below $3,000 per year; the median for the entire profession is only $2,990, almost half are below the respectable minimum family subsistence level of $2,500 per year (one third are in the class below $2,000 a year, one sixth below $1,000, and almost one tenth at or less than $500 per year); and substantial portions are on the edge of starvation, with at least close to ten per cent of the New York City Bar virtually confessed paupers.

"The cause is almost exclusively overcrowding; for the public pays enough (over $6,000 net average to each lawyer, not to speak of the extravagant overhead).

"(g) The overcrowding is attested by the comparison with actual and changing population and business figures. * * *

"(i) The economic distress of some members of the bar concerns not only those sufferers themselves, but also the bar as a whole and the public. It has a tendency to drive many of the sufferers to unethical acts. We as lawyers are most interested in having all the members of our profession maintain the highest standard of ethics,—for in our own practice we want the men we deal with to be dependable, and it is of primary importance not only to us but to the public that the lawyers, from whom judges and other officials are to be selected, shall be of the highest type. The public, which pays us millions of dollars every year, to protect its lives, happiness and property, trusting us, is entitled to have lawyers all worthy of confidence, and not any desperate starvelings. * * *

"(m) Your Committee purposes to point out elsewhere that work and revenue, for lawyers, can be increased, and the public at the same time better served; but the present economic trouble in the profession is so widespread that it would be folly to rely too much on future benefits of constructive improvements alone. The logic of the situation counsels simultaneous effort both for increasing work and revenue, consistent with the public interest, and also relieving the overcrowding itself.

"The overcrowding itself obviously militates against maximum profiting by such business as exists or any reasonably expected increment thereof. The excessive competition, induced by overcrowding, forces the handling of work, in wide areas, on a basis less than compensatory. Nor does this spotty existence of low prices redound unreservedly to the public benefit; since at low prices the client may sometimes receive, as the saying goes, only what he pays for, the security to which the public is entitled is undermined, and a disorganized and unstandardized "market" opens the door to catch-as-catch-can tactics which are not to the public interest in a professional relationship.

"(n) Further restriction of admissions to the Bar is not inconsistent with democracy. The following observations meet some commonly voiced objections:

I. Not everybody in New York can become a lawyer even today. The practice of the law is a privilege and not a right.

II. Nor can everybody in New York today become a doctor, plumber, school-teacher or electrician, or operate a gas company, railroad or bank.

III. Lawyers are officers of the courts, they are subject to restrictions (for example they are not permitted to canvass and circularize strangers for business), they have devoted their lives to make a certain training a necessary and vital service available to the public, and there is no logical reason why they should not have the protection of something in the nature of a franchise granted in proportion to public necessity or convenience.

IV. The courts, the legislature, the people, all have power to limit our particular profession according to reasonable public need. (See the brilliant piece of scholarship represented by Mr. Teiser's collection of the legal precedents, for arbitrary limitation of the Bar according to public need, in XXI A. B. A. Journal (1) at p. 42 et seq.) See also p. 135, and note 14, of the Wisconsin Survey Report, supra, for recent American (Penna.) "quota" precedents.

V. The public is already protected, against extortionate legal charges based upon alleged monopoly, by the standards of well-known court decisions and statutes; and certain classes of fees might be further regulated.

VI. The humane problem of what to do with a given quantity of persons theoretically capable of becoming good lawyers, if they are discouraged or not allowed to become lawyers (at least at a given time), is a community vocational problem, and is not solved by dumping them into the legal profession.

Restriction on Admission Recommended

As one method of dealing with overcrowding, the committee recommends in general terms the raising of admission standards and the adoption of a quota system. On this subject the report continues:

"(o) We recommend that measures be taken at once for further restricting admissions to the Bar of New York State. As to method:

I. There is no doubt about one method, namely, that of raising the standards of merit for admission.

If there is any better way of judging and acting upon character tests, it should be found and adopted; but we are frankly doubtful of practicable progress in that direction.

As to educational or other tests of training, knowledge, aptitude and the like, we again favor such processes as will give the Bar and the public the best lawyers available; but as our Association has another committee on this general subject, namely, Legal Education and Admission to the Bar, we do not find occasion to suggest any definite proposals ourselves in that field at this time. We believe that the standards of New York State for admission to the Bar are commendably high as they stand; but with the continuous advance of the sciences of vocational testing and training in

numerous fields, we recommend further attention to all such devices, including numerous proposals made from time to time for examination or other guidance or testing before the commencement of law study, the so-called preceptorial system, the use of compulsory clerkships or apprenticeships, increasing law school curricula, the exploration of practical tests of aptitude analogous to those worked out by educators for the teaching profession, and limitation of the number of times a candidate may take the written Bar examination. The Committee believes that some at least of such additional devices which may be scientifically and judiciously arrived at, may have a wholesome effect by way of vocational guidance even on a voluntary basis.

II. As to methods other than those merely raising the competitive standards, we believe the quota system, either for the State as a whole or, so far as practicable, for local regions therein such as New York City, if not New York County, that is, limiting (by legislation or Court rule) the number of lawyers to be admitted, during a given period, to a given number, if any, according to estimated need of the community, may be advisable in the interest of the public as well as present and prospective members of the profession,—with fair treatment of those already embarked on law study; and we recommend immediate practical and more definite study of this problem.

III. There is another minor method, of cutting down present size by justly eliminating a not inconsiderable number of present lawyers, to which more detailed consideration will be given from another standpoint herein below, namely, registration. Just as frequent general calendar calls, in some New York City courts, eliminate much dead wood in litigation, so perhaps the incompetent casual practitioner might be eliminated, without serious loss to himself, and with benefit to the community, by efficient periodical registration requirements. * * *"

The report then presents recommendations dealing with the development of new legal business by means of a collective approach including the organization of neighborhood clinics, the establishment of lists of qualified specialists and general practitioners, their recommendation to the bar and the public, a systematic publicity campaign, annual registration of the lawyers of New York and payment of a registration fee by them and a number of other important suggestions.

High praise is due to the Committee for the exhaustive studies it has made and for the valuable report it has produced. Only a very small part of it has here been touched on. Other topics include a discussion of overhead charges under the heading "Cost of Doing Business," organization of the legal profession as bearing on earnings, relationship of the nature of clientele to

earnings, lawyers practicing as a part-time vocation, patronage, including a discussion of appointments by judges, women lawyers, age groups, proportion of lawyers and other professional groups to general population, and many other subjects.

Reference is made to a fuller account of the report which appears in the July number of the American Bar Association Journal. The committee is headed by Mr. Isidor Lazarus, and among its members is John Kirkland Clark, Chairman of the New York Board of Law Examiners.

"Philadelphia, June 11, 1936.—At a special meeting held yesterday the Board of Judges of the Courts of Common Pleas opposed a plan recommended by a special committee of the Philadelphia Bar Association, whereby the number of admissions to the Philadelphia bar would be numerically limited, commencing in 1939. * * *

"One suggestion was that the admissions should be limited to 80 in each year, which would cut in half the average number admitted per year for the last 10 years. A ballot on the question was submitted to members of the bar association last October."

Nebraska Joins. Amendments to the rules for admission to the bar of Nebraska, adopted by the Supreme Court on June 13, 1936, include the following provision: "A practicing attorney from another state or territory seeking to be admitted generally in this state shall pay a fee of $35.00, of which $25.00 shall be paid to The National Conference of Bar Examiners for investigating and reporting upon the applicant."

Fordham Approved. The Fordham University School of Law, New York City, received the provisional approval of the American Bar Association at the meeting of the Council on Legal Education and Admissions to the Bar, in Washington on May 6. This provisional approval becomes effective in September of this year and brings the total number of schools on the approved list of the Association up to eighty-nine.

A Correction. Mr. Hugh J. Fegan, Assistant Dean of the Law Department of Georgetown University, Washington, sends us a correction to the article by Mr. John Brown Mason in the January number of The Bar Examiner in reference to lawyers in the 74th Congress. Georgetown should be credited with three Senators and seven Representatives. There were eight Representatives from that school in the previous Congress.

it is able to furnish him with specific and comprehensive examples of the work of prospective applicants.

In summary, it may be said that the two years of experience with the Briefing Service at this Law School convinces us that it is a valuable undertaking for the School, the student, and the lawyers whom the organization is designed to serve.

Is "Radical Activity" Ground for Refusing Bar Admission?

San Francisco, May 22.—On charges of college radicalism, an effort is being made to prevent Aubrey W. Grossman, University of California graduate from taking the oath requisite for the practice of law, it was revealed here yesterday.

Should the Committee of Bar Examiners and the State Supreme Court uphold the contention, the action will be unique in the history of American jurisprudence.

The Subversive Activities Commission of the California American Legion, under the leadership of Harper L. Knowles, called upon Chief Justice Waste to bar Grossman from practice on his university record. Knowles claimed it revealed "continuous and pernicious radical activity of a known communist pronouncement."

It was further asserted that Grossman could not take the oath to support the California and Federal constitutions, required of attorneys, without having his "tongue in his cheek."

Judge Waste requested Claude Minard, executive secretary of the State Bar, to bring the Legion's charges before the bar examiners. They will meet here May 26 to decide Grossman's case.

Grossman took the recent bar examinations and passed. He was an honor student at Boalt Hall, California Law School, being chosen as one of the editors of the California Law Review.

The American Civil Liberties Union, through its Northern California director, Ernest Besig, announced yesterday they will fight the Legion in its attempt "to make membership in the State Bar depend on political considerations."

They will defend Grossman on three grounds: First, no specific instances of his asserted radical activity have been named. Second, assumption that he will not take the oath in good faith is assuming he will commit crime. Third, even if he were a member of the Communist party, which is not admitted, that is a legal party and therefore membership in it could not be used as a basis for denying him the right to practice law.

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Wyoming.....N. R. GREENFIELD

Quaker State Adopts Character Plan

At a recent meeting of the State Board of Law Examiners of Pennsylvania, a resolution was passed adopting the foreign attorney investigation plan of The National Conference of Bar Examiners. This action is of particular significance in view of the fact that it is generally conceded that Pennsylvania leads in the thoroughness with which it investigates and passes on the character of all candidates for admission to the bar. Their investigation is conducted by local committees and in the case of original applicants includes a careful survey, by comprehensive questionnaires and personal interviews, of the student's record at the time of his first registration before he begins the study of law, as well as an additional investigation at the time he applies for admission to the bar. There are now fifteen states which regularly use the services of the Conference for character investigation of foreign attorney applicants.

Psychology Points Way to New Character Tests

By Oscar G. Haugland*

Secretary, Minnesota State Board of Law Examiners

Much has been written in our own Bar Examiner, in the American Bar Association Journal, in other publications devoted to our professional problems, and elsewhere, concerning moral character and the desirability of determining the presence or absence of that vague trait or combination of traits. Much more has been spoken on this subject at our meetings and similar meetings. That the subject is important goes without saying. That not much is being done about it, effectively, is generally conceded.

The futility of investigations into the moral character of our applicants is illustrated by the report made by Mr. Horack and Mr. Shafroth on the survey of legal education and admissions to the bar in California. The methods used in that state were described in that report in this manner:

> "The applicant files a questionnaire which is examined by one of the employes of the state bar office. Character witnesses whom the candidate lists in his application are written to concerning him. If their replies are satisfactory, it is assumed that the candidate has good moral character. If on the face of the questionnaire it appears that a man is of doubtful character, which happens only in the rarest of instances, a further investigation is made."

Their comments upon this are not only obvious but may well be applied to the investigations made in practically all of the states, when they continue:

> "This procedure is no safeguard whatsoever to the public. It is not even a real and genuine attempt to find out what the man's character is. It is common knowledge that anyone, no matter how dishonest or unscrupulous he may be, can supply as reference the names of three persons who will vouch for him."

The report which Mr. Shafroth made in the July-August, 1934, Bar Examiner upon "A Study of Character Examination Methods in Forty-Nine Commonwealths" indicates that even the states which have adopted "more advanced" or detailed methods of gaining information on this subject have progressed barely a step, if at all, in efficiency. We all know of the procedure in Pennsylvania where comprehensive questionnaires are required of the applicant, his preceptor, and three citizen sponsors at the time of registration for law study, the personal appearance and interview made before the county board at that time, the supervision of or contact with the student by the

* An address delivered at the sixth annual meeting of The National Conference of Bar Examiners, August 25, 1936.

preceptor during his law study, and the duplication of the initial investigation at the time of application for the bar examination. That this method, which is approximated in some of the other states, should be credited with some achieved results superior to the usual perfunctory methods appears from the figures quoted in Mr. Shafroth's report. It seems doubtful, however, that the Pennsylvania method, the procedure suggested in Mr. Shafroth's report, or any of the systems now in operation, provide for as thorough and accurate an investigation as the problem warrants, whether the viewpoint be that of the student or that of the public upon whom the applicant may be foisted. That Pennsylvania, through its adoption of more comprehensive and searching means of inquiry, has gathered information which would probably not otherwise have been available, appears from the digests supplied by Mr. Douglas in his talk at Memphis in 1929.

Realizing full well that the digests may not indicate the evidence actually at hand, it does seem that applicants may have been disqualified upon evidence which would not be admissible in any legal proceedings. Thus, one applicant was rejected partially because he was "accused of embezzlement by his employer." Another digest stated that "one citizen sponsor was under impression father and possibly son are connected with bootleggers." Another, "Father suspected by creditors in recent bankruptcy proceedings of concealing assets." On the other hand, it is highly probable that in numerous cases undesirable applicants are undetected and approved.

One of the first steps in the investigations in practically all of the states is the submission of a questionnaire by the applicant, and often others, by means of which we attempt to gain information, among other things, about the applicant's character. These questionnaires undoubtedly vary in the different states. Even the more comprehensive ones may well be criticized. Thus, Dean Clark, in an address delivered at our 1933 meeting, pointed out that opinions as to the applicant's character, based upon the type of questions asked in even some of our better questionnaires, may constitute judgments resting on nothing more substantial than prejudiced assertions. He properly concluded that some of these questions were at their best meaningless and valueless and inviting of unsubstantial and unsubstantiated guesses. Our chief difficulty in framing questionnaires arises from the fact that we do not know what we are searching for and if we did we would not know how to go about it.

We all seem agreed that a candidate should be required to make a personal appearance before us so that we may thus insure more accurate appraisals of him. The validity of this assumption is certainly, at its best, doubtful. Dr. Moss, Professor of Psychology at Georgetown University, comments rather pointedly on the reliability of the personal interview in the selection of personnel:

"In the first place, an interviewer tends to generalize on too few experiences. If the interviewer has had an unfortunate experience with a red-headed person, he tends to regard all red-headed people with suspicion; if he has been swindled by some one with a hooked nose, he feels that no persons with hooked noses should be trusted; and if a man of the Jewish race has double-crossed him in the past, he tends to place less confidence in other members of that race.

"Another cause for unreliability of the interview is the widespread assumption that habits are general rather than specific. It is assumed that neatness in one situation will carry over into other situations. Clean hands may be taken to indicate clean morals, and dirty hands, dirty conduct. It may be assumed that a person who talks rapidly will be a rapid typist, and that a person with slow speech will work slowly. The fallacy of such assumptions have been demonstrated time and again. All habits are specific and involve certain definite reactions to equally definite situations. Nervousness on the part of the applicant is sometimes a third cause of unreliability. In the excitement of an interview, the applicant not infrequently fails to do himself justice."

Dr. Moss goes on to point out that experimental measurements of the reliability of interviews in employment,

"indicate that the personal 'sizing up' of applicants by interviewers is only a little more reliable than determining their fitness by an alphabetical arrangement or a chance shuffling of the names of the applicants."

Mr. Shafroth's report shows that nineteen of the states either publish or post the names of the applicants, or send lists of the names to members of the bar. In Minnesota, we are commanded to publish the name of each applicant in a newspaper of the county in which the applicant resides more than twenty days prior to our report upon him to the Supreme Court. Religiously, we have done so prior to each of our three annual examinations for many years. In the eight years during which those published notices have invited the transmission of information concerning the applicants to my office, the total of the information thereby elicited has been zero. Our files disclose no better record prior to that period.

Most of the states require affidavits as to character from persons of eminent or lesser standing. It is unnecessary to comment on the ease with which such affidavits are obtained, not only by applicants of doubtful character, but even by those bearing a distinctly unsavory repute. Upon the rare occasions when we have more or less accidentally discovered facts upon which we have rejected the applicant, we have had both affidavits and letters from lawyers of good standing and from other responsible persons attesting to the good character of the applicant. In fact, the graphic and very often verbose descriptions which we receive of the sterling qualities of the applicant would be amusing if they did not constitute so severe an indictment of our methods of

investigating moral character. And other than registration and the time of the initial investigation and supervision during the period of law study, our methods in Minnesota do not differ from those in states like Pennsylvania, except possibly in the scope of the questionnaires. This difference is undoubtedly of importance, but it is submitted that we are all struggling along with antiquated machinery.

We have made many advances and improvements in our judicial system since the time when questions of fact and of law were decided by ordeals. Such advances, however, suffer by comparison with those made in the fields of so-called science. When matters of property rights and personal liberties were decided by combats between professional champions, medications were administered and operations performed in equally crude fashion. Science began its great move forward when it abandoned the deductive method invented by the Greeks and adopted what we now refer to as the scientific method. Bertrand Russell tells us that "The essence of the scientific method is the discovery of general laws through the study of particular facts." Scientists now gather data through numerous and painstaking observations. The next step in their method is the classification and organization of such data on the basis of similarities, variations, activities, processes, causes, and results. Principles and theories are then induced in tentative form through generalizations based upon the organized data. Those generalizations or theories are validated or verified by controlled experiments, by tested predictions of results, by repetition of experiments and by observations of additional data.

In that part of our field which we are now discussing, however, we are still stumbling along in our own inefficient manner using archaic methods, attempting to cope with a problem for which we possess neither the training, the information nor the experience to handle. It is particularly an inconsistency that lawyers who require so many "circumstantial guaranties of trustworthiness" omit such requirements in matters such as this. When a witness is asked a question involving an expert opinion, we immediately cry, "incompetent, no foundation," until a showing is made of training and experience warranting the conclusion that the expert is really competent and that his opinion is entitled to greater weight than the inexperienced and untrained witness. Members of examining boards and character committees, however, with no foundations for their opinions other than the fact that they may have struggled with the problem for some years, or are about to commence struggling with it, decide the destinies of the applicants who come before them or hazard the interests of the public on the validity of their own inexpert conclusions as to the presence or absence of that intangible condition described as a proper moral character.

In the first place, what is this thing for which we are searching which we label "character"? A dictionary defines it "as the combination of qualities

distinguishing any person or class—the individuality which is the product of nature, habits, and environment." Dr. Hartshorne, of Columbia, speaks of various theories of character, distinguishing as he says, on convenient logical grounds the trait, habit, pattern, factor and self theories. Neither a definition nor a discussion on the point is of much help unless it clarifies or classifies for us the thing for which we are searching, so that we are thereby assisted in finding its presence or absence. A psychiatrist tells me that persons possessing improper moral character, in other words, those persons whom we are trying to exclude, are classified in the field of psychiatry as constitutional psychopathic inferiors, grouping in this class pathological liars, pathological drunkards, forgers, thieves, murderers, perjurers, sex perverts, and inadequate personalities. These people are those who are said to lack the ability "to inhibit the temptations and impulses which becloud the formulae of good behavior." Another psychiatrist, however, says that rarely, if ever, will any members of this class reach us for the reason that by that age they are either in jail or in an institution. A psychologist, at our state university, insists that the classification I have just cited is too broad and that by determining that a man is not a constitutional psychopath, we are not safe in predicting that the individual, if subjected to the normal stress of professional life, will not lapse from the recognized standards of conduct of the profession.

The theme of this paper is that the difficulties inherent in our problem are of such a nature and the matter is of such importance that we should certainly avail ourselves of all information and assistance which we can obtain and particularly that which we can obtain from those persons whose knowledge and methods rest on scientifically accumulated, scrutinized and verified data. It is submitted that such information and assistance are available.

Scientists long ago ventured from the definite world of physical science and began to devise calipers and yardsticks which would afford them, in as precise fashion as possible, accurate data of the various groups of traits constituting personality. We are all familiar of course, with the work done in the measuring of abstract intelligence. Alfred Binet, a pioneer in that field, developed the first intelligence test. The type of test developed by him could be administered only individually to every person tested. Other psychologists developed and improved upon his method. Thus the army intelligence tests, which were developed under the direction of the Psychological Staff of the Surgeon General's office and the National Research Council, may be given in a comparatively short period of time to several hundred people who undergo the test at the same time. By the end of the World War, this test had been given to over a million and a half men. On the basis of the results, over seven thousand of the men examined were recommended for discharge. Others were placed in the various occupations in the service which their intelligence level indicated they were fitted for. Similar tests are being

used throughout industry and in various educational institutions, and reliance is confidently placed in the substantial accuracy of the results.

However, a man may have a high abstract intelligence, he may do well in school, but he may be lacking entirely in the ability to get along with people which is, of course, often much more important than abstract intelligence. Psychologists, recognizing this importance, have developed tests for the measurement of social intelligence. On the basis of the information thus made available, a number of colleges and universities help their students to select their courses and to plan their careers. Industrial concerns have also utilized such benefits.

It has already been reported to this group that a number of law schools are administering or planning to administer so-called legal aptitude tests. Mr. Crawford of the Department of Personnel Study at Yale addressed us at our meeting in 1931 on the use of legal aptitude tests in the admission of applicants to the Law School at Yale. In 1933, Dean Clark told us of the success of this test.

In view of the apparent success of psychology in measuring such abstract traits and qualities, it is not surprising, therefore, that attention has been turned to the possibilities of measurement of character, highly intangible though it be.

We are told that since 1920, and particularly since 1924, there has been a rather sudden development of interest in this field. Doctors May and Hartshorne of Columbia published in 1928, in connection with the Character Education Inquiry conducted by the Institute of Educational Research of Teachers College, Columbia University, a volume entitled Studies in Deceit, which, besides reporting upon the work done under their direction, discusses a number of tests developed by others.

In a later volume published in 1930 entitled Studies in the Organization of Character, they report in one chapter upon a large number of more or less independently developed tests of various personality traits which approach the determination of the character of the subject.

One of the psychologists at the University of Minnesota tells me that the most authoritative work which has been done in the field of character measurement is that reported by Doctors May and Hartshorne. The Character Education Inquiry, in which their work was done, was instituted primarily through the activities of the Religious Education Association. Acting in accordance with other groups, they prevailed upon the Institute of Social and Religious Research, which in 1924 obtained the consent of the Teachers College, Columbia University, to undertake the project as "an inquiry into character education with particular reference to religious education."

Dr. Hugh Hartshorne, then Professor of Religious Education at the University of California, and Dr. Mark A. May, then Professor of Psychology at Syracuse University, agreed to serve as co-directors and the inquiry was

placed under the immediate supervision of Professor Edward L. Thorndike as Director of the Division of Psychology of the Institute of Educational Research.

In view of the purpose of the inquiry, the attention was directed primarily to children and the reported tests are mainly of children. The methods used and the information gained would seem to promise equal success if used in our field.

In 1927, Doctors May and Hartshorne published a monograph entitled Testing the Knowledge of Right and Wrong, in which they described the tests which they had developed under the Character Education Inquiry. For convenience in developing a method of measuring character, they divided the field of character study as follows: (1) Mental content and skills, the so-called intellectual factors; (2) desires, attitudes, motives, etc., the dynamic factors; (3) social behavior, the performance factors; (4) self-control, the relation of all these factors to one another and to social-self-organization.

They prefaced their description with the following statement of their attitude as they approached the problem:

> "Our interest in what words may reveal of moral knowledge is not based on the assumption that knowledge and behavior are highly correlated. One of our problems is to discover what the relation is between behavior and the knowledge of right and wrong. Furthermore, we do not assume that word behavior and a true knowledge of right and wrong necessarily go together. It may be that what a man does is a far better indication of what he really knows about right and wrong than what he says. If this be the case, there remains a very significant problem of what he says and what he knows on the one side and the relation between what he says and what he does or would do on the other. Words have a social significance that cannot be ignored. The heart of the problem of character lies in the adjustment of persons to one another and this adjustment is never complete until it has become articulate."

The tests were administered to sixty-eight groups of children in day schools in New York City, in a New York suburb, in a midwestern city and in some private schools for boys. Before preparing their tests they made a preliminary classification of the kinds of experience that theoretically ought to be included in a complete set of moral knowledge tests. They conceded that an extended study of the actual behavior of all types and ages of children in all sorts of actual situations should be had, but that material not being present they made their classification upon the knowledge of life and of children which they possessed.

The tests were given much as intelligence tests are given. Necessarily space and time does not permit of an extended discussion of them. They gave word tests requiring a choice between opposites, similarities and word consequences, the latter including all likely, most likely, best and worst con-

sequences. They gave sentence tests involving what they described as cause and effect, duties, comprehensions, provocations, foresights, recognitions, principles, applications, social ethical vocabulary and good manners. The tests were particularly based on the assumption that a person's tendency to honesty or to honest behavior is indicated by his reactions to certain realistic situations provided the situations can be presented without arousing the subject's suspicions. Their tests were designed to elicit what information the child had of moral duties and principles, his ability to foresee the consequences of deviations from such principles, his recognition of such deviations, his capacity to apply the principles to concrete situations, his background as indicated by the good manners test, his understanding and application of sayings, slogans, definitions, etc., as reflecting what they termed "fundamental folkways."

They were handicapped, of course, by the difficulty of obtaining accurate standards of criteria to judge the answers. They did this partially by submitting the tests to a class of graduate students in Education who were taking a course called the Psychology of Character Study, by their own conclusions and in some cases by reviewing the agreement of the subjects upon some of the questions.

Where the results on some of the tests, which were very similar to others graded, showed consistently an unusually high correlation, they abandoned some of them as being mere duplications.

Their later works, which have already been mentioned, report much more elaborately upon the tests as they were later altered and improved and, of course, report upon the results obtained.

In the volume published in 1930, Studies in the Organization of Character, Doctors May and Hartshorne, in addition to their further reports on the tests, state some of their conclusions derived therefrom. In all, they have devised or selected about eighty tests, many of them in two forms. As has already been said, some of those were abandoned. They recommended for a practicable measure of total character a battery of tests, apparently designed to measure honesty, service, inhibition, persistence, moral knowledge and attitude, and reputation.

It is not suggested that we hand our problem, lock, stock, and barrel, over to the psychologists. I am aware of the critical attitude of lawyers towards work of this nature. Professor Michael of Columbia in his address published in the American Bar Association Journal of May, 1935, on Psychiatry and the Criminal Law, takes stock of this skepticism. Discussing the difficulty of cooperation between psychiatrists and lawyers, he says, "The lawyer is skeptical of the psychiatrist's knowledge, and the psychiatrist is distrustful of the lawyer's purpose." Assuredly in view of our lack of knowledge and opportunities for investigation and experimentation in the field, we

are not warranted in adopting Macbeth's attitude, "Throw physic to the dogs, I'll none of it."

That these tests involve "less tangible areas of human nature than those measured by the abstract intelligence tests must be conceded." Apparently, Doctors May and Hartshorne and their eminent advisers who cooperated in the Character Education Inquiry feel that those areas are capable of accurate measurement. Other psychologists apparently join in that confidence.

The very factors which repel confidence in tests for the measurement of character are those which most strongly impel us to seek aid of this nature. The elusiveness of the qualities which are to be measured, the absence of generally accepted criteria and methods, the lack of opportunity to verify conclusions by subsequent observation, all of the difficulties inherent in the problem demand that our dilettant efforts be at least supplemented by the knowledge and methods, if not by the direct participation, of those persons whose painstaking accumulation and observation of data and whose laboriously validated experiments and conclusions eliminate to such an extent as the subject matter now permits, the errors which we must concede that we commit.

The Bar Examiner

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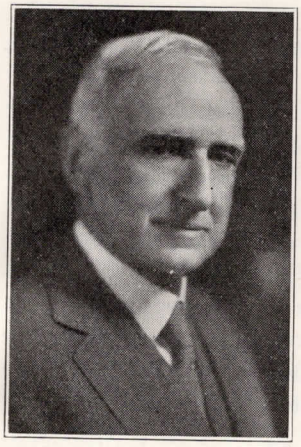
The Oral Examination in Massachusetts

By William Harold Hitchcock*

Chairman, Massachusetts Board of Bar Examiners



George S. Taft
Senior Member

Our Board was established in 1898. It is appointed by the Supreme Judicial Court, and consists of five members, not more than one member from a county, each appointed for a term of five years. The Court, following its usual practice of standing on a decision when it is once made, is quite apt, if the member appointed does not struggle too vigorously, to reappoint him, so that we have had men serving on our Board for many years. The all time record is that of George S. Taft, now our secretary, who has served 36 years.

We have two examinations a year, one about the first of January and the other about the first of July. Those examinations are for one day only, seven hours in all. They always have consisted of fifteen questions in the morning and fifteen questions in the afternoon.

Our rules set forth a list of subjects upon which candidates are to be examined, which are the fundamental subjects of the law. We have grouped those subjects into five groups. I will read you the first group: Contracts, three questions; negotiable instruments, two questions; partnership or agency, bracketed, one question. There you see, is a provision for six questions, and, without going into the details of it, other subjects are grouped in the same way, such subjects as contracts, corporations, real property, equity and trusts, with the suggestion that there be three questions, and other less important subjects, two questions, and other still less important, one question, leaving to the examiner to choose in which of those subjects there shall be one question.

That grouping of subjects is more or less permanent and is shifted each six months so that a member of the Board gets a different group of subjects from the one he had the time before. With five members of the Board and two examinations a year, in two and a half years he will make the complete gamut of the list and get around to the same subjects he had two and a half years before.

About the middle of November, the Chairman calls a meeting of the Board for the consideration of questions. That is at least an all-day session, and

* An address delivered at the sixth annual meeting of The National Conference of Bar Examiners in Boston, August 26, 1936.

usually we do not finish in one day. Each member presents both the question and the answer, the answer serving for two purposes; first, to test the question and to see whether we agree with the advisability of having it or not, and, second, to have a record as to what is probably a reasonably suitable answer for the question. The questions actually selected and the answers we keep and bind so we have a full set from the very beginning. We spend usually a whole day and perhaps cover the questions of three men. Then we meet again sometime later and finish that work.

It has been the practice for one member of the Board to serve as editor of the questions, that duty being passed around to each member of the Board. It becomes the duty of the member who serves as editor to revise the questions as to form and to check up the answers. The questions, when thus edited and put in final form, are then turned over to the Chairman to have printed.

We have two examination books numbered for each applicant, but with no place for the name except on the cover, one book for the morning, the other for the afternoon. The cover comes off, the book is divided into three parts, the first part spaced for six questions, the second part for the next six, the last part for three; the afternoon book, the first part for three, the next part for six, and the next part for six. You will note, therefore, that the section which goes to each examiner can be separated and taken out of the cover. Thus what goes to each examiner is simply the answers to his six questions and nothing more, and with no name, simply a number.

For many years each examiner personally read and graded his section of the books. Shortly after I came on the Board there were about 835 applicants who took one of our summer examinations. That was the highwater mark for numbers. Life was not worth living that summer for any member of the Board. Up to about that time the practice was, when the marks were all in, for the Board to determine a provisional passing mark. We never had an absolute passing mark, for our Board has never, I think, gone on the theory that admission to the Bar was to be based solely on arithmetic; but we would establish a provisional passing mark; those clearly above that mark were marked "YES" as a matter of course, and those well below that mark were marked "NO" as a matter of course. There would be in a list of 700 to 800 applicants a list of about 100 who were in the twilight zone of doubt.

In the meantime, a summary of the history and record of each applicant was prepared for each member of the Board, and the Board at a meeting without seeing any applicants would deal with these twilight zone cases on the basis of the whole record, including the examination mark. It seemed to me and some others that if we could only see the applicants, at least those on the doubtful list, and go over their records and their whole situation with them, not split the issue between character and qualifications, but make it all one issue, we would be in a much better position to reach a sound judgment.

Eventually we determined to make a try of that procedure. We got the permission of the Court. Then of course it developed that if the members of the Board spent all their time reading papers, they could not devote much time to seeing applicants. We then arranged that the books should no longer be marked by members of the Board but that each member of the Board should select some younger member of the bar of substantial experience to grade his section of the papers under the general direction of the member of the Board.

Lacking experience, after the first examination we saw every applicant no matter what his mark. That turned out to be a waste of time. Since then we have set a certain mark, perhaps varying with different examinations, depending upon how the marks ran, and saw every applicant who had that mark or higher, going over with them when we saw them, to whatever extent we thought necessary, the written examination, their educational record, their history in general, and then saying "yes" or "no" upon the entire record and upon consideration, of course, at that time of any character questions that came up.

Let me say right here (perhaps the detail is not of very great importance) that the only way we get information in the first instance, at any rate, with reference to character, is by a questionnaire and by letters of recommendations from other members of the Bar. The questionnaire has to be filled out by every applicant; it goes into the family and personal history and education, with various questions as to whether the applicant has been involved in any civil or criminal legal proceedings, the latter from parking overtime up to murder in the first degree. We get a quite accurate record.

When we first had our so-called oral examinations, we did not go farther than I have described. This is not much more than taking a view of the premises, as the jury does in a land damage case or an automobile collision case, but even that was much better than we had been doing before, because it gave us an opportunity to do what we would all do if we were hiring an office boy—we would give him the once-over; it gave us an opportunity to ask questions about anything specific that developed and then to deal with the case on the combination of everything we could learn about the applicant, bearing in mind, of course, that a high mark necessarily took a man by in the absence of any defect in character, a low mark put him out independent of anything else, and that in the case of a twilight zone mark we could make allowances a little each way as the case deserved. Of course, we had always to have before us the danger of favoritism.

While this procedure was a definite step in advance, it was not a real oral examination on the issue of legal ability. Due to the versatility of Mr. Powers, we have now adopted for several examinations what is a real oral examination on legal ability, knowledge of the law and general intelligence. It is in its experimental stage. It has its dangers, but we feel it is another long step in advance.

I have always said that if we had only twenty-five to fifty applicants for admission to the bar instead of twenty times that number, the ideal thing would be to give each applicant a record, either fictitious or actual, in a case that was going to an appellate court, and say, "Write a brief." Turn him loose in a law library, have somebody watch him so you would know that he did the work himself, and the test would be infinitely better than almost any bar examination. Of course that is impossible, with the number of applicants that we have. What we have done is to try to approach that situation. We have, on three or four occasions, prepared and sent out to the applicants who were to be called for the oral examination, some printed material.

What we used six months ago was a supposititious case, a bill in equity and an answer, with a summary of evidence that had been introduced at the trial of the case, the theory being that the case had been tried in our Superior Court, and was to be argued in a day or two. To half of the applicants we said, "You are junior counsel for the plaintiff," and to the others, "You are junior counsel for the defendant." To all we said: "You are going to have a consultation with your senior counsel. Prepare yourself in any way you see fit, consult with anybody you see fit, except other persons who took this examination, inform yourself fully, prepare a memorandum of law and come in prepared for a consultation with senior counsel."

Mr. Powers invented a machine-gun, theoretically at any rate, and this case was a bill in equity brought by a plaintiff who was an inventor. The facts were somewhat complicated, so that an applicant had to establish that he had a little gray matter in attempting to understand the facts, and there was quite a variety of questions of law of a somewhat fundamental character involved.

I doubt if we start another machine-gun case, because many of these applicants very properly, and with plenty of horse sense, ran around to one of our leading sporting goods concerns in Boston, and I was afraid that almost any day we would have a bill in equity brought against us for injunction to keep them away. I suspect that at least a hundred of them went around to different stores of this concern to get information about the workings of machine-guns. They did not find this particular machine-gun, because whether it would work or not, it never had been manufactured.

This summer we are sending out some material which is a story of more or less of human interest in which there is involved a defaulting executor, who after he defaulted but before he was found out, married the widow of the testator. He stole from the estate, or at least borrowed from the estate, and ran a margin account with a broker whom Mr. Powers has given the delightful name of Sellim Short. He pledged some bonds of the estate and when further margins were demanded he committed suicide.

There was a lot of correspondence of more or less interesting character between him and his wife and with Sellim Short. There was also what pur-

ported to be a "suicide note" but which was perhaps a fake. The idea is that this is a mass of material that is dumped down on counsel, and he is to find out first what the story really is, and then who is liable. The name of the deceased executor was Earl E. Gammon, and his wife gave him the pet name of "Oily." Oily Gammon is a name, I think, known to a great many members of the legal profession.

The applicants who have the required mark on the written examination are asked to come before us, one at a time with no other present. Each one has been told in advance, "You are counsel for Sellim Short," "You are counsel for Mrs. Gammon," "You are counsel for the surety company," which was called the Honor & Integrity Bonding Corporation. "Go over this case, prepare whatever memorandum you choose to prepare, and then come in prepared to discuss the rights or liabilities of your client and to suggest what settlement you would advise as the proper way out.

It has proved very interesting. As one of the judges of our Supreme Judicial Court, who saw the problem, said, "There are large chunks of law under the surface." It has given us an opportunity to judge these applicants, to test their ability, to correct whatever errors of exaggeration there may be in the marks on the written examination, for we get men having marks that are higher really than they deserve, and to correct errors resulting from marks which are lower than the applicant really deserves.

We are now in process of going through our list of applicants. We find in this examination about half of the applicants are being given the oral examination. We have set a rather low mark for the oral. Those who come before us are selected purely on the basis of that mark. Occasionally in looking through the record of an applicant we find that he is right on the ragged edge; he has an excellent educational record, but he is a point or a fraction of a point below. In such cases we ask the members of the Board to review his paper and see whether there has been any unfairness or inaccuracy of grading in his case. So seldom does any substantial change result from this procedure that it is only in a very few cases that we do it.

We are going to attempt in a few minutes to give an illustration of the way we run this oral examination, but that I may tell you my entire story at once, I will tell you what happens afterwards.

Of course, if there is any character question, anything in a man's record that requires explanation, a criminal record of any sort, or if any complaint comes to us, we dig into that at this oral examination and make it a hearing on character as well as on legal ability. While I am not a veteran in this work as are some others, I am getting around to the point of thinking that applicants for admission to the bar are neither moral nor immoral but unmoral! For the most part they have not been tested by experience, and in view of the type of men who have gone wrong here in Massachusetts I do not believe there is any way of successfully putting on x-ray eyeglasses, of

looking into a man's inner soul and determining whether he is going to go wrong or not. The only way you can find that out is by testing him by experience.

We do have, however, one check-up on character, about which I am not so hopeless in my view as one of the gentlemen who spoke here yesterday. Our rule as adopted by the Court requires that notice must be published three times, as a legal notice in one of the Boston papers, thirty days before applicants are sworn in. Then the Boston papers always carry the full list of successful applicants as a news item. During that period of thirty days there is an opportunity for anyone to complain. Not infrequently we receive complaints that require careful consideration. Sometimes these result in adverse decisions even at this stage.

When this grief is all over, notice is published and no complaints having come in, a single justice of our Supreme Judicial Court has a field day. We swear in the successful applicants, usually in two groups, one when the Court comes in for this special session in the morning, and the other a couple of hours later. The job is then all over, but in a few weeks the Chairman sends out notices of assignments of subjects for the next examination, and the grind begins again.

The Examination Clinic at Boston

A unique and interesting feature of the Boston meeting of the Conference was the "clinic" given by the Massachusetts Board and referred to by Mr. Hitchcock, demonstrating the manner in which the oral examination is given.

Two candidates were called before the Board and each in turn was questioned by Mr. Powers on the problem mentioned in Mr. Hitchcock's discussion, involving "Oily" Gammon, the defaulting executor, and Sellim Short, a broker with whom he dealt. The young men who appeared for questioning had been given a printed pamphlet some ten days or two weeks before, containing letters, accounts, canceled checks and a variety of other pieces of evidence from which the entire transaction could be spelled out. They had been permitted to use any means they regarded as helpful in solving the problem, including full reference to any law books and consultation with lawyers, but they were forbidden to work with other candidates.

The two candidates were questioned by Mr. Powers concerning their general education, legal training and the occupations which they had followed. They were interrogated at length regarding the particular problem which had been given to them on the basis that they were counsel for one of the parties in the case and were prepared to discuss what steps should be taken and what the law was with reference to the transactions involved. Mr. Powers questioned each candidate for about twenty minutes, following which they were

Editorial

Conditions in the Profession

"The local bar as a whole is now so overcrowded as to constitute a serious problem to the public as well as to the profession, for the future as well as for the present. Therefore we recommend that admission to the bar should be further restricted."—Report of the Committee on Professional Economics of the New York County Lawyers' Association.

With this terse statement, the committee of the largest metropolitan bar association in the United States sums up the results of four years' work in making a survey of the bar of New York County. Facts and figures contained in the committee's voluminous report indicate that many lawyers in New York have an income below reasonable subsistence levels, that in the year 1933 half of the fifteen thousand lawyers in New York County were earning less than three thousand dollars a year, and a third less than two thousand.

In Tennessee, a questionnaire regarding bar admission standards was sent out last spring to representative lawyers over the state, in reply to which more than one hundred answers were received, and ninety-seven per cent replied in the affirmative to the question "In your opinion is the legal profession overcrowded?"

The question of what constitutes too many lawyers is one of individual opinion which is not capable of scientific demonstration. When Dean Garrison of the University of Wisconsin Law School made a survey of the profession in that state, he came to the conclusion that the Wisconsin bar was not overcrowded because the volume of legal business and the opportunities for lawyers had increased much more rapidly since 1880 than the increase either of the lawyers or of the population. However, his survey, made in a state where income tax returns are open to public inspection, showed that 36 per cent of the lawyers in 1929 had incomes of less than two thousand dollars and this percentage increased to 48 in 1932. In Milwaukee 45 per cent of the lawyers in practice six years or more had an average net income of less than three thousand dollars for the years 1927 to 1932.

The real essence of the overcrowding problem lies in the income of members of the bar, for the reason that whenever lawyers are unable to make a living practicing in an ethical way, there is a strong temptation to resort to ambulance chasing, solicitation of business and a commercialization of practice, the evils of which are too evident to require dissertation. A proper regard for the public interest must cause the members of our profession grave concern where it is apparent that many lawyers are not making a decent living.

Accurate information is not available on a nationwide basis, but such facts as those accumulated in New York are impressive and are substantiated by less complete and comprehensive data from other places.

According to a report made to the Idaho Bar Association, based on information received from the Commission of Finance of that state, in the year 1934 seventy per cent of the members of the legal profession in Idaho earned less than two thousand dollars and, excluding the judges and district attorneys and others who were on official salaries, only ten per cent had a gross income of over four thousand dollars.

A survey instituted in Missouri in the spring of 1934 brought very fragmentary returns, but they were probably sufficient to constitute some indication of conditions in that state. Out of 48 reporting members of the St. Louis bar, 30 per cent had incomes of less than three thousand dollars in 1929 and 38 per cent were below the same figure in 1933. The percentages in these same groups averaged about three per cent lower among 36 members of the Kansas City bar, while outside of these two cities 62 lawyers reported, of whom 57 per cent had incomes of less than three thousand dollars in 1929 while 66 per cent were below that figure in 1933.

Chief Justice Kephart of Pennsylvania believes that the only satisfactory method of bar limitation is to cut down the number of men who may enter law school. In this connection he has recently said:

"The solution, it seems to me, lies at the source of the difficulty rather than at a later stage. It is in this approach that the law schools must play the principal part and bear the greatest burden. They must perfect a more stringent selection of students, in fairness not only to the profession but to the students themselves.

"There are today numberless young men in law schools or at the bar, whose abilities are unquestionably directed toward other fields of endeavor, in which they could enjoy a success far greater than will attend their efforts in our profession, and whose diversion to other fields would have relieved much of the congestion. The problem is not merely one of scholastic aptitude which is capable of solution by curricular reform or more severe examination. It is a problem of personal and individual character study and analysis.

"The law schools must be prepared to make a more searching inquiry of applicants for admission to discover the presence or absence of the qualities and attributes other than scholastic of each individual."

The American medical profession has done just this. Only slightly more than half of the applicants for admission to the medical schools succeed in getting in, and for all practical purposes there are no third-grade, commercial medical schools. It is perfectly true that their carpet, having been pressed

down in one place, has bulged up in another and that there are many more of the various cult schools than any other profession has to cope with; but as far as licensed M.D.'s go, the number has actually been limited by the process of placing a limitation on the approved schools and eliminating the commercial training institutions. During the period from 1900 to date degree-conferring law schools have increased from 102 to 185, while in the thirty-two years since 1904 the number of medical schools has decreased from 160 to 81. How was this done? First, by a survey to establish what conditions were; secondly, by energetic, enthusiastic and successful cooperation between the American Medical Association and the medical schools and the establishment in all but a few states of a requirement of graduation from an approved medical school.

The question naturally arises as to how far our states have gone in recognizing schools approved by the American Bar Association. This is a relevant question as it was through the requirement by state medical licensing boards of a degree from an approved medical school that the present development of elimination at the beginning of medical training received its initial impetus.

At the present time there are about a dozen states which give some recognition to schools approved by the American Bar Association. In New Mexico graduation from such a school is required, and in West Virginia three years of successful study at such a school is a minimum; Connecticut, Delaware, Indiana, Wisconsin and Wyoming recognize law study only if it is pursued in this type of institution; and Alabama and Utah favor the American Bar Association approved school by requiring longer training if law is studied in an unapproved institution. In Idaho, Minnesota, Oregon, Rhode Island and Washington law school study will be recognized only in schools approved by the court, or sometimes by the examining board, which means the American Bar Association list with local exceptions. In Ohio and North Carolina certain local schools are approved and law school study out of the state must be in a school on the American Bar Association list unless some unapproved institutions receive the court sanction in the future. The State Department of Education of New York recognizes law study outside the state only if conducted in a school approved by it, and its list of approved out of state schools is identical with that of the American Bar Association. The Board of Bar Examiners follows this ruling.

Adoption of these requirements has accompanied remarkable progress in the past three years in the raising of the standards of general education to the two-year college requirement. With the addition since last fall of New Hampshire, Indiana and Texas to this rapidly growing list, there are now thirty-two states which require, either presently or prospectively, two years of college education or its equivalent of substantially all applicants for admission to the bar.

Four years ago some figures were obtained which showed the impracticability of depending on the bar examinations to screen out unworthy applicants. Ninety per cent of the candidates in the six states furnishing figures were shown to have been admitted over a period of years by virtue of their persistence in retaking the bar examinations. More recent figures bear out the former conclusions although in some cases, notably in California, the examinations have been more successful in this respect than heretofore. The following table shows the two sets of figures:

EVENTUAL SUCCESS OF CANDIDATES TAKING THEIR EXAMINATIONS FOR THE FIRST TIME IN THE YEARS 1922, 1923 AND 1924

California 83%	Illinois 86%	Pennsylvania 93%
New York 95%	Colorado 89%	Ohio 95%

EVENTUAL SUCCESS OF CANDIDATES TAKING THEIR EXAMINATIONS FOR THE FIRST TIME IN THE YEARS 1930, 1931 AND 1932

California 71%	Illinois 91%	Pennsylvania 85%
Michigan 96%	Oklahoma 89%	Florida 72%

This shows the need of qualifications of preliminary training and law school education. During the past three years new admissions have averaged slightly over 9,100 a year, and with an increasing trend in law school enrollment it is apparent that there will be no substantial immediate decrease in this figure. We are annually losing by death somewhere between two and three per cent of our members, or between 3500 and 5250 lawyers a year. This steady increase in the bar gives promise of continuing.

But even if this were not so, there would seem to be little ground for doubt that the standards of admission to the bar should be uniformly raised to the general level of two years of college plus a minimum of three years of full-time or four years of part-time study in an approved school, which would of necessity be followed by the elimination of commercial schools and those of low standards.

A Recommendation From Missouri

"Your committee recommends to the bar of Missouri that it urge upon the Supreme Court of the State of Missouri the desirability of increasing within the near future its general education requirement from two to four years of college work as a prerequisite to legal education and admission to the bar, such requirement to take effect at a time in the future, so that those now studying for the bar may not be in anywise penalized."—From the Annual Report of the Committee on Legal Education and Admission to the Bar of the Missouri Bar Association.

Chief Justice Waste and Chairman Riordan Address New Lawyers

In a picturesque ceremony at which the candidates recently passing the bar examination in California were admitted to the bar of that state, Chief Justice Waste welcomed the neophytes in the following words:

THE CHIEF JUSTICE: "The session of the court this morning will be devoted to hearing the report of the Board of Bar Examiners on those entitled to be admitted to practice law.

"You are to be complimented on the fact that the Chairman of The National Conference of Bar Examiners will make the motion for your admission this morning. This Conference was organized about five years ago. * * * I think it appropriate at this time to read to you the purposes for which this Conference of Bar Examiners was formed. Reading from the by-laws of the Conference, it was organized 'to increase the efficiency of state boards of law examiners and character committees in admitting to the bar only those who are adequately equipped * * * and * * * to study and cooperate with other branches of the profession dealing with problems of legal education and admissions to the bar.'

"California has had a very prominent part in the organization and affairs of the Conference. I can say seriously to you who have successfully passed the bar examinations, and to others who have been successful in previous years, that you are truly the beneficiaries of that organization. California is honored by the fact that the Chairman of the Conference is a member of our own bar. He has had considerable to do with shaping your examinations. One year ago he was elected Chairman of The National Conference of Bar Examiners, and was chosen for that office again this year.

"I am asking Mr. Riordan if he will not only make the motion of admission officially, but also represent the bar in extending its welcome to the successful admittees."

Mr. Riordan moved the admission of candidates and, following the calling of the roll by the Clerk, made the address of welcome to the newly admitted lawyers.

MR. RIORDAN: "Your Honors, Newly Admitted Members of the Bar, and Friends: Yesterday the Chief Justice requested me to say a word to the young men and women who today are being admitted to the bar. It was an assignment which I accepted with some trepidation, but it occurred to me that it was not inappropriate that a member of the Committee of Bar Examiners should speak on such an occasion.

"Bar examiners are the guardians at the gate of the legal profession. They are not enrobed in white or crowned with a halo like that great Saint who stands at the celestial portals. On the contrary, they are more often pictured in the minds of those approaching the bar examinations, and naturally in the minds of those who fail therein, as garbed in red and crowned with horns. Indeed, the bar examiners themselves are seldom allowed to forget that if they are not constantly walking through the regions of the damned, every examination at least heaps fresh coals on their unhaloed heads. Since we are the recipients of so much undesired warmth, if not heat, we appreciate this opportunity to appear in the more kindly light of extending the hand of welcome and fellowship to you new members of the bar.

"The law is a noble profession. It has furnished most of the great political and social leaders, as well as statesmen, of this country. It necessarily has supplied us with the great judges and jurists who have sat upon the benches in this nation. In no other profession or calling will you find so many who are devoted to the high and patriotic ideals of this government and its founders. In no other field will you find as many who appreciate the heritage of our forefathers. In no other group—not even the ministry—will you find as many who practice the great virtue of tolerance.

"You are now at the threshold of your professional careers. Your ability to succeed will be commensurate with your power to meet adversities. It has been said that the law is a jealous mistress, and indeed, you will perhaps find that it is a hard task master.

"I think that Chief Justice Waste and Justice Langdon will recall the occasion some years ago when the late Chief Justice Taft in this city addressed a similar group in his kindly and humorous way as follows:

> 'You have ahead of most of you three or four years of the dryest time that you will ever have in your life. Do not misunderstand the expression "dry." You will find that the world is not waiting for your service. You will find that one of the loneliest places is the office which you may elect to rent—if you do; that the deserts beyond the mountains are nothing in loneliness compared therewith. You will find that the period to which I refer is one which you can use without interruption for your further preparations for the bar; and I may say, seriously, that upon the use to which you put that period will largely depend your real success at the bar. . . .'

"Please understand I am not endeavoring to dishearten—rather, to encourage you. The road to success runs not down hill. The goals of achievement are always on high mountains. In this age of doubt and materialism, dauntlessness and courage are still living forces. Even their worst enemies

must have thrilled at the recent example of the death-facing and unsurrendering defenders of the Alcazar.

"With perseverance, industry and patience as your partners, you cannot fail. While the bar may be overcrowded, it is not overcrowded at the top. At no time in the history of our country have there been greater opportunities for young lawyers. The world is looking for men of vision, men of resource, men of judgment, and men of courage. In short, it is looking for leaders and leadership, and no group of men is better equipped to furnish such leaders than that which has been trained in and for the law.

"In conclusion, I would like to repeat the lines quoted by that eloquent Canadian barrister, Leonard W. Brockington, in his inspiring address to the American Bar Association recently at Boston, as you go out to face the unknown world—

> 'My boy, wherever you are,
> Work for your soul's sake,
> That all the clay of you, all the dross of you,
> May yield to the fire of you,
> Till the fire is nothing but light! . . .
> Nothing but light!' "

Bar Survey Shows Much Unsatisfied Need for Legal Services

A published report of the Committee on Cooperation with the Bench and the Bar of the Association of American Law Schools, submitted in advance of its annual meeting in Chicago on December 29, 30 and 31, presents some interesting facts revealed in the experimental survey of lawyers and the public conducted by the Committee in Hartford, Bridgeport and New Haven, Connecticut. One of the most striking results of the survey was shown by interviews with laymen in business and private life. Over half the persons visited had problems where the services of lawyers were indicated as necessary or at least desirable, and in the case of business men this was true of ninety per cent of those interviewed. Two-thirds of the persons in the residential district and sixty per cent of the businesses canvassed were without legal advice.

There are many other interesting things brought out in the survey which are discussed in the report and quoted at some length in the "Current Events" section of the January number of the American Bar Association Journal. Dean Charles E. Clark of Yale Law School is Chairman of the Committee.

A COUNTRY LAWYER'S COMMENT

Dear Sir:

Your letter of February 12th to hand relative to the moral character and fitness for the practice of law of John Doe, son of Mr. and Mrs. Doe of this County, asking as to the extent of my acquaintance and for an opinion.

I know Mr. Doe just as you know a young fellow who has come up in the county, but with whom you have had no occasion to become intimate. I do not know anything against his moral character and I am constrained to the opinion that it is all right for the family is regarded as an excellent family. His father is one of the best respected farmers in the county. The only error that he can be accused of is that he did not wed his boys to the farm where they could have led independent lives. One is our tax collector—and now this one has "busted loose." I should say his moral character at this time should give no one any concern. After he has been practicing at a congested bar for a few years it might be a different question, the pangs of hunger and the shame of nakedness having a way of working such revolutions in human character. As to the other angle of your question, his "fitness to practice law," it is altogether too comprehensive for me to answer. I think it is a rare human being who is fit to practice law who has not had at least five years preparation in a high grade law school. This young man, I do not think, has had anything like that, but probably about a year in a little coaching school where they are coached for bar examinations. But what are you going to do? He is a nice kid and if they turn the rest of them loose that way, why not him? It is surely not doing the tone of the bar any good and is breeding misery for those, a great number of them, who are not lucky, who are engaged in the "profession." It seems that a "profession of Faith" is all that is necessary and that no works are necessary. Unless some remedy can be suggested there will have to be "plowed under" about each third row of lawyers.

Please do not understand this letter to be any criticism of Mr. Doe for he is all right at the present time. Maybe he will get a government job or be lucky as a real estate operator.

Yours very truly,

(Signed)————————————

34 years a Pilgrim, who landed on a bare rock.

YULETIDE GREETINGS FROM A CANDIDATE

The following letter was received by a board of bar examiners from a registrant:

My dear Sirs:

I am the grateful recipient of your very kind communication of a recent date in which communication you afforded me with a list of past bar

examinations available to me at present at a quoted price to be paid in advance. Pursuant, therefore, to the information and advices therein I am enclosing herewith a Money Order for $5.00, which will pay for the nine copies listed, dating from August, 1932, to September, 1936, and another fifty cents (50c) for a copy of the examination questions which you will give in March, 1937. I am asking that you keep the full $5.00, sending receipt for same, and kindly send the other copy of the March, 1937, questions after the bar examination in March, 1937.

Permit me at this point to offer an expression of deepest gratitude for the fine and full co-operation which you have so marvelously given me since my first registration with you in June, 1936. Such courtesies as you have given have indeed effected and magnified the pleasantness of my anticipation of appearing before you at a time which I hope is not far away.

Herewith, likewise, my kind wishes that the pleasures of the yuletide will be yours in fullest measure.

Very respectfully yours,

(Signed) _____

"As Maine Goes------"

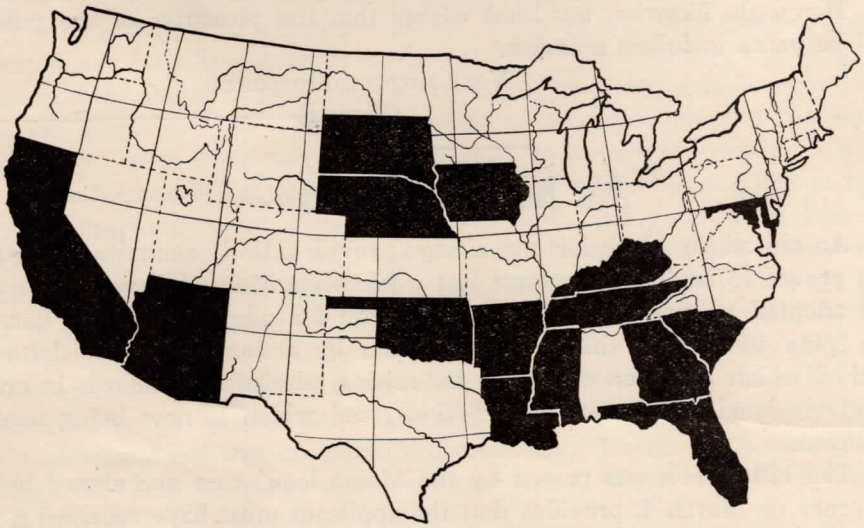
An old adage which has not always proved entirely accurate in the past was proved to be true in reverse last week when Maine followed the nation and adopted a two-year college requirement for admission to the bar. In the "pine tree" state this step was taken by action of the legislature, a method which has been employed for raising admission standards in only a relatively small number of jurisdictions, and which is now being used in California.

The bill, which was passed by the Maine legislature and signed by the governor on March 4, provides that the applicant must have received a preliminary education sufficient to admit him as a member in good standing of the third year class of any approved college or university. No equivalent is recognized except where an approved college or university will admit to third year standing on examination. Applicants who have already begun the study of law have until January 1, 1939, to register. By making the act effective in the future, the legislature has safeguarded the rights of students who have already begun their law study without having the preliminary qualifications called for in the new act.

A further provision which was adopted calls for the payment of an examination fee for each examination beyond the second and limits the number of examinations which can be taken by one candidate to four, except by special permission of the Board, whose decision may be reviewed by any Justice of the Supreme Court on petition.

An additional provision of the law relates to foreign attorneys, fixes a fee of $50 for them and authorizes the Board to have an investigation made of each such applicant. In following out this requirement, the Board has adopted rules providing for the use of the character examination service of The National Conference of Bar Examiners.

By action in raising its admission standards, Maine becomes the thirty-third state to adopt the two-year college rule. It is the eighteenth to use the character service of the National Conference. As will be observed from the map, New England and the eastern seaboard as far south as Maryland now present a solid front on the question of general education requirements for bar admission. In these thirty-three states 74 per cent of our population and



States shown in white require two years of college or its equivalent before admission to the bar

74 per cent of our lawyers are to be found. A traveler may now traverse the United States from the easternmost point in Maine to the most westerly point in Washington without crossing or touching any state which, either presently or prospectively, does not require a general education of two years of college or its equivalent for admission to the bar.

Of the 42,000 students in law schools, three-fourths are attending institutions which require two years of college education for entrance. Probably at least a half of the remaining ten thousand odd students have obtained that amount of education before beginning law study even though it is not required in the schools they are attending.

COMPARATIVE SUMMARY

All Applicants

	First Timers			Repeaters		
	Total	Passed	% Passed	Total	Passed	% Passed
Sept. 1933-1935	872	658	75.5	186	76	40.9
April 1936	78	42	53.9	64	25	39.1
Sept. 1936	185	137	74.1	49	14	28.6
University of Michigan						
Sept. 1933-1935	187	175	93.6	2	2	100.0
April 1936	5	5	100.0	7	7	100.0
Sept. 1936	57	55	96.5	0	0	0
Detroit College of Law						
Sept. 1933-1935	317	228	71.9	84	34	40.5
April 1936	44	21	47.7	29	8	27.6
Sept. 1936	52	27	51.9	26	6	23.1
University of Detroit						
Sept. 1933-1935	114	86	75.4	23	16	69.6
April 1936	4	1	25.0	8	4	50.0
Sept. 1936	21	13	61.9	6	3	50.0
Detroit City Law School						
Sept. 1933-1935	66	53	80.3	16	6	37.5
April 1936	8	4	50.0	5	2	40.0
Sept. 1936	23	21	91.3	7	2	28.6
Other Universities and Schools						
Sept. 1933-1935	103	66	64.1	26	9	34.6
April 1936	9	7	77.8	10	4	40.0
Sept. 1936	28	21	75.0	6	2	33.3
Office Attorneys						
Sept. 1933-1935	74	42	56.8	32	8	25.0
April 1936	8	4	50.0	4	0	0
Sept. 1936	2	0	0	4	1	25.0
Law School Credits Without Degree						
Sept. 1933-1935	11	8	72.7	3	1	33.3
April 1936	0	0	0	1	0	0
Sept. 1936	2	0	0	0	0	0

MINIMUM SENTENCES

The worst men make the best clients.

There are only two kinds of women clients; those who pay liberally and those who complain to the Bar Association.

A good judge is like a good steel blade, easy to bend, but sure to come back quickly to a natural position.

Every compromise is an injustice.

Doctors, ministers and lawyers are true to the ideals of their profession only when they try to eliminate themselves.

——————William M. Blatt in Law Society Journal of Massachusetts.

Ohio Court Provides for More Effective Character Inquiries

Investigation Service of National Conference Will Be Used

Following an open hearing by the Supreme Court of Ohio on April 27, at which a general committee of the Ohio State Bar Association, representing local bar association committees on applicants for admission to the bar, presented suggestions concerning the desirability of thorough character investigation of applicants, the Court handed down a rule providing for the examination, by character committees, of original applicants immediately before they take bar examinations, as well as at the time they start to study law, and providing for an investigation by The National Conference of Bar Examiners in reference to foreign attorney applicants.

In the report presented by the committee, the following six advantages were set forth demonstrating the advisability of using the service of the National Conference in reference to immigrant attorneys:

"(1) It provides for a more thorough investigation than can be made by the local committee.

"(2) It provides for an independent investigation by investigators who are not under obligations of friendship to the applicants.

"(3) It relieves the local committee of a duty to make investigations which the local committee does not have the facilities to make.

"(4) It offers no embarrassment to the applicant who is worthy of admission but operates as a deterrent to undesirables who will hesitate to file an application in this state if they are aware of the thorough investigation about to be made.

"(5) In practical operation, reports indicate that about twenty per cent of those applying for admission without examination have been either rejected or have withdrawn their applications by reason of the discoveries revealed in the investigations, thus showing the great need for this service.

"(6) The cost of investigation, $25, is the standard in all cases, can be required with the filing of the application, and is not sufficiently great to prevent the admission of any person worthy of admission to the Bar of Ohio."

The committee of the Ohio State Bar Association was headed by former State Bar President Charles W. Racine of Toledo. Other members of the committee were: Paul L. Selby, Columbus; Elliott L. Kaplan, Toledo; A. H. West, Elyria; Carlos A. Faulkner, Kenton; H. Herschel Hunt, Youngstown; and William J. Reilly, Cincinnati.

Empire State Adopts Character Plan

By rule of the Court of Appeals of New York State, adopted July 13, New York became the twentieth state to require a character investigation by The National Conference of Bar Examiners of its migrant attorneys. The Conference has completed over four hundred reports on immigrant attorneys. The pertinent paragraph of the New York rules is quoted below; the recent amendment is printed in italics.

"A person to be admitted under this rule must be a citizen of the United States, over twenty-six years of age, and must show that he is and for not less than six months immediately preceding the application has been an actual resident of the State, and must produce a certificate from the clerk of the highest court of such State, territory or country certifying to his admission to practice and the date thereof and a letter of recommendation from one of the judges of the highest law court of the District of Columbia, or such other state, territory or country, or highest court of original jurisdiction therein. *Each applicant shall file a report of the National Conference of Bar Examiners and furnish other satisfactory evidence of character and qualifications.* If the Appellate Division doubts the character or qualifications of the person so applying, it may impose such other tests as in its discretion may seem proper."

The Need for Broader Legal Education

In speaking to the American Association of Law Libraries, at its recent annual meeting, Senior U. S. Circuit Judge Martin T. Manton of New York commented as follows on the need for a broader legal education:

"One of the evils with which society has been haunted for some time is the narrowness of legal education. We have been instructed in the abstractions of the law without even considering the social and economic phenomena which give life and substance to that law. Only of late have our schools come to realize, though faintly, that a study of economics and social conditions is indispensable to a healthy growth of our legal structure. Our intricate modern organization is not moved by abstractions but by hard facts, and it is to those facts that special attention should be given in our scheme of legal education. Facts develop the law; the law never yields facts. The law of today is far different from what it was when our country was first settled. The rules then were relatively few and simple. The state of commerce and industry did not require more. In reality, in many instances, rules were wanting altogether. Things have been different since society commenced to organize itself industrially. That early simplicity is gone and now the competent lawyer is the specialist. Law is now a matter of specialization, and

this is clearly recognized in business life. Much of the bad law in the books is the result of the poor work of general practitioners who attempt to master, within the compass of a brief or the space of a few hours, the inter-related principles which it has taken centuries to unfold. Their work has every token of superficiality. No one, I claim, can competently expound a particular question of law without a comprehensive knowledge of the general subject under which such point properly falls. Superficiality in the presentation of a case by counsel is reflected in the superficiality of many judicial decisions, since it is seldom that judges feel disposed to conduct independent inquiries into the law, even if they had the time to do it."

Lawyer's Career Valued at $105,000

Medical Career Worth $3,000 More According to Columbia Survey

(Reprinted by permission of the New York Times)

On the basis of income and working life span statistics gathered by Professor Harold F. Clark, in charge of Educational Economics at Teachers College, Columbia University, it is now possible to predict how much a budding doctor, lawyer or architect is worth as an investment when he starts his profession.

To develop means of guiding students more accurately into paying professions, Dr. Clark, aided by a troop of research workers, studied 4,400 magazines and several thousand books on occupational incomes in American and European libraries. They maintained close contact with officers of many occupational associations.

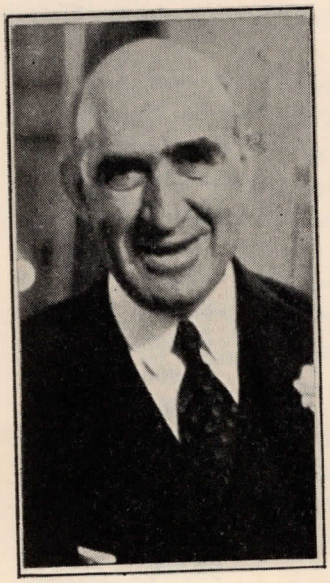
After spending eight years in surveying sixteen selected occupations, Dr. Clark came to the conclusion yesterday that the present estimated value of the future life earnings in the various occupations ranges from $108,000 for medicine down to $10,400 for farm laborers.

A Hypothetical Case

According to Dr. Clark's figures for the medical profession for the years 1920 to 1936, the average work span of a doctor is forty-two years. That being true, the following hypothetical transaction may be imagined between Hiram Jones, ready to begin practice as an average doctor, and a banker:

Young Dr. Hiram Jones enters the banker's office and offers to mortgage himself for his entire career. In return for a lump sum he promises to turn over all his future earnings to the banker. The banker, on the basis of Dr. Clark's figures, would give him $108,000. In doing so, Dr. Clark says, the banker would figure on receiving 4 per cent compound interest on Dr. Jones for the forty-two years, the difference between the lump sum and Dr. Jones's total income being the profit on his investment.

The Obligation of the Law Schools



At the New York Joint Conference on Legal Education in Albany on June 19, Judge Irving Lehman of the Court of Appeals spoke extemporaneously with reference to the duty of law schools in making a more careful selection of students. The report of Judge Lehman's speech, as published by the Court and Commercial Newspaper Syndicate, follows:

ALBANY (CCNS)—Keeping the unfit out of an overcrowded profession is a task calling for the joint efforts of law schools, Bench and Bar, in the opinion of Judge Irving Lehman, of the New York Court of Appeals.

While the task requires co-operation of all three, the jurist added, the Bar can do more than the Bench and the schools can do more than either.

Entrance tests, Judge Lehman held, are an imperfect instrument for keeping the unfit out of the profession, while the fact that they get in is "a calamity to the profession and the public."

Declaring that there are "too many men and women unfit to study law who are clamoring for admission to the law schools," Judge Lehman pointed out that "even the schools are overcrowded with those who should never be in the legal profession. Tests will never eliminate them completely. Even the Bar is overcrowded with this type."

Judge Lehman urged the schools to make more careful selection among applicants. He also suggested that they develop their curricula to stress proper conduct in the profession.

Social philosophy, social relations and social problems should be studied by the prospective lawyer, Judge Lehman declared, because a knowledge of these subjects should be part of his equipment for practice.

"I still believe that the fundamental duty of a law school is to teach the great ideals of the common law. And only on our insistence on the preservation of these traditions may we maintain the standards of the profession."

Limitation of the Bar in Delaware County, Pennsylvania

An interesting decision was handed down on June 21 by the Court of Common Pleas in Delaware County, Pennsylvania, in the case of Ginsburg v. Delaware County Board of Law Examiners. The case arose from the petition of Frank I. Ginsburg praying the court to "issue a writ of alternative mandamus requiring and directing the Delaware County Board of Law Examiners to present to your petitioner a certificate approving his admission to the bar of the Common Pleas Court and of the Orphans' Court of Delaware County, Pennsylvania." A portion of the opinion is quoted below:

"By the Act of 14th April, 1834, Sec. 68, P. L. 354—17 P. S. page 415, Sec. 1602, it is provided that 'The judges of the several courts of record in this Commonwealth shall respectively have power to admit a competent number of persons of honest disposition, and learned in the law to practice as attorneys in their respective courts.' 'Competent' connected with 'number' means adequate, sufficient, suitable.

"It therefore resolves itself into the position that before admissions to the bar should be permitted the court should determine how many comprise a competent number to be admitted to properly and safely care for the work they are likely to be called upon to perform and at the same time to not admit so many that the community may suffer by the wants of the over-plus and to also restrict the practice in this county to those who have their principal office therein, to insure safety to clients.

"To this end rules 31 and 31a were adopted by the court. Rule 31 provides that 'Admissions to the bar of this court are always at the discretion of the court, and will be allowed only upon motion of a member of this bar, in open court, and after compliance with these rules and the regulations from time to time prescribed by the County Board of Law Examiners in furtherance thereof, as evidenced by the certificate of such Board.'

"Rule 31a provides that 'Motions for admission to the Bar shall be made only on the first motion court of the months of April and October of each year and the number to be admitted at such times will be fixed by special orders of the court to be entered hereafter about three months prior to days fixed for admission, . . . The Board of Law Examiners shall not recommend for admission more applicants than the number so prescribed; and all applications for admission shall be made to said Board at its regular meetings on the first Monday of March and the third Monday of September.'

"The Board of Law Examiners after their investigation are in a better position to select the applicants for admission than are the judges, but their selections are not binding on the court.

"The members of that board are amongst the leaders of the bar in every respect and are beyond censure and it is our policy to uphold their recommendations, unless there is a good reason known to us why we should not. The fact that others, who applied after the petitioner's application was filed, have been selected for admission, cannot be controlling otherwise there would be no real point in having the candidate investigated except for something which should permanently keep him from the bar.

"We do not agree as suggested to us that we should admit to practice, everyone who was born in Delaware County and is qualified and should also admit a resident of the county who was not born here and does not have his principal office here, but who practices in Philadelphia, because we do not find that to be a fair criterion for admission. Let us now see if we are obliged to issue a writ of mandamus as prayed for requiring and directing the Delaware County Board of Law Examiners to present to the 'petitioner a certificate approving his admission to the bar of the Common Pleas Court and of the Orphans' Court of Delaware County.'

"The petitioner for the mandamus does not deny that the Board of Law Examiners has recommended each time for admission the full number permitted by the court to be selected. * * *

"It is further argued that, as the board did not assign any reason and did not inform the petitioner why others were recommended for admission, he is entitled to know where his deficiency, if any, lies so that it may be corrected. There is no reason that the board should disclose why they recommended to the court any particular applicant over another.

"When the members of the board have done their duty in recommending the required number of applicants as directed by the court, their duty has been fulfilled. The Supreme Court in 28 District & County Reports Appendix page LXXVIII, said, 'This court has never compelled a county board to register a law student nor a county court to permit an applicant for admission to the bar to practice before it. These are purely local matters to be passed upon by the county boards or the several local judges. The petition is dismissed, as this court would not compel a county board to register a law student against its own decision in the matter. A county board is not required to divulge its reasons for its action in a particular case, nor is the state board compelled to do likewise.'

"Even though we may issue a mandamus to compel the board to do its duty, that writ will not lie to compel them to recommend a particular applicant. * * *

"Granting that the petitioner complied with all the legal requirements, to get his petition before the court, his only complaint is that the Board of Law Examiners did not grant him a certificate of approval for his admission to the bar, and prays the court to compel them to do so. His petition does not

sustain its prayer and hence should be quashed. Reese v. Pollard et al. 248 Pa. 617."

In an opinion in which he concurred in the conclusion to quash the writ of mandamus because it did not permit the exercise of the Board of Law Examiners' discretion to receive or reject the petitioner's application for admission, Judge MacDade went on to say:

"We have had occasion before to express our dissent to the majority opinion of this court, when, on or about August 30, 1935, the majority members thereof filed an order refusing, for the reasons therein contained, further admissions to the bar of persons who have qualified under the law and the rules of the state Supreme Court and of this court, and proven their qualifications as well. Subsequently this rule was relaxed and we have since been admitting from time to time (see orders filed) applicants into full membership.

"At that time we said and we reiterate in the instant case that while it may be advisable at times to exercise the undoubted power of limitation to be placed upon such membership, yet I can not concur at this time in the exclusion of all applicants because of the numerical strength of the bar rather than consider as well the qualitativeness of the situation pertaining to such applicants. * * *

"3. While generally speaking the bar (not confining ourselves exclusively to local conditions) may have a large complement in its membership and some thereof are in distress during the present industrial, financial and economic debacle; and while, as in an adjoining county, others may be tempted by the crowded condition of the bar to commercialize the practice of law and defame its good name, yet we can not satisfy our conscience that each and every local applicant should be denied admission to practice in an ideal and ennobling profession because of the numerical strength of our bar at least. If this course be permanently pursued individual initiative is destroyed and the door of opportunity is closed to some of the finest and most outstanding of our youth whose character and attainment would adorn our profession."

Correction

In the June issue of The Bar Examiner it was stated that the new California rules provided that students are required in the alternative to have completed two years of college work or to have reached the age of twenty-five years before applying for admission to the bar. The act which was passed by the legislature reads as follows:

The Future of the Profession *

By Justice L. B. Day of the Supreme Court of Nebraska

Much has been said, especially at bar association meetings, relative to the public opinion of lawyers. One very influential man in an organized state once said: "First, let us kill all the lawyers." One of our great jurists tells us that even one of our own states, at an early date in our history, passed a single ordinance against lawyers and rum. He reports that some time after they relaxed as to rum but not as to lawyers.

However, seriously, the profession seems to be overcrowded. The distinguished dean of the law college of the University of Wisconsin, perhaps curious as to this general assumption, made a survey of his state. This survey took some account of the potential practice of lawyers and found generally that the profession was not overcrowded there. When the facts disclosed by that survey are generally known among us, perhaps that condition will not even prevail there.

More recently, the New York County Lawyers Association attempted to make a comprehensive survey of the condition of the profession in that county, which revealed the most distressing conditions. It was in some measure based upon the average income of lawyers. It definitely indicated that New York County could struggle along with a few less lawyers.

These are the only two comprehensive surveys called to our attention and although they may be criticized as lacking some essential elements of accuracy, they are not to be disregarded by us. Few of us are statisticians and perhaps, as charged, we do not draw proper conclusions from facts. But this one fact stands out preeminent and that is that only about one-half of the graduates of the law schools approved by the American Bar Association are able to establish themselves in the practice. The percentage is lower for other schools. It is a notorious fact that of those admitted to practice only a few remain in the profession at the end of a short period of time. Your attention does not need to be directed to the experience of your own state with an organized bar and a yearly assessment clearing the rolls. It is not

* An address delivered at the annual meeting of the State Bar of South Dakota at Rapid City on August 6, 1937.

unique—and upon this one fact and my general knowledge of conditions in many places, it does not seem unreasonable to rush at the conclusion that there are more lawyers than the public finds necessary for the transaction of its affairs.

If any one thinks the assumption that there are too many lawyers is erroneous, he must be in the minority of public opinion. It has been seriously urged in high places by men of distinction that the number of lawyers be absolutely limited. There have been speeches before the Section of Legal Education and Admissions to the Bar of the American Bar Association advocating that procedure. It has been demanded by some that the American Bar take definite action to accomplish this result. The method seems cruel and unreasonable. While the enthusiasm of the profession might be fanned into flame by its self-interest, the plan would not have adequate public support resting solely upon such a foundation to insure its permanence.

There are a few considerations which indicate that, at present at least, the scheme is impractical. For example, who will decide who shall practice law and who shall not? Who will decide how many lawyers are needed? Will the decision be based upon an adequate survey? Judged from the experience which we have, no comprehensive survey will be made, at least, at public expense.

Sometimes it is refreshing as well as informative to read back over pages of history. During the French Revolution the lawyers had been suppressed. When Napoleon produced his famous codes the lawyer was reestablished but greatly limited as to number. It is not easily determined whether he advised what legal opinions should be given. But it is recorded that while the judges were not coerced, they unconsciously knew what opinions were proper. Let it not be forgotten that he was a military genius with considerable administrative ability. But the plan was a failure there.

Such a scheme is contrary to the spirit of our social life in America. And this is why: There is no sound basis of choice between applicants for admission to the bar. There is no caste here. There are not supposed to be any favorites in America. While the practice of law is a privilege and not a right, it is open to all who conform to our standards.

Happily for us, there is a solution which has its basic roots in the public interest. The public interest should never be forgotten in the solution of the problem. The public requires the services of lawyers in the administration of justice and in the ordinary transactions of life. If every lawyer were destroyed today, men and women would be doing their work tomorrow perhaps under some other name, in any civilized society. The public interest unquestionably demands this. Time forbids and it is unnecessary to labor with this question here. Suffice it to say that civilized self-government seems to demand that there be those who interpret that government. That in the larger sense is the function of the lawyer.

From an examination of the cases, an all-embracing definition of a lawyer is difficult. Usually, a definition is given which is sufficient for the purposes of the case. But generally, he is one who gives legal advice relative to transactions as well as one who tries cases in court. The law is regarded as a profession and not a trade or business, perhaps not in the ordinary meaning of the word "trade" and "profession," but it is pleasant to bask in the sunshine of the thought that the lawyer has nothing to sell but knowledge.

The sources of our law confirm us in this belief. The law applicable to present day transactions is based upon several factors. The jus non scriptum consists of the common law of England prior to the Revolution. The reason of the rule is the important thing. Then state and federal constitutions must be considered together with state and federal statutes. In addition to all this, our rules are modified by judicial interpretation in the light of our political and legal philosophy. The law is not an exact science. It is an approximation of what is right under the circumstances determined by the rules stated heretofore. It requires study and application of the highest order.

This has been noticed and said by others. Your indulgence is begged for two great statements by two great jurists many years ago. One of them said in 1900: "I look into my book in which I keep a docket of the decisions of the full court which fall to me to write, and find about a thousand cases. A thousand cases, many of them upon trifling or transitory matters, to represent nearly half a lifetime! A thousand cases, when one would have liked to study to the bottom and to say his say on every question which the law has ever presented, and then to go on and invent new problems which should be the test of doctrine, and then to generalize it all and write it in continuous, logical, philosophic exposition, setting forth the whole corpus with its roots in history and its justifications of experience real or supposed!"

Another said in 1928: " 'They do things better with logarithms.' The wail escapes me now and again when after putting forth the best that is in me, I look upon the finished product, and cannot say that it is good. In these moments of disquietude, I figure to myself the peace of mind that must come, let us say, to the designer of a mighty bridge. The finished product of his work is there before his eyes with all the beauty and simplicity and inevitableness of truth. He is not harrowed by misgivings whether the towers and piers and cables will stand the stress and strain. His business is to know. If his bridge were to fall, he would go down with it in disgrace and ruin. Yet withal, he has never a fear. No mere experiment has he wrought, but a highway to carry men and women from shore to shore, to carry them secure and unafraid, though the floods rage and boil below.

"So I cry out at times in rebellion, 'why cannot I do as much, or at least something measurably as much, to bridge with my rules of law the torrents of life?' I have given my years to the task, and behind me are untold generations, the judges and lawgivers of old, who strove with a passion as

burning. Code and commentary, manor-roll and year-book, treatise and law-report, reveal the processes of trial and error by which they struggled to attain the truth, enshrine their blunders and their triumphs for warning and example. All these memorials are mine; yet unwritten is my table of logarithms, the index of the power to which a precedent must be raised to produce the formula of justice. My bridges are experiments. I cannot span the tiniest stream in a region unexplored by judges or lawgivers before me, and go to rest in the secure belief that the span is wisely laid."

When men who have given their lives to working with the intricacies of the law feel this way, do you think that the ignorant and unprepared should undertake this work? A high standard of education is a sound method of limiting the number of lawyers admitted to practice. It has never been tried, largely on account of the opposition of the members of our own profession. Abraham Lincoln and other successful lawyers have been used as examples that a general education and a legal education were unnecessary in the practice of law. During the last year "Lawyer Lincoln" by Woldman, has come to me. It gives an entirely different impression of Lincoln as a lawyer than that popularly accepted. Lincoln was a genius, and he was also a student. In the beginning, his practice was simple, growing gradually more complicated, during all of which time Lincoln was preparing himself for the task ahead. Perhaps you do not remember but Lincoln practiced during the railroad building era. During these years more corporations were formed in Illinois than formerly existed in the entire country. But the thing that we should focus our attention upon is the fact that he recognized the great need for knowledge. His advice to young lawyers was to study and study and study, or, as he put it in a letter to a young aspirant, "work, work, work." He did not disparage education, his son was a graduate of college and law school, and he often referred to himself as a "mast fed lawyer." He did not disparage pre-legal education himself and it is said that the book he walked miles to borrow and afterward read by the light of the fireplace was not a law book at all but an English grammar. He sought to make himself useful to the public who employed him as a lawyer. He served the public interest well, especially well when we consider the times in which he lived.

Raising the standards of legal education is a practical and effective method to limit the overcrowded profession. It would eliminate those who have such a remote chance to succeed. What state has not admitted many who had no qualifications to practice law? And we have heard the oft-repeated query, "What harm do they do?" That deserves an answer. They are skimming the cream from the business by doing the easy, lucrative jobs. They are doing for the public things they are not by training qualified to do. Those who are unwilling to prepare themselves are eliminated by the establishment of proper qualifications. Limitation of numbers based upon achieve-

ment is sound. No genius will thereby be kept out. There is no fear that one born in a lumber home on the prairies may not have his ability recognized. Such a one may even under such a scheme become the learned dean of the sedate and erudite Harvard Law School. Such a one may again be recognized throughout the world as the greatest contemporary legal mind.

Naturally, you wonder what education is sufficient to accomplish this result. Should the education be regulated by the state of general mass education? The education which was sufficient ten or twenty or fifty years ago might not be adequate today. Educators tell us that the general level of education is increasing. As a people we have worshipped at the shrine and have lavishly poured our substance upon the altar of learning. The law is said to be a learned profession. Why should we stubbornly resist higher standards of education? It cannot be because we do not need such an education. Who of us has not realized his incompetence to solve the problems which confronted him?

Since the organization of the American Bar Association in 1878, the Committee on Education and later the Section of Legal Education has led us, sometimes unsuccessfully, to higher standards of education. The norm they have adopted has finally been almost generally adopted,—at least two years of college study before the professional study begins. Today thirty-four states require that as a condition of admission. Just a word with reference to this pre-legal work. It ought to furnish a cultural background; history and English are, of course, important, but the background should not be a diluted law course. The law schools can teach that better.

Just a word, relative to some law schools; of course, this does not apply to the Law College of the University of South Dakota, any more than any remarks apply to this state. However, we must face facts as we find them. That is necessary for improvement. There has been no general improvement in teaching law since Professor Langdell introduced the case method in Harvard University in 1870. The present law school has been severely criticized. Early this year, President Hutchins of Chicago University said: "Legal education is impractical today. Law professors do not teach the economic, social, or political basis of legal decisions or their economic, social or political effects." The school immediately thereafter added another year to its law course. In referring to the additional year, President Hutchins added, "We hope to remove legal education from its remoteness from reality."

Other schools have tried to remedy this. Ohio State University Law School has tried to reach the same goal by a different method. There a free legal aid clinic for the poor is in operation under the direction of Professor Silas A. Harris, a former Nebraska practitioner. It does not require an experienced educator to know that the graduates of our law schools are lacking in the essential qualifications so necessary to the lawyer. The aver-

age graduate would not know how to handle a client if he had one. For want of a better term (I borrow from another profession), the average graduate does not have a good "bedside manner."

But our profession has had little time to consider the education of the law schools approved by the American Bar Association. You are familiar with the requirements. Last year there were in round numbers, 40,000 law students enrolled in schools in this country. But nearly half of them are shown to have been in part-time commercial schools which were not approved by the association. Many states admit to practice upon a certificate indicating office study. Mindful of many great men, including the present president of the Nebraska bar who studied in a South Dakota law office, who have achieved greatness upon entering the profession by this route, office study does not exist except in rare instances. Rules requiring actual study have almost ended the sham and pretense that now accompanies it.

But what is the interest of the public in these troubles of ours? A license to practice law ought to mean something. The public ought to have a right to rely upon a licensee to have at least the fundamental qualifications of service. People should realize that unless they are qualified to render service to their clients, they are not entitled to a license. It is an old trite saying that lawyers are officers of the court. They are more than that, they are public servants and not licensed pirates to prey upon an unsuspecting public.

The public suffers most because the overcrowding of the profession in a particular locality leads to unscrupulous practice. "Ambulance chasing" is a term resented as an insult by every member of our profession. But it is said to be common in some places. The lawyer is not expected to go out on the street and hawk his brains as though they were similar to bananas. It is not necessary to dwell upon the evils of the practice here or to remind you that so-called ambulance chasing is wrong because it stirs up unrighteous litigation where perhaps none exists. Suffice it to say that eventually the public pays for this.

Then again, too many lawyers in a community cause an era of fee cutting with the result of careless and inefficient work. Again the public suffers. But not to be overlooked is the frustration of hope of the individual who strives to practice law and cannot make a living. For example, in a western city there recently appeared in the daily newspaper want ad section this advertisement of a lawyer: "Divorce cases, uncontested, $15 and costs." When the committee on professional ethics of the local bar association called the advertised telephone number, it was temporarily disconnected. This is not the first time that a lawyer has advertised but this story illustrates better than any the utter frustration, the hopelessness that accompanies

nature's method of removing superfluous lawyers from practice. And the process of elimination is going on before us whether we will participate in it or not. But with our help, the public can be saved from false hopes, the consequent heart pangs, and millions of dollars annually by our intelligent help.

But the public is interested for another reason because usually the judges of our courts come from the profession. That is of the greatest importance to the average citizen. That idea is best expressed by the language of John Marshall at the Virginia Constitutional Convention, meeting in 1829. That convention was attended by ex-presidents Madison and Monroe and many other fathers of our country. He there said: "Advert sir, to the duties of a judge. He has to pass between the government and the man whom that government is prosecuting; between the most powerful individual in the community and the most unpopular. It is of the last importance that, in the exercise of these duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security and his property depend on that fairness? The judicial department comes home in its effects, to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not in the last degree important, that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? * * * I have always thought from my earliest youth until now that the greatest scourge an angry heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt, or a dependent judiciary."

No one realizes better than a member of a state court of last resort that it is the guardian of the entrance to the profession. But the court cannot do more than the people and particularly the profession wish done. The people of Indiana years ago in their Constitution provided that anyone of good moral character could be admitted to practice law. It might interest you to know that Lincoln would have been admitted there had not his father moved to Illinois about two years previous to his admission. Recently, however, the Indiana Court held that anyone who attempted to practice law without certain educational requirements was not of good moral character. In some states the Constitution limits the action of the court. Fortunately, your neighbor state on the south follows the doctrine that the legislature may protect clients in the public interest by passing restrictive legislation upon the practice of law. But these legislative acts are regarded as minimum requirements and the court may exact other and higher requirements.

The courts usually appoint a commission of bar examiners. These men throughout the states are industrious, intelligent, and sympathetic. Their attitude in any particular state depends largely upon the attitude of the profession. If the court and the profession think that everybody should be

admitted who applies, then this is bound to influence the commission. But, in general, they are trying to use the means afforded them to make the examination mean something to the public.

It has been said that the examinations are lax and inefficient. But a recent review indicates that the percentages of failures is constantly increasing, this in view of the fact that fewer are taking the examination due to many formal requirements. The examination of the bar commission is often slightingly referred to by the students at schools which have the diploma privilege. The examination is not very highly regarded by those who are not obliged to take it. Pardon another personal reference, but the legislature of your sister state to the south enacted a law which provided that the graduates of two great schools in that state were exempted from taking the examination. The court there said that after 1938 everybody should take the examination. These schools did not complain, because they are members of the Association of American Law Schools, and that association condemns diploma privileges. Who should complain? If the graduates of these schools are as good as we think they are, the examination is in fact nothing. If they are not so good, we as a profession should know it.

But seriously, there is another more important aspect to this question. Those preparing themselves other than at such schools will be spurred on to do a higher class of work. The standards of the examinations by the bar commissions will be unconsciously raised so that they will actually test the knowledge of the applicant. No one likes to do a foolish thing. Bar examiners are no exception.

No discussion of this subject would be complete without a mention of The National Conference of Bar Examiners. This organization, nurtured by the Section of Legal Education and Admissions to the Bar of the American Bar Association, has in a few years exerted a tremendous influence upon admissions to the bar. It, together with its parent organization, has made the American bar conscious of its responsibility to the public. If you are one who thinks the American Bar Association is inactive in behalf of the profession, this work alone justifies its existence. Compare the standards now with some time in the past. The law has always been theoretically regarded as a learned profession. What will it be in fact in the future? The future lies entirely with the American bar.

It is often asserted that the examination of the bar examiners is not a fair test of the applicant's abilities. It is possible that some who have passed the examination are not qualified to practice law. But there is another and practical method by which The National Conference of Bar Examiners has met the serious problem. They have advocated such so persistently that there has been adopted what are known as formal requirements before the examination may be taken.

The formal requirements for admission to the practice of law that we are discussing are educational requirements. A few of them are attendance at a high school, attendance at college and attendance at a law school or a prescribed study of law. The purpose of these formal requirements is no doubt to obviate the possibility of anyone's cramming for the examination. There is no use of our making a pretense; the study of law outside of law schools has lately often been the registration under an attorney and the evenings of a few weeks spent with a standard law quizzer.

Reputable law schools cannot compete with this preparation. It is holding them back in their effort to raise educational standards. But our time will not permit the further discussion of the subject of higher standards of admission to the practice of law. * * * The whole program of the bar insofar as it directly relates to the profession is dependent upon what the bar generally regards as adequate preparation for the practice.

Finally, be impressed with the fact that the future of the profession is entirely in our hands. What is done and how it is done in South Dakota is primarily and entirely your business, but every member of the bar throughout the whole United States is vitally interested. You are far in advance of all other states, if you require equal qualifications from those from other states who seek admission on their certificates elsewhere. There should be no easy place where one may be admitted to the bar, take the cream of the business, and permit the public to suffer from incompetent service. When the profession has become in reality again a learned profession as measured by our surrounding communities, we shall enjoy that respect to which we were formerly accustomed. The world in which we live and work is so changed from what it was. Much that was orthodox and vigorous is now unorthodox and decrepit. But it is the duty of the profession to grapple with the problems confronting it and in the public interest to help to solve them. The profession is constantly and relentlessly reasoning to the particular need of a client from the general rule, and it is this that makes any form of permanent legal absolution impossible and keeps the law expanded and adapted to every changing condition. The general level of mass education is far higher than it was and the profession must keep pace if it is to retain its position. If we do this, it shall bring true what is written in an old book (Lord Davis' Reports, 1674) that "The profession of the law is to be preferred before all other kinds of professions and sciences as being most noble, * * * most necessary for the common and continual use thereof and most meritorious for the good effects it doth produce in the commonwealth." The future of our profession! What do you wish it to be? The search for justice in our country is a glorious and a glamorous achievement. It has been left largely to us so that its failure will be our responsibility, and its success our triumph!

the bar examiners had given a lower average mark than the papers had actually received at the hands of the Missouri Board, that the law school teachers had given the same average mark within about one-tenth of one percent, and that the practicing lawyers had given a higher mark than the Missouri Board. The session was both instructive and interesting. A limited number of the questions which were distributed and the answers given by students are available and will be supplied to any bar examiner who writes to the Secretary, Mr. Will Shafroth, at 605 South State Street, Ann Arbor, Michigan.

The National Conference of Bar Examiners —Its Accomplishments and Service

Address of John H. Riordan as Chairman of The National Conference of Bar Examiners, at Kansas City, September 28, 1937

Its Genesis and Early Activities

Seven years ago a handful of bar examiners met at Chicago following a session of the Section on Legal Education of the American Bar Association, and initiated The National Conference of Bar Examiners. Prior to that time, most of the other professional-admission groups had established national organizations, but the bar examiners of the different states were isolated from and unknown to each other. Their technique was as varied as their numbers, and their standing and influence in the nation was nil. Indeed, it may be truly said they were even "without honor in their own country."

Since that time the existence and activities of this Conference have given them national recognition as outstanding servitors of the profession and as potent leaders in the movement to raise the standards, intellectually and ethically, of the Bar. Consequently, Dean Pound at our Annual Conference in Los Angeles in 1935, while discussing the history and progress of bar examinations, paid this compliment to our Conference:

> "Next to the central examination under the superintendence of the highest court of the State, *the establishment of this Conference is the most important step forward in the movement upward from the decadent system of the last quarter of the Nineteenth Century.* It is a characteristic feature of an era of cooperation in all lines of activity."

Notwithstanding its rather recent and humble beginning, this Conference has achieved many things. It has brought representatives of the various state boards together in these annual meetings for the personal interchange of ideas and experience. It has procured the attendance of noted legal educators and leading bar examiners from different sections of the country to address

us on legal learning and bar examination technique. It has published and circulated gratis among the bar examiners, law school deans and members of the highest courts of the nation its monthly magazine, The Bar Examiner, containing instructive articles and statistics on the subject of legal education and bar admissions.

It instituted at its earlier annual meetings, and as a part of the program thereof, notable *round-table* conferences covering the subjects of character investigation, method and content of bar examinations and the minimizing of the repeater-examinees. More recently, it has innovated bar examination *clinics* where we have been privileged to witness bar examiners actually functioning, and where, as at Boston last year, we were taken "behind the scenes" by the Massachusetts Board and permitted to witness, and participate in, its oral examination of a number of applicants.

Its Character Investigation Service

But most important of all, its outstanding achievement, in my opinion, was its establishment of the Foreign Applicant and Attorney Investigation Service. Much akin to Mark Twain's observation about the weather, there is a great deal of *talk* about "character" in our profession but not much is actually *done* about it. "There is a vague popular belief," said Lincoln, "that lawyers are necessarily dishonest." In recognition of this, the organized Bar through its admission and disciplinary agencies, is doing the best it can to "clean house."

While State Boards can and do efficiently check the character of local applicants, it is practically impossible for them to conduct an adequate character examination with respect to applicants who come from distant localities in other states. Herein the "carpet bagger" or migrant attorney ofttimes finds a loophole through which he may enter, notwithstanding the vigilance of the local Board.

It was for this reason that The National Conference of Bar Examiners initiated and offered to all the State Boards its service of investigating foreign applicants to the Bar. As a unified national body it was peculiarly equipped to undertake and render this service. This Conference with its nation-wide contacts and highly developed technique in this delicate matter, has been singularly successful in its character investigation work. Its reports, while accurate and impartial, are thorough and comprehensive. It has been a matter of amusement to bar examiners using this service to witness the amazement of foreign applicants when transgressions, which the latter thought were either unknown or forgotten, were disclosed at the hearing of their applications. The charge for each investigation and report is but $25.00 which is generally added to the admission fee or, as in some states, is required to be paid directly by the applicant himself.

I am happy to report that twenty states are now subscribing to the character investigation service of this Conference, but I want to say with all the earnestness at my command, that I hope before the present year is ended, *all* State Boards will avail themselves of this service, so that the loophole through which the unfit migrant attorney enters, will be completely closed. *I urge the adoption of this plan by all of the State Boards for the further reason that it provides the sole source of income for the maintenance of this organization* and without which it must cease to exist, at least as an independent institution. Speaking somewhat as a veteran bar examiner about to retire, I feel that this Conference is so advantageous, if not necessary, to the various State Boards and the efficient and progressive performance of their functions, that each Board or State would be justified in making a direct and substantial annual appropriation for its maintenance. However, at this time, no such request or even suggestion is being made. All that I am stressing, as Chairman of this Conference, is that every state utilize this important service.

Bringing Examiners and Instructors Together

In addition to establishing contacts between the bar examiners themselves, another laudable achievement of this Conference has been the promotion of a better acquaintanceship of the examiners with the personnel and methods of law teachers in their respective states. At our Conference held in Boston last year, we unanimously passed a resolution reaffirming our prior recommendation to the effect that joint advisory committees consisting of representatives of the bar examiners, law schools, bar and bench, be set up in each state to give consideration to the matter and problems of legal education and bar admissions. The Association of American Law Schools has joined in this recommendation.

Pursuant thereto, we addressed letters to the Chairman and Secretary of each State Board of Bar Examiners, urging the formation of such committees. Practically all of the Boards so addressed have signified their desire to cooperate in this movement and it is gratifying to observe that at the present time several states have acted on this suggestion.

Advantage to Bar Examiners

It is my earnest hope that by the time of our next annual meeting, all the states will have such committees. As there appears to be some diffidence, if not inertia, in certain states with respect to the adoption of this proposal, I here and now suggest that the said Section on Legal Education would be the ideal agency through and by which the examiners and instructors could be brought together. It would appear to be inevitable that bar examiners who isolate themselves from the law instructors become strangers to the current trends of legal education. As a consequence, their qualifications as competent

examiners become subject to question and their examinations the object of criticism. No progressive-minded examiner should close his eyes to the report of the Committee on Bar Examinations of the Association of American Law Schools, rendered at its convention in Chicago last Winter. Without attempting to discuss that report, I deem it important and instructive to here briefly list the chief points of criticism or sources of dissatisfaction to certain bar examinations as registered by law instructors, viz:

1. Archaic subject content;
2. Provincialism or over-emphasis of local law;
3. Insufficient use of optional questions;
4. Inconvenient dates of examinations;
5. Insufficiency of time allotted for answering questions;
6. Unskilful drafting of questions;
7. Inadequacy of staff or technical equipment;
8. Lack of mutuality of understanding between bar examiners and law schools.

Advantage to Law Instructors

On the other hand, through the instrumentality of the aforesaid joint advisory committee, law instructors can hardly fail to improve their technique by obtaining the advice and counsel of the more practical bar examiners or other practitioners who may sit on such committee. The law teachers who deprecate bar examiners as public nuisances in the field of legal education may at times need a little sedative, if not stronger specific. This is particularly true in the case of those professors who spend their time stressing their political theories rather than inculcating legal principles.

In this age made "jittery" by so many uncertainties, let us cling to certainties! For the type of professors just mentioned, I desire to quote the admonition of Eustace Cullinan, Esq., my successor on the California Board, recently published in our State Bar Journal:

> "The full-time law teacher has done much to improve the standard and the average of the scholarship and ability of bench and bar. But this generation of law teacher has been pastured on the sheltered college campus and has never had to forage on the unfenced and overcrowded range. If he has gained something thereby he has also missed something. His job is to fit youth for life on the range. But has he got what it takes?"

Success of Cooperative Committee in California

To illustrate the usefulness of these joint advisory committees, I would like to briefly cite my experience of this last year on our California Committee for Cooperation Between the Law Schools and the State Bar. This Committee consisted of the seven bar examiners, nine law school deans, the president of the State Bar and three other members of the Bar. The Committee divided itself into sub-committees to consider and report on the following subjects:

1. Adjective law;
2. Answers to last bar examination questions;
3. New legislation and rules for admission;
4. Coach and cram courses;
5. Weeding out law students.

Some of these subjects were inspired at previous meetings of The National Conference of Bar Examiners, notably Adjective Law, or the question as to whether law schools are adequately training their men in procedure and practice.

The conclusions reached by said Committee after careful investigation and consideration are most instructive, e.g.:

With Respect to Adjective Law

"Academic instruction can offer no substitute for experience in the practice of law. . . . On the other hand that training which comes of experience can be acquired after emergence from Law School. . . . The recent experiment conducted by the Stanford Law Society at San Francisco in presenting to the Bar a course of lectures by experienced practitioners dealing with the techniques of practice demonstrated that there is not only need but demand for *post-graduate instruction* and training in the practical work of dealing with the affairs of clients."

Bar Examination Questions

"The Committee is of the opinion that the report indicates that the questions and grading of the answers are adequate and fair.

"The Committee recommends that similar work of this kind be done from time to time for the purpose of determining the quality of the questions and the accuracy of the grading of the answers for the mutual help of the Committee of Bar Examiners, the different Law Schools, and the applicants.

"In this connection, it may be said that the Committee recognizes that it is difficult for any one person, or any two or three, to prepare questions covering all subjects upon which applicants are examined. The Committee has studied the possibility of having a certain number of questions drafted by leading out-of-state teachers of law in various parts of the United States. This would take some burden from the Committee of Bar Examiners and, at the same time, place at their service the experience and skill of recognized leaders in the teaching profession throughout the United States."

Coach and Cram Courses

"The opinion of the Committee as a whole seems to be that so-called 'cram courses' under careful supervision may serve some useful purpose. However, they may prove detrimental if the student attempts to take them while he is actually pursuing his studies in Law School or if he relies on them as a substitute for class-room work."

Weeding Out Law Students

"The part-time schools represent the only field in which a more stringent application of the weeding out process can produce substantial results."

> "The new legislation is now a matter of record, further discussion of this phase of the sub-committee's work is unnecessary. Assistance has been given by the entire Committee to the Committee of Bar Examiners in formulating new rules for administering the newly amended Act governing admission to practice law."

First Year Bar Examinations

This last impels me to mention an innovation in bar examination procedure which may be novel to most, if not all, of you. Whereas heretofore the bar examiners had no authority to make rules, that being a function of the Governors of the State Bar, subject, however, to the sanction and approval of the Supreme Court, now under a statute which became effective last month (Chapter 503, Statutes 1937) the Committee of Examiners are empowered to make their own rules subject only to the approval of the Board of Bar Governors. In addition, they are given the right to accredit all law schools for purposes of the California bar examination. But most novel of all, they are authorized to require, in addition to the final examination, a *first year bar examination* which must be taken by all students of unaccredited schools, before they can claim any credit for their first year's study of the law.

Pursuant to this authority, the California examiners have just completed their new rules which have been approved by the Bar Governors. These rules provide that only those schools in California which have enjoyed a percentage of success of not less than 30% for the applicants taking the final bar examination for the first time during the preceding three years, shall be accredited, whilst out-of-state schools which are found to maintain substantially the same standards, are also entitled to be accredited.

It is complimentary to the Section on Legal Education of the American Bar Association and to our Secretary, Will Shafroth, who happens to be the Adviser of that Section, that the California Committee has determined all schools presently approved by the American Bar Association are entitled to be accredited under the California law.

Our Future

In conclusion, I cannot retire from the Chairmanship of this Conference without testifying that Will Shafroth is the heart and brains of this organization. I shudder to think what would happen to it should we lose his service, inspiration and guidance, so generously and gratuitously rendered since its inception. If, however, the bar examiners of the nation will immediately and henceforth cooperate with him by deed rather than by word, particularly through the unanimous adoption in all of the states of our Foreign Applicant Investigation Service, I am sure he will be thereby induced to continue with us and this National Conference of Bar Examiners will go forward to greater achievement.

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Turn the Rascals Up!

Information was received recently by the Secretary of the Conference from an eastern law school that in case a certain young man applied for admission to the bar, important facts concerning him could be furnished by that law school. This information was relayed to the secretaries of all boards of bar examiners. The Conference is the logical clearing house for information of this type and the law schools will aid in maintaining the character of the bar and will assist character committees if they will notify the Conference of the names of any students concerning whose right to admission to the bar there exists a serious question on character grounds.

of New York. Other members of the Committee are Mr. Albert L. Moise of Pennsylvania, Secretary of the Philadelphia County Board of Law Examiners, Mr. Herman A. Heydt of New York, of the Committee on Character and Fitness of the Appellate Division of the Supreme Court, First Department, and Mr. Benjamin F. Van Dyke of California, member of the Committee of Bar Examiners in that state. It is planned to devote a session of the next bar examiners' conference to a discussion of this subject. In the meanwhile Mr. James will be pleased to have suggestions from either bar examiners or character committee members.

Connecticut Statute Increases Power of Character Committee

The following statute, which was passed in Connecticut last year, gives the Standing Committee on Recommendations for Admission to the Bar the power to use the process of the court in compelling the attendance of witnesses and the producing of books and relevant papers:

"Sec. 832d. Investigation of qualifications of applicants for admission to the bar. (a) For the purpose of investigating the moral qualification or general fitness of any applicant for admission to the bar of the state, either upon motion or examination, each chairman of any standing committee on recommendations for admission to the bar, in any county, shall have power to compel the attendance and testimony before it, or any member thereof, by subpoena and capias issued by him or other competent authority, of any person who such chairman reasonably believes may have information useful to his committee in such investigation, at such time and place in the town wherein such investigation is being made, as may be designated in such subpoena, and for such purpose any such chairman may compel the production before such committee, or any member thereof, by subpoena duces tecum, of any books, records or papers which such chairman reasonably believes may contain information useful to such committee in such investigation. (b) No such person shall be excused from testifying or producing books, records or papers on the ground that such testimony or the production of such books, records or papers will tend to incriminate him, but such evidence shall not be used in any criminal proceedings against him. (c) If any person shall disobey any such subpoena, or, having appeared in obedience thereto, shall refuse to answer any pertinent question put to him by such committee or any member thereof, such committee or such member may complain to the state's attorney of such county, who, upon being furnished with the necessary information, shall forthwith apply to the superior court, or to a judge thereof if said court shall be in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before him and shall inquire as to the truth of the allegations contained in such application and, if he shall find them to be true, shall commit such person to jail until he shall testify, but not for a longer period than sixty days. (d) Any such process may be directed to any proper officer and such officer shall serve the same as commanded therein."

A similar result has been achieved in Illinois through new rules of the Supreme Court, a simpler method and one which may be generally employed since the power of the court to regulate admissions to the bar is now almost universally recognized.

Character and Fitness

By William M. James

Chairman of the Committee of The National Conference of Bar Examiners on Character and Fitness Examination

During the past decade much has been written, said and done about the standards for admission to the bar. A major percentage of the time devoted to this subject has been confined to educational requirements while a relatively small amount of effort has been devoted to ways and means of selecting only men of character for admission to the bar. Those who have spent so much time in endeavoring to increase the educational requirements are to be strongly commended for their efforts, but is it sufficient to see that an applicant for admission to the bar is well educated? What does it profit the bar or the public if men who lack character are admitted to the bar simply because they are well educated? Is not a dishonest individual equally if not more dangerous to the public after he is well educated than before he is well educated? Is it not just as essential that a member of the bar have character as well as a good education? Movements are on foot in many states to stamp out the unauthorized practice of law by the layman. If these movements are to receive the sympathetic support of the general public, is it not indispensable that the lawyer, in addition to being well educated, be also a man of character and integrity?

The officers of The National Conference of Bar Examiners, realizing that character is just as essential as education, have created a committee of five from among the membership of the association for the purpose of bringing to the fore the problem of character and fitness of applicants for admission to the bar. It is expected that this committee will initiate a movement that will create a better understanding among lawyers of this problem; that it will assist in co-ordinating the work of the various character and fitness committees throughout the country in an effort to improve the machinery which now exists for inquiring into the character and fitness of applicants; that it will attract new interest in the problem among the courts or other authorities who prescribe the qualifications for admission; and that it will be able to enlist the assistance of the American Bar Association and state and local bar associations. The members of the character and fitness committees throughout the country are eligible for membership in The National Conference of Bar Examiners and it is hoped they will become members thereof and give freely of their time and energy in solving this difficult problem.

The status of character examinations throughout the United States is well summarized by Mr. Will Shafroth in an article written by him and published in the July-August, 1934, issue of The Bar Examiner where Mr. Shafroth says:

"It is, however, universally recognized that this is not enough. The tremendous difficulty of finding out what a man's character is going to be when he is still immature has probably acted as the chief hindrance. Impressions are not sufficient evidence on which to refuse a man admission to the bar and overt acts of a really reprehensible character are comparatively rare and are difficult to discover.

"The National Conference of Bar Examiners has not devoted adequate time or attention to this problem. It is something which needs the careful thought of wise men. The bar examiners themselves are too occupied with the problem of testing mental ability to have time to look thoroughly into character. This is the job of a separate committee and in many states the character examination is organized in this way.

"It is a sad fact, and one which is comparatively unknown, that there are at least eight or ten states where the only character investigation made is a perfunctory examination of the formal papers which are required to be filed. Certainly affidavits of two or three friends prove nothing. They may furnish a starting point for getting additional information, but who, outside of the moron, would file an affidavit which was unfavorable to him? In perhaps half a dozen other states no definite procedure is followed, which means that the investigation is generally very cursory. Probably there are not more than a round dozen where the job is properly done.

"Recent inquiry from all state boards shows that in only twenty of the states is there any record of definite rejection of candidates for the bar by reason of lack of proper moral qualifications, and the incomplete figures for the last three years show that the percentage of rejection has varied from six-tenths to eight-tenths of one per cent of the total number of candidates. It is true, of course, that this does not include applicants who have been discouraged from applying for admission."

The writer is serving his fifth year as a member of the character and fitness committee of the First Appellate Court District of Illinois and his second year as chairman thereof. During this period of servitude he has personally interviewed hundreds of applicants for admission to the bar in Illinois. From this experience he has arrived at certain definite conclusions some of which are hereinafter set forth. Some may not agree with the writer's conclusions but at least they may prove an incentive to others to give their views and eventually lead to a better understanding and a more satisfactory solution of the problem.

When a man is admitted to the bar, he has run the gauntlet of what is intended to be a selective process. To accomplish the best results each cog in the process must function at its maximum efficiency. The first step in the applicant's preparation is in the grammar school where, for all anyone knows, every student therein is a potential lawyer. Many eliminate themselves at

this early stage in their education. The next step is in the high school where others disqualify themselves either by voluntarily or involuntarily not completing their high school education or by maintaining such a low scholastic average as to virtually exclude them from the field of higher education. The third step is taken in the liberal arts college. Here again many are eliminated because of scholastic difficulties or for other reasons. It will be observed that at this stage of the prospective applicant's life, the field of potential candidates for admission to the bar has been considerably narrowed when compared with the number who originally enrolled in grammar school. The fourth step in the potential lawyer's career is his attendance at law school. It is this step which has perhaps received the most consideration by those who are interested in the problem of who shall become a lawyer. Much has been written and said about inferior law schools. Most of this criticism is undoubtedly justified. However, without condoning in any way the inferior law school, it is the writer's opinion that very few law schools have reached a state of perfection where they can rightfully say that every man or woman they graduate should be graduated. As a matter of fact, after interviewing hundreds of applicants, it is the writer's opinion that virtually all law schools with which the writer has come in contact through the medium of their graduates are graduating men and women who should not be graduated. The principal difference between the law schools lies in the degree in which they are guilty. If any moral is to be gleaned from this observation, it is that all law schools should continue with increased vigor their efforts to separate the sheep from the goats and to see that only the sheep graduate. Whether this can best be done by a selective process of admission to the law school, by a more rigorous exclusion from the law school of students who demonstrate their inaptitude, or by a combination of both of these methods supplemented by other methods, is something which those in charge of the law schools are best equipped to determine. In any event the law school represents one step in the selective process of admission to the bar and represents a very important step.

The fifth step encountered by the potential lawyer in the selective process is the bar examination. The bar examiners in the different states, notwithstanding their laborious efforts, are criticized alike by educators, applicants, lawyers and laymen. From the lawyer's viewpoint, they are regarded by some as too strict; by others they are regarded as too lenient; by educators their systems of examination are frequently subjected to caustic criticism. The applicant usually regards the questions as too difficult. The attitude of the layman depends somewhat upon his contact with the board. If he is related to an applicant who fails, then he considers the bar examiner too strict. If he is related to an applicant who passes, then the bar examiner is a fair-minded individual. If he is not related to an applicant and his contact with the bar examiner is indirect and consists of a contact he has with a

member of the legal profession and his work is properly handled by the attorney he employs, he believes the bar examiner is doing a good job. If, on the other hand, his attorney does not handle his matter in a proper way, then he believes that the bar examiner has not done his duty. While it is true that many things can and will be done to improve bar examinations, it is the writer's view that the principal reason the bar examination fails to exclude more unfit applicants than it does is because the applicants are permitted to take the examination too many times. If the applicant were limited to three examinations, the bar examination would then come closer to accomplishing its purpose and would bring about a greater elimination of unfit applicants.

The final step in the process of selecting candidates for admission to the bar is the inquiry into the applicant's character and fitness. In a number of jurisdictions, as disclosed by Mr. Shafroth's investigation, this step does not even exist. In many jurisdictions where it does exist the machinery functions in an ineffectual manner.

Character has been defined as "the peculiar qualities impressed by nature or habit on a person which distinguish him from others; hence, a character is not formed when the person has not acquired stable and distinctive qualities." Fitness has been defined as "suitableness; adaptableness; adaptation; as, the fitness of things to their use."

In the practical application of these terms to the applicant it is usually possible to segregate the applicants into three groups. In the first group may be placed the applicant who during his life time is known to have committed some positive offense such as larceny, obtaining property under false pretenses, forgery, embezzlement or the like. In dealing with this type of applicant, one is prone to place the emphasis on the word character rather than general fitness. The proper disposition of this type of applicant's case is not ordinarily difficult.

In the second group we find the type of applicant who, at least as far as the committee knows, has not committed any positive wrong such as larceny, embezzlement or the like. Not infrequently, he has been dismissed from one law school for poor scholarship and has ultimately succeeded in graduating from another or, if he has not actually been dismissed from a law school, he has barely succeeded in passing and graduating. Furthermore, he is often found to have taken the bar examination four, five or six times before he ultimately succeeds in passing it. It is not uncommon for an applicant in this group to exhibit a lack of candor in dealing with the committee who is investigating his character or in dealing with his fellow men in the course of the every day events of his life. Some applicants in this group have had no scholastic difficulties and to all intents and purposes appear to be very intelligent individuals. However, an investigation among the applicant's friends or in the neighborhood in which he lives may disclose that his

habits are bad or that he is regarded as unreliable and untrustworthy. Frequently it is difficult, if not impossible, to determine exactly why the applicant is regarded as unreliable and untrustworthy by his neighbors and associates. In other words, it cannot be established that he has done something definitely wrong, as for example, committed a crime. Applicants who fall within this group present one of the most difficult problems which confronts a character and fitness committee. This becomes particularly true because the action of most committees is subject to review by a court and in many instances the reviewing courts have been loathe to sustain the action of the committee because the court has felt that the committee did not have before it sufficient facts to justify its conclusion that the applicant lacks general fitness to practice law. Furthermore, the action of the committee usually takes place after the applicant has passed the bar examination and this weighs heavily in the applicant's favor.

The third group includes those applicants who have never committed a positive wrong, who have demonstrated their intellectual ability by satisfactory work in school, have passed the bar examination without much difficulty and, in general, have a reputation among their friends and associates for being capable, honest, reliable and apt.

Needless to say it is only on rare occasions that an applicant who falls in the first or second group should be admitted to the bar. The law schools can and should do much to decrease the number of applicants who compose these groups, particularly the second group. However, if past experience is any criterion, it will be some time before all law schools can, or will do, or be able to do their full duty in this regard. In any event their work can and should be supplemented by character and fitness committees. This then leads us to the question of what can be done to improve the work done by character and fitness committees.

One suggestion which has received considerable support is that the applicant should be required to register with a character and fitness committee before commencing the study of law and should at that stage of his career be subjected to a preliminary character and fitness examination; that while he is studying law he should be required to keep in contact with the committee with which he has registered; and upon completing his law school work he should be subjected to a final examination as to his character and fitness before being permitted to take the bar examination. Another suggestion is that character and fitness committees, particularly in the metropolitan districts, should have available sufficient funds with which to make a thorough investigation of each applicant. A third suggestion is that character and fitness committees should be given the power to subpoena witnesses and cause them to be sworn. Again it has been suggested that character and fitness committees should be given more latitude in delving into the general fitness of the applicant as distinguished from inquiring only into

his character as such. Probationary admission has been advocated by many. These and other suggestions which might be made are worthy of consideration.

The National Conference of Bar Examiners can and should assist each state in the establishment of a functioning organization adequately equipped and fully authorized to inquire into the character and fitness of candidates for admission to the bar and should endeavor to impress upon the courts the realization that there is a distinct duty on their part not only to see that the proper machinery exists but also to support the findings of these committees when they are justly and fairly made. By creating a national committee on character and fitness, the officers of The National Conference of Bar Examiners have taken the initial step. The members of this committee are men of experience in dealing with the problem and will undoubtedly give freely of their time and energy. However, this alone will not be sufficient. In order to succeed the Conference and the committee will necessarily have to have the cooperation and assistance of the members of character and fitness committees throughout the country, bar associations, the individual members of the bar, the courts, educators, and laymen. Now that the initial step has been taken it is hoped that everyone will do his part to assist the Conference and the committee in their efforts.

Michigan Studies Character Problem

The following excerpt from the report of the Committee on Legal Education and Admissions to the Bar of the Michigan State Bar, submitted to the 1937 annual meeting of the Association, indicates that careful study is being given to the character problem in that state:

Character Investigation

"Informal reports concerning the work of the Character Examination Committee of the Detroit Bar Association indicated that the work of the Detroit Committee had apparently resulted in an improved quality of applicants at the time of the last examination for admission. This is due not so much to exclusion of applicants found to be unworthy, as from the deterrent effect which the activities of this Committee had exercised upon persons of undesirable character or conduct in the Detroit area. The work of this Committee is, of course, largely that of investigation of individual applicants, based upon their answers to a questionnaire which the Detroit Committee had sent to each applicant, and upon personal interviews with the applicants and with persons who might know about the reputation and standing of such applicants. The Committee believes that the work of

the Detroit Committee should be continued, and that local bar associations should undertake similar work throughout the state. The emphasis put upon character by the mere carrying on of this work will unquestionably have a beneficial effect upon the stream of young lawyers entering the bar. The Committee further believes that the schools, both within and without the state, whose graduates apply for admission here, should exercise increased care in this matter. If each school would require, early in the course of the student, a statement of his intention to practice law and in what state, the later investigating committees would have more information upon which to proceed.

Shall Periodical Licenses to Practice Be Required?

"There are several evils in the present situation, which might be wholly or at least partially removed by a wisely framed plan of requiring every person admitted to the bar in the future, at the end of two, three, or five years, to apply for a permanent renewal of his license to practice law.

"What are these evils? One clearly presents itself in connection with the subject of professional ethics. Despite all the care which the bar examiners and law schools may exercise to prevent the admission of persons without a sound ethical attitude, some such persons will be admitted. One's character has not fully developed at the normal age of admission to the bar. It cannot be told whether one will yield to temptation to dishonest conduct until that temptation has been presented. If, therefore, all persons admitted to the bar in the future were required, at a stated interval after such admission, to have the license made permanent, the conduct of the individual during the interval (say of three years) could be carefully investigated.

"In the second place, many persons pass the bar examinations and are admitted, but do not engage in practice for some years. Then, under special circumstances, some of those people may begin the practice of law, but without experience and with many of the benefits of the legal education lost through the passage of time.

"In the third place, a general check-up of the persons actually engaged in practice, which would result from the adoption of such a plan, would give to the bar and to the courts needed information regarding the members of the profession. Our Committee believes that a carefully worked out plan along the lines suggested should be presented to the State Bar for consideration at its next annual meeting."

The present committee on the subject has recently filed a report which asks that this recommendation be given consideration at the next annual meeting of the Association.

Applicants for Admission to the Bar

By Karl A. McCormick*

Proctor of the Bar, Eighth Judicial District of New York

In the work with the Character and Fitness Committee of this judicial district, it was soon found that while this committee is made up of distinguished lawyers who have been giving generously of their time to help the Court in preventing the admission of the unfit, nevertheless, much of its work could be made of greater value if certain changes in the rules were brought about.

The Committee sees the applicants, for the first time, only a day or two before the admission day set by the Court. Each applicant has filled out a questionnaire telling something of his education and qualifications. He also has two or more affidavits from lawyers who state the applicant is qualified for admission. In many instances, the affidavits are from instructors in the law school attended. Upon this showing, plus the certificate of the Bar Examiners to the effect that the applicant has passed the written tests, the Committee is required to approve or disapprove the applicant for admission. First of all, under such a procedure, no committee made up of human beings is going to impede the progress of a young person, after the formal educational requirements and bar examination tests have been successfully passed, unless some grievous offense has been committed by the applicant.

The information which the Committee had before it was furnished entirely by the applicant with no chance to checks its accuracy. In the past fifteen years, more than one thousand applicants have been examined by the Committee in this way and in the past six or seven years, the largest part of that number has been before the Committee.

It is, of course, no criticism of the Committee to state that a number of applicants have been admitted who never should have been given a license to practice. The wonder, rather is, that a much greater number of unworthy applicants have not been given a place in the profession.

This method of procedure served very well at a time when the numbers were comparatively few and most members of the committee had an acquaintance with either the applicant or the family from which he or she came. With the increase in numbers and the diversity of residence of many of the applicants, it is no longer true that even one member of the committee ever heard of the applicant prior to his or her appearance before the committee.

And so this office is attempting to furnish the committee with as complete an investigation as possible regarding each one who comes before it. In order to do this, much time and effort is required. To investigate and report

* An excerpt from the First Annual Report of the Proctor of the Bar.

on some seventy-five or eighty applicants in the course of a year means considerable work for this office. It must be remembered that many of the applicants come from various parts of the country and have attended various schools throughout the United States.

Then there are increasing numbers who apply for admission from other states. They have been admitted in far distant jurisdictions and after practicing there for five years or more, seek admission in New York State, upon motion.

In August, 1937, the Court of Appeals amended its rules to require those who come from out of the state desiring to be admitted on motion, to furnish a complete investigation by The National Conference of Bar Examiners. This report is now used in connection with further investigations made by the Committee and this office.

In the beginning, this office asked the various law schools where boys and girls from this district are attending school, to have such students fill out cards giving some information about the student. These cards are filed in this office. The law schools have given their co-operation and in the coming years the office will have complete files. In this way, it is hoped we can keep in touch with the students who will eventually be applying for admission to the Bar from this district.

It is recognized that the first time to contact these prospective applicants is when they first enter law school. From then on, they should be conscious of the fact that they have registered in this office and that information will be obtained regarding their fitness for admission to the Bar.

In another way this office has attempted to be of service to those about to be admitted to the Bar. Each candidate is talked with separately before appearing before the Committee. These interviews last from one hour to four or five hours at different times. The object is to give these new lawyers some idea of the profession of which they are about to become members. Unfortunately, for both the Bar and the public, they start the practice without having the slightest idea of what the profession is, its traditions, its difficulties, or its opportunities. Most of them have never had their attention directed toward the practical, economic side of the vocation in which they feel called upon to attempt to make a living.

Many of the newly admitted have a vague idea that work in the courts is all that there is to the practice. They are attracted by the spectacular or dramatic side such as highly publicized criminal trials, and their sole ambition seems to be to immediately represent clients before the courts. Most of these applicants are very young—the average age is less than twenty-four years. Far more than half the number have only the minimum educational requirements. The largest percentage state that they were impelled to take up the law because either a parent or some near relative has influenced them

and a further reason that is given is because the educational requirements are easy and short in time and less expensive by comparison with many of the other professions.

In addition, this office has had many interviews with boys and girls in high schools and colleges and with parents who are thinking of urging a legal education upon their son or daughter. A number of students in far distant states have corresponded with this office. They all seek information about the prospect of making a respectable living in our profession.

These requests for information lead one to wonder whether the Bar has discharged its duty in the past toward those who are to come into the profession in the future. Would our ranks now be so overcrowded if the profession had been diligent to obtain and disseminate accurate information of true conditions? At any rate, it seems certain that much service can be rendered if the actual facts are now obtained and made available for those who are about to select their life work.

These requests for information also require the Bar and the courts to consider seriously the necessity for comprehensive surveys. Only a beginning has recently been made along this line. The New York County Lawyers Association published a survey of New York County in 1936 that made a contribution of great value to the public. The New York State Bar Association at its annual meeting last January directed that a state-wide survey be taken. A special committee was appointed for that purpose. It is a large job that will require time and a substantial sum of money. So far no funds have been obtained to start the work. However, the necessity for such a survey is imperative and it is hoped that the work can be undertaken in the near future. * * *

Much thought has been given by those who have the welfare of our system of justice at heart, to the serious problem of overcrowding. This problem has become so acute and its implications so serious that some of the lay public have begun to show concern. Articles appearing in many different publications and the press throughout the country indicate its importance. Comparisons are frequently made between the numbers in our profession and in the medical profession. It is stated that there are over 178,000 lawyers in this country as compared with not more than 162,000 doctors. Last year there were 197 law schools in the United States as compared with less than 90 medical schools. There were more than 40,000 students enrolled in law schools with probably not half that number in medical schools. Since 1903 the number of law schools has more than doubled while in the same period the number of medical schools has been more than cut in half. The requirements of the average person for medical services far outnumber the requirements for legal services. While most medical schools have a strict limitation of only a small number of new students each year, most law schools have no numerical limitations.

In New York State, out of the ten law schools, only two or three have any numerical limitation. Last year there were 7,000 enrolled in law schools in this state.

In Ohio an alliance has recently been formed between the law schools and the Bar for the purpose of attempting to cut down the numbers and improve the quality of those who come to the Bar. Efforts along this line have been attempted in this state, but, so far, the organized Bar and the courts have not progressed very far in this work. However, the necessity for such action now seems imperative. It is a difficult problem, but the integrity of the whole system of the administration of justice demands its solution.

Much can be done by education of the public as to the true facts. In this district, this office, working in conjunction with the local bar associations, is attempting to do all that it can to keep on giving accurate pictures to the public of the economic conditions that confront the average lawyer.

One encouraging sign is now apparent, though but very recent. Many thoughtful members of the Bar throughout the country begin to see where our present course is leading the profession. Within the past few months Dean Young B. Smith, of Columbia University Law School, was quoted in the public press as follows:

"The time to eliminate the unfit is before they begin their professional training. Any other procedure is not only wasteful but inhuman . . . The solution of this problem (overcrowding) is to take the profit out of legal education."

Dean Leon Green of Northwestern University Law School states in his pamphlet entitled "Who Shall Study Law?",

"There are too many lawyers, too many law schools and too many law students for the good of the country."

He pleads for better selection of students and better and more fitting education in the law schools. Many similar expressions on the part of members of the Bar have recently been voiced.

A layman, an editor of a middle west newspaper, recently wrote a satirical editorial on the condition of the Bar throughout the country. After expressing his views on the great number in proportion to the need for services, he suggested the way to solve the problem was to "plow under a third of the crop each year." This satirical thrust may some day symbolize the attitude of the public who have a way of drastic action when sufficiently aroused. They then might not be satisfied to eliminate one-third. They might demand the destruction of the whole crop.

Should not the courts in co-operation with the Bar and the law schools take an active interest in changing these conditions to the end that the administration of justice will be materially improved and the public thereby greatly benefited?

To quote Dean Smith again,

"Justice is so dependent upon the efficiency and honesty of those who administer it, that changes in legal rules and in methods of administration will accomplish little unless membership in the bar is restricted to men of high ideals, ability and integrity."

Difficulties Facing Character Committees

Speaking before a meeting of the New York State Bar Association in January of this year, Mr. Cornelius W. Wickersham, Chairman of the New York Joint Conference on Legal Education, discussed among other things character committees and their duties. Mr. Wickersham said in part:

"I venture to suggest that the Character Committees are too small in numbers for the needs of the larger communities. In the First Department (Manhattan and the Bronx) it is too much to expect that nine busy practicing lawyers should be able to pass adequately on the character and general fitness of from 500 to 1,000 applicants in a year. If the members of the Character Committee had nothing else to do, the task would still be large, if it is to be thoroughly done. But we must remember that they are busy lawyers with many calls upon them."

Mr. Wickersham said that the difficulties of the task of the character committees are often very great. Applicants may appear whose appearance and conduct in the examination give an unfavorable impression, resulting in the conviction that they are not worthy of admission to the bar, he said, adding:

"Yet they may be without any discoverable blot on their records, and it is difficult for the committee to refuse admission with nothing more tangible to base it upon than an impression that the applicant lacks the character to withstand the temptations that practice may bring.

"In this Department (the first) the Committee requires a lengthy questionnaire followed by a personal appearance before a member of the Committee. Sponsoring affidavits must be produced and other evidence bearing on the question of character. These are, of course, of value, but the difficulty comes in the cases where the committee is without sufficient knowledge of proven character. If the committee rejects they may be accused of arbitrary action: if the committee approves, without doubts, they may thereby admit one who will later prove to be morally unfit to practice law, the public will be the sufferer, and, of course, the bar, as a whole, will be blamed."

—*The Buffalo Daily Law Journal.*

full discussion of the last bar examination, based on the report of a committee copies of which had been furnished in advance to all those present. The question of apprenticeship for young attorneys was also given consideration. Other matters discussed included aptitude tests, review or cram courses, approval of law schools, sponsorship of law students, and contents of the instruction book which is now given to all students applying to take the bar examinations. The Committee will meet again in June.

Back Door Applicants

The following letters were received by The National Conference of Bar Examiners concerning two applicants for admission to the bar in Missouri who applied on the basis of a period of previous practice in Arkansas. The names and places are fictitious and the facts have been slightly changed in order to prevent identification.

March 11, 1938.

The National Conference of Bar Examiners,
Ann Arbor, Michigan.

Gentlemen:

You inquire regarding Elmer Hurry who seeks admission to the bar in the State of Missouri and advise that he was admitted to the bar in Arkansas in 1934 and has practiced law in Mantonville, Arkansas, with Mr. John Lewis of this city.

He appears to be a very nice gentleman about thirty-two years of age. His home is in Jackson, Missouri. He was admitted to the bar of Arkansas in June of 1934 when our examinations for admissions were much more lax than they are at the present time. It is the general information, current among the lawyers here, that he came to Arkansas for the purpose of being admitted, and with no intention of remaining permanently here. His name appears upon the door to the office of Mr. John Lewis, an attorney here. It is my information that he has never tried a case. Recently he has been expending a considerable portion of his time here, but up until a few months past he was here only occasionally, preserving his actual residence in Jackson, Missouri. It is current talk of the local bar here that Mr. Hurry expects to return to Missouri to practice as soon as the four year period from the date of his admission to the Arkansas bar expires.

Yours very truly,

M. S. S————————.

March 22, 1938.

The National Conference of Bar Examiners,
Ann Arbor, Michigan.

Gentlemen:

Mr. Determined came to Norton from Flatbush, Arkansas, and opened an office and I think stayed a little over a year. When he came into our town, every lawyer here took him in and introduced to the people and tried to help him all we could. We understood that he came from a very fine family in Missouri and that his wife was a very fine lady. He received, so he told me, $175.00 a month from his uncle, and even with this he couldn't keep his bills paid and when he left he owed most every merchant in town.

He didn't have any practice and to the best of my knowledge never tried a law suit while he was here. On two or three occasions I heard of him soliciting business and it was not long until the rest of the lawyers started staying away from him. He would go for days and never come to his office but would stay around the pool halls and bet on horse races. Mr. Determined at one time borrowed some money from Mr. Lender of this city, and gave him a mortgage on his household furniture. When the note came due, he did not have the money to pay and the mortgage was foreclosed. He came to me and wanted me to go on his bond but I refused. At this same time he was six months behind with his rent on his house and his landlady, who lives at Oakville, Arkansas, wrote to his uncle and he agreed to send her the money direct each and every month.

I am a young lawyer myself and I know that a young man has a hard time but in my opinion, and the opinion of others here, a man who is getting $175 a month from his uncle should surely leave off playing poker and betting on horses if it took all of his money, and his family has to suffer. I have been practicing law seven years and have seen four or five lawyers come into Norton just like Determined, on account of the fact that the bar examination might be a little less hard to pass than some other state, and stay just long enough to enable them to get admitted to the bar of another state. I write this letter with the full knowledge that I am hurting Determined's chances of admittance to the bar in Missouri but I feel that the only way that any local bar can be cleaned of lawyers who don't conduct themselves right as a lawyer or a man is for the other lawyers, who are trying to do the right thing, to get behind some conference such as yours and give true information about anyone you are examining.

Yours sincerely,

N. H. J————————, Jr.

Lawyers in the 71st to 75th Congress

EXCERPTS FROM AN ARTICLE BY JOHN BROWN MASON†

of the Department of Social Science of
Santa Ana (California) Junior College

The following information concerning the members of the 71st to 75th Congress, elected between 1928 and 1936, is of interest to every lawyer as showing the numbers from our profession in the national legislature:

LAWYERS IN THE SENATE

	No. of Senators					*No. of Lawyers*					*Per Cent of Lawyers*				
Congress	71	72	73	74	75	71	72	73	74	75	71	72	73	74	75
Dem.	42	48	60	69	76	31	39	51	55	62	70	80	85	80	81%
Rep.	54	48	36	27	20	28	26	17	13	11	52	54	47	47	55%
Total	96	96	96	96	96	59	65	68	68	73	61	68	70	70	76%

LAWYERS IN THE HOUSE

	No. of Representatives					*No. of Lawyers*					*Per Cent of Lawyers*				
Congress	71	72	73	74	75	71	72	73	74	75	71	72	73	74	75
Dem. 165	220	310	322	331	119	142	191	218	203	72	65	62	68	61%	
Rep. 267	212	122	113	102	153	127	62	64	57	57	60	51	56	56%	
Total 432*	432*	432*	435	433*	272	269	253	282	260	63	62	58	65	56%	

* There were two and three vacancies, respectively.

The record shows that close to one-half of all lawyer-Senators (41 to 52%) are college graduates, with the tendency inclining toward a gradual increase in their absolute number (ranging from 27 to 38). A fair sprinkling of four to ten per cent of all lawyer-Senators also hold an A.M. degree.

In regard to legal education, between five and ten (7 and 10 per cent) of the lawyer-Senators received their professional training the old way—by reading law in a law office. This is in great contrast to past times when, for instance, in the 45th Congress (1877-79) the ratio of privately-trained to university trained lawyers among Senators was 55 to 6.

The professional degree of LL.B. is held by 23 to 36 lawyer-Senators in each Congress (33 to 56 per cent), while an additional 6 to 14 Senators (10 to 19 per cent) have at least "attended" law school for some time. * * *

There is consistently a larger percentage of college graduates among the lawyer-Senators (41 to 52 per cent) than among the lawyer-Representatives (37 to 42 per cent); the same is true of holders of the A.M. degree (4 to 10,

† Reprinted from 10 Rocky Mountain Law Review, 43 (December, 1937).

and 3 to 7 per cent, respectively). However, the House is persistently ahead of the Senate in its law school training, with 57 to 66 per cent of all lawyer-Representatives holding an LL.B. degree, as against 33 to 56 per cent of all lawyer-Senators.

Cheating at Bar Examinations in Louisiana

Disbarment charges against three lawyers and blacklisting of four candidates for admission to the bar are the results of the investigation of reported irregularities at a recent bar examination in Louisiana. A news dispatch indicates a report was filed by the Board of Bar Governors with the members of the state Supreme Court which stated that a deliberate and systematic tie-in of furnishing information to candidates during the time the last examination took place had been discovered. "The undersigned members of the Board," the report said, "conducted a thorough investigation into this matter and are in possession of conclusive proof that two or more persons—one a Shreveport attorney, definitely identified—engineered a scheme to procure payment of sums of money from members of this class, for which payment the subscribing candidates were to receive answers to examination questions delivered to them daily at the place of the examination."

Questions to one examination subject, the report continued, were made available to subscribing candidates several days before the examination began in Baton Rouge. The parties furnishing the information to the students managed to obtain copies of the questions during the previous week and had all answers ready when the examination began, according to the report. Answers to questions of the other examination subjects were sent daily to rooms where the examinations were being held a short while after each examination was begun.

"In a nearby hotel room," said the report, "were two men—one known to be the Shreveport lawyer, and two women—one the wife of a man taking the bar examination and the other a hired stenographer—who hurriedly prepared several copies of the answers to questions by dictation on the part of the lawyer to the stenographer, using a working library in their room."

The answers were hurriedly prepared after questions were rushed from the examination place to the hotel room and copies of the answers were rushed back to students and distributed in a wash room of the building.

One applicant is alleged to have increased the mortgage on his house to raise $250 which he paid for the answers, while a second is said to have paid $138 and a third, $67.50.

Annual Meeting of National Conference

A new chapter in the history of The National Conference of Bar Examiners was written at the annual meeting held in Cleveland on July 25. Chief attention at this meeting and at the subsequent joint meeting held the next day with the Section of Legal Education and Admissions to the Bar was devoted to the character problem and to ways and means of improving methods of examination for character and fitness and of finding out more about the moral background of applicants for admission to the bar.

A committee which had been working during the year on this subject presented a report which was adopted first by the Conference, then by the joint meeting and finally by the House of Delegates of the American Bar Association. This resolution proposed standards to be adopted in each state to bring about more thorough character tests. It is not an exaggeration to say that these standards may prove as important and as far-reaching in their way as have the standards of admission to the bar adopted by the American Bar Association in 1921.

Character Standards Adopted

The standards of character examination adopted were as follows:

1. The applicant should be required to register at the beginning of law study and at that time submit to an examination of his character and fitness.
2. That further study be made of the desirability of each applicant upon commencing the study of law being assigned to a sponsor in the locality in which the applicant lives in order that the applicant may have the benefit of advice and suggestions from an active practitioner during the course of law study and that where found to be practicable such a plan be adopted.
3. A standard form of questionnaire should be adopted which will give information about the applicant to be used in addition to his application form, unless that form calls for the required information.
4. Character and fitness committees should have the power to cause oaths to be administered and witnesses to be subpoenaed.
5. Each applicant, particularly in the metropolitan districts, should be interviewed personally.
6. Administrative machinery should be set up for the investigation of applicants where questionnaires or interviews show that further information is needed.
7. We reiterate the position taken by the American Bar Association that a report of The National Conference of Bar Examiners should be required when an appplicant is applying on a foreign license.
8. Just before taking the bar examination the applicant should be required to submit to a final examination into his character and fitness.

9. Local, state and national bar associations, and other interested organizations should be encouraged to make a study of this problem and to do what they can to bring about the establishment of an adequate system in each jurisdiction to inquire into the character and fitness of applicants.

10. In each jurisdiction the court, legislature or other group which has control of admission to the bar should be encouraged to continue a study of the problem with the view of obtaining better cooperation in setting up the necessary machinery, and after the necessary machinery has been set up with the view of getting the proper cooperation between the group which determines the requirements for admission to the bar and those appointed to inquire into the character and fitness of applicants.

The meeting opened with the chairman's address, which will be reprinted in the next number of The Bar Examiner.

Mr. Bierer reviewed briefly the history of the Conference, pointed out the useful work it had done for the benefit of bar examiners, referred to its investigation service of foreign attorneys and spoke of the work which it was undertaking in the character field.

After the conclusion of his remarks, the chairman introduced Dean Paul Shipman Andrews, of the Syracuse University Law School, who spoke on the subject "Admission to the Bar—Before and After." Dean Andrews referred to the difficult problems which the bar is facing today and in assessing its ability to cope successfully with the present difficulties he cast up a balance sheet of assets and liabilities. As assets he listed the ideals of the profession, the large number of lawyers who will not compromise with these ideals, the great fund of enthusiasm and idealism possessed by the law school graduates going into the bar, the higher standards of legal education and the requirements for admission which are now found in the great majority of the states, the incalculable amount of work done by bar examiners, character committees and bar associations, and the large amount of leadership lawyers are giving in government, politics and business. These tangibles which are found on the plus side of the balance sheet will go far to enable the bar to meet its obligations to the public. But there are also liabilities, including an unfavorable press, a small minority of unethical practitioners who breed cynicism in the ranks of the neophytes, a frequent failure to exclude the unfit or to discipline the unethical and a lack of organization which would make possible more competent service in every type of legal work which has been undertaken by lay agencies. Dean Andrews is a firm believer in the presence in the bar of high ideals of service and morality, but he believes that something must be done to waken these ideals and make them effective.

The Right Honorable Lord Macmillan, Lord of Appeal in Ordinary of the House of Lords of England, a distinguished guest of the Association at Cleveland, was present at the meeting and the chairman called on him. His

lordship's remarks were both gracious and eloquent and were much enjoyed by those present. It developed that he had been a law examiner at one time and was keenly interested in the work which the Conference was doing and particularly in its efforts in the character field. He referred to the question of how we are to have worthy lawyers as one of supreme concern to the profession, including both the problem of testing the legal technique of applicants and their character. These problems are ones with which they are also preoccupied in England. He attached the greatest importance to the examination system, but nevertheless thought that there were other sanctions of perhaps more importance and these were things which depended upon the spirit of the profession itself. In England and Scotland by far the most stringent and potent means of keeping men on the right path has lain in the profession itself. In the ranks of the English and Scottish bar there is a very fine esprit de corps and the man who offends against the professional ideals soon finds himself mistrusted and shunned by his brethren of the bar and by the benchers of his Inn.

Lord Macmillan referred to the diverse character of our admission requirements and examinations in America and stated that in his opinion the gateway to the bar should be nation-wide rather than state-wide, and the spirit of the profession, which is of slow growth, must also be nation-wide. This spirit he said was the most potent means of promoting the traditions of the profession. This spirit has been promoted in England by the requirement that the aspirant for a call to the bar of England has been required to eat a certain number of dinners in the Inns of Court as a part of his training. This has a social as well as an intellectual value.

He then spoke of the great traditions of the profession and congratulated the Conference on the part it was taking in maintaining these traditions and ideals. While the legal profession is not particularly highly esteemed in some quarters, he assured those present that "the profession is only passing through a change of pace and believe me, gentlemen, we shall be indispensable to the end."

Mr. Thomas F. McDonald, Secretary of the Missouri Law Examiners, then spoke on "Preparation of Questions and Grading of Papers in Missouri." This address contained a number of valuable suggestions and will be printed in a future number of The Bar Examiner.

Mr. William M. James, Chairman of the Committee on Character and Fitness of the First Appellate Court District of Illinois, reported for his committee and presented for approval the standards which have already been quoted. Mr. James' discussion of the character standards was included in the address which he made the following morning before the joint meeting with the Legal Education Section, and which is printed in the following pages.

A nominating committee was appointed, consisting of Mr. George Turner of Nebraska, Chairman, Mr. Clyde L. Young of North Dakota and Mr. Alan W. Boyd of Indiana. Its report was adopted and the following officers and members of the executive committee were elected: Chairman, A. G. C. Bierer, Jr., of Oklahoma; Secretary, Will Shafroth of Michigan; executive committee, Stanley T. Wallbank of Colorado, and Warren F. Cressy of Connecticut.

On the following morning a joint session was held by the Bar Examiners and the members of the Legal Education Section for the purpose of discussing the work of the Character and Fitness Committees. The meeting was presided over by Chairman R. G. Storey of the Legal Education Section and addresses were made by Chief Justice Carl V. Weygandt, of the Supreme Court of Ohio, by Mr. Karl A. McCormick, Proctor of the Bar, Eighth Judicial District of New York, and by Mr. William M. James, whose address is found in the following pages. Reference will be made in a subsequent issue of The Bar Examiner to the capable addresses of Justice Weygandt and Mr. McCormick.

Following Mr. James' address, Mr. John Kirkland Clark of New York moved to recommend to the House of Delegates the standards proposed by the Conference's Committee on Character and Fitness, which motion was duly passed. The session ended with a report by Mr. Alfred L. Bartlett of California for the Committee on Cooperation between Bar Examiners and Law School Representatives. This report gave an account of the substantial progress which has been made during the past year.

Justice Roberts Discusses Character Problem*

As I have been sitting around here, listening to the talk and getting the views of the men here and trying to appraise the work this Association is doing, I have been thinking, What is the significance of this Association, really? What is its fundamental function in the life of the country?

You have done an enormous amount of valuable technical work, dealing with procedure, recommending legislation to correct inequities and lapses in our statute law, but all of that, ladies and gentlemen, is adjective. After all, the fundamental thing that this Association exists for, as I see it, is to maintain and to raise the standards of professional character and conduct in America.

That is the fundamental job of this Association and if all its activities do not ultimately lead to and promote that great end, the other things that you have done are trifling, and they are not worthy of the Association's continued existence. I think you have sensed that. I think the work that this Association has done in holding up the standards for the intellectual qualification of applicants to the bars throughout the country speaks for itself.

* Excerpts from the remarks of U. S. Supreme Court Justice Owen J. Roberts at the annual banquet of the American Bar Association in Cleveland, July 28.

As the result of the period of years of work, the standards of professional education have been pushed forward at an amazing pace and to a most satisfactory point. But, ladies and gentlemen, the standard of professional character is to be viewed in two aspects. It consists of two factors, intellectual and moral. We must be as zealous that, in promoting the intellectual qualification of the young men and women who come to our bar, we do not neglect the moral qualification as well.

Improvement of Character Investigation an Important New Field for Conference

The significance of the annual meeting of the Conference at Cleveland has already been pointed out. The standards of character examination adopted there were recommended as a result of the study of a committee of five men who have had intensive experience with this particular subject. It is perhaps trite to say that character is the most important element in the makeup of the lawyer. The Bar has devoted a great deal of time and energy to securing proper standards of admission to the Bar as far as general education and legal training are concerned. In thirty-eight states a two-year college requirement has been adopted and there are at least twenty-two jurisdictions where, with a few local exceptions in some cases, law school study is not recognized unless pursued in a school approved by the American Bar Association. The success of this movement initiated by the American Bar Association on the recommendation of the Root Committee in 1921 is most encouraging and indicates that the efforts to raise intellectual standards will be continued.

It is true that there is some character test involved in requiring an applicant to pass two years of college work and to cope successfully with a modern law school course in an approved school. But it must also be recognized that this is not enough. The great importance of being able to assure the public that the men who receive a lawyer's license are all, actually as well as theoretically, "of good moral character," demands that every effort be made to bring this about. The great difficulty in finding out the true character of applicants for admission to the Bar has made progress in the field of character and fitness examination extremely slow. At the present time in the majority of states, little is done other than to require the presentation of letters or certificates from reputable members of the Bar and then to call the candidate in for a rather cursory examination by members of the local committee. In perhaps seventy-five per cent of the cases this is all that is necessary. But in the other twenty-five per cent a more careful procedure is warranted if there is to be any real sifting of the wheat from the chaff.

The small amount of attention which has been given to this subject is

shown by the meagerness of the statistics as to rejections by character committees. In Pennsylvania it is reported that about five per cent have either been rejected or have withdrawn their applications. In New York, figures presented by Mr. Wickser a few years ago showed the number of rejections to be less than one per cent and in many other states, it does not exceed this. If everything was done which could be done, in the jurisdictions last referred to, to find out about the character of these applicants, will any one maintain that the percentage would not have been larger? This is no reflection on the character committees, which have worked hard and conscientiously, but it does indicate that there is room for improvement of methods.

In most of the states there is no information as to how many rejections there have been on character grounds.

The program proposed by Mr. James' committee and adopted by the House of Delegates will very much improve the present procedure in most places. In the first place, the applicant would be required to register and be examined at the beginning instead of at the end of his law study. Registration at such time is now required in many states, but there are very few where any character examination or investigation is then made. Obviously, the element of estoppel which exists after a man has spent three or four years studying law, is absent when he is just beginning, and not only can the committee feel more free to reject hm, but also it can use its powers of persuasion to convince him that he is more fitted for other work. An important attribute which should be possessed by Character and Fitness Committees is the power to administer oaths and to have witnesses subpoenaed. It seems strange that every committee does not now have this power.

The standards propose that administrative machinery should be employed in the investigation of applicants concerning whom some question arises. The work which the National Conference has done in the investigation of foreign attorneys indicates that very often the candidate whose general reputation is not good can be affirmatively proved to be unfit for admission. The employment of the National Conference as the administrative agent in reference to such applications for admission on comity, which is now the rule in twenty-three states, is also recommended by the committee. The bar and bar associations are urged to make a further study of this problem and of the question of a system of sponsorship for law students by active practitioners, similar to that used in Pennsylvania.

These are the most important of the suggested standards. They are recommended to each examining board, character committee, Supreme Court and bar association for careful consideration and further study. Their adoption at the Cleveland meeting marks the first step in a drive for higher standards of character for bar admission and may well prove one of the most significant actions in the history of the Conference and of the American Bar Association.

Character and the Applicant for Bar Admission

By William M. James*

Chairman Committee on Character and Fitness Examinations of The National Conference of Bar Examiners

In looking through the advance program published by the American Bar Association, I observed that I was described as "Chairman of the Committee on Character and Fitness, First Appellate Court District of Illinois." In the last issue of The Bar Examiner, I was referred to as "Chairman of the Committee on Character and Fitness, First Appellate Court District of Illinois" and "Chairman of the Committee on Character and Fitness of The National Conference of Bar Examiners." These dignified references to my official positions rather embarrass me because in Cook County I am known to the applicants for admission to the bar as "Chairman of the Morals Gang."

In Cook County, Illinois, we have a comparatively elaborate system for inquiring into the character and fitness of applicants for admission to the bar. Perhaps a brief outline of our methods will be helpful to you in understanding my remarks which follow.

Rule 58 of the Supreme Court of Illinois provides for the appointment of a committee on character and fitness in each Appellate Court District. The rule requires every applicant for admission to the bar in Illinois to appear before such a committee. In the First Appellate Court District, which includes Chicago, the committee consists of fifteen members, besides two members of the Board of Law Examiners who are ex officio members of the committee. In the Appellate Court Districts outside of Cook County, each committee consists of three members.

In order to be admitted to the bar in Illinois, there are certain essential qualifications in addition to educational requirements. The applicant must be a citizen of the United States, he must speak the English language readily and intelligently and he must satisfy the committee on character and fitness that he has such qualifications as to character and fitness as to justify his admission to the bar.

Before being admitted to the bar, the applicant is required to file with the committee a verified or sworn application. In this application he must state, among other things, his age and residence, the schools he attended, what degrees he received, whether or not he ever had any scholastic difficulties in school, whether he has ever been a party, either plaintiff or defendant, to a

* An address delivered at the joint session of The National Conference of Bar Examiners and the Section of Legal Education and Admissions to the Bar in Cleveland on July 26.

civil, criminal or quasi-criminal action, the names of his parents, their occupation and residence, if living, and so on.

Inasmuch as there are from five hundred and fifty to seven hundred applicants each year in the First Appellate Court District, the whole committee in this district can not examine each applicant. Hence, the committee divides itself into five sections composed of three members each. Immediately after its appointment at the October term of the Supreme Court, the committee meets and elects its own officers, a chairman, a vice-chairman and a secretary. When an application is filed by an applicant it is referred to a section, and it is not considered by the entire committee until that section has passed upon the applicant.

At each hearing of a section or the entire committee a reporter is present. After an application is heard by a section, the section has the authority by unanimous vote to recommend the issuance of a certificate. However, if any member of the section is opposed to the issuance of a certificate, the application is then sent to the entire committee for action; or if any two members of the section request it, the application may be held for further consideration by the section. In any event, even though the applicant is recommended by a section, the affirmative vote of nine members of the committee is required to certify the applicant for admission to the bar.

In the event the applicant is denied a certificate, he may ask for a rehearing at the expiration of six months. Three such rehearings may be allowed under the rules of the committee. In order to obtain a rehearing the applicant must file a written petition in which he must state what he has been doing since he last appeared before the committee. If he received assistance in the preparation of his petition, he must so state and give the name of the person who assisted him and state the nature of the assistance given. This latter requirement was incorporated in the rules of the committee in the First Appellate Court District of Illinois because the committee found that some applicants were going to able lawyers to have their petitions prepared, so that their petitions in no sense constituted the work of applicants and gave the committee no insight into the applicants' fitness or ability.

When an applicant is refused or given a certificate, he is notified by the secretary. Every other member of the committee is prohibited from giving this information to an applicant.

It has been my pleasure to serve as a member of the Character and Fitness Committee of the First Appellate Court District of Illinois for five years and to serve as its chairman for two years. During this period of service I have personally interviewed over one thousand applicants. From this experience I have arrived at certain definite conclusions with regard to the subjects of legal education, character and fitness, and admission to the bar.

For many years much has been written, spoken and done about the standards for admission to the bar. Most of the time devoted to this subject has been confined to educational requirements, while a relatively small amount of time has been devoted to ways and means of selecting only men of character for admission to the bar. Those who have spent so much time in endeavoring to increase the educational requirements are to be strongly commended for their efforts, but is it sufficient to see that an applicant for admission to the bar is well educated? What does it benefit the public or the bar if men who lack character are admitted to the bar simply because they are well educated? Is not a dishonest individual equally, if not more, dangerous to the public after he is well educated than before he is well educated? Is it not just as essential that a member of the bar have character as well as a good education? We hear a great deal of criticism in some districts of the character of judges. Most of these judges are members of the bar. Hence, if the integrity of our judges is to be improved, must we not start in that direction by improving the integrity of the bar? Movements are on foot in many states to stamp out the unauthorized practice of law by the layman. If these movements are to receive the sympathetic support of the general public, is it not desirable that the lawyer, in addition to being well educated, be also a man of character?

When a man is admitted to the bar, he has run the gauntlet of what is intended to be a selective process. To accomplish the best results each part of the process must function at its maximum efficiency. The first step in the applicant's preparation is in the grammar school, where, for all anyone knows, every student is a potential lawyer. Many eliminate themselves at this early stage in their education. The next step is in the high school where others are disqualified either by voluntarily or involuntarily not completing their high school education or by maintaining such a low scholastic average as virtually to exclude them from the field of higher education. The third step is taken in the liberal arts college. Here again many are eliminated because of scholastic difficulties or for other reasons. It will be observed that at this stage of the prospective applicant's life, the field of potential candidates for admission to the bar has been considerably narrowed when compared with the number who originally enrolled in grammar school. The fourth step in the potential lawyer's career is his attendance at law school. It is this step which perhaps has received the most consideration by those who are interested in the problem of who should or should not become a lawyer. Much has been written and said about inferior law schools. Most of this criticism is undoubtedly justified. However, without condoning in any way the inferior law school, it is my opinion that very few law schools have reached a state of perfection where they can rightfully say that every student they graduate should be graduated. As a matter of fact, after interviewing hundreds of applicants, it is my opinion that virtually all law schools with which

I have come in contact through the medium of their graduates are graduating men and women who should not be graduated. The principal difference, in my humble opinion, among the law schools lies in the degree in which they are guilty in this regard. I trust that you will feel that in making this statement I am not attempting to say something sensational but am merely expressing an honest opinion which has resulted from a contact with hundreds of law school graduates. If any moral is to be gleaned from the foregoing observation about law school graduates it is that all law schools should continue with increased vigor their effort to separate the sheep from the goats and to see that only the sheep graduate. Whether this can best be done by a selective process of admission to the law school, by a more rigorous exclusion from the law school of students who demonstrate their inaptitude or by a combination of both of these methods supplemented by other methods, is something which those in charge of the law schools are best equipped to determine. In any event the law school represents a very important step in the selective process of admission to the bar.

The fifth step encountered by the potential lawyer in the selective process is the bar examination. The bar examiners in the different states, notwithstanding their laborious efforts, are criticized alike by educators, applicants, lawyers and laymen. Perhaps some of this criticism is justified but, in my opinion, the principal reason the bar examination fails to exclude more unfit applicants than it does is because the applicants in most jurisdictions are permitted to take the examination too many times. If the applicant were limited to, say, three examinations, the bar examination would then come closer to accomplishing its purpose and would bring about a greater elimination of unfit applicants.

The final step in the process of selecting candidates for admission to the bar in many jurisdictions is the inquiry into the applicants' character and fitness. In a large number of jurisdictions this step does not exist. In many jurisdictions where it does exist the machinery functions in an ineffectual manner.

Character has been defined as "the peculiar qualities impressed by nature or habit on a person which distinguish him from others; hence, a character is not formed when the person has not acquired stable and distinctive qualities." Fitness has been defined as "suitableness; adaptableness; adaptation; as, the fitness of things to their use." In the practical application of these terms to applicants it is usually possible to segregate the applicants into three groups.

In the first group may be placed the applicant who during his lifetime is known to have committed some positive offense, such as larceny, obtaining property under false pretenses, forgery, embezzlement or the like. In dealing with this type of applicant, one is prone to place the emphasis on the word

character rather than general fitness. The proper disposition of this type of applicant's case is not ordinarily difficult.

In the second group we find the type of applicant who at least as far as the committee knows has not committed any positive wrong, such as larceny, embezzlement or the like. Not infrequently, he has been dismissed from one law school for poor scholarship and has ultimately succeeded in graduating from another. Or if he has not actually been dismissed from a law school, he has barely succeeded in passing the examinations and graduating. Furthermore he is often found to have taken the bar examination four, five or six times before passing it. It is not uncommon for an applicant in this group to exhibit a lack of candor in dealing with the committee or in dealing with his fellow men in the course of the every day events of his life. Some applicants in this group have had no scholastic difficulties and to all intent and purposes appear to be very intelligent individuals. However, an investigation among the applicant's friends or in the neighborhood in which he lives may disclose that his habits are bad or that he is regarded as unreliable and untrustworthy. Frequently it is difficult, if not impossible, to determine exactly why the applicant is regarded as unreliable and untrustworthy by his neighbors and associates. In other words, it can not be established that he has done something definitely wrong as, for example, the commission of a crime. Applicants who fall within this group present one of the most difficult problems which confront the character and fitness committee. This is particularly true because the action of most committees is subject to review by a court, and in many instances the reviewing courts have been loathe to sustain the action of the committee because the court has felt that the committee did not have before it sufficient facts to justify its conclusion that the applicant lacks general fitness to practice law. Furthermore, the action of the committee usually takes place after the applicant has passed the bar examination and this weighs heavily in the applicant's favor.

The third group includes those applicants who have never committed a positive wrong, who have demonstrated their intellectual ability by satisfactory work in school, have passed the bar examination without much difficulty and, in general, have a reputation among their friends and associates for being capable, honest, reliable and able.

Needless to say it is only on rare occasions that an applicant who falls in the first or second group should be admitted to the bar. The law schools can and should do much to decrease the number of applicants who compose these groups; particularly, the second group. However, if past experience is any criterion, it will be some time before all law schools can or will do or be able to do their full duty in this regard. In any event their work can and should be supplemented by character and fitness committees. This then leads

us to the question of what can be done to check more effectively the character and fitness of applicants.

It appears to the Committee on Character and Fitness of The National Conference of Bar Examiners that the functions of the character and fitness committee are two-fold. In the first place, of course, it inquires into the character and fitness of applicants for admission to the bar. Secondly, the committee should do what it can to assist prospective applicants for admission to the bar to acquire a knowledge of the duties and obligations of a member of the legal profession.

New Standard Added by American Bar Association

An action of interest to all bar examiners and law school deans was taken by the House of Delegates of the American Bar Association at Cleveland by adding a new standard relating to approved schools. Upon recommendation of the Council, the Legal Education Section recommended to the House an additional standard, defining an approved school, giving to the Council a somewhat wider discretion in the matter of this approval. The purpose of the additional standard was to insure that schools on the approved list meet the standards which have been laid down by the American Bar Association in the past, in spirit as well as in letter. The new provision states that in addition to meeting the other requirements for approval already laid down, the school "shall be a school which in the judgment of the Council of Legal Education and Admissions to the Bar possesses reasonably adequate facilities and maintains a sound educational policy; provided, however, that any decision of the Council in these respects shall be subject to review by the House of Delegates on the petition of any school adversely affected."

Delegates Recommend Establishment of Institutes

The following resolutions were passed at Cleveland by the House of Delegates of the American Bar Association on recommendation of the Legal Education Section:

Resolved, That the American Bar Association recommends to all state and local bar associations the setting up of courses designed for practicing lawyers on the subject of the new rules of federal procedure, to the end that every lawyer in the United States shall have the opportunity, if he so desires, to attend such lectures. And, be it further

Resolved, That the American Bar Association recommends to such associations, for their careful consideration, a program of legal institutes and practicing law courses of the type which are now being given in many parts of the country for the benefit of practitioners.

mission authorities, law teaching agencies and the bench and bar, and the promotion of joint conferences between them. We want to give early and adequate consideration to the important question of recommending a revision of the subject coverage of bar examinations, better to conform to the changed emphasis upon the various branches of the law brought about by economic and social changes of our time, and to such curricular changes in the law schools as have demonstrated their worth and permanence. These things are the objects of our especial and immediate attention. We propose, also, to continue our consideration and treatment of every matter material and relevant to the improvement and standardization, so far as practical, of bar examination and admission methods and technique, and to seek, by every means at our disposal, to improve the art and develop the science of bar admissions.

I feel that our accomplishments are significant, but they have enhanced, and not diminished, our opportunities. Questions of pressing moment await our study, causes of vital significance demand our advocacy, and appealing vistas of new inquiry beckon our exploration. I hope that for many years to come this Conference will grow in usefulness and capacity for accomplishment, and that the time lies far in the future when we can consider any part of our work as done.

Character and Fitness

By Karl A. McCormick*

Proctor of the Bar, Eighth Judicial District of New York

Character fitness of applicants for admission to the bar seems to me to transcend any and all other necessary qualifications. Therefore, the methods pursued in determining this qualification, not only in my own judicial district, but in most other places that I have any knowledge of, seems to point the weakness in the system now in vogue in preparing an able, conscientious group of lawyers to serve society in the future.

Let us consider for a moment how this weakness has developed. Early in the history of our country, admission to the bar was open to almost anyone. Very little education of any kind was required and the examinations, if any, consisted of a few oral questions propounded by the court. In at least one state, by constitutional provision, anyone was entitled to practice law without meeting any test. And so, a belief became widespread that the "right" to be a lawyer was an American "right" and any limitation thereof was undemocratic and not in keeping with the traditions of our form of government.

All of the advances that have been made, and I believe they have been many, especially in the past twenty years, have been in the face of the old

* An address delivered at the joint session of The National Conference of Bar Examiners and the Section of Legal Education and Admissions to the Bar in Cleveland on July 26.

feeling that to preserve American ideals of democracy, the profession of law should be open to anyone who desires to enter.

This feeling on the part of large numbers of the people has not been shared with the other professions. Notably, the field of medicine has for many years been looked upon as properly restricted. The public believes that the rigid limitations of that field are in the interests of society. I have yet to hear a layman complain that the medical profession violates our ideas of democracy when it requires its members to pass much more difficult tests than are required in the field of law. Neither have I heard complaint that the practical limitation of their numbers by the limitation of admission to medical schools is not in keeping with the best interests of society.

But in our own profession, we have many who relish the opportunity to argue loud and long that any system of limitation, even higher educational qualifications, may possibly deny society the benefit of the legal skill of a Lincoln or a Choate.

Doting fathers and mothers, who upon the slightest inquiry learn that medicine and most of the other professions are too hard and long for John or Mary, who have shown up well in their high school debating society, turn to law as the place where their children can perpetuate the family name, at a minimum expenditure of time and money.

The present system in New York State permits the boy or girl to obtain a minimum of two years of college work and then three years of law school, a bar examination, which students are privileged to try as many times as they wish with the result that more than 95% of all who try eventually pass. Some try one or both parts of the examination several times. By the law of averages, the great majority must pass if they try enough times. If the successful candidate has had a college degree he is ready for the character committee. If he hasn't a college degree, he must serve a year's clerkship in a law office. If the purpose of the clerkship is to acquaint the student with some of the practical applications of the legal principles he has learned in law school, it is difficult for me to see how a college degree in liberal arts or social arts can be considered a substitute for the experience supposed to be obtained in serving a clerkship. But that is the present rule.

Now up to this point, I have said nothing of any test of character or fitness to become a member of the profession. That is because nothing has been said to the student about this vital test up to now.

After he has spent his time and money in his formal education and passed his bar examinations, the student is, for the first time, advised that there is a committee on character and fitness which he will have to appear before. He is provided with a questionnaire consisting of some twenty-seven questions which he is required to answer and swear to and also he must provide at

least two affidavits, one preferably from an instructor in the law school he has attended.

This seems to some students like an unnecessary delay in their otherwise swift progress of admission to the bar. Occasionally, some student or his parent or some close friend requests that this "formality" be waived and the candidate be immediately admitted by the Appellate Division of the Supreme Court. One can hardly criticise such a request, when we consider how perfunctory the method of character tests must appear to the students.

There, undoubtedly, was a time when a character committee made up of lawyers of long practice had an acquaintance with most of the applicants for admission. In those days, the numbers applying were comparatively few and, in most cases, at least one member of the committee knew every candidate. With the large increase in numbers, of course, this is no longer true. Most of those who apply now are strangers to all of the members of the committee.

The committee is made up of six members who are conscientious, able lawyers of long standing at the bar. They are willing to give freely of their time and talents, but the method in vogue limits their efforts to almost a perfunctory service.

The first that they usually see of the candidate is when he comes to them with a questionnaire filled out by himself and they have a few minutes' talk with him just before the day set for admission by the court. The questionnaire contains little information that could lead anyone to fairly judge of the applicant's character. Indeed, his affidavits of endorsement are usually made by close friends or by those who have little opportunity to know much of the applicant's real character.

The applicant has spent his time and money for his required formal education. He is full of the ambition and high hopes of youth. He has been attracted to the law (so he says in his questionnaire) "because it is a noble profession, and it gives the greatest opportunity to serve his fellow man." He states that a lawyer friend of his family told him once that there were great opportunities at the top for all of those who had "personality" and were smart and were willing to work. He says he has never been interested in finding out about the practical or economic side of the profession. He has been pretty busy getting his law school work and passing his bar examinations. He has a college degree from a well known college so it wasn't necessary for him to serve a clerkship. He expects to get in a law office if he can and get some practice in trial work and then open his own office. Yes, his questionnaire shows he has been convicted of speeding and violations of parking ordinances, but, after all, he is young and the member of the committee he is talking with has had the same experience and does not consider his character to have been injured. He has read the Canons of Ethics adopted by the American Bar Association and swears that he will uphold them. If asked further about

his knowledge on this subject, he will probably say he heard someone lecture on professional ethics his first year in law school. He has just forgotten who it was, he doesn't recall why the Canons were adopted, he believes there are seven or eight of them, there may be more. He is a little confused about the American Bar Association. He believes it meets in Washington and that Judge Hughes speaks to them when they meet. He thinks they are really organized to state rules of law so it will be simpler for lawyers.

Now I am not giving what might be termed uniform answers. Neither am I giving exaggerated cases of the display of knowledge or lack of it. I am simply portraying what actually occurs many times.

What about a much more serious case of a man who had sworn in his questionnaire that he had never been charged with a crime or been a party to any court proceeding either civil or criminal, when before he entered law school he had been discovered by his employer in the theft of several thousand dollars, had given notes to a bonding company that had paid for his embezzlements which he had never paid, but had been reduced to judgments in the court of the community where he had lived and later practiced law for nearly three years? He caused much loss to certain clients and did great harm to the profession before he was discovered and disbarred. His questionnaire, and probably his interviews, disclosed a fine type of earnest young man who had worked for his education and seemed entirely worthy of admission to the bar.

My reason for referring to one or two of these actual cases is to show how our system is bound to work out under the present conditions of great numbers with no means of forming an intelligent opinion of character. I could give numerous other instances that prove that the time honored system now in vogue in most places is almost futile as a character test.

But many who have given little thought to this matter will say, "Talk about character, how can anyone tell whether a hitherto upright young man or woman, after admission to the bar and under the economic pressure that today exists, will not betray the trust?" My answer is that we should not hesitate to try some more intelligent system simply because we may believe in advance that it will not be one hundred per cent efficient. I further believe that since psychiatrists tell us that the formative period of character is from age five to eighteen years, we can feel fairly sure that if we know that a boy or girl has done one or several things even before entrance to law school that indicate a moral weakness, we should be very careful about endorsing them for admission to the bar.

I fully appreciate the unfairness of a character committee saying to a young man after he has passed his bar, you cannot be admitted because we have found out that when you were in high school or college you were found to have had a real character weakness and so we are afraid that if you are

admitted and undergo financial hardship, you may be tempted to misappropriate a client's funds. But if that same boy was investigated and talked with before or at the time he entered law school, either he may decide to take up some other occupation or else the influence of strict supervision until he is ready to enter the bar may tend, at least, to strengthen him.

If it is true that no fair test of character can be made until after a man has been in actual practice for some time, then we should abolish our so-called character examinations and not hold out to anyone that any character fitness is required.

But if we are to have character requirements, then should we not do all that is possible to make those tests effective? Should we not have a system, which has been tried in some places, that gives a much better opportunity for judging character? Should not the student know from the time he starts the study of law that he is under a character test and that it is of more importance to him than his formal legal education or his bar examinations?

The State of Pennsylvania has been attempting to provide some kind of effective character tests since 1928. There the rules require that each student upon commencing the study of law must register with the State Board of Law Examiners. He fills out a questionnaire. He must select a member of the bar as his preceptor and he must select three citizen sponsors. He must give their names and addresses in this questionnaire. He also registers with the County Board in the county in which he intends to practice, if and when he is admitted. The State Board then forwards the questionnaire and blank questionnaires for the preceptor and citizens to the County Board. The County Board mails the questionnaires to the parties, and upon their return the chairman of the County Board appoints two members of the Board as a committee to interview the applicant. These two members of the committee appoint a time and require the applicant to call, bringing his sponsors if desired, although this may be dispensed with. If the members of the committee are satisfied after the interview, reading questionnaires, and such personal inquiry as may seem proper, they report favorably on the application in the form of their own questionnaires which are filed with the County Board. The County Board at its meeting approves the application and certifies the same to the State Board. Under this practice, the County Board has the responsibility of the character qualifications of the applicants, but subject always to review upon an appeal by the applicant to the State Board. The State Board in turn is subject to appeal to the Supreme Court.

Now would it not be much easier for a character committee functioning in some such manner and finding out about the applicant when he starts the study of law to turn down those whom they believed unworthy than to attempt to stop the entrance into the bar of the same person, when they had first seen or heard of him after he had passed the bar examination and was only waiting

to appear before the court to be sworn in? Would not fairer judgment be passed at the earlier date than at the latter?

To continue the Pennsylvania system further, substantially the same procedure is applied in the case of the student when he applies for permission to take the final examination for admission to the bar.

Now the preceptor selected by the student has to be a member of the bar approved by the Board. His duties are defined as follows:

> "During the entire period between registration and taking the final examination, while attending law school, the student is required to keep in touch, by correspondence or otherwise, with his preceptor. The preceptor assumes the responsibility of vouching for the student at the beginning; of helping him to understand the ethics, duties, responsibilities, and temptations of the profession; of endeavoring to develop in the student a high standard of character; of having him serve a clerkship of six months or more in his office; and of certifying, at the end, what he knows of his character and fitness to become a creditable member of the Bar."

The members of the committee who interview the applicant can in some cases discover his unsuitability and persuade him to withdraw his application, and, indeed, the fairness of permitting a candidate to withdraw rather than be rejected is apparent, as his disqualifications may not always extend to other professions or occupations.

What do you say as to the influence for good of some such system upon the student during his time of preparation? Is it likely to be more valuable than the system prevailing in so many places where the student never hears of such a thing as a character committee until he has passed his bar and only a few days before the court is to admit candidates?

There are undoubtedly weaknesses in the Pennsylvania system and criticism has been heard of it. But after ten years of trial must it not be judged as infinitely better, more intelligent and effective in doing what the bar and the courts claim is done, than any system now in vogue?

I think we can look to Pennsylvania for much assistance in bettering the system now in vogue in most other locations.

Mr. Oscar C. Hull was quoted in the Journal of the American Judicature Society in February, 1936, as follows:

> "The graduate who has no association with an experienced lawyer and who hangs out his shingle, starts practicing alone or with a fellow embryo, is like a rudderless ship. . . . My own observation leads me pretty definitely to the conclusion that more poor advice is given and more law suits are poorly prepared and poorly tried by reason of the lack of knowledge of the art of *practicing* law rather than by lack of *knowledge* of law itself."

The Pennsylvania system requires that a clerkship be served for at least six months by every applicant before admission to the bar. The student, when he first commences the study of law and when he selects his preceptor, must look forward to the time when he will serve his clerkship with that preceptor. This system would seem to go a long way toward solving the problem of finding places for students after their admission to the bar. The student, upon his commencement of his studies, must find his place to gain experience. He is not left until he has completed his formal education and then faced with the difficulty of starting the practice without any experience. This certainly is in the interests of the public as well as the young lawyer.

In the Eighth Judicial District in New York State, the Legislature created the office of the Proctor of the Bar in 1936. One of the duties of that officer is to work with the Character and Fitness Committee of that district. I have interviewed at length every applicant for admission since January, 1937. I first hear of them after they have finally passed their bar examination. Most of these applicants have never known there was any character test or such a thing as a character committee, to say nothing of their lack of knowledge of what lawyers compose this committee.

My office attempts to investigate each applicant as best we can in the few days' time available. A report is made on each candidate to the Character Committee. There are between fifty and sixty each year admitted in three classes. We know we do not see the students in time to be of much service to them and we know that our investigation is cursory. But in the twenty-one months my office has been in existence, we have prevented the admission of one man, who would have otherwise been passed, because of our discovery of his previous defalcations. In another instance, a student had been convicted seven different times for various criminal offenses while in law school, but he had obtained his degree. We have reported unfavorably on some others, but the Committee, although filled with doubt, have passed them because it seemed unfair to try to prevent their admission at such a late date.

I further feel convinced that several candidates, out of the number I have investigated, are totally unfit to become members of the profession. Yet I have no tangible evidence to present to the Committee. But I am sure there will be complaints against these persons made by citizens before they have been in practice many years. Already, in one or two instances, this has proven true.

I have just finished investigating a class of about twenty applicants who have been admitted and I feel certain that had these same applicants been subject to the Pennsylvania system, at least four and probably six would never have been in the class for final examination.

Now I am deeply conscious of the errors that can befall anyone in judging character and I realize full well that any system adopted will be far from

perfect. I appreciate fully the opposition from several quarters to any change in a system that has been in vogue for many years.

Plausible arguments can be made of cases of unfairness. Absolute impartially is a rare quality in any human being, if in fact it can ever be found. But can we justify our present system by saying we know of no perfect method?

Those who give time and study to the educational requirements that are now the rule throughout the country, do not claim the standards are high enough. We must admit they are all too low. But would anyone want to give up what has been gained in the past sixteen years because we have not reached perfect tests for education?

The progress has been slow and opposition has been encountered all along the way, but the accomplishments have been worth while.

If the same importance had been attached to character tests that has been given to educational requirements during the past two decades, I feel very sure the bar would be in higher standing with the public than it is today.

Will not any change in method tend toward improvement? If so, are we not justified in attempting the trial?

Whose responsibility is this matter of character requirements? Is it the bar's? Is it the law school's? Is it the court's? Is it the public's? Well, to date, in most places, it seems that it has been no one's.

The bar says we don't know much about it; we are pretty busy with other problems. The law school says we furnish the best legal education we can. The court says while we are at the head of the administration of justice, we have many other functions to perform, one of them being the supervision and discipline of attorneys *after* they are admitted.

But the public, that speaks through its legislatures, says we are not concerned with methods used by the bar in selecting its future members, but we are not well satisfied with existing conditions. We want to get away from the traditional American system of decision of judicial questions by courts assisted by their officers, the attorneys. We want administrative bodies to decide our controversies and administer justice. We want less legal machinery and more lay bureaus to serve our needs. We are willing to go to others than lawyers for legal advice and counsel. We could tell you why we feel this way, but we won't because you wouldn't listen anyway. After all, we, public opinion, rule in this democracy. We are sometimes slow in forming and we are intangible and cannot be identified as persons, but we make the laws in the end and we have a lot to do with the way courts decide important questions of public policy.

Is not public opinion now saying, "If you members of the bar want your profession to survive and have the high confidence of the citizens, you should cut your numbers to somewhere near the necessities of society and you should

fill your ranks with men of the highest integrity equipped by education and some experience before you offer their services to us, who in the end, have to suffer for your shortcomings"?

Does that request sound unreasonable? If not, then why should not every member of the bar show some concern and attempt to solve this problem?

Within the past few months, through the American Bar Association, an effort is being made to draw the character committees of this country into closer contact with each other.

The National Conference of Bar Examiners has recently formed a national committee, headed by Mr. William James of Chicago, and with Mr. Albert L. Moise of Philadelphia, Mr. Herman A. Heydt of New York City, Mr. Benjamin F. Van Dyke of Sacramento, California, and your speaker, as members. This committee is undertaking a large and very important responsibility. The aim is to get the many hundreds of men engaged in the work of character judging, throughout the nation, thinking along the same lines in an attempt to formulate some uniform methods which will have some efficiency in weeding out the unfit before or immediately after they commence the study of law.

Much can be done by this committee, provided the whole bar of the country gives its attention to this matter and unitedly cooperates with us.

I feel sure that in my own district it would be difficult for any small group to bring about any change in methods.

If the bar of the country shows its concern and gives its support, better methods can be quickly adopted.

In New York State, the Joint Conference on Legal Education, headed by Col. Cornelius W. Wickersham, has done splendid work in the field of legal education. The National Conference of Bar Examiners has been responsible to a large extent for the advances in educational requirements.

The importance of the character tests, largely neglected as it has been until now, should immediately engage the thought and efforts of the bar of the whole country.

I believe we should aim to bring about a closer contact between the admitting courts, the law schools, and the bar. I know in my district, where nearly twelve hundred new lawyers have passed before the character committee in the past fifteen years, most of them in the past seven or eight years, there have been very few meetings with the court and the members of the committee.

I also know that all too many applicants, without the necessary character background, have been admitted to the profession we hold out as an "honorable

one." This is not a criticism of the members of the committee or the court, but it is a serious indictment of the system that prevails.

While it is true that the real character of many persons is not revealed until they have been in practice for several years, it is also true that many young practitioners reveal their true characters before they have practiced many months. It is also true that in many of these cases, had there been a careful system of character tests, they probably would not have entered the profession.

In connection with this subject, I desire to bring up the suggestion that has been made in recent years for a probationary period of admission. Some have suggested that for the first five years after first admission the young lawyer be on probation and at the end of that time he come before a committee for rejection or complete certification.

I do not see any merit in such a proposal. I do see great unfairness and unnecessary handicap.

We know, that with the great numbers coming into the profession each year, there are many who cannot obtain employment in law offices. They have to open their own offices. Their path is difficult enough, if the community knows that they are full fledged lawyers. But suppose they were all serving a probationary period. How could they expect to obtain a clientele? What citizens would want to employ a young lawyer who was not fully admitted and might never be?

A system which uses care in the selection of law students and watchfulness over them until their formal education is completed, that provides for intelligent investigation and helpful cooperation during the pre-entrance years, gives much more promise of efficient and fair selection than any system of trial after a preliminary admittance to practice.

Of course, in any group as large as the legal profession, there will always be unworthy members. Their number is surprisingly small when their method of selection and the temptations that beset them are considered. But so long as human nature is as it is, the whole bar must suffer tremendous loss of prestige because of the conduct of a very small proportion. This furnishes a very strong reason why members of the bar, bar associations and the courts should deal with this matter in an intelligent and effective manner.

If these agencies will realize the importance of this problem and set about to seek its solution, even though the start is late, in my opinion, much can be done to raise the standards of the future bar of this country.

The responsibility rests with us today. If we meet it fully, we shall earn the gratitude of both the bar of tomorrow and the public they seek to serve.

Wolfgang Kohler: Age, 26

AN EDITORIAL BY IVAN A. SCHWAB
Secretary, The Committee of Bar Examiners, State Bar of California

In the San Francisco "Chronicle" on November 20, 1938, appeared this notice:

> "Wolfgang Kohler, 26, 1135 Taylor Street, died early yesterday morning at Dante Hospital, the result of injuries received when he fell off a horse Friday near the ocean beach."

On the list of successful applicants on the September, 1937, bar examination in the record room of the State Bar there still remains one name opposite which no date of admission to practice is recorded. There the notation, "Died November 19, 1938," will be made and the list, complete at last, will be filed away.

What of the story that lies behind those brief and prosaic entries? It begins a number of years ago in far-off Germany, where a school boy, as he toils at his studies, dreams of the day when he will take his place in the professsion of the law in his native country. Thoughts of the career of his father, a judge in Berlin, and of his grandfather, who had been one of Germany's greatest jurists, stood out like beacon lights to lead him on to the completion of his own preparation for a career which he hoped would add further lustre to the name he bore.

While the boy was still in law school calamity struck. The door leading to the profession of the law was slammed shut in the faces of all Jews. While there was a faint streak of Jewish blood in his family, the boy was not a Jew according to common understanding. It made no difference, under the regulations the door was barred to him and there was nothing that could be done about it. But there remained across the seas a country which from its beginning had afforded asylum to the oppressed of all races and creeds. The boy's sister had gone to live in that country, in the city of San Francisco. And in that same city of San Francisco had been born a man, John Henry Wigmore, who had become one of the world's greatest legal scholars and dean of a great law school, and who had known his grandfather well, whom the boy was sure would help him. The boy, undaunted, decided to emigrate to this country that was free of the hatred and prejudices so rampant in his native land.

In characteristic style Dean Wigmore, when appealed to, made all necessary arrangements for the enrollment of the boy at Northwestern Law School and for the completion of his legal education there. The boy then journeyed on West to San Francisco, to be with his sister and to take the bar examination. He passed the examination in the fall of 1937, but the fulfillment of his lifelong hopes was not yet at hand. Citizenship was required to be admitted to practice as an attorney, and while he had applied for citizenship immediately

(*Continued on page* 160)

The Importance of the Character Problem

By Hon. Owen J. Roberts*

Associate Justice of the Supreme Court of the United States

As I have been sitting around here, listening to the talk and getting the views of the men here and trying to appraise the work this Association is doing, I have been thinking. What is the significance of this Association, really? What is its fundamental function in the life of the country?

You have done an enormous amount of valuable technical work, dealing with procedure, recommending legislation to correct inequities and lapses in our statute law, but all of that, ladies and gentlemen, is adjective. After all, the fundamental thing that this Association exists for, as I see it, is to maintain and to raise the standards of professional character and conduct in America.

That is the fundamental job of this Association and if all its activities do not ultimately lead to and promote that great end, the other things that you have done are trifling, and they are not worthy of the Association's continued existence. I think you have sensed that. I think the work that this Association has done in holding up the standards for the intellectual qualification of applicants to the bars throughout the country speaks for itself.

As the result of the period of years of work, the standards of professional education have been pushed forward at an amazing pace and to a most satisfactory point. But, ladies and gentlemen, the standard of professional character is to be viewed in two aspects. It consists of two factors, intellectual and moral. We must be as zealous that, in promoting the intellectual qualification of the young men and women who come to our bar, we do not neglect the moral qualification as well.

The old method of coming to the bar in America was not wholly satisfactory from the intellectual viewpoint; the training, the intellectual training, the technical training, the professional training of the neophyte; but it was, I think, wholly adequate on the other side of the sheet.

The young man or woman had to be, in effect, apprenticed to a practicing lawyer and to serve that apprenticeship over a period of years in his office, and when that preceptor, as we called him, was ready to recommend the candidate to the bar examiners as of good moral character, and if your bar had any moral character, those whom it recommended ought to have been equally as good.

The bars were smaller. The bar knew the young people that were coming; they knew enough of them either to recommend or to veto.

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* From a speech delivered at the annual banquet of the American Bar Association in Cleveland on July 28, 1938.

Now, the law schools have made a laudable effort to teach professional ethics and to instruct law students in the way a lawyer and a gentleman ought to behave. But that is the sort of thing that cannot be taught didactically. That is the sort of thing a child absorbs in his family; that is the sort of thing a professional man absorbs in his professional family. What is and what is not done is instinctive, rather than didactically imparted.

The thing that disturbs me about our situation today is not that we are not training intellectually the young people who are coming forward to the bar. But we cannot, apparently, and this is your great problem, I think, for the future, we cannot, apparently, under present conditions be assured of the moral qualifications as we ought to be. You have not any preceptors who are responsible. The candidate does not grow up in a small community, the bar of which and the members of which know him well and can vouch for him.

The condition is particularly acute in the great cities. You take a city with a bar of anywhere from three thousand to twenty thousand men, and such exist in the United States. Most of the young people who graduate from law school are not known to many members of the bar, not to many outstanding members of the bar certainly. Most of them can not obtain positions in offices of high repute. They have spent years of effort and money and their families have made sacrifices to put them in the bar, and they come to the bar of a great city without money, without friends, without influence, with no hope of clients, and what happens?

They fall into bad ways. They have got to live. Heaven knows what you or I would have done if subjected to some of the stresses and temptations that these young people are subjected to in the great city bars today. The older I get, the more lenient I am in my judgment of these young people who do fall into bad ways, because no man would put out a hand of friendship and no one cares.

Now, in a bar of from three to twenty thousand people where a lawyer, perchance, appears in court once a month, in another court another month, may not appear in court but a few times a year where the judges do not know him, how do you expect to have a condition such as in the English bar where the barristers are few in number, known intimately to the judges, to each other, where, if a man attempts to do what isn't done by most gentlemen, the community knows it in no time.

We have the same conditions in our country bars. You don't find in the country bars a man carrying on bad practices long. His judge knows, his county judge, his brethren know, the citizens in the community know. The thumb is turned down on him. He has got to get out of the community. You have that safeguard always. But what are you going to do beyond what you are already suggesting, namely, character standards—and I am for them strongly. Every bar in this country ought to put up character standards and

enforce them strictly, look into a young man's past, a young woman's past, before he or she is permitted to become a student of law.

Put your character standards as high as you can. My own state has done it, as you may know, and I think you do know it; has gone very far in that matter. We have preceptorships in my state and it is now proposed to lengthen the term of preceptorship and to make a young man serve an apprenticeship after he graduates from law school and passes his examinations, in the office of a reputable law attorney, so that he has a background.

Do all of that, but you have got to do something to supervise the admissions to the bar. You cannot permit the metropolitan bars to be crowded with thousands of lawyers beyond the needs of the community and then expect to discipline those lawyers for falling into bad ways when they have not been invited to come into a situation where they cannot honestly live.

You have carried the flag forward on the intellectual side. The great problem of this Association, in my judgment, is to determine how the bar is to prevent overcrowding, the bringing to the bar of hundreds every year, of people who are doomed to disappointment and certain not to be needed in the community where they elect to practice. The problem is how to put professional pride in one's achievement, in one's character, into our large, scattered, diverse bars in the great centers of population, and to give the same kind of sturdy character to the standards of professional conduct as we had a hundred years ago in the small community and as we all hope to have in every community. There is your challenge, ladies and gentlemen!

Encouragement from East and West

The following excerpts from letters recently received in connection with the character investigation service of The National Conference of Bar Examiners are two examples selected from a large number of commendatory letters. They are both from men who have themselves rendered notable service through the work they have done in their respective bar associations.

Secretary,
The National Conference of Bar Examiners.

Dear Sir:

Messrs. Blink & Blank are one of our finest Boston law firms, but you are wise to carry out your customary thorough checkup. About four years ago a young man who had been associated with an A-1 Boston law firm went to a small Massachusetts community to practice law. He lived at the local country club and did everything in the grand manner, figuring that it would help his practice. Before long he spent for his personal use funds

Progress in Admission Standards

With the recent addition of Iowa and the District of Columbia to the list of states requiring two years of college education or the equivalent before admission to the bar, thirty-nine jurisdictions now have this requirement. Progress toward universal acceptance of the American Bar Association's recommendation of two years of college education has been steady over the last dozen years, and twenty of these states have been added to the list since January 1, 1934. Prospects are bright for action in South Dakota, Kentucky and Oklahoma. The remaining states of Florida, Georgia, Mississippi, Louisiana, Arkansas, South Carolina and Maryland will find an increasing drift in their direction of candidates who cannot meet the preliminary requirements in other jurisdictions.

The tendency is also growing, as shown by the new District of Columbia rules, to refuse to recognize law office study. There are now nine states where every candidate for the bar examinations must have pursued his law study in a law school.

The American Bar Association standards defining approved law schools are also receiving increased recognition. In the following 23 jurisdictions law school study (with a few local exceptions) will be recognized as qualifying for the bar examination only when pursued in a school on an approved list which at the present time is either the American Bar Association list or corresponds substantially with it: Arizona, Connecticut, Delaware, Hawaii, Idaho, Indiana, Maine, Minnesota, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

The significance of this latter development is not generally realized. It means simply this, that the fourteen thousand students in the eighty or more unapproved schools are receiving a legal education which is regarded as being so inadequate by twenty-three states that these students will not be permitted even to take the bar examinations in any one of them, with the exception, in some cases, of the state where the law school is located. The number of students in unapproved schools in each of the states is as follows: * Alabama, 117; Arkansas, 55; California, 1,051; Colorado, 80; District of Columbia, 3,006; Florida, 127; Georgia, 276; Illinois, 593; Iowa, 63; Kentucky, 193; Maine, 29; Maryland, 451; Massachusetts, 3,032; Michigan, 505; Minnesota, 278; Mississippi, 60; Missouri, 374; Nebraska, 152; New Jersey, 827; New York, 361; North Carolina, 26; Ohio, 810; Oklahoma, 248; Oregon, 269; Pennsylvania, 176; Tennessee, 748; Texas, 653; Virginia, 36; Washington, 134.

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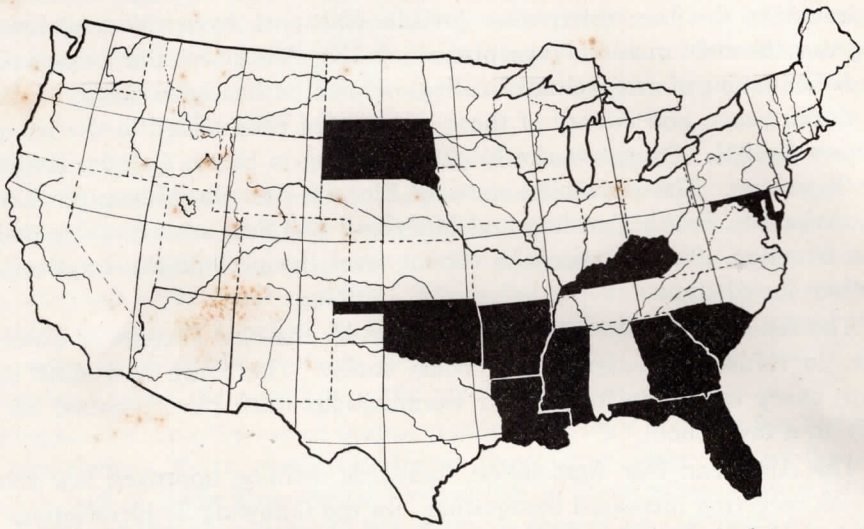
* Attendance figures from Annual Review for 1937.

39 States and One Territory Require Two Years of College or the Equivalent



The states shown in white had, as of January 1, 1939, a requirement of two years of college or its equivalent before bar admission, effective presently or prospectively.

Alabama
Arizona
California[1]
Colorado
Connecticut
Delaware[2]
D. C.
Hawaii
Idaho
Illinois
Indiana[3]
Iowa
Kansas[4]
Maine
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oregon
Pennsylvania[5]
Rhode Island
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

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[1] Except for those 25 years of age or over at time of commencing law study.

[2] Requires before law study a college degree or passage of a general educational examination on certain specified subjects conducted by the University of Delaware.

[3] Except as to office students.

[4] Effective July 1, 1940, college degree required from all students. For those qualifying by law school study, it may be earned by 3 years college in a combined course followed by 4 years law school or by 4 years college if followed by 3 years law school.

[5] Requires before law study a college degree or passage of a general educational examination independently conducted by the College Board for the State Board of Law Examiners.

Pennsylvania an Example of Sound Character Investigation Technique

Improvement in character investigation technique is an immediate objective of The National Conference of Bar Examiners. At the annual meeting last year recommendations were adopted and were subsequently approved by the House of Delegates of the American Bar Association. A considerable number of members of character committees have registered with the Conference as members, as they are entitled to do under the By-Laws, and an active committee is now working under the chairmanship of Karl A. McCormick, Proctor of the Bar of the Eighth Judicial District of New York.

There has been far too much lost motion in the work of most character committees. The bar can be counted on to furnish the necessary volunteer personnel to carry on efficient character work but this is not enough. There must be machinery which actually discovers and weeds out unqualified applicants. The creation of such machinery in every state is the objective for which the National Conference is striving.

Pennsylvania has had an effective system of character examination for many years. Accounts of this system have been published from time to time in The Bar Examiner but, nevertheless, little is known outside of that state as to the actual workings of their system. Therefore the two articles on the subject which appear in this issue are of current value. One sets forth the actual machinery which is used throughout the state and the other gives information as to how it works in Philadelphia County.

The preceptorship provision in Pennsylvania, requiring each student to have a preceptor during the period of his law study, has been of very material assistance to the character committees. However, it should be regarded as separable from the other features of character investigation in that state since its adoption involves a distinct responsibility on the part of the members of the local bar which is not involved in other parts of the system. In other words, a state which might hesitate to adopt the preceptorship features of the Pennsylvania plan could nevertheless use other parts of it.

The Conference has not taken a position on the Pennsylvania plan as such but has recommended some features of it, such as, for instance, the registration and investigation of applicants at the time of beginning law study. Since much can be learned from the workings of any system which has been tried out, the following accounts will be read with interest. Messrs. Lefever and Moise will be glad to answer any inquiries which may be sent to them.

Character Examination Procedure in Pennsylvania

By Mark E. Lefever

Secretary and Treasurer, Pennsylvania State Board of Law Examiners

There is a County Board of Law Examiners in each of the sixty-seven counties of this State. These Boards investigate the fitness and general qualifications (other than scholastic) of an applicant when he applies for registration as a law student and again when he makes application for admission to the bar examination.

Each applicant is required to register as a law student prior to entering upon his law studies. To do so he files, in duplicate, with the State Board of Law Examiners an application, in the form of a comprehensive questionnaire.

Thereupon, the State Board transmits blank questionnaires to the applicant's preceptor and citizen sponsors.

At the same time, the State Board mails one copy of the candidate's application, together with blank questionnaires, to the Board of Law Examiners of the county in which the applicant states he intends to register. A subcommittee, consisting of two members of the County Board, then personally interviews the applicant and, if possible, his preceptor and sponsors, and makes such other investigation of his fitness and general qualifications (other than scholastic) as it deems necessary. In some counties professional investigators are retained to investigate and report to the committee upon the applicant. The committee then prepares a report and recommendation, which is presented to the County Board at a meeting attended by at least a majority of its members. The County Board thereupon takes formal action, either approving or disapproving the applicant and the qualifications of his proposed preceptor to act as such. It then sends to the State Board a certificate of its action upon the applicant and his preceptor, in which it states that the applicant either does or does not "possess the 'fitness and general qualifications (other than scholastic)' entitling him to registration as a law student."

If the applicant and his preceptor are approved by the County Board (and the educational and other requirements of the Supreme Court Rules are met) a certificate recommending registration as a law student is issued.

If the County Board rejects the applicant, it usually files a complete report of its investigation and the reasons for the rejection, although not required to do so by the present Supreme Court Rules. The said Rules provide that "the State Board, in its discretion, may hold a hearing, by a committee or otherwise; to which the applicant, representatives of the County Board" and other witnesses summoned by the Board may be invited to attend.

It is the practice of the State Board, upon receiving an adverse report from the County Board, to notify the applicant, in writing, of his rejection, without giving any details or specific reasons therefor, beyond the formal language of the Rule, together with a statement that the action of the County Board will be considered by the State Board at its next meeting.

Oral hearings are never held by the State Board unless specifically requested by the applicant, and then only in those cases involving circumstances so unusual as to warrant such a hearing.

Where the applicant files a petition with the State Board, which the Board feels does not require an oral hearing, or where a petition is not filed, the State Board considers the certificate and report of the County Board at its next regular meeting, following the applicant's rejection. Usually the action of the County Board is affirmed, in view of a ruling by the Supreme Court that "the decision of a county board in the matter of the registration of a law student is conclusive in the absence of fraud or mistake."

Whenever an oral hearing is granted by the State Board, the proceedings, in so far as possible, are transcribed so as to constitute a record which may be transmitted to the Supreme Court in the event the applicant desires to take a further appeal to that Court.

If the State Board approves the findings of the County Board and the applicant appeals to the Supreme Court and such appeal is allowed, the Court may decide the matter on the record or after oral hearing. The Court rarely permits oral presentation of such matters and seldom reverses the County Board. It has specifically held: "This court has never compelled a county board to register a law student nor a county court to permit an applicant for admission to the bar to practice before it. These are purely local matters to be passed upon by the county board or the several local judges."

All appeals to the Supreme Court must be filed in duplicate with the State Board whereupon the State Board prepares a statement of its action, which is in reality an answer, and files the same, together with the applicant's appeal, in the Supreme Court.

The exact procedure outlined above is followed when a candidate makes application for admission to the bar examination, three or more years after his registration as a law student. Questionnaires are again forwarded to his preceptor and to the citizen sponsors he names, which are very similar in content to those answered by them at the time of the applicant's registration. The County Board is again asked to make its report. The procedure pursued by the County Board is the same as that described above, as is the procedure followed by the State Board and the Supreme Court in the event of the applicant's rejection.

In addition every candidate is required to publish in a legal journal or other suitable publication in his particular county, once a week for four consecutive weeks prior to the examination date, notice of his intention to appear for the examination.

Practical Operation of the Pennsylvania Plan in Philadelphia County

By Albert L. Moise

Secretary of the County Board of Law Examiners of Philadelphia County and Member of the Committee of The National Conference of Bar Examiners on Character and Fitness Examination

When the Supreme Court of Pennsylvania made sweeping changes in its rules affecting the registration of law students and admission to the bar examinations and to the Supreme Court, which changes became effective on January 1, 1928, naturally drastic changes were made in the work of the County Boards of Law Examiners. The Philadelphia County Board of Law Examiners, which prior to that date, had consisted of twelve members appointed by the Courts of Common Pleas and the Orphans' Court,—whose work was practically limited to attending about five or six meetings a year—was immediately increased to twenty-four members, and the Board was deluged with applications. The Chairman and the Secretary, as a rule, do not conduct examinations, so that left twenty-two members to take care of the avalanche of work. The Board has since been increased to thirty-four members.

No set rules or methods of procedure have been adopted. The student's application and the questionnaire of his preceptor and citizen sponsors are sent by the Secretary of the County Board to an examining committee, consisting of two members of the Board appointed by the Chairman. At the beginning when the whole system was new to the Board, each committee used its own discretion as to the manner in which an application was to be handled. This is still the policy of the Board. In his application, each applicant is asked to name three instructors with whom he came in close contact while at school or college. Letters are sent to these instructors by the examining committee prior to interviewing the applicant, and sometimes valuable information is obtained from these sources.

In the case of an applicant who is the son or other close relative of a reputable member of the Philadelphia Bar, and whose sponsors are known to the examining committee, not a great deal of examination is required, although the committee insists upon interviewing the preceptor and sponsors before actually recommending any applicant. There is printed on the questionnaires which are sent to the preceptor and sponsors a notice to the effect that the one answering it will be required to appear before two members of the County Board for a personal interview, so that if, for any reason, the party receiving the questionnaire cannot comply with this requirement, he is put on notice that he should notify either the Secretary or the applicant.

The case of an applicant whose preceptor is not known to the examining committee and whose sponsors are also unknown, presents a more difficult problem. In a great many instances, after an interview, the applicant is found to be satisfactory and he is recommended in the usual manner. Sometimes, however, adroit questioning gives a clue to some criminal history, or some incident revealing a lack of moral character, which is followed up by the examining committee themselves, or, if they deem it necessary, by a professional investigator. If the report of the investigator is adverse, it is followed through by the committee, and if verified, is the basis of an unfavorable recommendation.

These two classes of cases are comparatively simple; in one, there is no doubt about the applicant's fitness, and in the other there is a definite reason why the applicant is unfitted to practice law. The intermediate cases are the ones which give the Board grave concern, and it would be a revelation to the applicants if they could be present at the meetings of the Board and hear the discussion about their cases and see and hear the real concern exhibited by the members that no unfairness or injustice shall be done. This is particularly so in cases where the applicant and his parents have made sacrifices to give the applicant the necessary preparation. In a number of instances, in order to clear up the doubt in the minds of the examining committee, they have asked that the applicant be permitted to come to a meeting of the Board and be personally interviewed by all of the members present so as to have the benefit of other opinions before actually deciding that an applicant is morally unfit to practice law. This is an ordeal for a young man, but nevertheless, in some instances, they have come through it satisfactorily and the Board has recommended them.

The Board is not now limited to rejections where it has something definite "pinned on" the applicant. Since December 16, 1935, if a committee decides that an applicant does not possess the necessary fitness or general qualifications, other than scholastic, for registration as a law student, or for admission to the final examinations of the State Board, the applicant may be rejected on that ground. With each rejection, the examining committee files a full report, sometimes covering 5 or 6 pages, setting forth in detail the impressions of the committee and its reasons for rejecting the applicant.

The State Board of Law Examiners has, in every instance, where unfitness and lack of general qualifications have been the grounds of rejection, upheld the County Board.

In the beginning of the work, under the new Rules, the State Board reversed the County Board in several cases, but these were more or less test cases at a time when the procedure was new to both the State and County Boards.

In 1928, in the beginning of this work, the County Board rejected quite a number of applicants, as will be noted from the following figures:

A. *Applications for Registration on College Board Examinations.*
B. *Applications for Registration on College Degree.*
C. *Applications for Final Examination.*

	Total A	Rejects A	Total B	Rejects B	Total C	Rejects C
1928	204	26	225	3	214	2
1929	63	6	228	2	215	2
1930	46	—	178	1	217	—
1931	37	1	194	2	242	3
1932	52	—	258	3	228	1
1933	33	—	211	—	186	2
1934	25	2	164	—	140	3
1935	19	—	149	2	163	—
1936	20	2	137	3	169	—
1937	1	—	145	3	125	—
1938	10	—	142	3*	117	—

*One of these was reversed by the County Board.

The number of rejections has become fewer, so also has the number of applications. Perhaps one reason for the fewer rejections is the fact that the work of the Board has become known and has had a deterring effect upon applicants who feel that their past conduct will not bear the close scrutiny of the Board.

It will probably be interesting to summarize briefly some concrete cases of rejections by the Board and the reasons therefor.

One applicant denied having filled out questionnaires for two of his sponsors when the committee, noting a similarity between applicant's own handwriting and that of the answers to the questionnaires of two of his sponsors, questioned him about it. The committee explained to him that it was not such a reprehensible thing for him to have answered the questionnaires himself, but not to tell the truth about it was decidedly wrong. He still denied having done so. The matter was referred to another committee, at the request of the first committee, and a handwriting expert was employed. He corroborated the opinion of the first committee. The second committee then interviewed the applicant, and he finally admitted having filled out the questionnaires for his sponsors who were illiterate. He stated that he thought there was nothing wrong about this; that when he found the committee felt it was improper, he felt that he must protect these sponsors; and that he accordingly told an untruth concerning his action and adhered to it. The applicant was twenty-two years of age. In addition to the foregoing, he stated frankly when asked why he wished to become a lawyer, that he regarded the whole thing as a business proposition and that he expected to get out of the law at least as much as he put into it. It was perfectly evident to the committee that this applicant would not be prepared to stand any strain,

but would be prepared to compromise with the truth any time he got into a corner. He was unanimously rejected.

Two of the citizen sponsors named by another applicant who was rejected, apparently did not fill out their questionnaires themselves, and when questioned by the examining committee as to their knowledge of the applicant, gave answers which were totally at variance with those given in the questionnaires. The matters on which they were questioned were immaterial, so in order not to do an injustice to the applicant through the foolishness of his sponsors, particularly one of them, the examining committee arranged another date for an interview, giving the applicant an opportunity in the meantime to get the matter cleared up with the one particular sponsor. At the second interview, the applicant stated that he had interviewed the sponsor several times, and gotten the matter cleared up. The sponsor, upon being separately examined, stated that he had had no communication with the applicant between the two meetings. The committee then had the applicant and the sponsor face each other; the sponsor vigorously asserted that he had no communication with the applicant since the last meeting and the applicant then hesitatingly agreed that this was so and denied that he had a few moments before, when the committee examined him alone, stated that he had discussed the matter with his sponsor several times. There were so many reversals of stories and denials on the part of each, of assertions made a few moments before, that the committee decided that the applicant lacked candor and honesty and that even if the fault were principally that of his sponsor and not very material, the applicant lacked the courage to assert in his sponsor's presence what he had told the committee formerly as being the truth of the situation. This applicant was twenty-two years of age.

The two cases last above mentioned were both based on untruthfulness and lack of candor and honesty of the applicant discovered through matters which were of themselves not very important and which could have been corrected had the applicant been straightforward about them.

In another case, while the application was before the examining committee, an anonymous letter was received by the Philadelphia Bar Association, stating that two of said applicant's brothers had been in business trading under their own first names; they decided to defraud their creditors and moved to another location; no creditors were paid and the new business operated under the name of the applicant for registration as a law student, under an arrangement whereby the creditors could not reach the assets of the new business because the two brothers appeared to be employed by the nominal owner, the applicant. Said letter closed with this statement: "I am a citizen who is of the firm belief that there are too many reprehensible lawyers. They should be stricken off in these preliminary studies." At the interview before the committee, the applicant did not voluntarily give any information as to his connection with his brothers' business, but when he believed that the committee

knew about it, he made a rather effective gesture at frankness about it. The applicant was twenty-nine years of age and had been married four and a half years. The information contained in the anonymous letter was checked and augmented by the efforts of a professional investigator, and the examining committee, after considering carefully all of the facts, decided that the surrounding circumstances, as well as the facts admitted by the applicant himself, indicated that he was utterly reckless in the manner in which he permitted the use of his name and then ignored the fortunes of the business conducted under his name, and that this course of conduct disclosed a weakness of character and a general unfitness for the profession of law. The Board concurred in this finding.

Another case was that of an applicant twenty-nine years of age, who first filed an application for registration as a law student in 1932. He was examined by two members of the Board and reluctantly approved. The application was not acted upon, however, at that time because the State Board informed the County Board that he had not completed payment of the registration fee. Upon completion of said payment a year later the application was referred for a check-up to a committee consisting of one of the members of the Board who formerly had interviewed the applicant, and another member of the Board. This committee questioned the applicant about his father's bankruptcy which occurred in 1932, and which, in the opinion of this committee, was highly questionable. Neither of the examiners asked the applicant whether he had ever been arrested, and he did not state that fact. The professional investigator of the Board was asked to make an investigation with respect to the bankruptcy of the father of the applicant to ascertain whether the applicant was implicated in it in any manner, and in the course of making his report, it developed that the applicant had been arrested between the time he had filed his application in February, 1932, and the time of his second examination in 1933. Notwithstanding this, he did not attempt to correct his application, so as to include this fact, which was the subject of one question in applicant's questionnaire. The applicant's arrest was the result of a family fight, and the case against him was subsequently nolle prossed. The point in this case was that the applicant failed to state the matter to the examining committee until the second meeting when he was directly questioned about it. The examining committee was strongly of the opinion that the applicant had purposely suppressed the occurrence and that he was not frank with them. Said committee advised the applicant that its report would be unfavorable and suggested that the applicant withdraw his application, which he did. He filed a new application on November 18, 1936, although in the meantime he attended law school and at the time of filing the second application was in his last year at the law school. The matter was referred to a different committee. This meant that five different members of the Board had interviewed the applicant. The consensus of opinion of all of them was that the applicant was

not frank, that he recollected facts in their most favorable light and that his general background and personal impression were unfavorable. It was impossible to pin the applicant down to any connected statement. The last committee thought the case was a close one and that it was very doubtful whether the applicant met the fitness test laid down by the Supreme Court. Applicant's preceptor, too, expressed some doubt about his general qualifications as a law student. It was a particularly pathetic case because the applicant had an inordinate urge to become a lawyer and had spent nearly four years in preparation for that purpose, knowing that he might be rejected by the County Board. He gave no satisfactory reason for the long delay in filing his second application. The committee asked that he be permitted to appear at a meeting and have the matter decided by the entire Board. He did appear at a meeting and was questioned at great length. It was the unanimous opinion of the Board that he did not possess the qualifications of frankness and honesty required for a lawyer and he was rejected.

Of the five applicants rejected in 1936, three were applicants for registration upon College Degrees. Two of these applicants were untruthful and lacked candor and honesty; the third was exceedingly dull and stupid, and while the Board did not feel justified in rejecting the applicant for this reason, they recommended that if he failed in his examinations at the end of his first year at the law school, he should be rejected. He failed in every subject in said examinations and was not entitled to re-register and was automatically rejected.

The other two rejections were applications for registration on College Entrance Board examinations. One applicant was "obtuse" and his educational background and general qualifications were poor. The committee recommended rejection unless upon inquiry another committee would feel justified in recommending that the applicant be registered. The second committee agreed with the first committee, and in the meantime the applicant had received an average of 40 per cent in the three subjects in which he was examined by the College Entrance Board and was rejected. The other applicant for registration upon College Entrance Board examinations failed, by reason of his lack of intelligence, to convince the committee that he had the fitness and general qualifications other than scholastic to justify the Board in registering him.

In addition to applicants actually rejected, the examining committee, in a number of instances, where it felt that the applicant, while apparently there was no reason to reject him, would never succeed as a lawyer but was better adapted for some other work, has discussed the matter with the applicant and persuaded him to withdraw his application. The examining committee has also persuaded others whom it had decided to reject for sufficient reason, to withdraw their applications rather than to be formally rejected. In such cases, however, the committee usually files its report, so that should the applicant

change his mind later, the committee's impressions and findings will be available to the Board. The number of withdrawals *after* applications have been referred to examining committees have been as follows:

	Registration on College Board Exams.	Registration on College Degree	Final Examination
1929	0	1	1
1930	0	3	0
1931	2	3	0
1932	4	1	0
1933	2	3	0
1934	2	6	0
1935	1	3	0
1936	2	2	0
1937	0	1	0
1938	1	2	2

From the above it may be seen that the majority of applications rejected for unfitness are from a lack of candor and honesty and a desire to give the answer which the committee apparently expects, even though it is untrue.

The Board has had no rejection of an applicant for final examination for the last four years. Wherever possible, such applications are referred to the same committee which interviewed the applicant three or four years before, on registration. The character of the applicant is then more mature and undesirables have "fallen by the wayside." The right preceptor can do much for the applicant in these years while he is studying law. The examining committee in a great many instances has tactfully suggested to the applicant that he obtain another preceptor where there is some definite reason to believe that the lawyer named as preceptor is not the type to successfully steer a law student into the way in which he should go.

After rejecting an applicant, a request for reconsideration is very often received. Such requests are referred back to the examining committee and then discussed at the next meeting of the Board. If no new facts are adduced and the report of the examining committee is positive, such requests are generally refused. In some instances, they are referred to another committee, where a good reason therefor appears.

After the State Board of Law Examiners has acted on the recommendation of the County Board, the applicant then has the right to file a petition with the State Board asking for an oral hearing. If the State Board grants such a request and thereafter affirms the finding of the County Board, the applicant may then appeal to the Supreme Court of Pennsylvania. Four such appeals were taken to the Supreme Court by Philadelphia County applicants between 1928 and 1935 and all four appeals were denied by said Court

13. WILLS AND ADMINISTRATION—Testamentary capacity; wills, their execution, revocation, republication and revival; descent and distribution; probate of wills and administration of estates..... 2
14. EVIDENCE 2
15. INSURANCE—Marine, fire, life and liability..... 1
16. ADMINISTRATIVE LAW AND TRIBUNALS—Public Utilities; Workmen's Compensation Act; Public Utility Commission; Interstate Commerce Commission; Federal Trade Commission; Boards of Health, etc.; procedure before such boards; extent and manner of judicial review of their orders..... 2
17. TAXATION—U. S. and State inheritance, U. S. income, excise and property 1
18. CONSTITUTIONAL LAW—U. S. and State Constitutions..... 2
19. LEGAL ETHICS 1

NOTE—Equity, Conflict of Laws, Statutes of Frauds and Limitations are not made separate subjects. Questions involving these points may be included under any subject, particularly under Contracts, Personal and Real Property, and Security Transactions.

Maryland Is the Forty-First State

To Adopt a Two-Year College Requirement

With the addition of Maryland to the list of states requiring two years of college education or its equivalent as a qualification for admission to the bar, only a small group of jurisdictions in the solid south remain which still permit applicants to take the bar examinations without any general education beyond the high school stage. Kentucky, the farthest north of these commonwealths, and Oklahoma, the one farthest west, both have this matter before their courts of last resort at the present time. Seven other states are still pictured in black on the legal education map.

The Maryland advance came by the legislative route through the passage of a bill which provides that every student who begins the study of law after June 1, 1940, must have completed one year of college education and those beginning such study after June 1, 1941, must have had two years of college work, or its equivalent. The two-year requirement is less stringent than in most other states, however, as it may be satisfied by the completion of a total of thirty-six semester hours in a university or college recognized by the Maryland State Department of Education. Maryland's achievement is the result of ten years of effort by leaders of the bar of that State, and is a tribute to the long continued efforts of Mr. J. Maulsby Smith, Secretary of the Character Committee for Baltimore City, who for years has served both as a member and as chairman of the Joint Legal Education Committee of the Maryland State Bar and Baltimore City Bar Associations. Mr. Alexander Armstrong, Chairman of the Board of Law Examiners, Mr. F. W. C. Webb and James W. Chapman, Jr., members of the Board, as well as present and former officials of the Maryland State Bar Association and of the Bar Association of Baltimore City should also be congratulated for their effective work in this behalf.

Oklahoma Repeals Integrated Bar

The Oklahoma legislature on the last day of its session repealed the integrated bar act and provided for admission on diploma of the graduates of "Class A" schools, which were defined as schools belonging to the Association of American Law Schools, approved by the American Bar Association, or by the Supreme Court of Oklahoma, or members of the National Association of Law Schools. The latter group consists of some eleven law schools which are not on the approved list of the American Bar Association and one which is. The Board of Bar Examiners submitted their resignations to the Court but apparently these have not been accepted. The bill was passed on April 30 but is not effective until July 28. In the meantime candidates for bar admission are somewhat at a loss to know what to do, particularly if they have, or expect to have, a diploma which will admit them without examination. Apparently the cause of the trouble was the attempt of some University of Oklahoma law students in the legislature to secure the diploma privilege. Such a situation clearly illustrates the vice of permitting admission standards to be fixed by legislative act. It is believed that the Supreme Court will use its inherent power to integrate the bar and to fix proper admission standards.

Higher Standards Recommended by Louisiana Bar Committee

To the Officers and Members of the Louisiana State Bar Association
in Convention Assembled:

At the meeting in Baton Rouge last year your Committee on Legal Education and Admission to the Bar in a rather extensive report called attention to the low standards of educational training required in Louisiana for eligibility for admission to the bar. The contrast between the present standards in Louisiana and those in other states becomes more acute when we consider that at the present time there are forty-one jurisdictions requiring two years of college work as a prerequisite for admission to the bar. The most recent jurisdictions to adopt the standards of the American Bar Association in this respect were Tennessee (in July of 1938), the District of Columbia (in June of 1938), Iowa (in December of 1938), and South Dakota and Maryland (both in 1939). It should be a matter of concern, therefore, to all members of the legal profession in this state that Louisiana continues to be numbered among the eight states classified in the most backward group in the matter of general educational requirements. * * *

In connection with the recent action in South Dakota, it is interesting to note that the requirements of legal training have been altered by the abolition, effective January 1, 1942, of law office study as a means of preparation for the bar. This action of South Dakota increases to ten the number of states that now require every candidate for the bar examination to have pursued his study in a law school. When we consider the superior facilities for legal education that are afforded in the approved law schools and the utter impossibility for the busy and able practitioner of today to devote any substantial amount of his time in giving legal instruction to one who is "reading" law in his office, it becomes readily apparent that serious consideration should be given to the adoption of the full import of the American Bar Association's standards which will also have the effect of eliminating law office training as a means of preparation for the bar.

Even if law office training be not abolished, additional safeguards should be adopted to insure that persons registered for the study of law under the direction of an attorney should be required to pursue a fairly systematic program of study. This might be done by requiring a preliminary examination after one year as a condition precedent for eligibility to take the bar examination, and by requiring periodical reports from the attorneys concerning the progress being made by those studying under their direction. While the statistics will show that the percentage of success in the bar examinations of those who have prepared in a lawyer's office is much lower than the percentage of success in the bar examinations of those who have prepared in law schools, yet the fact that at the present time approximately three hundred persons are registered for study under attorneys is cause for concern, particularly when we consider that this fall there were enrolled in our three approved law schools three hundred seventy-four students.

While this Association is powerless to take any official action with regard to increasing the pre-legal and educational requirements for admission to the bar, by constantly focusing attention upon the progress toward higher standards that is being made elsewhere it is hoped that the result will be to make the entire legal profession keenly aware of the great need for some improvement in the Louisiana system. Two avenues of action are open, first, the Supreme Court of Louisiana might be requested, under the doctrine of ex parte Steckler, 179 La. 410, 154 So. 41 (1934) [appeal dismissed 292 U. S. 610, 54 Sup. Ct. 781, 78 L. Ed. 1470], to adopt the standards of the American Bar Association; or secondly, legislation (a method less frequently used in other jurisdictions) might be passed to accomplish this result. Your Committee recommends that these suggestions be passed on to the incoming Committee and that they be referred to the Executive Committee for any action that may be deemed proper.

In the matter of legal education, one of the most significant developments of the past year has been the sponsoring in this state of two successful

legal institutes on the new Federal rules, one in New Orleans under the sponsorship of the New Orleans Bar Association and the other in Shreveport under the auspices of the Shreveport Bar Association. The success of these two institutes demonstrates the value of the movement for post-admission legal education that is being currently sponsored by the American Bar Association. Your Committee commends this movement to the attention of all lawyers and to all local and regional bar associations. It is to be hoped that other institutes organized along similar lines, dealing with a variety of subject matter on which the modern lawyer is so sorely in need of information, will be held during the forthcoming year.

Respectfully submitted,

EDWARD DUBUISSON, *Chairman*
WOOD BROWN, J. ELTON HUCKABY,
HARRIETT SPILLER DAGGETT, ALVIN O. KING,

Committee on Legal Education and
Admission to the Bar.

April 21-22, 1939.

A Bar Examination Analyzed

Recommendations of a Sub-Committee From State "X" Law Schools, Appointed by a Cooperating Committee to Report on Bar Examination Questions

The following report was made by the Sub-Committee appointed by a Cooperating Committee of bar examiners and law school representatives in a state where this Committee has been recently organized. The Committee consisted of representatives of the law schools in the state and was asked to analyze a bar examination which had just been given.

1. It is recommended that some simple designation, such as letters, should be used to indicate parties in the several sets of questions. P can stand for plaintiff, D for defendant, A, B, C, etc., for additional parties, and X, Y and Z for interlopers and malefactors. In cases involving husband and wife or family affairs, H may stand for husband, W for wife, S for son, D for daughter, U for uncle and N for nephew, etc. The use of letters promotes brevity. They are used almost exclusively in law school examinations and are found in the illustrations in the Restatements of the American Law Institute. The Board may have good reasons for avoiding the use of letters of the alphabet to designate parties but we do not believe that it would be nearly as confusing as the present system, or lack of it, revealed in the last set of questions. The letters are certainly superior to such names as Wilhartz and Schoenit (first Agency question, second set), which require attention to spelling and

The answers to these questions are highly significant. Particularly suggestive is the heavy preponderance of the vote favoring a four-year course. When we consider the returns on that question together with the fact that a majority of the replies also favor the retention of a three-year entrance requirement, we have indications which involve a substantial change in the training period for lawyers. The fields stressed for inclusion in the fourth year are equally significant.

The replies on the modification of the case method of instruction have given me a good deal of trouble. This question reads, *Would you advise a modification of the case method of instruction? If so, in what respect?* Two hundred thirty-five individuals replied, "Yes," and one hundred ninety-seven said, "No." But this does not tell the whole story, for some who answered, "No," qualified their replies to such an extent that it is a fair inference they favored some modification. One hundred sixty individuals indicated that the case method should be supplemented with text materials or lectures; one hundred thirty-two said that we should inject into the program work of a more practical application and stressed one or more of the following: legal procedure, legal clinics, courtroom visits, and practice-court classes; twenty-nine mentioned apprenticeships in law offices. In the answers to this question, therefore, we are given another strong indication of a wish for more practical instruction.

A Comment on an Overcrowded Bar

A very interesting and well-written article on the subject of bar admission by Dean Francis M. Shea of the University of Buffalo Law School, appears in the February, 1939, number of the Columbia Law Review (39 Columbia L. Rev. 191). The following summary of the article appears in the American Bar Association Journal for June:

> "The Bar is troubled with too many members and organizations of laymen are competing for the services to be rendered. Shall we reduce the number entering the profession? A quota system has its adherents but is not favored. It may be expected to discriminate unfairly. There are three other more subtle proposals: (1) more efficient committees on character and fitness; (2) increase the duration of legal education; and (3) make law schools the method of entrance to the Bar and then eliminate many of them by setting standards that they could not meet. The first of these more subtle plans is opposed. It is futile to believe that even on adequate data we may predict upright or dishonest future conduct at the Bar. Furthermore, if 'character impressions become the effective tests of admissions, they will not be applied with rigorous honesty.' As to the third proposal, the less well reputed law schools are defended as serving a democratic government by affording legal education to persons with small means and a place for the training of lawyers who will be

content to return to the small cities to practice. By way of an affirmative program the following is stated: (1) exacting higher standards of attainment for admission to law schools with the corollary that where state universities do not exist, the state subsidize a student of high rank; (2) no objection to the immediate elimination of the proprietary school; (3) less lawyers in the large metropolitan centers and a greater percentage of them in the smaller communities and (4) win back law business 'which we have neglected and consequently lost'."

"As Others See Us"

Three Outstanding Law School Deans Look at Bar Examinations

Examination by a national board of bar examiners, elimination of unqualified candidates at the beginning of or after the first year of law study, and the supplanting of boards of bar examiners by state boards of legal education, are the suggestions made by three prominent legal educators in a symposium on bar examinations which appears in the April, 1939, Illinois Law Review of Northwestern University. Even though bar examiners may disagree with these suggestions, they will find the articles stimulating. They are here abstracted and commented on.

Dean Horack Criticizes Bar Examinations

Dean H. C. Horack of Duke University, first contributor to the discussion, severely criticizes present-day bar examinations, and asks: "Why should a well-trained applicant need a coaching course in order to pass such subjects as Contracts, Torts, Property, or any of those subjects which the bar examiners say are 'fundamental'?" He accounts for this generally accepted habit on the part of candidates by saying that most bar examiners are unacquainted with modern law school methods and that the planners of cram courses, from a close study of the bar examinations, are often able to train their students to outguess the bar examiners. While joint conferences of law teachers and bar examiners are excellent things and have produced good results, in his opinion "such conferences, no matter how desirable they may be, are not apt to give an examiner of the old school a fundamentally different viewpoint about education than that which holds over from his own student days."

As one method of aiding the situation, he stresses the need for appointment on every board of a fair proportion of young lawyers who held high rank as students and who are but a few years out of law school.

National Board Recommended

Dean Horack's major thesis deals with the desirability of establishing a national board of bar examiners. On this subject he says:

The Bar Association Standards and Part-Time Legal Education*

The American Bar Association Program in the Field of Legal Education and Admissions to the Bar and the Part-Time Law School Problem

By Charles E. Dunbar, Jr.

Of New Orleans, La., Chairman of the American Bar Association's Section of Legal Education and Admissions to the Bar

As Chairman of the Section of Legal Education and Admissions to the Bar, I desire to express my personal appreciation, as well as the appreciation of our Council, for the invitation and opportunity of addressing you on the very important subject you are discussing, viz.: the relation of the Association of American Law Schools to part-time legal education. I will attempt to outline for you, in connection with your consideration of this subject, the position and policy of the American Bar Association with reference to the night or part-time law schools and those which are designated as mixed schools, so called because in addition to their full-time sessions they have either late afternoon or evening sections.

Our Section on Legal Education is justly proud of the fact that your organization, in a sense, is its child, because your association was nourished and became a separate organization with the blessing and encouragement of our Section. We have watched your progress and achievements with paternal pride and gratification and we feel that the splendid results, which have been accomplished in the public interest in raising the standards of legal education and admissions to the bar, have been made possible only because your association and our Section of the American Bar Association have had common ideals and objectives and have been working shoulder to shoulder throughout the years in a great and common cause.

Let me review briefly for a moment what this progress has been. Our Section was created in 1893, after fifteen years of more or less futile reports and discussions under the auspices of the Legal Education Committee of the

*Address delivered at the meeting of the Association of American Law Schools in Chicago, Dec. 29, 1939. The following questions were listed on the agenda for discussion:

Assuming compliance with all other provisions of the Articles of Association:

1. Shall a school be eligible for membership if all of its classes are conducted at night?
2. Shall a school be or remain eligible for membership if it conducts, in addition to a morning division, a late afternoon or evening division equal in size or smaller than the morning division?
3. Shall a school be or remain eligible for membership if it conducts, in addition to a morning division, a late afternoon or evening division substantially larger than the morning division?

The action taken by the Association of American Law Schools was as follows:

"DEAN BERNARD C. GAVIT (Indiana University): I would like to offer a motion to the effect that the Association instruct the Executive Committee to encourage the part time and night schools to seek admission to the Association.

". . . The motion was regularly seconded, put to a vote and carried. . . ."

Mr. Dunbar is a graduate of the Harvard Law School and the Tulane Law School and has been a part-time professor of law at Tulane for some twenty years.

American Bar Association. Our only accomplishment which stands out over the course of the ensuing twenty-eight years was the formation of your association in 1900. In 1921, the standards of the American Bar Association were adopted by it on the recommendation of a committee headed by Elihu Root. At that time Kansas was the only state having a two-year college requirement. There were some eighteen states which granted admission on a law school diploma, and there were a comparatively few which prescribed a definite period of law study. Bar examinations were generally unscientific in character, and although they constituted practically the sole barriers which the candidate for bar admission had to surmount, they were in many states of doubtful efficiency as a means of proper selection. Today, eighteen years later, we find 41 states requiring two years of college education as an essential part of a lawyer's training. Of these, three jurisdictions, Pennsylvania, Delaware, and Kansas have rules which have resulted in the obtaining of a college degree by most candidates. In another state, Wisconsin, the Supreme Court has indicated its intention to follow the desire of the Bar in establishing a three-year pre-legal requirement. The states of Alabama, Arizona, Kentucky, New Mexico, Ohio, South Dakota, West Virginia, the District of Columbia and the Territory of Hawaii have refused to recognize office study. Forty-one states require a minimum of three years of law study, and about half of the states are now refusing to recognize as qualifying for the bar examination study in an unapproved school. The approved list is based on the American Bar Association approval, with local exceptions in some cases, or sometimes upon membership in your association. There are now 180 law schools in the United States, and of this number 102 schools have met our requirements and have obtained the approval of the American Bar Association. The remaining 78 schools have not been approved. Ninety-one (91) have adopted sufficiently high standards of education to be elected to membership in your association. We have truly made great strides.

The progress during the last eighteen years in bar examinations has been equally encouraging in most jurisdictions. One of the outstanding accomplishments in the last decade has been the organization by our Section of the National Conference of Bar Examiners and its growth into an important instrumentality for the improvement of the bar examinations and for the raising of legal education standards.

Although we have made astounding progress in the past, I feel sure it is unnecessary for me to tell your association that the most difficult part of our task still remains ahead of us, because we are now carrying on our struggle in states and areas of our country where our program and objectives have been consistently opposed and are being bitterly fought. The truth is that until the general membership of the organized Bar through the American Bar Association became interested in and supported the movement for improving the

standards of legal education, no substantial progress was made by the Section of Legal Education or your association. To perform the task that remains ahead we therefore must have the active interest and support of the profession as a whole. This requires that they understand the problem, that they believe in the objective and that they agree substantially with the method of obtaining that objective.

One important reason for the fine record of accomplishment in the past which should be emphasized and always borne in mind, was the appointment in 1927, during Mr. Silas Strawn's presidency of the American Bar Association, of a full-time Adviser. As you know, the official duty of our Adviser has been to carry out the policy and program of the Section; to stimulate interest in higher standards of legal education, and to work closely with all interested groups in the several states in raising admission requirements. Our Council also feels very strongly that the splendid program and achievements I have briefly summarized would have been impossible of accomplishment if your association and the American Bar Association had not throughout the years worked side by side as allies in a common cause.

The American Bar Association, and the Part-Time School

Coming now to the part-time and "mixed" school problem, it may be helpful, by way of preface, to summarize briefly the historical and present, practical situation. At the time the American Bar Association standards were first adopted in 1921, there were 141 law schools in the country, of which 67 were either full-time or "mixed" schools. Attendance at the full-time schools in 1921 ran about 40% of the total law school attendance of 32,000. Today, the proportion of attendance at full-time to that at part-time and "mixed" schools remains about the same. The great difference, however, is that the "mixed" full-time and part-time schools had but 22% of the enrollment in 1921. Today, this type of school accounts for about twice as large a percentage of the total, while the schools with only part-time sessions have but half as large a percentage of the total enrollment as they had in 1921. In other words, the positions of the part-time and of the "mixed" schools are now reversed from what they were twenty years ago.

As a result of the American Bar Association theory and the theory of your association that any school which meets the respective minimum standards prescribed, whether instruction be given in the day or in the evening, should have a place on the approved list, we have today two part-time and 21 "mixed" schools on our approved list, out of a total of 102 approved schools. It is also interesting to note that of the 23 part-time or "mixed" schools, approved by the American Bar Association, all but seven are members of the Association of American Law Schools. It would appear from a practical point of view that a wise decision was made in 1921, when the American Bar Association standards were so drawn as to include, through relatively higher minimum standards,

the possibility of approving night law schools. As a result of our requirement as to full-time teachers, evening schools which have met our standards have usually found it advisable to establish also a morning division, which accounts for the fact that there are only two evening schools on our approved list at the present time, as compared with 21 "mixed" schools having both day and evening divisions. At the present time, the total enrollment of afternoon and evening students in our approved schools is one-fourth of the total enrollment of all approved schools, while the afternoon and evening enrollment at unapproved schools is 75% of the total enrollment at unapproved schools. The attendance for 1938 at law schools now approved was 24,075. This total attendance is made up of 14,581 at full-time, approved schools, and 9,494 at mixed and part-time, approved schools. The attendance for 1938 at schools now unapproved was 13,331. This total is made up of 310 at full-time, unapproved schools and 13,021 at mixed and part-time, unapproved schools.

The relative merits and adequacy of part-time instruction, as compared with full time instruction, in law schools, has been a matter of controversy in the American Bar Association and in our Council on Legal Education for many years. Many partisans with different points of view have urged many and varied arguments in support of their conflicting contentions. It may be helpful to select and mention a few of the arguments to illustrate the difficult problems that have confronted our Council in its capacity as a standardizing agency seeking, as a general objective, the improvement and raising of minimum requirements and standards of legal education uniformly throughout the United States.

Assuming adequate minimum requirements as to pre-legal education, it is frequently argued in support of the part-time school that a man who has the energy and perseverance and is willing to make the necessary sacrifice to study law night after night for four long years (which is now required by our standards), while he is making his own living, has demonstrated a perseverance, a character, and an ambition which prima facie indicate that he is a desirable law student and will be a desirable addition to the bar. If, it is said, in spite of his character he lacks energy and ability, it can be fairly presumed that the better grade part-time school, meeting our American Bar Association minimum standards as to proper class work and rigid examinations, will drop him from its rolls because of inadequate scholarship, and thus eliminate the incapables and incompetents before their graduation.

It has often been suggested to us also that the part-time school frequently has an advantage, in that most of its students are intensely interested, more mature, and have had experience in the business world and that there is not the "play-boy" attitude that is found in some of the full-time schools.

The argument is also frequently made to us that it is highly desirable that the bar be recruited from the wage-earning class, as well as from the well-to-

do and more privileged classes, and that this representation will be greater if the part-time school route is left open to deserving and qualified men and women. This argument must be considered by us and given proper weight, although we all know and recognize that there are great numbers of so-called "poor boys"—of which class Mr. Justice W. O. Douglas of the Supreme Court may be cited as a shining example—who each year work their way through our full-time schools.

It has been said by eminent men in the field of legal education, who have examined many full-time and part-time schools, that some of the better part-time schools in this country, approved by your Association and the American Bar Association, are giving better and more thorough legal training than some of the full time schools approved by your association and the American Bar Association. Irrespective of whether this is true, this point of view would have to be considered and reckoned with if we should decide to attempt arbitrarily to excommunicate the best type of part-time school.

It is generally admitted by thoughtful students of legal education problems that given the same period of study, the same curriculum and quality of instruction, and all other things being equal, part-time or night students have an inherent disadvantage as law students, because they cannot give the same amount of time to outside reading, study and other activities during the similar period of time, as full-time students. There are many experts in the field of legal education who contend, however, that the inherent disadvantage of the part-time school I have referred to can be compensated for by requiring a longer period of resident study in part-time schools than in full-time schools. In fact, both your association and the American Bar Association have in the past accepted this solution of the problem as a practical matter by requiring a longer period of law study in part-time or night schools, in connection with the fixing of minimum standards of legal education.

Our Council has not attempted to settle this problem or the other problems from a theoretical and academic standpoint, because of real and practical considerations that must be considered and recognized by us if our program and objectives for the improvement of standards of legal education throughout the country as a whole are to go forward. In this connection we have had to recognize the fact that there are many leaders of the American Bar and many eminent educators sincerely devoted to the improvement of standards of legal education who feel that the solution of the problem of minimum standards of legal education lies in the field of raising qualitative and quantitative standards in both the part-time and full-time schools, and not in attempting to eliminate or discourage the best type of part-time school. Moreover, these educators and leaders of the bar are firm in their conviction that the good part-time law school fulfills a real need and performs a necessary and vital function in the field of legal education in the United States, and that the part-time school should, therefore, be encouraged and its standards improved.

We have been repeatedly warned by this influential group, who are enthusiastic workers and devoted to the cause of legal education, that any attempt on the part of the American Bar Association arbitrarily to excommunicate and eliminate part-time legal education would be an unfair attempt to eliminate about half of the students in our law schools at the present time. To do this is considered by a large majority of our Council on Legal Education not only an impossible task, but one that public opinion, our courts, our legislature and the bar of our country will not assign to us. In fact, we have reason to believe and fear that if we should attempt to eliminate the part-time school, our action would result in arousing so much antagonism that our entire program and objectives would be seriously jeopardized and the work of your association and the American Bar Association during the last eighteen years would be weakened and possibly destroyed.

We must also bear in mind, in considering these problems, that we have not yet sold our present minimum standards to the bar and the country as a whole. This is, of course, essential before we can drive the commercial and substandard law school out of the field of legal education, and before we can successfully and effectively raise our qualitative and quantitative minimum standards. The Sheppard Bill, which has been adopted by the Senate, and is now pending in the House of Representatives of the United States, can be given as one of many examples which demonstrate this important fact. This bill, under the guise of preventing discrimination against the graduates of unapproved schools in the securing of appointments to legal positions in the Government, in substance actually forbids consideration by the Government, in connection with the making of Federal appointments, of the kind and character of legal training which an applicant has had, or whether or not he has had any college education. If this bill is adopted—and there is grave danger that it will be—it will, in effect, be an announcement by the Congress of the United States that educational qualifications and requirements should not and will not be considered in connection with the selection and appointment of lawyers in the various departments of the United States Government. The adoption of the bill will amount to the repudiation by the Federal Government of the policy and laws of forty-one states of the Union, now recognizing minimum requirements of education for the practice of law. Such a declaration of policy by the United States Government will also amount to a repudiation of the activities and achievements of the American Bar Association, your association, and others, in their long and tedious struggle to improve standards of legal education during the last eighteen years.

In the light of the practical considerations I have referred to, many thoughtful students of our problems feel that we should first encourage as many of the present unapproved, part-time and full-time schools as possible to meet our minimum standards and obtain approval, and drive the others

which refuse to meet our standards from the field, before we attempt to further raise our minimum standards. In other words, we should, as a matter of plain, practical procedure, complete the second story of the house of minimum standards of legal education before we attempt to put on the third story.

Your association and its Curriculum Committee, as you know, have, for some time, been considering the very interesting and many-sided problem of whether a four year curriculum should be substituted for a three year curriculum in law schools. It can, of course, be argued, as a theoretical proposition, that, from a purely educational standpoint, as an ideal, five or ten years of study in a law school should be required, and that such a requirement would result in producing law graduates who are much better trained and more adequately prepared for admission to the bar. I think all of us will admit, however, that we cannot approach minimum standards of legal education from a purely theoretical point of view, but must take into consideration the many practical considerations involved, which include reasonable opportunity for the average man to obtain a legal education in every part of the United States, and some reasonable limitation on the period of time within which a young man can afford to postpone his desire or necessity to earn his own living, and above all what public opinion at any given time will permit. I mention this problem of the four and three year curriculum, which your association is considering, because, like the part-time school problem, it involves to a certain extent the same conflict between idealistic and practical considerations, and a similar question as to where the line should be drawn at any given time in the interest of practical progress and achievement in the improvement of legal education as a whole.

I hope that I have made clear that to act at all and perform a helpful service in the field of legal education and admission to the bar, the American Bar Association, through our Council, has been compelled to work out and adopt a policy and program which necessarily have involved reasonable compromise between a variety of opposing and conflicting views and a recognition and appreciation of the many serious, practical considerations to which I have referred. It has seemed to us that this has been the proper way to proceed in the general improvement of minimum standards of legal education, and that if we had failed to recognize this, our progress during the past few years and our present program would have been impossible of achievement. If we had not adopted such a policy, our activities would have been futile in the chaos of sincere academic controversy and combat. This compromise policy of fixing national minimum standards from time to time is necessary if we are to present a united front in our struggle for the improvement of legal education, and if we are to have the united support of all schools of thought, and of all of the powerful and diverse elements sincerely devoted to the cause of better legal education. We believe, therefore, our ideals and objectives for

ultimate higher minimum standards for both the part-time and full-time school, if they are to be realized and accepted in practical operation, and if they are to result in a general nation-wide acceptance and improvement in legal education, must be found in the establishment of reasonable minimum standards in the "twilight zone" between the extremes of admittedly weak law schools, and the "blue-ribbon super school."

The attitude and position of our association with reference to the part-time school has been the same attitude and the same approach we have adopted in connection with the working out and moulding of our program as a whole. Fundamentally, the main reason for the adoption of any standards of bar admission whatsoever is the protection of the student and the public. No one has a right to admission to the bar, whether he is poor or rich. The only right which exists is the right of the public to be protected against incompetent lawyers. It is not only the prospective clients of lawyers who must be protected against incompetency. The public in general has a vital interest in a lawyer's qualifications, because of the public nature of the lawyer's calling. He is an officer of the court and intimately connected with the administration of justice. He has, in the past, taken a leading part in the affairs of municipal, state and Federal governments. The general public, therefore, as well as the lawyer's own particular clients, has a vital interest in having the bar composed of honest, educated and qualified lawyers.

Primarily then, in fixing minimum standards of legal education and admission to the bar, we must consider not whether some deserving boy has found it difficult (he will not find it impossible, if he has character), to gain admission to the bar because he must first secure a reasonable amount of college education, but rather whether the public will be better served if every lawyer is required to have an adequate general education as well as technical training in the law. Obviously, the clients who are served by lawyers and the general public interest are better served if lawyers are required to be men with a wide general knowledge as well as good legal training. Each of us knows from his own experience that there are men who have studied in offices, read law at home, or even become lawyers through the correspondence route, who are excellent lawyers. We also know that there are many men who have gone to inadequate law schools, who have turned out to be competent practitioners. The reason we do not sanction office or home or correspondence school training, the reason we do not countenance poor and inadequate law schools, is that these are methods of training which experience clearly demonstrates also turn out a larger proportionate number of totally unequipped lawyers to prey upon the public, and the mesh of the bar examination is too coarse to prevent these from sifting through.

It is axiomatic that the more effective the training, both in college and in law school, the better lawyer a given individual on the average will become.

But we cannot demand that every lawyer should be a graduate and hold a degree from the best university and law school in the country.

Consequently, the practical and reasonable question in connection with minimum standards at this time, whether we are dealing with full-time or part-time schools, is, in the opinion of our Section, simply this: Can the schools which comply with our minimum requirements and standards, whether part-time or full-time schools, weed out, in conjunction with bar examinations, the great majority of the kind of lawyers against whom the public is entitled to be protected? Stated in another way, can the graduates of these schools which meet the minimum American Bar Association standards, whether part-time or full-time, be regarded as being reasonably and adequately trained for the proper performance of their many duties and obligations as lawyers?

As you probably know, our Council, in 1938, was given by the Association a broad discretion in the sphere of qualitative and quantitative appraisal. Since then a school, to obtain our approval, must not only measure up to the minimum quantitative standards prescribed by the American Bar Association, but it must, in the opinion of our Council, "also possess reasonably adequate facilities and maintain a sound educational policy." It is the belief of our Council that unqualified lawyers are not being graduated in any large numbers from our approved, full-time or part-time schools. If they are, then, we believe, it is because our minimum general standards are too low, or because our accrediting process and appraisal is improperly administered, or both. It is not due, in the opinion of our Council, in any substantial sense, to the fact that the better part-time schools are now recognized and approved by both your association and the American Bar Association.

We hope and believe that we may be able to raise qualitative and quantitative standards from time to time in the future, both in the case of full-time and part-time schools, as our work progresses and public opinion and support, through educational activity and a broader appreciation of our objectives, justifies and permits such action.

In conclusion, I return to what our Council believes are the fundamentals involved in our mutual problem. What are the ultimate objectives for which we are working? We believe that the legal education picture as a whole is our concern. We do not believe we are merely authorized to deal with "blue ribbon" and "super" law schools at this time and to attempt to fix idealistic and dizzy heights in the way of standards of legal education which are impossible of achievement, and which, if attempted, would seriously hamper, if not destroy, our usefulness and constructive program. Rather, it is our duty and our mandate from the American Bar Association, as we understand it, to consider and uniformly improve legal education of every kind throughout the country as a whole. Consequently, in the light of our experience and after careful study, we are attempting to fix, from time to time, the kind and char-

acter of minimum standards both for the part-time and full-time school which will result in the elimination of unworthy and incompetent students and will bring about the graduation of reasonably and adequately trained lawyers. Instead of making a futile attempt to drive all part-time schools—whether good or bad—out of business, we are attempting to fix minimum standards for the part-time school sufficiently high to guarantee a reasonable, adequate and superior type of legal education for their students, and by the recognition and approval of this higher type of part-time school we may be able, eventually, to drive the commercial and inadequate part-time school out of the field of legal education and thus uniformly improve and elevate the standards of legal education as a whole throughout the country. On the other hand, an attempt, on our part, to disqualify or ostracize the part-time school—including the best type of part-time school, would, in our opinion, endanger our present program and the splendid progress we have made. Moreover, such a policy, we believe, would actually result in encouraging the growth, prosperity and multiplication of the worst type of commercial and inadequate part-time school.

As you know, we have been going about the accomplishment of our objectives through the exertion of constantly increased pressure on the unapproved schools. First, the states have been induced to require two years of college education. This has resulted in decreasing the number of unapproved schools. Next, the courts and the bar examiners have been convinced that the American Bar Association standards are a minimum which the profession and the public have a right to demand, and in more than half of the states only study in an approved school is recognized. This is making it very inconvenient for the unapproved law school to continue to exist. A graduate from any one of the three unapproved law schools in New Jersey, for example, finds that he is not qualified to take the bar examination in New York. Moreover, there are some 13,000 students in unapproved schools today who are discovering that half the states in the Union do not consider their education good enough to permit them even to take the bar examinations in those states. We are doing just what the American Medical Association has done before us. There are only six unapproved medical schools in the United States, a condition which has been brought about largely by the fact that in forty-four states substantially all candidates for a doctor's license must be graduates of schools approved by the American Medical Association.

In the final analysis it must be remembered that we can only eliminate unapproved law schools through the difficulties of competition with approved schools, and, most important of all, by making their graduates ineligible for admission to the bar. Law schools, large or small, full-time or part-time, do not voluntarily go out of business, and there are many law schools that do not reach out and seek for high standards except as a result of the compelling lash of necessity and an informed public opinion. Our future course is plainly

marked out. We must complete our job of securing the adoption of a two-year college requirement, even in the slow-moving states of the deep South. We must go forward with our program of securing the adoption of legislation or rules of court requiring law study in an approved school. We must make sure that our minimum standards for approved schools, whether part-time or full-time, are sufficiently high to guarantee adequate preparation for the bar, and we must speed up the elimination of the poor law school.

In the past, approval by the American Bar Association has been the first step toward membership in the Association of American Law Schools. Institutions which have achieved a place on our approved list usually increase their facilities and then seek an honor of a higher order—membership in your association. Perhaps your standards would discourage some schools if they had to be met initially; whereas, now they are achieved by gradual steps. Out of 36 schools that have been approved by the American Bar Association since 1928, all but 12 have become members of the Association of American Law Schools, and many of these were recently added to our list. If we take the 26 schools approved from 1928 through 1936, we find that all but 4 are now members of the Association of American Law Schools. A great deal of our strength has come from a united front.

Our task has not been an easy one. I think it is fair to say that the American Bar Association, through its Council on Legal Education, is in the first line trenches and has had to meet and will be compelled to continue to meet the first impact of the shock troops of those opposed to any minimum standards whatever, and who in many places are scoffing at the present educational program and ideals of your association and the American Bar Association. We must not forget that in many parts of the country there still prevails the fallacious and discredited idea that everyone in democratic America has a right to become a lawyer, and that any restrictions or limitations on this right are un-American and undemocratic.

It is the opinion of our Council that there is at present no substantial sentiment in the American Bar Association in favor of or that would permit the changing of our standards so as to eliminate schools giving afternoon or evening instruction, or to refuse admission to new applicants in that category. We are, therefore, anxious that you should give the fullest consideration to a step which would start you in a different direction from that which the American Bar Association is pursuing. You are dealing with the future of the general improvement of legal education, not simply with the rules governing a group of select schools, and you will exercise, by your action and effort, considerable influence on the future of the bar.

The First Thousand!

By Marjorie Merritt,

Assistant Secretary of The National Conference of Bar Examiners

Today every nation in the world is "taking stock"—counting its airplanes, battleships, machine guns and man-power, estimating the bushels of wheat in its bins, and feverishly checking over its gold reserves. Assets are being weighed carefully against liabilities and maximum efficiency is the goal. Let's narrow the stock-taking down to our own province and learn what the bar examiners' Conference has accomplished in the past five years through its effort to make the "character investigation plan" an efficient piece of auxiliary machinery for the bar examiners or character committees and an asset to offset some of the liabilities in the legal profession.

In June of 1934, when the character investigation service was inaugurated, there began a new system, or experiment, in an attempt to furnish concrete and valuable assistance to those charged with the duty of determining whether or not a lawyer-applicant was entitled to a license in the state to which he had recently migrated. The wheels of the machinery were oiled first by the preparation of a questionnaire to be filled out by the applicant. The application forms for admission to the bar in all of the states of the Union were collected, a tabulation was made of the information they requested, and the composite result was the basis for the questionnaire used today by most of the states subscribing to the service; a few changes and additions have been made in it as experience proved desirable. Since the actual procedure for the character investigation itself has been described frequently, it need only be outlined very briefly: The applicant fills out the questionnaire and it is sent to the Conference; letters are then written to all possible sources for accurate and reliable information, such as references, law school personnel, employers, associates, judges, fellow citizens and lawyers, credit, insurance and bonding companies, character committees, and bar association officials; where necessary a personal investigator conducts interviews or searches records; the replies are assembled and a confidential, fact-finding report is filed with the examining authority. Twenty-nine states, the District of Columbia and the Territory of Hawaii now use the service and well over one thousand individual reports have been completed. This is to be a "stock-taking" of the first one thousand applicants to be investigated—a checking as to the checked.

The Courses of Migration and Distribution

As it may be of interest to know from whence and whither the thousand applicants set forth for greener pastures, this information is presented below. Each state's proportion of these first thousand investigations is also given, as

well as the date on which the Conference received the first request for a character report.

The date given is that on which the first character report was requested.

6 to Alabama March, 1936	—	2 from New York 1 each from Ga., Miss., Mo., and Va.
48 to Arizona* December, 1936	—	7 from California 5 from Kansas 4 from Illinois 3 from Missouri 2 each from Colo., Ind., Ky., Mich., N. Y., Ohio, and Okla. 1 each from Alaska, Ark., B. C., Conn., Del., D. C., Iowa, Mass., Mont., Neb., N. J., Ore., Pa., W. Va., and Wis.
252 to California June, 1934	—	45 from New York 32 from Illinois 19 from Ohio 18 from Nebraska 12 from Delaware 10 from Michigan 9 each from Minn. and Okla. 8 from Washington 7 each from Iowa and Mo. 6 each from Mass., Ore., and Pa. 5 each from S. D. and Tex. 4 each from Colo., Idaho, and Kan. 3 each from Ind., Nev., and Utah 2 each from Ariz., Md., Mont., N. Mex., N. D., P. I., S. C., Tenn., W. Va., and Wis. 1 each from Ala., Canal Zone, Conn., N. J., P. R., Va., and Wyo.
3 to Colorado October, 1937	—	1 each from Kan., Mass., and Wash.
9 to Delaware December, 1935	—	3 from Pennsylvania 2 from New York 1 each from Mass., Mich., Ohio, and Tenn.
12 to District of Columbia March, 1939	—	3 from Ohio 2 from Missouri 1 each from Ark., Ga., Md., Mich., N. Y., N. D., and Va.
133 to Florida* January, 1935	—	46 from New York 13 from New Jersey 12 from Illinois 10 from District of Columbia 8 from Ohio 5 each from Ky., Minn., and Tenn. 4 from Missouri 3 from Michigan 2 each from Ala., Kan., Mass., Pa., P. R., Tex., and Va. 1 each from Conn., Ga., Md., N. C., Okla., S. C., Wash., and Wis.
5 to Hawaii September, 1936	—	1 each from Calif., Mich., Mo., Tenn., and Wash.
17 to Indiana December, 1936	—	8 from Illinois 3 from Kentucky 2 from Michigan 1 each from N. Y., N. C., Okla., and Tex.
1 to Iowa March, 1939	—	1 from Missouri
5 to Maine September, 1937	—	3 from Massachusetts 1 each from District of Columbia and New York

*Includes some original applicants, or out-of-state attorneys taking bar examination.

29 to Maryland— November, 1936		17	from District of Columbia
		4	from Virginia
		2	each from Mass. and N. J.
		1	each from Ill., Iowa, Mo., and N. Y.
21 to Minnesota May, 1935	—	4	from New York
		3	from Illinois
		2	from North Dakota
		1	each from Calif., D. C., Ind., Iowa, Mich., Ohio, Pa., P. R., S. D., Tex., Wash., and Wis.
71 to Missouri July, 1935	—	11	from Oklahoma
		9	each from Ill. and Kan.
		7	from Arkansas
		6	from Iowa
		4	each from D. C. and N. Y.
		3	each from Calif., Ind., and Md.
		2	each from Texas and Va.
		1	each from Colo., La., Mich., Minn., Mont., Nebr., Ore., and Wis.
40 to Nebraska December, 1936	—	18	from Iowa
		6	from South Dakota
		4	from District of Columbia
		2	from Colorado
		1	each from Calif., Ill., La., Mass., Minn., N. Y., Tenn., Utah, Wash., and Wis.
9 to Nevada February, 1935	—	2	from California
		1	each from Colo., Conn., Mass., Nebr., N. Y., N. D., and Okla.
16 to New Mexico* December, 1936	—	6	from Okla.
		2	each from Iowa and Texas
		1	each from Ariz., Kan., Mass., Mo., N. Y., and Tenn.
91 to New York January, 1937	—	22	from District of Columbia
		9	from Illinois
		8	each from Mass. and Ohio
		7	from Pennsylvania
		6	from Missouri
		4	from Texas
		3	each from Calif. and Mich.
		2	each from N. J., N. C., and Ore.
		1	each from Ala., Colo., Conn., Ga., Idaho, Ind., Iowa, Md., Miss., Mont., Nebr., Tenn., Wash., W. Va., and Wis.
4 to North Carolina July, 1938	—	1	each from Md., Mich., S. C., and Va.
23 to Ohio March, 1937	—	4	each from D. C. and Ind.
		3	from Illinois
		2	each from Fla., Mich., N. Y. and Va.
		1	each from Calif., Ky., Mo., and W. Va.
44 to Oklahoma November, 1935	—	9	from Missouri
		7	from Texas
		5	from Arkansas
		3	each from D. C., Ill., and Nebr.
		2	each from Ind., Kan., N. Y., and Ohio
		1	each from Calif., La., Mich., N. Mex., N. C., and Wash.
29 to Oregon August, 1936	—	4	from Washington
		3	each from Minn. and S. Dak.
		2	each from Calif., Ill., and Mo.
		1	each from Canada, England, Colo., D. C., Fla., Kan., Nebr., N. Y., N. Dak., Ohio, Okla., Tex., and Utah.
36 to Pennsylvania* October, 1936	—	9	from New York
		4	each from D. C. and Mass.
		3	each from Ind. and Md.
		2	each from Calif., Conn., and Ill.
		1	each from Ala., Mich., Minn., Mo., Nebr., R. I., and W. Va.

42 to Texas* February, 1935	—	13 from Oklahoma 3 each from Ala., D. C., and Mo. 2 each from Fla., Ill., Iowa, N. Y., Ohio, and Pa. 1 each from Ark., Calif., Colo., Kan., La., Nebr., N. C. and Tenn.
9 to Utah November, 1935	—	2 each from Calif. and D. C. 1 each from Colo., Idaho, Ill., Ind., and N. Y.
1 to Vermont April, 1939	—	1 from Connecticut
42 to Washington October, 1934	—	5 each from Nebr. and Ore. 4 each from Illinois and N. Dak. 3 each from Mont., Ohio, and Utah. 2 each from Iowa, Kan., Minn., and Wyo. 1 each from Idaho, Ind., Mo., N. J., N. Y., S. Dak. and Tex.
2 to West Virginia February, 1938	--	1 each from Ky. and Ohio

Note: Kentucky, Louisiana and South Dakota adopted the service after the thousand investigations had been made and therefore are not represented in this list. It should also be mentioned that some investigations have been made for Connecticut and Illinois, these states furnishing liberal financial support to the Conference. The statistics, however, do not include these investigations as the service is not used exclusively in those jurisdictions.

1,000 to 28 States	—130	from New York
	96	from Illinois
	77	from District of Columbia
	51	from Ohio
	45	from Oklahoma
	44	from Missouri
	41	from Iowa
	33	from Nebraska
	31	from Massachusetts
	30	from Michigan
	28	from Kansas
	27	from California
	26	from Texas
	22	from Minnesota
	21	each from Ind. and Pa.
	20	from New Jersey
	19	from Washington
	16	from South Dakota
	15	each from Ark., Ore., and Va.
	14	from Colorado
	13	each from Del., and Tenn.
	12	each from Ky. and Md.
	11	from North Dakota
	8	each from Ala., Conn., Mont., Utah, and Wis.
	7	from Idaho
	6	each from N. C. and W. Va.
	5	from Florida
	4	each from Ga., La., P. R., and S. C.
	3	each from Ariz., Nev., N. Mex., and Wyo.
	2	each from Miss. and Philippines
	1	each from B. C., Canada, England, Alaska, Canal Zone, and R. I.
	None	from Hawaii, Maine, N. H., or Vt.

The tabulation shows that California, the pioneer subscriber to the service, furnished one-fourth of the total number of applications. She has employed this method since it first became available as an aid to "rid the temples of justice of termites," a mandate which her favorite son, President Beardsley of the American Bar Association, is now so vigorously voicing in his addresses to bar associations throughout the country.

California, with by far the greatest number of applicants, naturally drew her foster attorneys from a wider territory than did any other state, 39 jurisdictions being represented. Florida with 133 applicants, the second largest number, drew 46 of them from New York and the balance from 24 other states. New York's 91 applicants came from 27 jurisdictions, chiefly the District of Columbia. It is interesting to note that the 48 applicants to Arizona were from 25 states and British Columbia, and the 29 going to Oregon were from

18 states and two foreign countries. On the other hand, Maryland's 29 applicants, the same number as Oregon, came from only eight other jurisdictions, 17 being from the District of Columbia. Considering numbers, Oregon wins the blue ribbon for having the most cosmopolitan atmosphere.

As the character service was inaugurated at different times in the 31 jurisdictions, it is difficult to reach any accurate conclusions from the migrations. However, a few observations can be made as to the "comings" and "goings" in the first eight states to adopt the plan. California had 252 applicants, of whom 214 were admitted, while the other states later adopting the service received applications from only 27 attorneys leaving California. Delaware, the second pioneer, had nine applicants, of whom she admitted only five, while she lost 13 attorneys who moved elsewhere. Washington had 42 applicants, with but 19 Washington attorneys applying in nine of the other states. Nevada had nine applicants, refused admission to three of them, but still may have a gain as only three Nevada lawyers were investigated for other states. The Conference reported on 42 applicants for Texas but, as in the case of Florida, some of them were original candidates whose records were checked because they were from outside the state; the number of Texas attorneys investigated for other boards was 26. Oklahoma sent in 44 applications, 7 of which have not been approved, while 45 lawyers left that state for other climes. Minnesota had 21 immigrants and 22 emigrants, but five of her newcomers were denied admission. Florida had 64 attorney-applicants, with only five attorneys from Florida reported on for other states.

The reasons for the move are as varied as the individuals, of course, but the most common are bona fide transfer from one state to another, family ties, hope for greater opportunity, and health. "Health," incidentally, may cover many conditions. The actual well-being of the applicant or his family may be involved. An instance is recalled where the Conference was at the same time investigating an attorney going from California to Nevada because of asthma and an attorney leaving Nevada to go to California, also because of asthma. The temptation was great to suggest an exchange of clients and practice, but it was impossible to proffer this solution as our investigation disclosed that the home-town atmosphere was entirely "too hot" for one of the sufferers. Also there is sometimes the unstated but unhealthy situation of having clients who expect to receive at least a portion of the money collected in their behalf.

It is to be noted that some of the states are troubled with "back-door" applicants, as those are called who leave a state because they cannot meet its requirements or pass its bar examinations, go elsewhere and gain admission, and then after a few years return to the original state in an effort to be admitted on the basis of a period of previous practice. Missouri, for example, receives for possible acceptance some of its raw material which for a time is side-tracked in Arkansas. An unsuccessful Missouri applicant has been

known to go over into Arkansas, which has no educational requirements for admission and, if he finally passes the Arkansas bar examination, attempt, or pretend to attempt, the practice of law there. He then returns to Missouri after three years, saying he has been a lawyer the required period to qualify him for admission on motion. Some of the investigations proved that these "back-door" applicants actually remained at home or followed other pursuits while waiting for the three years to elapse before trying to slip through the screen. There have also been instances of insufficient practice by applicants of good character, and often the boards require the passing of the bar examination in these cases. Over half of the states require for admission on motion at least five years of previous practice; three require ten. This, of course, cuts down materially the number on the back porch. Connecticut has an interesting provision which calls for at least five years of practice in a state having equally high educational requirements and demands at least ten years of previous practice if the applicant has ever failed the Connecticut bar examinations; her back door is of solid oak, with a Yale lock!

The Action Taken on the Applications

The reports present the opinions of others, supported, however, by all possible concrete evidence, and the Conference does not itself recommend the action to be taken. Some boards and committees are stricter than others or consider more seriously certain defects in character. For example, one board may wish all possible details as to domestic difficulties, while another feels them of no importance whatever unless they bear directly on the applicant's activities in the practice of law. A differentiation is sometimes made between personal character and professional character; in other instances all attributes are considered entirely as a whole. In a few states the formal rules contain a useful, and perhaps a wise, provision that should the candidate make a misstatement in his application or attempt to conceal something from the board or court, that in itself will be sufficient to deny him admission to the bar; other jurisdictions are more lenient. Also, questioning the applicant may result in additional facts which tip the scale one way or the other. The Conference therefore does not pass judgment, either on those judged or on those doing the judging.

The statistics show that 104, or 10.4 percent of the 1,000 applicants were not admitted to the bar either because they were denied a license or because they withdrew. Then there were 12 who were told to take the bar examination, 26 who have so far not appeared or completed their papers, 69 who failed the examinations, and 23 whose petitions are still pending. Fifty-one applicants were denied on character alone, six on character and insufficient practice, seven withdrew after an interview, four with questionable character withdrew for some reason, four of those who did not complete their papers

Statistics on First Thousand Character Investigations

State	Total Number Applicants	Denied Admission: on Character Grounds	Denied Admission: Due to Insufficient Practice	Denied Admission on Comity: But Permitted to Take Exam.	Denied Admission on Comity: Did Not Meet Residence Req.	Denied Admission on Comity: Other Reasons	Withdrew After Interview Ques. Charac.	Withdrew Reason Not Given Ques. Charac.	Withdrew Voluntarily	Did Not Appear or Complete Papers: Ques. Charac.	Did Not Appear or Complete Papers: Recommended	Did Not Appear or Complete Papers: Others	Failed Examination	Pending: Ques. Charac.	Pending: Insuf. Prac.	Pending: To Take Exam.
Alabama	6	1	(later allowed to withdraw)													
Arizona	48	2							1		2	3	3			
California	252	15	1	1			2		7				6	1	2	3
		—3—														
Colorado	3															
Delaware	9	2	1										1			
District of Columbia	12	1	5									1				
		—1—														
Florida	133	2								1		6	45			1
Hawaii	5						1						1	1		
Indiana	17				1											
Iowa	1															
Maine	5													2		
Maryland	29	2	1													
Minnesota	21	2	2		1			2	1	1			1			
Missouri	71	4												—1—		
		—1—														
Nebraska	40										1					
Nevada	9	2	1													
New Mexico	16	1			1											
		—1—														
New York	91	2	5	8			1	1		1	1	6		1	2	
North Carolina	4													1		
Ohio	23	2	1				1							—2—		
														1		
Oklahoma	44	4	1	1												
Oregon	29	5					1									
Pennsylvania	36	2						1					7	1		2
Texas	42	1	1	2		1	1				1		1			2
Utah	9		2													
Vermont	1															
Washington	42	1	1						1	1		1	3			
West Virginia	2												1			
Total	1000	51	6 22	12	3	1	7	4	10	4	5	17	69	8	3 4	8

were of doubtful character, eight applications are pending because of character and three because of character and practice, making a total of 83 applicants whose unsatisfactory character was an important factor, sufficiently so to eliminate 72 of them and hold up action on 11. This means that approximately one out of every twelve is a black sheep, or at least a spotted one. It is assumed that the four withdrawals and the four incompleted papers by those of doubtful character resulted from a preference to drop out rather than to risk refusal, there being no doubt but that some of those investigated learn by the grapevine route that the Conference has discovered their records. As to insufficient practice, 22 were denied admission for that reason, 12 were told to take the bar examination, and action on four has been withheld.

Some of the Liabilities

In this type of work the investigator sometimes wonders, and asks, "what to look for." The Conference looks for almost anything—expects, and gets it. The facts cover a wide range of situations and the goods are of many patterns. Among the applicants have been authors, automobile dealers, druggists, drunkards, gigolos, painters, paranoiacs, preachers, rapists, realtors, tree-choppers, and wife-deserters—all considering themselves "good" lawyers. Several of the most interesting cases will be presented briefly to demonstrate the variety of circumstances which result in refusal of admission to the bar—for all those referred to have failed the quality inspection test and were classified as liabilities not to be assumed by new jurisdictions.

Heading the list is Mr. Juggler. In 1935 he applied for admission in Delaware, claiming residence in both Delaware and Texas from 1930 to 1935, stating he was admitted in Texas and Tennessee in 1931 and had practiced law in three Texas cities. He stated he had never applied elsewhere. It was learned that he was admitted in Texas on the basis of a diploma from an eastern university and that a month later he was admitted in Tennessee on the basis of having passed the Texas bar examination. It was noted that a letter of recommendation with his Texas application was addressed to the North Carolina Bar, and inquiry to that state revealed he had failed their January, 1931, bar examination. Mr. Juggler's Delaware application was denied. Then in 1937 he applied in Maryland. While he had said nothing in his Delaware application about his efforts in North Carolina, in his Maryland application he omitted any reference to Delaware, mentioned North Carolina, and added that in the fall of 1935 he had been admitted in a southern state not using the character service. He also claimed residence in Texas throughout the period, although the Conference knew of letters written in 1936 from Delaware. Admission in the southern state was gained through simple certification of practice in Texas for three years, signed by a Supreme Court Justice and two practicing attorneys; his tri-state activities were not known. Maryland marked him off her list.

Our first investigation of an applicant for admission to the bar of New York pertained to Mr. Sinner, who claimed five years of practice in a southern capital. The Conference learned he had been there a short time, but in 1935 had gone to a small city, ordering stationery falsely bearing his name as county attorney and charging the bill to the county. In his New York application Mr. Sinner said he had attended D Law School prior to 1926 and then for the next four years had "remained at home, unemployed." The D Law School records showed dishonorable dismissal due to his arrest in April of 1926 on the charge of rape. He had left the state and, after an attempt to enter several law schools in the west, had become a student and received an LL.B. from a southern school. Mr. Sinner could not furnish a list of clients, and court clerks, judges and lawyers in the southern state did not know him. The investigation was swiftly closed when this telegram came from a New York chief of police: "Sinner indicted for crime of rape and assault second degree by Grand Jury, May 13, 1926, circulars and finger-prints issued and sent to every law enforcement agency Stop Not apprehended and warrant still in force Stop Was convicted of rape Massachusetts in 1918, and sentenced to house of correction Stop Do you desire further information?"

Mr. Gall furnished a self-made investigation, including twenty-nine photostatic copies of letters of recommendation from prominent personages. He had practiced law for a total of twelve years. The character report showed that he had filed false claims against the street railway in the first state in which he had practiced and had left town just ahead of disbarment proceedings. He was admitted in the second state because of his fine letters of recommendation. Upon being refused admission to the bar, as a result of our report, he requested the Conference to return to him the $25 fee he had paid!

While most of the lawyers to whom inquiries are sent reply personally, there are two interesting instances of group action. One concerned an attorney whom the members of the local bar regarded so highly that they made up a purse of $200 and sent him on a far journey to begin life over. The other case related to a former member of a well-known law firm who had been gone some four years before applying elsewhere. Conference inquiries resulted in a huddle session at the next bar association meeting, after which the individuals cautiously advised that the association's secretary had been directed to report to the Conference. A bar examiner attending the meeting, however, sent in a resume of the discussion, which included knowledge of forgery, bad checks and embezzlement,—later confirmed by the secretary.

The following should certainly be mentioned: Mr. G, who left his wife and two children after fifteen years of practice in a large city, to be co-editor of "Better Verse" and live in a trailer with a widow and her two children; Mr. C, who said he had practiced law for six years but in reality was chiefly a preacher, very conveniently able to perform marriages and obtain divorces;

Mr. E, who went south for his health while being investigated because he had obtained a judgment of $12,000 against himself in order to collect accident insurance; Mr. D, who had seven warrants for arrest awaiting his return across the state line; Mr. M, a lawyer of ten years' standing and a former prosecuting attorney, who proved to be an exhibitionist; Mr. R, who tried to have his marriage annuled after his wife became insane and, when that was denied him, filed a petition in bankruptcy in an effort to be relieved of the litigation expenses; Mr. O, with an exceedingly bad record who had tried for six years to be admitted, on the plea that he had reformed, but who proved to be an ace fibber; Mr. N, with a good record for twenty-three years, who absconded with a fellow attorney's wife; and Mr. K, a paranoiac who had escaped from a hospital for the insane and had gained admission to the bar.

Signs of Deterioration

The preceding examples show clearly the great variety of circumstances bearing on character and fitness which make impractical any general "rules of procedure." However, a list of the more frequent signs of deterioration might be helpful to the inspectors of the goods.

First, does the manner in which the application is filled out show that the applicant is of good character, is of the "back-door" variety, or belongs on the blacklist? Emphatically, "No." There have been instances where busy, highly respected lawyers answered the questionnaire haphazardly and cases where unsavory characters filled it out meticulously, furnishing detailed accounts of their lives and many recommendations.

Some of the red lights along the right-of-way are: filing the application just ahead of the dead-line; voluminous data furnished perhaps by the applicant who hopes the prima facie evidence will forestall an investigation; statements which are later proved false; vagueness or discrepancies as to dates and practice; an unaccounted for period of time; the omission of the names of former associates; inability to furnish a list of clients; poor credit rating; and practicing law from a residence.

The time element particularly may indicate a need for caution. In several of the blackest records, the applications were filed in order to allow little time for an investigation, and the attorneys urged the Conference by wire and even by telephone to rush the reports to completion. Also, if response to letters of inquiry is slow, a rechecking of the application and further study as to best sources for information are necessary. Immediate replies usually indicate the applicant is either an angel or definitely a crook. Time is often required to verify derogatory information or to amplify indefinite statements, such as the well-inked blotter one ingenious lawyer sent as his opinion of the applicant's record. Delays are costly, but haste should not send the goods on its way without getting a clearance and checking the block signals.

The Value of the Service

The state boards subscribing to the investigation service have expressed satisfaction with the system and its results. One examiner, for whom over thirty investigations have been made, recently wrote he could point to any one of six cases where the information presented was worth the entire sum his board had expended for all the investigations. Four state boards, which at first used the plan only in regard to attorneys seeking admission on motion, now require reports on out-of-state applicants taking the bar examination.

The members of the bar have indicated their opinion of the plan by their remarkable cooperation in furnishing information. It is not uncommon to receive a letter showing that an attorney has of his own accord made inquiries concerning an applicant from perhaps six or more fellow lawyers or citizens. Such expressions as this are also frequent and cheering: "As a member of the bar I appreciate the benefit of your efforts in this matter of character investigation and hope to be able occasionally to furnish any information which might assist you from this community." Likewise, the laymen have cooperated fully and have shown their gratification that such work is being undertaken. Even the applicants' references are exceedingly frank, more than once proving the source for extremely derogatory information. The tangible results given in the statistics should therefore be supplemented by the statement that the lawyers have become more conscious of their responsibilities to the profession and to the public, and the public has become more conscious of the constructive efforts of the bar. Public relations have been improved.

There is another intangible benefit, the extent of which will always remain unknown,—the elimination of prospective applicants who decide not to apply when they learn their records are to be checked thoroughly. The Conference and the state boards receive requests for many more questionnaires than are later filled out and returned. There is no way to determine to what extent this has no significance and to what extent it is an actual indication of decision and desire to avoid a careful investigation. Undoubtedly there are many who prefer not to jump from the frying pan into the fire.

The value of the character plan will naturally increase as it is adopted by the other states. When it becomes entirely national in scope, those lawyers who have once been refused will find it difficult to gain admission in another jurisdiction and they will also be unable to apply elsewhere as original applicants to take the bar examinations, thus wiping the slate clean. Protection for one state will mean protection for all states; the clearing-house feature will be all-inclusive. In the meantime the itinerant shyster is discovering a constantly widening no-man's land where he cannot safely venture to submit himself for admission to practice, even though he wears the outer garments of respectability in the shape of glowing letters of recommendation.

Bar Examination Results to Be Considered in Approving Law Schools

By James E. Brenner
Secretary of the Section of Legal Education and Admissions to the Bar

At the January meeting of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association a resolution was passed, the effect of which is to give consideration to bar examination results in approving law schools. As finally adopted the Council reserves the discretionary power to give its approval in the first instance or to continue the approval of a law school even though the school is not making a satisfactory showing in the bar examinations because of extenuating circumstances or because the bar examination is not geared to test acceptable law school training.

If the bar examination questions are scientifically prepared and if they are the law school type, as they should be for proper evaluation of the training for the legal profession, the results in the bar examinations should be of assistance to the Council in considering law schools for approval. However, if bar examination questions are largely informational and not designed to test the analytical power and reasoning ability of the applicant, or if they may be easily recognized as based on recent decisions, or if they do not properly measure the caliber of the law school training, then the results in the bar examinations will not be helpful to the Council. Where such conditions exist it will be expected to exercise its discretion and not consider bar examination results in approving law schools.

In order to make the resolution effective it will be necessary for the Council to have the cooperation of the state boards of bar examiners in furnishing it with the results in their respective bar examinations according to the success of the various law schools which are represented in the examinations. An inquiry was recently addressed to the secretary of the board of bar examiners in each of the states and the District of Columbia, asking whether this information could be made available to the Council. Replies have been received from the majority of the secretaries and in only one instance was there an indication of lack of enthusiastic cooperation in furnishing the desired data. In one state the secretary of the board, who is also the Clerk of the Supreme Court, stated that the employes of his office could not take on any more work, but he pointed out that the records of the office are public records and open for inspection at all times to any person seeking information. In another state the court has heretofore treated the information desired by the Council as confidential, but it is hoped that arrangements may be made to obtain the data for confidential use by the Council.

In some instances the boards concerned have not had a meeting since the

inquiry was sent out by the Council, but it is anticipated that these boards will give the same splendid cooperation as that tendered by those which have already responded.

The resolution of the Council has possibilities of becoming the basis for one of the most important forward steps that has been taken in raising the standards for admission to practice. It should be an incentive to all boards of bar examiners to provide bar examinations which can be used as reliable tests for evaluating law school training, and it should also be an incentive to all law schools to provide the sound fundamental training which will insure a high percentage of success in bar examinations of this type.

Some Problems of Admission to the Bar That Affect the Law Schools*

By Marion R. Kirkwood
Dean, Stanford University Law School

The bar admission process is full of problems, most of which have implications for legal education. In the time available today no comprehensive consideration of these problems is possible. I shall confine myself, in the main, to matters which have been discussed or suggested in recent reports of the committee of this Association on Cooperation With the Bench and Bar and Bar Admissions.

First, the matter of quotas. In the reports and discussions on this subject there has appeared to be some confusion due to the absence of a definition of the word quota. Some have applied the term to *any* restrictive measure. Thus it has been said that we now have a quota system in the bar examinations themselves which affect the numbers admitted and also in the present requirement of certain educational qualifications which have the same effect. To others these restrictions if properly called quotas at all are not "arbitrary" quotas. In line with this view and for the purposes of this paper I shall use "quota" to mean any numerical restriction upon admission, whether fixed or determined upon a ratio of lawyers to population or per capita wealth or by any similar device, applied without regard to the quality of the applicants.

The only justification for a quota, so defined, is to prevent overcrowding in the Bar and the evils in the administration of justice that are assumed to result therefrom. The proponents of the quota would seem to have the burden of proving that the Bar is overcrowded. What do we know about this matter? There have been half a dozen surveys of local bars during the past ten years. Some of them seem to find an overcrowded condition and some do not. Quite

*Address delivered at the meeting of the Association of American Law Schools in Chicago Dec. 28, 1939.

likely there is overcrowding in some localities and not in others. For most—possibly all—of the country we really do not know. I think this can probably be said even where surveys have indicated the presence of overcrowding *at the date of the survey.* It has been suggested that much more legal service is needed than is being provided and in the Connecticut survey definite evidence of this was found. Possibly, therefore, what we need is a reorganization of the Bar rather than a constriction of it. Furthermore, who knows whether the present decade is merely a temporary period of economic hard times or whether it is a sample of what the indefinite future has in store for us. Until much more study has been given to the problem in all its aspects, I submit that we are in no position to judge of the necessity of quotas for restrictive purposes. It is to be hoped that surveys and similar studies will go on so that some time in the future we may have the data upon which intelligent action can be based. We do not have such now.

Even if we assume the fact of overcrowding, it must still be proved that unethical practices are a consequence thereof. No restriction on numbers can be justified on the ground merely of pecuniary advantage to other lawyers unless we are prepared to establish similar restrictions upon every other vocation. If overcrowding is the prime cause of unethical practice one might reasonably expect to find that a high percentage of those engaged in such pursuit are young newcomers to the Bar who cannot get legitimate practice. In my state, at any rate, this is not the case. The records in California show that from 1927 to July, 1939, 397 lawyers were disciplined by disbarment, suspension, public or private reprimand. Of this number we have age statistics for all but 9. Only 18.05% of the group were under 35 years of age; 31.18% were from 35 to 44; 28.08% were from 45 to 54; 17.01% from 55 to 64 and 5.68% were 65 or over. I have an idea that much if not all of the unethical practice that is being carried on can be attributed to two classes of lawyers: (1) Those of good ability but without ethical inhibitions who find such practice the easiest and most profitable, and (2) those who are incompetent and who fail to get legitimate business for that reason, regardless of age. A quota will not keep either of these groups out of the Bar. The solution generally offered for this problem is a character test. Just a few words on this score. Do not the figures just given suggest what seems to me obvious, namely, that we can't tell what a man will do, ethically, until he has been subjected to economic pressure or at least has faced temptation? Character study is very fruitful in dealing with older applicants who have had worldly experience. Particularly is this true of those seeking admission on motion after some years of practice in other states. The work of the National Conference of Bar Examiners in investigating such persons has demonstrated its utility. But with the much larger mass of young people fresh from college and law school we do not get very significant results from such a test.

For the lawyers who are unethical because of incompetency the obvious remedy is a more severe competency test. I shall speak of this more fully a little later.

But even if the quota proponent convinces us of the fact of overcrowding and that such is the source of evil practices he still faces some very substantial obstacles. There are many who feel that such a restrictive device is fundamentally unsound as not in accord with the equality of opportunity that should exist in a democratic country. Also they are fearful of the difficulties involved in administering a quota system. For example, how is the number to be determined? By whom can it be determined to give assurance of intelligent treatment of the profession's needs on the one hand, and, on the other, to avoid the evil effects of a decision based upon self interest? What geographical unit shall be employed? When the number is fixed how shall we choose from among the applicants? If any discretion is to be permitted, how can we be sure of a selection that will keep the Bar democratic? A long list of applicants will develop and unless we change our definition of what constitutes the practice of law will not the quota provide the basis for a "racket"? It is not now considered practicing law for one to do all kinds of legal research and prepare memoranda and briefs thereon for a duly admitted practitioner who assumes responsibility therefor. The waiting applicants may be so employed. Under such a situation the quota will not help solve the problem of overcrowding. Its chief effect will be to enable those who are admitted to exploit those who are not. Also the presence of many applicants may readily aggravate the unlawful practice problem. Is it not likely that many of these young people will seek positions in banks, real estate offices, etc., and employ their legal training in a manner that will grieve the Bar?

Those of us who have the task of placing our graduates will, I am sure, agree that for the most part there is no serious difficulty in finding openings for those at the top of the class, but the farther we go down the ladder of scholastic standing the more difficult the problem becomes. I am satisfied that we have no overcrowding of really first class material in the profession. If there be overcrowding it is not at the top but at the bottom of the profession. I do not believe that this audience needs statistical proof that there is very considerable room for improvement in the quality of those being admitted. We can never provide a steady flow of men of high and equal competency but we *can* narrow the range very considerably by a substantial cutting off at the bottom. It is my view that this Association will accomplish much more by working toward this goal than by attempting to establish quotas. Furthermore, I venture to think that the profession will be more sympathetic toward such a program than it will be toward quotas. There seems to be some evidence of this in a recent New Jersey survey. Those in charge of the study tell me that their tabulations are not yet complete and I cannot, therefore, provide you with official information.

But a news story states that out of some 2386 lawyers who responded to a questionnaire, 75% favored a limitation on the number of admissions. When it came to determining the means of effecting such a limitation 1378 or approximately 58% favored higher educational standards.

Limitation, however, should not be our principal or even an important motive. We should seek improvement in quality even though numbers are not affected at all. What, then, can be done to elevate the qualitative average of the recruits coming into the profession?

Last year our Committee on Bench and Bar suggested that at present Bar Examiners are testing only one of the three qualities essential in a desirable candidate. They are testing his legal learning. They are not testing his natural ability or his general education. Should the Bar Examiners be attacking these two problems? It seems to me that the plain answer should be yes if it is practicable to do so.

As to natural ability. Another contributor to this symposium has discussed the matter of aptitude tests in relation to admission to law school and I shall not trespass on his field. I should like to say a few words, however, as to the relation of aptitude tests to bar examination results. A study has been made in California on this matter based upon the records of 195 graduates of a certain law school. They were divided into 5 groups on the basis of their relative standings in a college aptitude test as follows:

Class	Number in the class	College Aptitude Test scores	Aver. Grade in Bar Ex. (70 passing)	Number who passed Bar Ex. 1st time	Per cent passing Bar Ex. 1st time
A	26	100-134	75.73	25	96.15
B	36	90- 99	75.36	35	97.22
C	50	80- 89	74.14	43	86.
D	45	70- 79	72.58	34	75.56
E	38	36- 69	71.03	27	71.05
Total	195				

Since the ultimate requirement for admission to practice is success in the bar examination, these figures are quite significant. They show almost a perfect curve. I might add, parenthetically, that the curve is equally perfect for the correlation between the aptitude test and the Law School record when treated in groups. For individuals the correlation is, of course, not perfect. We have employed the aptitude test in connection with the academic record of the student for purposes of admission to law school. There it is being applied to individuals rather than groups. We made a study over a period of eight years before putting the test into effect and found that the aptitude test and the academic record together gave excellent results in a negative manner. That is to say, as a basis for a rule of exclusion we found that an applicant with less than

a median aptitude test score and less than a C+ academic record was an exceedingly poor risk in Law School.

Can the same test be employed to forecast bar examination results? We have a study covering 242 individuals who, as freshmen, had taken the same aptitude test, who had taken undergraduate work in the same university and who later took the California bar examination. When we compare the multiple of their aptitude test scores and their undergraduate grade point averages with their bar examination results we get the following picture:

Class	No. in Class	Multiple of Apt. scores & G. P. av.	Took but have not passed Bar Ex.	Passed Bar Ex. after more than one attempt	Total of two preceding columns	% of the group
A	61	256-403		1	1	1.6
B	61	211-255	2	6	8	13.1
C	60	176-210	2	14	16	26.6
D	60	90-175	9	13	22	36.6

This table indicates that in group D more than one-third failed to pass the bar examination on the first attempt. Now even in group D there was considerable sifting. They were all persons who were admitted to a college in which they studied at least three years and were then admitted to some law school and studied law three years before taking the bar examination. A similar test applied to applicants who are not subjected to much sifting might give significant results. I wish we might have an experiment covering several years time in which all students registering with a committee of bar examiners at the time of beginning law study were required to take a law aptitude test and were then followed up until they took a bar examination. I wonder if a five year study of this nature might not disclose something very useful as a basis for rejecting applicants even before they enter upon law study.

What can bar examiners do in testing the general education of the applicant? There is obviously more difficulty in examining upon two years of college work than upon three years of law school work. The latter has more or less definite boundaries which will circumscribe the work of all the applicants. This is not true of two years of college unless the examiners are to lay down a prescribed pre-legal course. In view of the inability of this Association to come to any agreement upon the proper content of a pre-legal program, we cannot criticize examiners for not doing so. For my part, I don't want them to attempt any such thing. As matters now stand, I wonder if they can be asked to do more than we do, i.e. require two years of college work, excluding non-theoretical courses, acceptable in quality for a bachelor's degree by the state university or the principal colleges and universities in the state. However, it may be possible in the not too remote future to do more. I understand that the American Council on Education has been at work for some

years on comprehensive subject matter tests covering two years of college. These include tests in English usage and vocabulary, literary comprehension, general culture and contemporary affairs (governmental, scientific, social, economic, literary, amusement, etc.). There are also detailed tests in English, foreign languages, general science, physics, chemistry, etc. These tests have been used to some extent for other purposes and offer a field of study for our purpose.

In some 30 states registration with the examiners is now required prior to the beginning of law study. In some the requirement is limited to certain classes of students but it can be easily extended to all students as is now frequently the case. The matter of general education and eligibility for law study can be looked into and finally passed upon at the time of registration. It seems to me that this should be the universal practice. Only by so doing can the general educational requirement be effectively administered, for if the student is permitted to go ahead with his law study it is very hard to refuse him the privilege of taking the bar examination if he is a border line case. He has spent time and money in preparation and he feels, and the Board is likely to feel, that he has built up something of an estoppel.

Such registration is desirable for other purposes as well. Knowing who are looking forward to careers as lawyers, makes possible a sponsorship requirement if such be thought desirable. It affords an opportunity to inculcate a professional spirit in those who are soon to enter the Bar. In my own state we have made a start, at least, toward a closer relationship between the integrated bar and the registrants by sending to each of the latter without charge copies of the State Bar Journal. In itself this is a small matter but it does create an interest in the organized work of the Bar and it may be the forerunner of further helpful contacts. For all of these reasons I am a strong believer in the requirement of registration before the beginning of law study.

I would like to say a word about another device that we are using in California which merits study. I refer to what we call the First Year Examination. It is required of all law students other than those studying in schools accredited by the Committee of Bar Examiners. This examination covers Contracts, Torts and Criminal Law. The purpose in mind is to protect the students themselves. The California accredited schools are those which are weeding out the poor students while the unaccredited ones are those which are not. In many instances in schools operated for profit the student is led along so long as he pays the fees, and he learns of his lack of aptitude or his poor instruction for the first time when he fails the bar examination. We cannot expect too much from even an excellent bar examination. We know that it is not, taken alone, a complete guaranty of excellence in those who pass. If no earlier eliminating is done, we have the unfortunate situation of a large number of applicants annually of whom only a small percentage should

(*Continued on page 40*)

Admissions to Bar by Examinations in 1939

State	1939 Examination	Number Taking	Number Passing	Percent Passing	Total Taking	Total Passing	Percent Passing
Alabama	February	14	8	57%			
	July	15	11	73%	29	19	66%
Arizona	January	12	3	25%			
	July	42	29	69%	54	32	59%
Arkansas	January	40	16	40%			
	June	60	28	47%	100	44	44%
California	March	307	87	28%			
	October	718	254	35%	1,025	341	33%
Colorado	Dec. 1938	27	18	67%			
	June 1939	63	45	71%	90	63	70%
Connecticut	December	66	28	42%			
	June	87	51	59%	153	79	52%
Delaware	September	8	3	38%	8	3	38%
Dist. Columbia	December	609	269	44%			
	June	968	388	40%	1,577	657	42%
Florida	February	32	13	41%			
	June	34	6	18%			
	October	42	13	31%	108	32	30%
Georgia	December	116	25	22%			
	June	240	112	47%	356	137	38%
Idaho	December	12	11	92%			
	July	17	9	53%	29	20	69%
Illinois	March	434	296	68%			
	September	604	437	72%	1,038	733	71%
Indiana	March	71	37	52%			
	July	107	74	69%			
	October	53	35	66%	231	146	63%
Iowa	October	68	64	94%			
	August	105	104	99%	173	168	97%
Kansas	February	39	34	87%			
	June	83	77	93%	122	111	91%
Kentucky	December	70	62	89%			
	June	133	90	68%	203	152	75%
Louisiana	March	41	16	39%			
	July	77	57	74%	118	73	62%
Maine	February	18	5	28%			
	August	44	31	70%	62	36	58%
Maryland	November	186	56	30%			
	June	263	90	34%	449	146	33%
Massachusetts	Dec. 1938	428	172	40%			
	June 1939	708	224	32%	1,136	396	35%
Michigan	April	161	56	35%			
	September	240	167	70%	401	223	56%
Minnesota	March	38	13	34%			
	July	106	66	62%			
	November	52	27	52%	196	106	54%

Admissions to Bar by Examinations in 1939

State	1939 Examination	Number Taking	Number Passing	Percent Passing	Total Taking	Total Passing	Percent Passing
Mississippi	February	30	24	80%			
	July	43	29	67%	73	53	73%
Missouri	February	70	37	53%			
	June	181	138	76%			
	October	61	43	70%	312	218	70%
Montana	September	22	13	59%	22	13	59%
Nebraska	November	26	13	50%			
	June	135	122	90%	161	135	84%
Nevada	November	7	3	43%	7	3	43%
New Hampshire	June	27	12	44%	27	12	44%
New Jersey	April	313	143	46%			
	October	288	139	48%	601	282	47%
New Mexico	February	11	11	100%			
	August	28	14	50%	39	25	64%
New York	March	1,154	419	36%			
	June	1,465	784	54%			
	October	1,158	564	49%	3,777	1,767	47%
North Carolina	August	100	62	62%	100	62	62%
North Dakota	June	22	22	100%	22	22	100%
Ohio	January	206	108	52%			
	June	394	265	67%	600	373	62%
Oklahoma	December	64	52	81%			
	June	121	75	62%	185	127	69%
Oregon	July	95	61	64%	95	61	64%
Pennsylvania	January	182	88	48%			
	July	335	143	43%	517	231	45%
Rhode Island	March	32	9	28%			
	October	34	15	44%	66	24	36%
South Carolina	November	18	10	56%			
	June	22	6	27%	40	16	40%
South Dakota	June	6	4	67%	6	4	67%
Tennessee	January	111	68	61%			
	June	233	154	66%	344	222	65%
Texas	February	222	108	49%			
	June	324	166	51%			
	October	222	83	37%	768	357	46%
Utah	October	49	37	76%	49	37	76%
Vermont	October	22	16	100%	22	16	100%
Virginia	December	75	35	47%			
	June	170	107	63%	245	142	58%
Washington	January	44	34	77%			
	July	90	74	82%	134	108	81%
West Virginia	March	12	4	33%			
	September	37	27	73%	49	31	63%
Wisconsin	July	51	29	57%	51	29	57%
Wyoming	August	15	15	100%	15	15	100%
Total		15,985	8,102	51%	15,985	8,102	51%

First-Timers and Repeaters in 1939

State	1939 Examination	First-Timers Taking	First-Timers % Pass.	Repeaters Taking	Repeaters % Pass.	% Repeaters to Total Taking Exam.	% Passing First-Timers	% for Yr. Repeaters	% Repeaters to Total Taking '39
Alabama	February	2	100%	12	50%	86%			
	July	10	90%	5	40%	33%	92%	47%	59%
Arizona	January	6	0%	6	50%	50%			
	July	30	90%	12	17%	29%	75%	28%	33%
Arkansas	January	10	50%	30	37%	75%			
	June	33	55%	27	37%	45%	53%	37%	57%
California	March	117	35%	190	24%	62%			
	October	453	50%	265	10%	37%	47%	16%	44%
Colorado	Dec. 1938	15	80%	12	50%	44%			
	June 1939	62	73%	1	0%	2%	74%	46%	14%
Connecticut	December	24	46%	42	40%	64%			
	June	65	65%	22	41%	25%	60%	41%	42%
Delaware	September	5	60%	3	0%	38%	60%	0%	38%
Florida	February	14	57%	18	28%	56%			
	June	13	31%	21	10%	62%			
	October	26	38%	16	19%	38%	42%	18%	51%
Idaho	December	3	100%	9	89%	75%			
	July	11	45%	6	67%	35%	57%	80%	52%
Illinois	March	198	78%	236	60%	54%			
	September	455	80%	149	48%	25%	80%	55%	37%
Indiana	March	20	70%	51	45%	72%			
	July	77	82%	30	37%	28%			
	October	23	83%	30	53%	57%	80%	45%	48%
Iowa	October	36	100%	32	88%	47%			
	August	100	100%	5	80%	5%	100%	86%	21%
Kansas	February	28	96%	11	64%	28%			
	June	78	95%	5	60%	6%	95%	63%	13%
Kentucky	December	33	79%	37	97%	53%			
	June	119	67%	14	71%	11%	70%	90%	25%
Louisiana	March	15	20%	26	50%	63%			
	July	77	74%	0	....	0%	65%	50%	22%
Maine	February	4	0%	14	36%	78%			
	August	38	74%	6	50%	14%	67%	40%	32%
Maryland	November	45	22%	141	33%	76%			
	June	141	38%	122	30%	46%	34%	31%	59%
Massachusetts	Dec. 1938	157	34%	271	44%	63%			
	June 1939	451	36%	257	24%	36%	35%	34%	46%
Michigan	April	74	39%	87	31%	54%			
	September	184	82%	56	30%	23%	69%	31%	36%
Minnesota	March	8	38%	30	33%	79%			
	July	97	68%	9	0%	8%			
	November	29	52%	23	52%	44%	63%	35%	32%
Mississippi	February	17	76%	13	85%	43%			
	July	36	69%	7	57%	16%	72%	75%	28%
Missouri	February	34	71%	36	36%	51%			
	June	161	79%	20	55%	11%			
	October	33	79%	28	61%	46%	78%	49%	27%

First-Timers and Repeaters in 1939

State	1939 Examination	First-Timers Taking	First-Timers % Pass.	Repeaters Taking	Repeaters % Pass.	% Repeaters to Total Taking Exam.	% Passing First-Timers	% for Yr. Repeaters	% Repeaters to Total Taking '39
Montana	September	22	59%	0	....	0%	59%	....	0%
Nebraska	November	20	55%	6	33%	23%			
	June	126	95%	9	22%	7%	90%	27%	9%
Nevada	November	7	43%	0	....	0%	43%	....	0%
New Hampshire	June	19	63%	8	0%	30%	63%	0%	30%
New Jersey	April	108	61%	205	38%	65%			
	October	159	64%	129	29%	44%	63%	34%	56%
New Mexico	February	7	100%	4	100%	36%			
	August	24	58%	4	0%	14%	68%	50%	21%
New York	March	192	53%	962	33%	83%			
	June	1,448	53%	17	65%	1%			
	October	233	39%	925	51%	80%	52%	42%	50%
North Carolina	August	69	75%	31	32%	31%	75%	32%	31%
North Dakota	June	22	100%	0	....	0%	100%	....	0%
Ohio	January	86	55%	120	51%	58%			
	June	305	74%	89	44%	23%	70%	48%	35%
Oklahoma	December	49	82%	15	80%	23%			
	June	110	65%	11	27%	9%	71%	58%	14%
Oregon	July	68	72%	27	44%	28%	72%	44%	28%
Pennsylvania	January	40	43%	142	50%	78%			
	July	247	44%	88	40%	26%	44%	46%	44%
Rhode Island	March	12	33%	20	25%	63%			
	October	22	59%	12	17%	35%	50%	22%	48%
South Carolina	November	16	56%	2	50%	11%			
	June	11	36%	11	18%	50%	48%	23%	33%
South Dakota	June	4	100%	2	0%	33%	100%	0%	33%
Tennessee	January	58	69%	53	53%	48%			
	June	189	73%	44	36%	19%	72%	45%	28%
Texas	February	71	44%	151	51%	68%			
	June	228	49%	96	56%	30%			
	October	121	18%	101	60%	45%	39%	55%	45%
Utah	October	40	75%	9	78%	18%	75%	78%	18%
Vermont	October	22	100%	0	....	0%	100%	....	0%
Virginia	December	26	54%	49	43%	65%			
	June	124	68%	46	50%	27%	65%	46%	31%
Washington	January	24	83%	20	70%	45%			
	July	84	85%	6	50%	7%	84%	65%	19%
West Virginia	March	7	43%	5	20%	42%			
	September	30	80%	7	43%	19%	73%	33%	24%
Wisconsin	July	38	71%	13	15%	25%	71%	15%	25%
Wyoming	August	15	100%	0	....	0%	100%	....	0%
29 Two-Examination States									
	Summer	3,774	65%	1,415	30%	27%			
	Winter	1,237	57%	1,810	46%	59%			
Total for 47 States		8,170	60%	5,882	41%	42%	60%	41%	42%

NOTE: The only jurisdictions not furnishing separate figures on repeaters for the 1939 examinations were the District of Columbia and Georgia.

Admission to the Bar by States—1937, 1938, and 1939

State	Admission by Examination			Admission by Diploma			Admission of Foreign Attorneys on Motion			Total Admissions		
	1937	1938	1939	1937	1938	1939	1937	1938	1939	1937	1938	1939
Alabama	42	12	19	58	62	62	1	2	0	101	76	81
Arizona	34	29	32	....	....	....	4	9	9	38	38	41
Arkansas	27	36	44	28	38	27	3	3	3	58	77	74
California	375	443	341	....	....	....	40	54	47	415	497	388
Colorado	81	71	63	....	....	....	10	7	3	91	78	66
Connecticut	61	63	79	....	....	....	6	7	2	67	70	81
Delaware	6	5	3	....	....	....	0	0	0	6	5	3
District of Columbia	637	742	657	....	....	....	123	100	35	760	842	692
Florida	72	26	32	79	62	69	0	0	0	151	88	101
Georgia	114	154	137	....	....	....	17*	17*	17*	131	171	154
Idaho	11	23	20	....	....	....	1	0	0	12	23	20
Illinois	641	720	733	....	....	....	78	85	81	719	805	814
Indiana	207	158	146	....	....	....	3	5	10	210	163	156
Iowa	156	210	168	....	....	....	18	22	7	174	232	175
Kansas	102	104	111	....	....	....	12	10	8	114	114	119
Kentucky	113	161	152	....	....	....	8	21	11	121	182	163
Louisiana	128	92	73	....	....	....	0	0	0	128	92	73
Maine	43	23	36	....	....	....	1	2	4	44	25	40
Maryland	127	148	146	....	....	....	8	13	42	135	161	188
Massachusetts	426	413	396	....	....	....	27	26	22	453	439	418
Michigan	242	294	223	....	....	....	7	11	5	249	305	228
Minnesota	75	101	106	....	....	....	8	4	6	83	105	112
Mississippi	36	24	53	47	33	40	1	1	1	84	58	94
Missouri	260	244	218	....	....	....	18	9	10	278	253	228
Montana	11	8	13	26	30	17	7	0	13	44	38	43
Nebraska	36	39	135	95	98	....	7	9	6	138	146	141
Nevada	9	3	3	....	....	....	0	2	1	9	5	4
New Hampshire	18	21	12	....	....	....	4	6	5	22	27	17
New Jersey	274	224	282	....	....	....	0	0	0	274	224	282
New Mexico	13	15	25	....	....	....	4	2	5	17	17	30

New York	1,910	1,731	1,767	....	....	....	38	36	31	1,948	1,767	1,798
North Carolina	119	53	62	....	....	....	7	6	0	126	59	62
North Dakota	26	23	22	....	....	....	1	1	1	27	24	23
Ohio	379	333	373	....	....	....	21	3	12	400	336	385
Oklahoma	128	117	127	....	....	....	15	10	2	143	127	129
Oregon	58	42	61	....	....	....	6	8	8	64	50	69
Pennsylvania	270	309	231	....	....	....	5	10	6	275	319	237
Rhode Island	28	28	24	....	....	....	0	0	1	28	28	25
South Carolina	9	11	16	28	36	20	1	7	3	38	54	39
South Dakota	4	2	4	25	26	24	0	4	2	29	32	30
Tennessee	173	166	222	....	....	....	18	24	18	191	190	240
Texas	188	376	357	358	112	....	31	2	0	577	490	357
Utah	32	31	37	....	....	....	2	3	2	34	34	39
Vermont	21	16	16	....	....	....	3	1	2	24	17	18
Virginia	133	110	142	....	....	....	30	33	20	163	143	162
Washington	77	92	108	....	....	....	13	7	6	90	99	114
West Virginia	24	18	31	29	36	36	0	0	0	53	54	67
Wisconsin	26	28	29	172	159	134	11	8	3	209	195	166
Wyoming	7	13	15	....	....	....	0	1	1	7	14	16
Total	7,989	8,105	8,102	945	692	429	618	591	471	9,552	9,388	9,002

Total Admissions in 1937			9,552
Less Admissions of Foreign Attorneys on Motion			618
Total New Admissions in the United States, 1937			8,934
Total Admissions in 1938		9,388	
Less Admissions of Foreign Attorneys on Motion		591	
Total New Admissions in the United States, 1938		8,797	
Total Admissions in 1939			9,002
Less Admissions of Foreign Attorneys on Motion			471
Total New Admissions in the United States, 1939			8,531

*Estimated.

Percentages—1937 to 1939

	Percent Passing Bar Examinations		
	1937	1938	1939
Alabama	35	92	66
Arizona	63	85	59
Arkansas	30	34	44
California	40	47	33
Colorado	74	73	70
Connecticut	38	40	52
Delaware	50	63	38
District of Columbia	40	42	42
Florida	50	20	30
Georgia	37	44	38
Idaho	46	49	69
Illinois	52	60	71
Indiana	52	45	63
Iowa	65	87	97
Kansas	94	87	91
Kentucky	68	85	75
Louisiana	81	72	62
Maine	61	46	58
Maryland	34	33	33
Massachusetts	42	37	35
Michigan	61	64	56
Minnesota	47	52	54
Mississippi	60	36	73
Missouri	64	64	70
Montana	58	42	59
Nebraska	50	52	84
Nevada	56	60	43
New Hampshire	51	68	44
New Jersey	40	34	47
New Mexico	43	45	64
New York	46	45	47
North Carolina	63	56	62
North Dakota	100	100	100
Ohio	63	53	62
Oklahoma	68	64	69
Oregon	62	42	64
Pennsylvania	40	52	45
Rhode Island	47	42	36
South Carolina	33	39	40
South Dakota	50	40	67
Tennessee	56	56	65
Texas	33	41	46
Utah	73	57	76
Vermont	100	67	100
Virginia	51	40	58
Washington	75	75	81
West Virginia	73	69	63
Wisconsin	46	56	57
Wyoming	70	100	100
Percent Passing	48	48	51

SOME PROBLEMS OF ADMISSION TO THE BAR

(*Continued from page 33*)

pass. On the other hand if we can apply fair tests of aptitude and general education at the time of registration and, if necessary, check up upon the least successful at the end of the first year of law study, we may be able to bring about a situation where only a selected group will be subject to the final examination and the percentage of success should be very high.

Time has permitted mention of only a few of the problems relating to admission to practice. It is a subject that bristles with them. How are they to be solved? Not by symposia such as this nor by any action we may take as an association, nor by any action any other association may take. Occasions of this character are useful in providing a clearing house for ideas but the actual work of improving the admission process will have to be done in the laboratories. The latter, as I see it, are the 48 states of the Union and the District of Columbia. For the past two years I have served as chairman of the Association's Committee on Bar Admissions. I came to that task after ten years of work on a cooperating committee in my own state which had brought about enormous improvement in our own admission methods. My enthusiasm was such that I expected law school men everywhere to jump at the chance of

establishing similar committees in their own states. I have been disillusioned. In a few states, it is true, we have had an interested and enthusiastic reception, but, generally speaking, I have been appalled at the apathy of my brethren. Some of them see no problems in their states! Others seem to think it can all be done by imperial ukase from I know not where, some are unhappy with their local situation but think nothing can be done. I am convinced that every state needs such a cooperating group, not for social diversion, as some seem to be, but for work and hard work. It can be had in any state if some law school man will generate the necessary enthusiasm to take the initiative. The American Bar Association will help him with the local Bar, the National Conference of Bar Examiners will help him with the examiners. Both of these bodies are definitely on record as favoring the development of such committees. The law school man will have to give the matter thought and energetic effort but if he will his efforts will be fruitful. So far as I can see this is not only the *best* way to improve the present situation—it is the only way.

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1044 Hamilton Avenue
Palo Alto, California

"On and after February 1, 1942, no person shall be permitted to register as a law student until he shall have graduated from an accredited high school and shall have completed at least two years of resident college work or its equivalent, such college work to consist of a minimum of sixty hours credit in a college recognized by the state University of the State in which said college is located."

The provision as to legal education specifies the successful completion of three years of study in a full-time law school or four years of study in a part-time law school, said school to be approved by the American Bar Association or by the Oklahoma Board of Bar Examiners. Law office study is still permitted, but the Board is now establishing strict rules to regulate the method of study and instruction.

How to Be a Successful Lawyer

The California State Bar recently sent a questionnaire to attorneys who were admitted to the bar of that state in 1935, for the purpose of obtaining their appraisal of the practical value of certain subjects in the law school curriculum, opinions as to the need for post-graduate instruction, the nature and extent of their legal business, chief difficulties encountered in beginning the practice of law, their financial status, etc. One of the questions and an exceptionally enlightening answer are set out below.

Question: "What methods and activities have you employed to secure and build up legal practice?"

Answer:

"To become a successful practitioner of the law in a rural community, especially where he is a stranger, a young lawyer should, like Jacob, wear a coat of many colors, be a social lion, a political zebra, a smooth talker, a fast worker, a personality boy. He should at least be a director in one bank, preferably the president of the other one; a member of the chamber of commerce, a director in the junior chamber of commerce, an active member of the Kiwanis Club, Elks Club, Masonic Lodge, Redmen, Eagles, 20-30 Club, Lions Club, and any others. In all of these he must be known as a Jolly Good Fellow, the able raconteur who always has a funny story for every occasion, and who can without fail produce an A-1 program on an hour's notice. He must be able to shake hands until his elbow smokes. He must be a pillar of the biggest and richest church in town, and must be a favorite speaker for the Woman's Home Improvement Club, the living exemplification of virtue for the Parent Teacher's Association, the W.C.T.U., and he must be able to drink all the other Eagles or Elks under the table. He must be an able leader of the Farm Bureau, and attend all the meetings; he must never get sleepy at a meeting, regardless of the fact that at all of the last six meetings the same subject, liquid manures,

has been discussed by the same assistant farm adviser. He must be a potent force in the Grange (who are hated by all farm bureau members). He must drive a good car, live in a fashionable part of town, or at least in a house of his own, must sport a good looking stenographer who is always typing furiously. His desk should always be covered at least three inches deep with papers, and by all means he should be able to answer offhand every question that is brought to him. He must be a paragon of oratorical ability in court and on Fourth of July picnics. He must line the walls of his office with books and filing cabinets; and he must be thrifty and owe money to no man.

"Most important, he should marry the daughter of the mayor or local senator, or preferably the governor; he should be related to approximately 50% of all of the local merchants, and his wife should be the sister of the owner of the local credit rating bureau.

"All of these things are helpful. Most of them are indispensable."

The Bar Examiner

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and reflect to some extent in the numbers admitted to the bar, there still exists a great difference between statistics for the legal profession and those for the medical profession. There are now between 197,000 and 200,000 lawyers in the United States, while there are but approximately 140,000 physicians and surgeons in private practice excluding interns, those in government service, etc. These figures are, of course, estimates, and the 1940 census results will be more accurate. The American Medical Association reports show that the number of physicians added annually to the profession is about 6,000, and that the number of students in medical schools for the past five years has been as follows: 1935-1936, 22,564; 1936-1937, 22,095; 1937-1938, 21,587; 1938-1939, 21,302; 1939-1940, 21,271. All states but one require graduation from an approved school for medical licensure, and there are 67 approved medical schools and ten approved schools of the basic medical sciences in the United States. Only about sixty-four percent of the law school students are studying in the 103 approved law schools in this country; the rest are enrolled in the 77 unapproved law schools.

The state medical licensing boards examined 35,890 candidates (number of individual examinations) in the five years from 1935 to 1939, inclusive, and failed only 11.5 percent. The state boards of law examiners graded 82,650 individual examinations in this same period and failed 52 percent. The extensive weeding out of those unqualified for the medical profession obviously begins at the time of applying for entrance to a medical school. The lawyers attempt most of their weeding at the bar examination, but usually give the failures sufficient opportunities so that in a large majority of cases persistence brings eventual success.

Age Groups of Migrant Attorneys

Some interesting figures have been compiled regarding the ages of those who have applied for admission to the bar and have been subjected to the character investigation of the Conference. Fifty-two percent of the fifteen hundred investigated came within the army conscription ages of twenty-one to thirty-five at the time of the character investigation, and over a third of all the applicants were between the ages of thirty and thirty-five. The following table gives the number of applicants in the respective age groups:

Age	Number of Applicants
20 to 30 years	258 or 17%
30 to 40 "	756 or 50%
40 to 50 "	296 or 20%
50 to 60 "	141 or 10%
60 to 70 "	44 or 3%
70 or over	5
	1,500

The Law Schools and the Selective Service Act

It is too soon, of course, to reach any conclusions as to what effect the national defense program, and the Selective Service Act in particular, will have on the future of the legal profession. Much concern, however, has been evidenced on the part of law schools and those interested in maintaining high educational standards for admission to the bar, lest the profession suffer permanently as a result of a decrease in law school enrollment, interruptions in the law school course, and ill-advised concessions "to meet the emergency." Dr. Henry Smith Pritchett, then President of The Carnegie Foundation for the Advancement of Teaching, gave excellent advice in war-time 1917 when he said: "Bar examiners and law school authorities likewise face the heavy responsibility of steering their course between two extremes. If, on the one hand, they should not follow the line of least resistance, and in natural sympathy with the aspirations of youth 'let everybody by,' neither should they make the even graver mistake of not recognizing that this is a changed world in which we are living."

To give a general picture of the situation to be faced by the law schools in view of the national emergency, the Conference here presents statements by a number of law school deans as to what effect they believe the Selective Service Act will have on law school attendance and future admissions to the bar and what changes have already been made in plans for the coming school year.

Dean H. C. Horack, Duke University School of Law:

The Selective Service Act will have a very adverse effect on the enrollment of full-time law schools, while at the same time it will tend to boom the attendance at many evening schools regardless of their standards.

The man in the full-time school, if called, is not apt to be given deferment merely because he is a student, while many men working in munition plants with high wages and short hours, securing occupational deferment, may flow in great numbers to any evening law school which is operated in the vicinity. Even in states that theoretically have the standards of the American Bar Association, which under normal circumstances secure for them a very large percentage of men of good pre-legal and legal education, there is usually a "back door" for the individual who does not meet the exact requirements, left open for the occasional case, the so-called "Abraham Lincoln." Some states, though requiring at least two years of pre-legal work, are quite lax about the amount and quality of legal education, probably on the theory that this will be tested by the bar examiners. Though the bar examinations are a desirable check on applicants for admission, it can hardly

be presumed that a one, two, or three day examination can take the place of a three year full-time law course.

It seems not unlikely, therefore, that the Selective Service Act will have the effect of interrupting the flow of well prepared men who apply for admission, while the supply of men with less adequate training will be greatly augmented. That this is a serious situation is apparent, for even now the balance is none too strong in favor of the man with thorough preparation. The trouble with the profession today is not too many lawyers, but too many poor lawyers, and unless bar examiners are prepared to maintain the high standards which are applied when a large proportion of the applicants are from good full-time schools, the effect on the profession will be most harmful.

Is it in the public interest that there should be given to the public men who have had the best training and have given three full years of study to prepare themselves to meet the problems such as the good lawyer of the present day must solve? If the conditions of present day life are more complicated and difficult than those of a previous generation, then the bar and the public will suffer grievously by the interruption of the supply of the better trained men and the increase in the number of those who can only get the minimum, bolstered up by a cram course to pass an examination for admission to the bar. The bar examiners must set up their own defense program if they believe that adequate law training is in the interest of the profession and in the public interest.

The school with which I am connected will go forward to furnish the best training of which it is capable, and, if numbers are reduced, to give to those in attendance the most careful personal attention, and such time as is available will be spent in studying how best to improve its curriculum and its methods.

Dean William G. Hale, University of Southern California School of Law:

Unless readjustments are made in its operation, the Selective Service Act will doubtless make serious inroads on law school attendances beginning next year. Law students are just ripe for picking under the Act. I can easily foresee a reduction of fifty per cent in the normal enrollment.

The memoranda from the National Headquarters of the Selective Service System do not preclude the deferment of law students to enable them to complete the law course and take the bar examination, but their wording does not lend encouragement to such deferments. I believe that the law schools should give their students every assistance in securing the II-A Classification. The national interest calls for a continuing supply of a highly trained personnel for the legal profession. The operation of the draft must be viewed in perspective, not with only one year in mind. Law and its administration are the indispensables of government. A trained legal profession is indispensable to law and its administration. The expedient time for the lawyer to put

in his year of service is immediately after his admission to the bar. An adjustment to that end would bring much good and in the long run no harm would be done.

The experience of our seniors is favorable. They are being deferred until after the bar examination, which is held during the first week in October. First and second year students are asking for a II-A Classification. Thus far one such student has advised us that his request has been granted. No adverse decisions as yet have been reported.

Since no general policy of deferment can be assumed, we are adjusting our curriculum to the emergency by arranging all courses on a one semester basis. Under this system I cherish the hope that, if a student is well along in a semester's work when he is on the list to be called, he will be able to secure a postponement until he can complete his semester's work. The draft board could exercise such a discretion.

Dean Edward Stimson, University of Toledo College of Law:

The effect which the draft will have upon enrollment at the University of Toledo College of Law is forecast in the following analysis. If it proves to be unscientific we hope for a pleasant surprise. Questionnaires filled out by the students about May first provided information for the following classification:

Group I		Group II	
Over draft age	1	Unclassified—without dependents:	
Under draft age	2	Received questionnaire	2
Women	4	Questionnaire not received	7
Classified II or lower	11	Classified I-D (Deferred to July 1)	12
Unclassified—with dependents	7		
	25		21

Group III—Graduated in June—11

It is expected that those in Group I will return, together with about half of those in Group II, about 35 upperclassmen in all. At the start of the present school year there were 32 students in the first year class. An analysis of the draft situation of the first year students now in school should give some indication of how many first year students may be expected to enroll next year. It is as follows:

Group I		Group II	
Under draft age	2	Unclassified—no dependents	3
Classified II or lower	3	Classified I-D	6
Unclassified—dependents	4		
	9		9

If half of the students who would enter this fall are in Group I and half in Group II, and the draft takes half of Group II, then we may expect 75 per cent of last year's enrollment or 24 students. Add 24 to the 35 upper classmen expected to remain and the expected enrollment is 59. This compares with 78 enrolled at the beginning of the present school year. It must be remembered that there are many factors which cannot be calculated. It has been assumed that those which are favorable will be offset by those which are unfavorable.

Dean M. R. Kirkwood, Stanford University School of Law:

Based upon a survey of the students now enrolled in the School and the applications being received for the fall of 1941, it is estimated that the enrollment in the Stanford Law School will probably be approximately one-third less than in the fall of 1940.

This School operates upon the quarter system and is in a position therefore to provide a flexible program for its students who may be called into military service during the academic year. Ordinarily there are some courses which are continued over two or three quarters and in which no credit is given until conclusion of the course. Beginning next fall, however, we shall offer final examinations in such courses at the end of each quarter for those students who expect to be called into military service during the following quarter. Thus students will receive full credit for all work completed up to the end of the quarter in which they find it necessary to withdraw from the School.

By taking advantage of the regular summer quarter it will be possible to complete the usual three-year program in two calendar years and three months, and the usual four-year program in three calendar years.

Dean Edward A. Hogan, Jr., University of San Francisco School of Law:

It is not possible to predict with any degree of accuracy the effect of the Act on the Evening Division.

While our Day Division is threatened seriously by the proposed reduction in the age span from the thirty-fifth year to the middle twenties, the same is not true of the Evening Division. At least one-half of the evening enrollment will be above the proposed age limit.

Day Division students with mechanical skill propose to use these talents in shipbuilding and other activities for defense which are so numerous in the San Francisco area. It is the hope of some of these that they may complete their law work in the evening. Some of us fear that the high wages which they are receiving for this type of work will cause them to lose interest in the profession.

The State Headquarters of the Selective Service Act Administration has expressed a willingness to assist in the deferment of those who actually plan

to enter a government service requiring legal training. Such government services are reluctant to cooperate in this matter because their present members are not given any preference under the Act. The logic behind their position seems unassailable.

There is no likelihood of voluntary enlistments affecting enrollment. An arbitrary attitude on the part of local boards and the noticeable impoliteness of their employees have engendered a general hostility which encourages avoidance of the obligations imposed by the Act. On the other hand, applications for commissions in the Marine Corps Reserve and the Naval Reserve have been entered by a few.

The principal difficulty created by the Act has been the loss of morale. A feeling of uncertainty and futility characterizes the present student effort. To that extent the work of the Evening Division seems to have suffered.

Dean Leon Green, Northwestern University School of Law:

The Selective Service Act will reduce our enrollment for the year 1941-42 very greatly.

Our present first-year class (1940-41) will be the hardest hit. Many of its members are already entering special services, and the chances are they will not return to School for several years. Some have received their notices to report after the end of the school year. The others who are physically fit will doubtless be called during 1941-42 unless deferred.

By attendance during the summer, many of the present second-year class hope to receive their degrees in February, 1942, and to be deferred until after they have taken their bar examination in March, 1942. The others of the second-year class will doubtless be called during the year unless deferred.

The incoming class will be very short—how short cannot be estimated until after the July 1 registration, and after the order and method of calling the registrants into service have been determined. We are advising all applicants for admission not to enter if the possibilities are that the year will be interrupted by being called into service. It is believed to be better for them to get their military training before entering law school. The expectancy of a call most any day paralyzes a student's efforts.

What the situation will be in following years depends upon the continuance of the emergency. If those called into service are released at the end of the year the tendency will be for the School's registration to rise. If the emergency passes entirely the registration will probably reach new heights. On the other hand, if the emergency continues and grows even more severe all the able-bodied students without dependents will be called into some type of service. Members of the School's faculty will also be called into service as the emergency grows and the School's program considerably curtailed. We do not apprehend any shortage of lawyers for the purposes of carrying on

the general run of affairs of this or other communities. Doubtless many of the older lawyers who have found the sledding pretty rough the last few years will have more to do due to the shortage of recent graduates.

All in all, the schools and the profession and the country will not suffer permanently. The students who come back after their military training will be much better students, and their development as young lawyers will be vigorous and rapid. A crisis in government—even a military crisis—always calls for lawyers in large numbers. We may be fortunate in having an over-supply of lawyers at this time. At any rate, the law schools will probably be able to hold their organizations intact and if they have any surplus energies turn them to other ends for the period of the emergency.

Dean Walter T. Dunmore, Western Reserve University School of Law:

Since the Law School of Western Reserve University is a graduate law school with students whose age is largely between twenty-two and twenty-six, a very large decrease in attendance is anticipated by reason of the Draft. While it is difficult to form a definite estimate, it is our opinion that the attendance will be at least cut in half.

So many of our students who have just completed the second year are desirous of getting more work behind them that we began another half year's work on June 16. By October a student may, therefore, finish the full half year, and if he is able to remain in school until February he can complete the entire year. We expect to have the regular work begin in the fall for those who do not care to take advantage of this arrangement. Some of the draft boards seem to be inclined to permit those who have started in a semester to complete that semester. In addition we have furnished each student with a statement for presentation to his draft board showing just when his work here will be completed, and in cases of the students who have shown peculiar aptitude we have filed affidavits recommending that they be permitted to go on with their work in the Law School.

Dean George W. Matheson, St. John's University School of Law:

There are 673 students, in a total enrollment of 902 at St. John's University School of Law, who are subject to the operations of the Selective Service Act. Making due allowance for rejections for physical disabilities and deferment for dependents, it is fair to assume that at least 300 of the present enrollment will be inducted into military service before September, 1941. It is also fair to assume that many students who complete their college courses this June and who contemplate studying law, will defer their enrollment in law school until they have served the prescribed year of military training. The result of these observations would point to a considerable decrease in enrollment.

In addition to the factors commented upon above, there seems to be a definite trend away from the study of law. Many students who enrolled in

the College Department of St. John's University with the intention of entering the law school, have had their attentions diverted to other pursuits which seem to offer greater opportunities for immediate employment, and which may be classed as "defense industries." It would appear that this trend may continue. Engineering schools and schools of pharmacy are experiencing an increase in applications, and law schools a definite decrease. Law schools that have adopted a superior attitude toward those institutions that have been operated with one eye on the budget, may be forced to change their attitude. The schools that will survive are those which combine a sound educational policy with some good common business sense.

Dean Mason Ladd, University of Iowa College of Law:

At the College of Law of the University of Iowa, we are expecting possibly a fifty percent cut in the enrollment this fall. A substantial number of students have enlisted in various branches of military service. In the student body there are a large number of reserve officers subject to call at any time. A great number have been and will be called under the Selective Service Act this summer and fall.

Most local draft boards have been reluctant to grant deferments to law students, although some boards have been quite willing to do so if the student is in good standing. Many students desiring deferment, particularly among those who will be in the last year of law study, have offered to volunteer for service at the conclusion of their study if deferment can be obtained. Local draft boards have varied a great deal in their attitudes towards deferment, some definitely refusing to consider any law student, others granting temporary deferments in deserving cases.

There are three classes of law students affected. The first problem pertains to students who have completed their second year, and would normally commence their final year of law study in the fall. The Iowa Law School has adopted a program of permitting these students to attend an eleven-week summer session, and with a full schedule the first semester in the fall, to graduate in February. The students under this program, will have had a time residence requirement in three years of study of more than ninety weeks of study, which is the minimum requirement for residence study provided by the Association of American Law Schools. Our regular three-year law study which we have observed locally requires ninety-six weeks to meet the three-year residence requirement. Thus, in altering our local rules to permit graduation in February at the end of the first semester of the senior year, we have more than complied with the minimum standard for time requirement, and our students will have completed our eighty-two hours of course requirement for graduation. Some local boards have granted deferments until February to this group of students, on the theory that it would be an undue hardship to place these students immediately into draft service when they

could complete their work in so short a time. As to students who are not called into service—it will be necessary that they take the second semester's work and complete our ninety-six hour time credit requirement as well as the eighty-two hour course requirement, in order to graduate. It is surprising, however, that a considerable number of local boards have refused deferment even to students in this group and even though the students will sign a voluntary enlistment to be effective February first.

At Iowa, we have also passed a ruling to give semester examinations in year courses. Students therefore will be able to receive credit for one semester of a year course. However, as to those who are not called into service, it will be necessary that they complete the year course, and take a year examination.

As yet, we have not had a great deal of experience with deferment of students who completed their first year and would like to take their second year of law study. Some local boards have indicated a friendly attitude toward semester deferments, with renewals depending upon the need for men, as it develops in the local communities. Some boards have refused to give any consideration to these men on the ground that the time of their graduation is too remote.

We have no indication whatever as to the effect of the selective draft upon the entering class. It is reasonable to believe, in view of the fact that this group is usually in the draft age, that many of these men will be placed into service without the opportunity of entering the Law School under the present rulings. There is little doubt but that the Law School enrollment will be reduced fifty percent or more next fall.

The question arises whether or not it would be desirable, except where local communities cannot fill their quotas, to give all law students having a good standing, deferment until completion of their work. If the world crisis lasts for many years, it will be indeed necessary in the national interests, that we have a continuous training of men for the legal profession and governmental service if the best public interests are to be preserved.

Dean T. C. Kimbrough, University of Mississippi School of Law:

The faculty of the University of Mississippi School of Law feels that a continuation of the policy of the local selective service boards of refusing or failing to consider the study of law as "necessary to the national health, safety and interest" will endanger the very existence of this and other law schools. During World War I, the law school was reduced to such an extent that there was maintained here a force only sufficient to conduct classes for the entering first year class. In view of the fact that this school of law is at the state university and the only standard law school in the state, the education of practically seventy percent of the bar of this state is had at this school.

This law school is at the present time enjoying an unprecedented cooperation with the practicing bar of this state in an effort to raise the standards of legal education and we feel that our continued contribution to the Junior Bar of the state is of prime necessity in making progress along that line. We feel that an interruption of this work will retard the interests of legal education in this state to an extent wholly disproportionate to the military advantage to be derived from *immediate* training of its entire student body.

We feel that the military training and selective service program is not a mere temporary disturbance but is a long-term program and in view of the fact that the deferment of students is ordinarily only of a temporary nature involving at most only one or two years and in some cases only a few months, we believe every effort should be made to harmonize both the military interests and the interests of the state in the program of legal education.

In other fields of occupations deemed necessary to national welfare, the deferment is in fact of a permanent nature, while in the case of students only a temporary deferment is necessary until graduation.

The connection between students in engineering, medical and other technical schools and the national health and safety is obvious. The connection between law students and the national interest is not so obvious, but just as real and just as direct. Though it may not be recognized in urban centers, the fact is that the men who guide the destinies of and are responsible for the welfare of the small towns and cities are men who have had a legal education, though not necessarily practicing lawyers. These small towns and cities are the backbone of the Nation, and if there is a hiatus in the supply of young men with thorough legal education to these towns and cities, their welfare and the welfare of the Nation are endangered.

Dean Henry B. Witham, University of Tennessee College of Law:

At a time when the thought and energy of the nation are focused upon national defense, when the order of the day is the protection of the morrow, what, we may well inquire, should be the task of those engaged in education for the law? Montaigne observed that the clatter of arms drowns the voice of the law, and William Pitt declared that where law ends, there tyranny begins. It is submitted that both statements speak the truth. In the light of such truth then, what is the job of the law teacher and the judge and the practicing lawyer?

Certainly no patriotic citizen, lawyer or otherwise, will desire to hinder whatever is essential to our national safety. And lawyers particularly will recognize that the emergency and war powers of our government are necessarily broad and sometimes severe. But even so, during the times of national stress, we must not forget that justice, the cornerstone of democracy, must continue as such if democracy is to endure. The day-to-day contacts of

citizen and citizen, the clash of necessary speed-up against a thousand imponderables, all must be accomplished with orderly justice. Indeed without care and order, particularly in times like these, chaos will reign. So, if tyranny and chaos are distasteful, it would seem that calm, unemotional and dispassionate adherence to rules of law and order in attaining justice must be the plan and pattern now of all engaged in legal pursuits.

And then, when we shall have returned to normal times, when the wars shall be over—for they will be—what of that day? We must conduct ourselves so that at that day there will be no lack of freedom of speech, of the press, of worship, of religion, of peaceable assembly; that at that day we shall have speedy and public trials and security against unreasonable searches and seizures and against unwarranted arrest and double jeopardy; that then we shall have the same bills of rights that we have now, unchanged, unimpaired and in full force and effect. And watchful attention to our liberties is the cost we must pay for them. The judge, the lawyer, the law teacher, it is submitted, must do all within their power; for it is mainly their job. They must be the leaders. Indeed, it would not seem unreasonable, to maintain that the law schools of the country have a definite and very large part of the responsibility in this respect. Where else is the opportunity better presented than in the law schools? There, with the student anxious about the whole scheme of social affairs and curious to learn, sound leadership in governmental affairs must be built. The next generation will soon take over. It won't be long. And when it does, it must have understanding and knowledge of how to carry on.

Therefore, in the proportion that selective service fails to provide for competent engineers of society for the future our democracy will suffer. If high standards in bar admissions relate to the competency of future lawyers —and it is submitted that there is a very close relationship—and if high standards in law schools conduce to sound bar admission standards—and it is submitted that they do—then the future of democracy depends upon the maintenance of proper training in law. What the effect of selective service will be on any particular law school is not, in my opinion, relatively important. But sound training must be provided somewhere. If increased employment in industrial centers means that only in these centers there is provided instruction in law and that of the kind which heretofore has been considered as second-rate, then we must expect our future lawyers, our society engineers—for they are just that—to be representative of the training they have had.

How to provide a selective service which will assure competent government engineers for the future is definitely no easy task. But there is danger if the job isn't done!

Law Schools and the Emergency

By Albert J. Harno*

Dean of the University of Illinois College of Law

Ever since in an unguarded moment I consented to speak on the subject on which I am to address you, Law Schools and the Emergency, I have been uneasy about the scope and content of what I might say. The topic appears to call for unfounded prophecy—a gift I do not possess. A lawyer, I take it, is trained to build his brief on precedent, and what meager prophesying he does is likely to be supported by numerous instances of past procedures and experiences. There are, indeed, no precedents for the situation that faces the law schools today, except those raised by the last World War.† And these offer few factual materials on which to base a course of action. They tend rather to raise lowering forebodings—and so to serve only as factors that increase our apprehensions.

I might begin by making some remarks about my subject. An emergency, I take it, involves being cast suddenly into a set of circumstances that call for immediate action. What is this emergency? It would seem that there are, in fact, two emergencies; one primary; the other secondary; one affecting our national well-being; the other, the welfare of law schools and the integrity of legal education.

Immediate Prospects and Adjustments

One of the immediate problems facing the schools is the enrollment prospect. Last year, owing to the deferment of students in school, enrollments were affected but slightly. Even so, the drops in enrollment attributed to students going into military service were as high as twenty per cent in some schools, and a substantial number had decreases of from ten to fifteen per cent. Apprehensions relative to enrollments for the coming year were very grave. In a poll of a number of schools, the average decrease anticipated by fifty-three

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*Address delivered at the eleventh annual meeting of The National Conference of Bar Examiners in Indianapolis, September 30, 1941.

†"Figures furnished by ninety-eight schools show that they reopened in the autumn following our entrance into the present war with an aggregate student registration diminished by between 32 and 33 per cent. This, however, was only the beginning. Eighty-five schools have reported figures which agree with the preceding for that year, and show in addition a falling off at the opening of the present, or second, year of the war of no less than 69 per cent, as compared with the corresponding figures of 1916. Since information is difficult to secure from institutions that have quietly given up the ghost, these figures understate the extent to which the study of law has been abandoned. A cut of 40 per cent last year, increased this year to 75 per cent, would probably be a close approximation to the facts. Fourteen schools . . . are definitely known to have suspended operations." "The Study of Legal Education," in Thirteenth Annual Report of The Carnegie Foundation for the Advancement of Teaching (1918) p. 121.

schools was approximately thirty-eight per cent. Since the facts on this point will soon be known, it is fruitless to speculate further on it. The schools are now nearly all in session and we shall have the information in the course of a few weeks as to how closely the anticipated enrollments approximated the actual ones.

Yes, the schools will soon know what the situation is for the coming year, and they are prepared to take the shock of that in their stride. But that is not what is causing their principal worry. Their chief concern arises from the forebodings of what lies ahead. If men were to be called into the service for one year only, enrollments would, no doubt, tend to find a new level in a year or two. But with the passage of the draft extension act increasing the period of service another eighteen months, with the feeling that the period may in the end be even longer than that, and with no deferments recognized for those engaged in law study, the prospects for legal education are uncertain, indeed! But as to this I shall have more to say later.

A variety of reports have come from the schools on their experiences with Selective Service Boards. There is no indication of unfairness. In fact, the expression is almost unanimous that the various boards are considerate and fair. In most instances seniors of last June were deferred in order that they might take the next succeeding bar examination. In some instances further deferments have been given to students who can qualify for the bar examination in the coming mid-year. These actions, in view of the language and conditions of the Selective Service Act, are very generous. The chief complaints arise from the want of uniformity in board actions and from the fact that a policy of deferment for those engaged in law study is not recognized under the Service Act nor its interpretations.

A serious problem involving morale among students is indicated by law-school administrators. This has arisen in relation to a number of factors and mainly in connection with the want of uniformity in board actions and in the obscure future that lies ahead for young men wishing to study law. There have been numerous instances in which one student was given deferment by his board and another in similar circumstances denied it by his board. Each may have been anxious to finish his schooling before going into service, and it is not to be wondered that the one who had his program interrupted was unhappy, if not embittered. Multiply instances of this kind within a closely-knit student body and you have a disturbing factor that permeates and affects the morale of the whole group.

The other major factor affecting the morale of law students, the uncertainty of what lies before them, is difficult to describe and to appraise. Again and again the comment is heard coming from pre-legal and law students: "Why should I go on in school? My program will, no doubt, be interrupted if not changed completely. So, what is the use?" I realize fully that their situation

is no different from that of many other young men in all walks of life, but the problem is particularly acute for students preparing for law. It is not that they are disloyal nor that they are apathetic to the interests of their country. Nowhere have I found the slightest evidence of that. Law students are willing to go into military service and, if need be, to make the supreme sacrifice. The difficulty is that they are not given an opportunity to plan for the future. They cannot plan; they cannot map out their programs. They do not ask immunity from military service; they wish only to finish their education. What is more, not only do they face interrupted programs, but they are led to believe that law and lawyers have no place, no niche, no mission in the world today. The lawyer, so it appears to them, is merely excess baggage.

Conscious of these problems, law school faculties have made various adjustments adapted to help solve some of the difficulties facing their students. A few schools have materially expanded their summer sessions in an effort to shorten the calendar time of training. A number have announced that final examinations will be given in all courses at the end of each term, that is, at the end of each semester or quarter. The student is thus given the assurance that if he can remain in school for a term, he will have accumulated credit on the records of his school for at least a portion of the year. Some have gone further, with a provision that if a student is called into military service after having completed a substantial part of the term he is registered in when called, he may take examinations in the courses in which he is registered and be given credit for the fractional part of the term's work he has covered. Others have announced that if the student must leave for service in mid-term, he may return at approximately the same time a year or two later to resume his work at the point the interruption took place. There was merit in this action when the indication was that the period of service was to be one year. It has less significance since that period has been extended to two and one-half years. At least one Board of Law Examiners has announced that it will give permission to students entering the service after one or two years of schooling to write bar examinations on the courses they have completed.

In answer to a questionnaire sent out last spring by the Council of Legal Education of the American Bar Association, forty-six out of fifty-three schools indicated that twelve months' absence from school for military training with resumption of schooling thereafter would raise no unsurmountable problems. Most of these schools also replied that the drop in attendance with a resultant decrease in funds from tuition would have no serious effect. A fairly substantial number, however, anticipated serious consequences, because these schools were heavily dependent on tuition income. Some mentioned the likelihood of salary reductions. Since then, with the extension of military service to two and one-half years, the prospects have become very grave, indeed, for a large number of schools, and recent expressions from many of them are to the effect that programs and salary schedules will undoubtedly be affected.

The Question of Standards

This brings us to a question in which we are all interested—that of standards. Yes, lawyers the country over, bar examiners and law teachers are all wondering what the prospect is in legal education for the maintenance of standards. The uppermost question is whether legal education is likely to suffer a severe setback. The fight for standards has been a long and at times a bitter one. We must recognize, too, in this as in nearly all major controversies, wherever they may have arisen, that the issue has not always been clear-cut. It has not been an issue merely of high standards against low ones; of good versus evil. There have been differences of opinion on what was good and what evil, and there have been fighting faiths. There have been high motives and sordid ones. But sordid motives have rarely made their appearance unalloyed and unadorned. Almost invariably they have presented a respectable front. The controversy has raged ever since 1900, when the Association of American Law Schools was organized and announced as its chief objective the improvement of legal education in American law schools. The battle was given impetus and the issues were yet more clearly drawn when in 1923 the American Bar Association created its Council of Legal Education and gave it authority and support. In these years much progress has been made, though the fight is far from over. The paramount question today before all who are interested in the advancement of legal education is whether the gains that have been made can be maintained; whether the advance is to be slowed down; whether, indeed, the movement is on the verge of staging a retreat.

As a matter of principle there is no less need for well-trained lawyers today than before. In truth, in view of the growing complexity of our social and economic life, there is an increasing need for better-trained lawyers. If our premise in the past was correct, that a lawyer's education should be broad as well as intensive, there is nothing in the panorama of our country's affairs today, indeed, there is nothing in prospect in world affairs, indicating that lawyers should have less training. In this sorry state of things entire there is a growing and imperative need for leadership by men who are finely poised, who have insight into the ills of society and who have an inclusive understanding of its problems. That leadership cannot be entrusted to narrowly-trained specialists. What society needs now above all else is leaders of broad outlook and comprehensive viewpoints—men who are capable of making use of the fragments of knowledge possessed by the specialists and who can co-ordinate that knowledge and weld the parts into a working unit. I envisage this assignment for the lawyer. As the engineer stands in relation to the physical science, so stands the lawyer in relation to the social and economic disciplines. He by virtue of his training and the materials with which he deals must be the country's social engineer. If not he, who else, pray, can assume that position? I say to my profession; I have said it before: Awake! Awake! to the responsibilities and to the heritage that is yours.

That to my mind is the lawyer's responsibility and his opportunity. But it must be clear, if he heeds that call, his education cannot be inferior to what it has been and now is. It must, in truth, be richer in content and scope. If the lawyer accepts this role he must be superlatively educated. Now what are the implications of what lies ahead? As Al Smith used to say, "Let's take a look at the record."

Law school teachers are keenly aware of the fact that a critical period is before them. They are also conscious of the fact that the crucial problem in that period involves the struggle for the maintenance of standards. They are emphatic in their expressions that standards, come what may, must be upheld, but, notwithstanding their brave words, there is a deep undertone of apprehension. I have commented on the fact that the schools were prepared to adjust their affairs, with some misgivings, to be sure, but with assurance that they could survive its impact with standards untarnished, to a program that called for a year of military service. What they feared was the contingency that that period would be longer. Now with the time extended in reality to two and one half years, and with the apprehension that it may be even longer, the stoutest hearts among the law school men can venture no expression of optimism on the results. Many law schools, probably most of them, will survive. The question of survival is no mean one, but the critical problem for the welfare of the profession and the public is what the effect of all this will be on the standards of legal education. At this moment we can only surmise. This much seems clear, though, that the better bar which we envisaged a moment ago, to furnish virile and far-sighted leadership in the social crises that surely lie ahead, stands in fact in high peril of becoming a poorer one.

Specifically, how are standards likely to be affected? At the moment, that problem is one with which we can only conjecture. Some significant factors have, however, already made their appearance. One of these is the long period of military training and the probability that military service will become a permanent institution to be reckoned with in our national life in the future. The idea is already finding expression that if young men are to devote a substantial period to military service, measures must be taken to reduce the length of time for their professional training. Now this is no minor contingency for contemplation. It is a factor, indeed, that is likely to affect our whole outlook and attitude on legal education. Concretely, the question is, can we in this new era, with universal military service before us, afford to take as much of the young man's time as we have taken heretofore?

Among the factors stressed during the last forty years in our efforts to improve the standards of legal education, none has been given greater emphasis than that of lengthening the period of education as a condition to admission to the bar. Gradually and laboriously we have increased the requirements so that they now stand at a minimum of two years of college and three of law work. Many of the stronger law schools have, indeed, set their requirements

on a higher peg and are demanding three and four years of pre-legal work as a condition to law study, and several have lengthened the period of law training to four years. These advances have been accepted by professionally- and public-minded members of the bar and of the teaching group as laudable and necessary steps in the movement to build a better bar. The significant question now is, will we be forced to change our views and reverse our position on this issue?

For the present the most apparent evidence of distress is coming from what we may call the marginal schools. By marginal schools I mean those schools that have been approved or are near approval by the Council of Legal Education of the American Bar Association and the Association of American Law Schools—good schools, for the most part, with good spirit and a right attitude on legal education but not sufficiently fortified to withstand adversity. A number of these schools have already made requests to be relieved from some of the conditions set by the standardizing agencies. The requests that have come in thus far involve being relieved from the minimum requirement on full-time teachers, and from the stipulations on library expenditures. Some have asked for the privilege of shortening the minimum period set for law-school training. All requests so far have involved minor dispensations, but they are clearly indicative of what is to come.

Our chief concern is not over what has already happened to legal education but over what is the portent of the influences now active. I do not wish to overdraw this picture, but only to state faithfully what those who have studied the situation believe, and that is that legal education faces one of the most critical periods in its history. They believe on the basis of what they can at this moment foresee that law school attendance will decrease drastically; that many law schools will be eliminated; that others now seeking to maintain the requirements set by the standardizing agencies will give up the struggle but continue operations as sub-standard schools; that young men who wish to study law will, in increasing numbers, enter the sub-standard schools, and that the standards of legal education in all law schools, from the best to the worst, will be lowered.

A Long-Term View

In portraying this outlook, I wish to guard against any possible misinterpretations of the implications to be drawn from what I have said. Earlier, in remarking on my subject, I said there appeared to be two emergencies—one primary; one secondary; one that involved our national well-being; the other that touched the welfare of law schools and the integrity of legal education. There is among my fellow-workers in legal education, be they teachers or practicing members of the bar, no confusion on that point. If the national welfare demands the sacrifice of the standards of legal education, there will be no murmurs from that group. If the national welfare is served through the induction of men eligible for law-school training into military service, there

will be no complaints even though the law schools must close their doors. The question I wish to present now is one of policy; it involves how the national interests can best be served.

It seems to have been assumed that law-trained men do not have any particular mission to perform in the national program of defense. It is that premise that I wish to challenge. At a time when the whole world seems intent on converting itself into an armed camp, it is not to be wondered at, perhaps, that education in law and in the arts and humanities is thought to be of little consequence. Emergencies always excite short-sighted measures. For the present only those subjects whose immediate values to the national program are apparent, such as physics, engineering, chemistry and medicine, are recognized as significant. That they are essential no one will dispute, but it is wanting in foresight, if not dangerous, to assume that no other disciplines are essential. In a broad sense what I am here saying applies to other fields as well as to the law, but I shall confine myself to an appraisal of the need for men trained in the law in time of national peril as well as in time of peace.

A long-time view of the country's needs, whether at war or peace, involves a program of developing men capable of leadership. "An arsenal is no stronger than the men who control the destinies of the state"; the army is no stronger than its leaders, and leaders are not developed in munition factories. If we are to assume that we as a nation are launched on a long-time program of military service, it behooves us to adopt a long-time view of the situation to determine from what sources the country will draw its leaders in the military service and out.

In no sense, I wish to emphasize, do I suggest that men in training for the law should be given immunity from military service. What I am advocating is that we have the foresight to permit young men to finish their legal training before entering the service. It is my contention that this course will not only improve immeasurably the morale of these men, but it will likewise establish an ever-replenished source to which our country may turn for its leaders. It is significant that the Federal Bureau of Investigation has for years recruited its investigators from the ranks of young lawyers. It also is an accepted fact that young lawyers, as a rule, make capable army officers. Seasoned army officers have repeatedly observed that lawyers have the knowledge, the understanding and the adaptability that fits them well for almost any branch of the military service. And well they should, for a legal education, if it does anything for the individual, develops in him a discriminating mind and a balanced point of view. No man in an official position, whether in civil or military life, is likely to be efficient or trustworthy who does not have a trained mind. A wise and foresighted plan for the development and maintenance of a strong military organization should contemplate granting those who have the ability and the desire for law study, the privilege of finishing that program before they are called into the service.

What is more, it is needful, yes, imperative, in the interests of human welfare, that we contemplate a program which looks beyond the perils of war to the perils of peace. Competent leaders are essential in time of war; they will be equally essential when we face the problems of peace. We should consider whether we are gearing our national economy on the basis of an emergency for defense and perhaps war without adequate consideration for the emergencies of peace that lie ahead. No man who seriously views the catastrophic events of our day can, I believe, escape the conviction that the issues that will arise after peace is once more established will be as critical as and definitely more subtle than those now confronting a world submerged in war.

Now how do these observations bear on my topic? The answer is to be found in the leadership our profession has furnished our country ever since its inception. Perhaps the time has arrived when the profession must relinquish its paramountcy as a source of leadership, but, to the present, it has been pre-eminent. The bar's record is so clear on this that it would be merely laboring the point if I pursued it further. I wish only to emphasize one fact that often escapes notice. The profession's pre-eminence in supplying leaders for the principal offices of government is well known. But this is only part of the story. Public opinion and policies are not shaped alone in the halls of Congress and in the offices of our executives. They take form and find expression in the hundreds of communities, large and small, throughout our land. And here, as democracy in all of its intricacies goes into action, the lawyer, often unnoticed and unsung, does some of his most effective work. I do not, of course, claim that his voice always prevails, but I do say that, throughout the length and breadth of the land, it is the dominant one.

It is the significance of this relation of the lawyer to the wholesome operations of democracy that discerning leaders of the bar have noted, and it is this, among other things, that has inspired them to labor unceasingly for improved standards of legal education and a better bar. If the lawyer, trained as he has been, was so vital a cog in the vast machinery of democracy, then potentially he has a mission for even greater usefulness. And to fit him for that, this factor must definitely be taken into account in his education. So they reasoned, and under this inspiration they set to work to build a better bar. The lawyer, as I have said, by virtue of the place he occupies in the social matrix and through the materials with which he works, the law, is the country's social engineer. These are the principles, this is the faith on which I rest my case. The public has never been fully informed on the import of the place the lawyer occupies in the affairs of democracy. Lawyers themselves have been so immersed with the routine duties of their profession that, except for a far-sighted few, they have not been fully conscious of their strategic position. Years ago De Tocqueville observed it and paid eloquent tribute to our profession. "I cannot believe," said he, "that a republic could subsist at the

present time if the influence of lawyers in public business did not increase in proportion to the power of the people." The time has come, as one of my fellow-workers has well expressed it, when "in order to save ourselves, we shall have to reveal ourselves."

What then is the situation of legal education in the emergency? Legal education faces an emergency of its own. It is an emergency that grows out of another and a greater one—the national emergency. The immediate difficulties for legal education are precipitated by a national policy enacted into a law through a Selective Service Act which fails in its terms and in the interpretation of its terms to recognize that legal training is essential to the advancement of the public welfare in the national emergency. If the pursuit of this policy is conducive to the development of the national program, we who are interested in the advancement of legal education submit to it with full approval. It seems fitting, however, at this time, indeed it is our obligation, to inquire into the wisdom of that policy. It is an unchallenged fact that the standards of legal education are being seriously jeopardized and that the oncoming supply of competent and well-trained young lawyers is likely to be severely depleted. We rest our case on the premise that this course with these results, if continued, will tend to destroy a fertile source from which the country, in the past, has drawn its leaders both for military service and for many services, great and small, arising from and demanded by the affairs of ongoing democracy. That we believe. But whatever the decision may be, we shall seek to adjust ourselves to it and we shall carry on with the conviction that we are performing a high public duty.

One Bar Examination

John Hay, the famous American diplomat and statesman, before being admitted to the bar, was called before a committee of prominent lawyers for examination. One member of the committee, in an attempt to confuse the young lawyer, cited a very difficult and involved case in great detail and then, turning a forbidding eye upon the fledgling, said: "And now, Mr. Hay, let us suppose that a client came to you with such a case. What would you tell him?"

Young Hay had become lost in the maze of data and was thoroughly bewildered. Inwardly he swore that he would kill the first man who came to him with such a problem. But after a moment of nervous reflection, he looked up and said: "I would ask him for $50 and tell him to call again in the morning."

The committee murmured its approval. "Mr. Hay," said his questioner with a twinkle in his eye, "you are admitted."—*From "Famous Fables, Little Episodes in Lives of Celebrated Persons," by E. E. Edgar.*

physical education, vocal or instrumental music or other courses without intellectual content of substantial value.

"(b) A student's pre-legal work must have been passed with a scholastic average at least equal to the average required for graduation in the institutions attended, and this average shall be based on all the work undertaken by the student in his pre-law curriculum, exclusive of non-theory courses * * *."

Statistically Speaking—

By James E. Brenner and Leon E. Warmke

Research Secretary and Secretary, respectively, of the California Committee of Bar Examiners

Since the beginning of 1932, the California Committee of Bar Examiners has kept history cards for each bar examination applicant, showing in detail all pertinent facts relevant to the manner in which the applicant qualified for the examination, and his record thereon. Until 1940, two examinations were given annually, one examination now being held each year, commencing on the first Monday in October. Thus the Committee at the present time has data covering all applicants on the last seventeen examinations, given over a period of nine years. This factual material has permitted the preparation of the statistics which are submitted below in the belief that they may be of interest to persons outside of California who concern themselves in the admission process, whether such concern arise from participation in either the law school program or its climactic final step—the bar examination.

It should be borne in mind, in considering the statistics submitted, that under the California system all examination grading is done anonymously and that, accordingly, no factor enters into an applicant's success or failure other than his actual showing on the examination itself.

I. *Success of applicants taking the California Bar Examination for the first time between 1932 and 1940, inclusive, classified according to amount of pre-legal education.*

Pre-legal Education	Number of Applicants	Number Successful	Per Cent Successful
No high school, no college	54	3	5.6
One year high school, no college	67	14	20.9
Two years high school, no college	95	17	17.9
Three years high school, no college	69	15	21.7
Graduate high school, no college	536	147	27.4
Graduate high school, one year college	366	136	37.2
Graduate high school, two years college	550	254	46.2
Graduate high school, three years college	343	171	49.9
Graduate high school, graduate college	2878	1914	66.5

These statistics are based solely upon a consideration of the pre-legal educational training of the applicants, irrespective of the legal education of such applicants.

The fact that the percentage of success on the bar examination rises in direct correlation with the amount of pre-legal education possessed by the applicant would seem to warrant the policy of the more than forty American jurisdictions which now require *at least* two years of pre-legal college education, or its **equivalent.**

II. Success of applicants taking the California Bar Examination for the first time between 1932 and 1940, inclusive, classified according to the legal training of such applicants.

Type of Legal Education	Number of Applicants	Number Successful	Per Cent Successful
Law office study	39	3	7.7
Private study	53	5	9.4
Correspondence school study with degree	129	17	13.2
Part-time law school, with degree	814	268	32.9
Full-time non-A.B.A.-approved law school, with degree	849	449	52.8
A.B.A.-approved law school with degree	2431	1734	71.3

It is also of interest to note that two approved law schools have consistently maintained not less than an 85% average first-examination success for their applicants.

These statistics are based solely upon a consideration of the success of the applicants classified according to legal education, and in themselves take no account of the pre-legal education of the applicants.

At the present time, more than three-fourths of the American jurisdictions give no credit to correspondence law study, and there is an increasing tendency among the states either entirely to abolish or at least drastically to regulate private study and law office study as a basis for qualifying for admission. This policy of the more progressive states would seem to find support in the inferences to be drawn from the above statistics.

III. Subjects of disciplinary action classified according to the pre-legal education of those disciplined.

Taking into consideration all persons who have been admitted to The State Bar of California since the beginning of 1932, up to and including the October, 1940, bar examination, and likewise taking into consideration all disciplinary proceedings instituted since the beginning of 1932, to date, it is significant that of the twelve persons in this group who have been disciplined, only two had as much as two years of pre-legal college training.

This disproportion between the subjects of discipline among those without and among those with at least two years of college training becomes even more striking in light of the fact that, considering all applicants since

the beginning of 1932 who were successful on their first examination, the number of those who had at least two years of pre-legal college training is almost eight times as great as the number of those without at least two years of college.

IV. Subjects of disciplinary action classified according to the legal education of those disciplined.

Again taking into consideration all persons admitted to The State Bar of California since the beginning of 1932, up to and including the October, 1940, bar examination, and likewise taking into consideration all disciplinary proceedings instituted since the beginning of 1932, to date, it is found that not one graduate of a law school presently approved by either the Association of American Law Schools, the American Bar Association, or the Committee of Bar Examiners has been disciplined, whereas the total number disciplined comes from the group which satisfied the legal educational requirement in some fashion other than through graduation from a law school presently approved as above indicated.

The significance of this disproportion, also, becomes more striking when it is borne in mind that since the beginning of 1932, there have been admitted on their first examination approximately two and one-half times as many applicants who were graduates of A.B.A.-approved law schools as those who were graduates of non-A.B.A.-approved schools, part-time schools, correspondence schools, or who satisfied the legal educational requirement for permission to take the examination upon the basis of office or private study.

It is further of interest to note that of the total number of men disciplined as above noted, five were "repeaters" on the bar examination, having failed one or more previous examinations prior to their ultimate success, and of these repeaters, two passed on "review," i.e., having not been successful on the original reading but having been passed upon reappraisal by the board of review. Only seven of the twelve disciplined attorneys passed the examination on their first attempt, and two of these seven passed on "review," having not received a sufficient grade to pass on the original reading.

This unusual correlation of the subjects of discipline with the type of pre-legal and legal education of the attorneys involved would seem to indicate either or both of two things:

(a) That, speaking generally, a man who has not engaged in an A.B.A.-approved method of pre-legal and legal education is less likely to have acquired as high a standard of ethics as one who has had the benefit of a satisfactory pre-legal and legal education.

(b) That, again speaking generally, those attorneys who are admitted without having engaged in an A.B.A.-approved method of pre-legal and legal education may not possess sufficient legal equipment with which to compete

in active practice upon a basis of equality with those who have had the benefit of a satisfactory pre-legal and legal education, and thus may be subjected to such economic pressure as to induce them to resort to unethical practices.

It is, of course, obvious that the above statistics are based upon insufficient data to be of conclusive validity. As additional material is gathered, however, it should be possible to indicate in a more reliable manner the effect of higher admission standards upon the ethics of the practicing bar.

V. Average net income in the fifth year of practice of attorneys in active practice, classified according to their educational training.

In 1937 The State Bar conducted a survey of the economic status of California lawyers during their first five years of practice. The group surveyed included all attorneys admitted by student examination during the year 1931. The following facts were revealed:

Education of Attorneys	Average Net Income Derived From the Active Practice of Law in 1936 by Those Admitted in 1931
Pre-legal college degree and degree from A.B.A.-approved law school	$ 2,956.81
Less than two years of college with degree from non-A.B.A.-approved law school	$ 2,009.14

It thus appears from the above statistics, considered as a whole, that success on the bar examination and net earnings from active practice run in direct correlation with the amount of pre-legal education, whereas the subjects of discipline run in inverse correlation with the amount of pre-legal education.

It further appears that success on the bar examination and net earnings from active practice also run in direct correlation with the quality of legal education—as determined by whether such education was secured in an approved law school or through some other method—whereas the subjects of discipline run in inverse correlation with such quality of legal education.

VI. Accreditation of law schools by the California Committee of Bar Examiners.

Inasmuch as California is the only state which gives a first-year law students' examination, a brief summary of this phase of the California program may be of interest to those in other states who are engaged in the field of legal education.

Under the Rules Regulating Admission to Practice Law in California, a California law school is accredited by the Committee of Bar Examiners if such school requires classroom attendance of its students and has a percentage of success of forty per cent or more for its applicants taking the bar examination for the first time during the preceding three calendar years. On January 1, 1942, the required percentage of success will be increased to

forty-five per cent, and on January 1, 1944, will be increased an additional five per cent. A law school outside of California is accredited by the Committee of Bar Examiners if it is approved by the Council of the Section on Legal Education and Admission to the Bar of the American Bar Association.

Accreditation by the Committee of Bar Examiners is of primary significance in two respects:

(a) In order for a graduate of a law school to satisfy the legal educational requirement for permission to take the bar examination through three years of substantially full-time law study, the school of which he is a graduate must be accredited by the Committee of Bar Examiners. This is important in view of its tendency to encourage a three-year unaccredited law school either to raise its standards so as to become accredited, or to lengthen its program to four years instead of three.

(b) A law student who does not complete his first year of study in a law school accredited by the Committee of Bar Examiners is required to take a first-year law students' examination, given on the last Monday in June of each year, immediately succeeding such student's completion of his first year of law work.

The success of applicants on the June, 1941, first-year law students' examination, classified according to the method of study of such applicants, is typical of the results on such examinations since its inauguration in June of 1938.

Method of study	Total	Passed On First Attempt	Passed, Having Failed Previous Examination	Total Failed
Law office	3	0	0	3
Correspondence school	44	1	1	42
Private study	3	0	1	2
Unaccredited law school "A"	7	2	0	5
Unaccredited law school "B"	4	2	0	2
Unaccredited law school "C"	11	6	0	5

These statistics on the first-year law students' examination would also seem to support the policy of those states which have either entirely abolished or at least drastically limited correspondence school work, private study, and law office study as a basis of preparation for the bar examination.

The requirement of the first-year law students' examination serves two important functions:

(a) It serves as a warning, at the end of his first year, to a law student pursuing an unaccredited method of study that he is following a program which has little likelihood of success on the bar examination. This is of the utmost value in view of the policy of some proprietary law schools selfishly to encourage the continuance of persons in the study of law even though it

is apparent that there is almost no possibility that such persons will ever qualify as lawyers.

(b) It has a tendency to cause an unaccredited law school either to raise its standards so as to become accredited, or to hasten its departure from the field of legal education.

The first-year examination also serves a valuable purpose in inducing a serious attitude, at the very inception of their law study, on the part of students following an unaccredited method of preparation. This is of considerable benefit in the case of private and law office students, correspondence school students, and students at unaccredited law schools, who are seldom exposed to the same incentives toward diligent application which surround the student at an approved law school.

In addition, it not infrequently happens that the requirement of the first-year examination helps the men in the unaccredited school itself who are waging a fight for higher standards against the retrogressive tendencies of those with only a proprietary interest in the school.

Certainly the results of California's four-years' experience with the first-year examination have been sufficiently successful to commend that innovation in the field of legal education to the consideration of those in other states who are faced with similar problems.

Optional Subjects in North Carolina

The North Carolina Board of Law Examiners has changed its rules for admission to the bar in order to provide for the selection of optional subjects in the bar examination. The pertinent provisions are quoted below:

"9. Legal Education. Each person applying to take the examination in August, 1942, or thereafter, must have studied law for three years, all of which study must have been completed within a period of six years. During that period, he must either (a) have studied as a minimum requirement, all of the required subjects and any five of the optional subjects listed in Rule 13, or (b) he must have graduated from an approved law school."

"13. * * * The examinations to be given in August, 1942, and thereafter, will deal with the following required and optional subjects: *Required:* Agency, Business Associations (including corporations, partnerships, joint stock companies and business trusts), Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Equity, Evidence, Legal Ethics, Negotiable Instruments, Personal Property, Real Property, Security Transactions (including mortgages, security deeds of trust, trust receipts, pledges, conditional sales, guaranty and suretyship), Torts, and Wills and Administration. *Optional:* Administrative Law, Conflict of Laws, Debtor's Estates (including bankruptcy, receiverships, assignments for the benefit of creditors, compositions and state

reorganization and insolvency statutes), Domestic Relations, Federal Jurisdiction and Procedure, Future Interests, Insurance, Labor Law, Municipal Corporations, Public Utilities, Quasi-Contracts, Sales, Taxation, Trade Regulation and Trusts.

"Applicants will be expected to answer all of the questions relating to the required subjects and those relating to any five of the optional subjects."

Watch the Back Door!

Applications coming in to the Conference for character investigation bear out the following statement received from Mr. Charles P. Megan, former Chairman of the Conference and a member of the Illinois Board of Law Examiners: "As bar examinations improve, inferior candidates are finding more and more trouble in passing, and there is a tendency to look up some other state with easier standards, pass a bar examination there, and then return to the home state for admission on motion, or on very sketchy practice for the required number of years. This is becoming quite an acute problem, and many, perhaps most, of the cases are outside the scope of our Migratory Bird Law. There are two excellent New York cases in point, and I think that bar examiners and committees on character and fitness would appreciate having these cases brought to their attention." The two opinions are printed below. As higher requirements became effective in Indiana in June 1936 and in Tennessee in June 1940, these two states will in the future no longer furnish a path to the "back door," but there are still other jurisdictions filling the role of "easy street."

IN RE LEFKOWITS
285 N. Y. S. 249
Supreme Court, Appellate Division, Second Department
Feb. 7, 1936

Attorney and client

New York resident who, after attending one year in law school which required high school education for entrance, was admitted to Indiana Bar, and who thereafter continued law school course, and practiced law for five years, was not admitted to New York Bar, where applicant's scholastic and legal training and capacity were below those required of New York residents, and record disclosed that applicant undertook to do indirectly that which he was unqualified or unwilling to do directly.

Proceeding in the matter of the application of Norman Lefkowits for admission to practice as an attorney and counselor at law.

Application denied.

Argued before Lazansky, P. J., and Young, Hagarty, Carswell, and Davis, JJ.

PER CURIAM.

Applicant was born in the city of New York in 1907, and has always lived there except for the period from April, 1928, to July, 1934, when he was in the state of Indiana studying and practicing law. His early education was obtained in the public schools, and for about three years in three different high schools in the city of New York, and several months in a private preparatory school. From September, 1925, to April, 1928, applicant had no vocation, except for the few months that were spent in the said preparatory school. In April, 1928, he matriculated at a law school in Indiana, the requirements for entrance to which were "high school education." In June, 1929, after one law school year, applicant was admitted to the bar of Indiana after examination by a local committee. After admission to the bar, applicant continued his law school course and also engaged in the practice of the law. He received his law degree in May, 1930. He actually practiced for five years in Indiana, which would bring him to June 26, 1934. He returned to this state on July 15, 1934. He lived in Brooklyn with a stranger, although his parents lived in Manhattan. The reason given is that his parents did not have room for him. He was a part-time clerk in a law office until he verified his petition six months and three days after his return to his native state. The Committee on Character and Fitness examined the applicant as to his qualifications as a lawyer. The result was a failure. Six months later, on re-examination, he showed improvement and the committee recommended his admission. The court is of the opinion that this application should be denied. The scholastic and legal training and capacity of the applicant are far below that required of residents of this state. Furthermore, the record fully justifies the inference that the applicant undertook by a circuitous and indirect route to do that which he was not qualified or was unwilling to do directly, as required of residents by the rules of the Court of Appeals.

Application denied.

In re HIMMELSTEIN

285 N. Y. S. 265

Supreme Court, Appellate Division, Second Department

Feb. 7, 1936

Attorney and client

Applicant for admission to bar who had attended high school for six months and law school for nine months in New York, who had received law degree in Tennessee after attending law school there for nine months, who practiced there for five years and who had been suspended at one time for six months for soliciting criminal case, *held* not entitled to admission to practice in New York.

Proceeding in the matter of the application of Hyman David Himmelstein for admission to practice as an attorney and counsel at law (from the State of Tennessee).

Application denied.

Argued before Lazansky, P. J., and Young, Hagarty, Carswell, and Davis, JJ.

PER CURIAM.

Applicant resided in the city of New York until 1925. He attended a high school for six months, and a law school of good standing for nine months as a special student. In 1925 he went to Tennessee and studied in a law school for nine months and in June, 1926, received a law degree. In September, 1926, he was licensed to practice, and practiced in a local circuit court for seven years. His practice was principally in the criminal courts. After he had practiced for about five years, he was disciplined by suspension for six months for soliciting a criminal case. He earnestly asserts that he was guiltless in the matter. There are letters from representatives of the bar of Tennessee indicating that there may be some force in his claim. He was examined by the Committee on Character and Fitness as to his legal qualifications, and was found wanting. Six months later, upon a second examination, some improvement was shown. The examinations indicate the letters of recommendation filed by him were written by generous friends. Not a word is said by the applicant as to the reason for his departure from this state to take up a residence in Tennessee. His lack of scholastic training, the short stay at a New York City law school, one year of law school in Tennessee, and a return to his native state two years after the completion of five years of actual practice in Tennessee, indicate that the applicant was unwilling or unable to face the strict requirements in this state, and indirectly sought to gain the same end. One who indicates he is unable to meet the high standards of the tests required in this state should not be permitted to circumvent them by adopting the means provided by another rule in order to practice law "in his home city," as one of applicant's proponents from Memphis writes in recommending him.

Application denied.

Approval of Law Schools

At the meeting of the Section of Legal Education and Admissions to the Bar of the American Bar Association, held in Indianapolis on September 30, Willamette University College of Law, Salem, Oregon, and the University of the City of Toledo College of Law, Toledo, Ohio, were granted full approval; and the Detroit College of Law, Detroit, Michigan, the School of Law of Lincoln University, St. Louis, Missouri, the School of Law of the University of Newark, Newark, New Jersey, and the School of Law of Southeastern University, Washington, D. C., were given provisional approval.

Emergency Orders and Changes in Rules Governing Admission to the Bar

By John Kirkland Clark

Chairman, The National Conference of Bar Examiners

Since the entry of the United States into the current war, the courts and boards of bar examiners throughout the country have been confronted by a widespread demand for special consideration to be given to law students whose studies have been interrupted or interfered with by the exigencies of the national emergency. Few among us realize that this is the first time that such a demand has confronted the bodies which, during the past twenty years, have for the first time adopted approved standards for legal education and admissions to the bar.

During the war of 1917-18, few of our states had made any progress toward the adoption of such higher standards as have since been approved by the American Bar Association. The list of "Approved Law Schools" which had been found to meet the standards of the American Bar Association had not then been created. No standards had been adopted! There was no central body particularly concerned with the temporary impairment of the standards which had been adopted by the various courts and boards governing admission to the bar. While the American Bar Association Council of Legal Education and Admission to the Bar was functioning, it had not yet instituted its campaign for higher standards. The Association of American Law Schools had embraced in its membership the majority of the full-time law schools of the country, but had not yet reached anything like its present position as an agency for determining the qualifications of the great mass of the law schools. The National Conference of Bar Examiners had not then been created.

As a result, comparatively little interest was shown in the steps which were taken by the courts and boards to meet and solve the difficulties confronting the law students of those days. The number of students was then far smaller than it grew in the post-war years. The war was over in less than two years after the entry of the United States.

Today, the situation is basically changed. While the number of students in law schools is far smaller than it was ten years ago, there are still thousands of our young men and women studying law, even though the call made for service and the prospects of a protracted struggle which may cover four or five years have made serious inroads in law school attendance and have created a situation which threatens the future existence of many of our law schools and will materially affect the conduct of all of them.

All too few of our citizens—even of those who have the determination of the individuals to be called into service and the time when that call should be made effective—have any comprehension or realization of the importance of preserving our cultural educational system and the continuous training of future lawyers who, ten to twenty years from now, will be called upon to handle and solve the outstanding problems of the re-adjustment of the world. Few appreciate the frightful results, especially in England and in France, not to mention Germany, of the slaughter of those who should have become the leaders of public opinion in those countries in the last decade. No one can say, today, whether, if a core of educated and trained youth had been kept out of the front-line service in the years between 1914 and 1918, there might not have been leaders with enough keenness of perception and force in the direction of the governments of England and France to have coped with the situation which the elderly statesmen of the day failed to handle properly. These lessons need careful study and the courts, the bar examiners, and the law school leaders should devote their thought and their energies to working out some solution of this problem of the future.

Fortunately, with the combined efforts of the American Bar Association's Council, the Association of American Law Schools, through its Executive Committee, and our own Committee of The National Conference of Bar Examiners, we have a small and trained group who are able and anxious to assist the courts and the others in authority to reach a wise solution of these difficult problems.

For the most part, the courts and the boards have resisted efforts which have been made to break down the standards of legal education and admissions to the bar which have been so wisely, so patiently, so successfully established during the past twenty years. In only a few instances have examinations been waived, and, even in those cases which have seemed, to many interested in the solution of this problem, to have gone too far, there have been safeguards which tend to protect the public against the admission to the bar of those improperly or insufficiently endowed, equipped, and trained.

For the purpose of enabling all of those interested in the solution of this problem to keep track of the developments in this field of meeting the emergency as it affects law students and admission to the bar, the Conference has endeavored to make a comprehensive collection of all orders entered, and has set forth, in this issue, a brief summary of the principal provisions of such orders.

This compendium deserves careful study by every judge, bar examiner, law school man, and member of the bar interested in the welfare of the future of the profession. The Conference will welcome prompt notification

of any inaccuracies in this outline, and urges all of its members to notify the officers immediately of all changes made and, where possible, of any proposed changes which have been or are about to be submitted to the rule-making authority, so that cooperation may be given in the drafting of any orders or modifications to be made. We need and count upon your earnest and active cooperation.

Summary of Emergency Rules and Orders Regulating Admission to the Bar

ALABAMA—The rules require foreign attorneys seeking admission on motion to have practiced law five of the six years immediately preceding filing of application. A new provision excludes time spent as a member of military or armed forces in computing said six year period, provided same privilege is extended by the state of applicant's former residence to citizens of Alabama.

ARKANSAS—Special examinations may be scheduled.

COLORADO—Applicants entering military or naval service who shall have taken December 1940 bar examination or a subsequent examination and whose general grade thereat was less than 75 but not less than 73 shall have 2 percent added thereto, need not be re-examined, and upon honorable discharge from the service may apply for admission to the bar.—Court order of Dec. 29, 1941.

A bona fide citizen of Colorado who has degree from an approved law school and is approved by character committee, shall be admitted on motion, on showing he has served one year or more in armed forces, has been honorably discharged or prevented from serving due to disability or retirement. —Court order of Feb. 13, 1942.

CONNECTICUT—A court rule gives examining committee authority to approve qualifications of all applicants for bar examinations who have substantially complied with rules but who, through service for United States, have been or will be unable to literally comply with qualifications.

FLORIDA—Florida has previously required three years of legal training except in the case of graduates of approved colleges who then were required to study law for only a year and a half. On December 9, 1941, a rule was adopted requiring graduation from a law school approved by the Court, effective as to all students not then registered with the Board. A new rule authorizes the Board in its discretion to permit students to take the bar

examination if they have studied law at least a year and a half and are ordered to duty in the armed forces before completing their law course.—Court order Jan. 27, 1942.

GEORGIA—The established rules provide that the applicant must take the bar examination in the circuit in which he is a resident. A new rule permits the applicant in military or naval service, who is a bona fide resident of Georgia, to take the bar examination in whatever circuit he may be stationed at the time the examinations are held, provided he meets all other requirements.—Court order of April 16, 1941.

IDAHO—The rules require six months residence of applicants for admission to the bar. A new provision is that Board may waive the remaining portion of such period of residence if applicant cannot complete it "by reason of imminence of call into the armed service of the United States of America."

ILLINOIS—The final semester of law school study may be waived in case of bar examination applicants who are about to enter the armed forces of United States and therefore cannot complete law course. Applicants who fail to pass bar examination and who enter armed forces before the examination next following such failure will be re-examined only in subjects on which they failed. Students about to enter armed forces who have satisfactorily completed two-thirds of the work required for graduation from law school will be permitted to take bar examination on subjects they have completed in their law course, and if they enter armed forces before completing law study, shall be re-examined after completion of required law study only in subjects they previously failed and in which they were not previously examined. Board may give bar examinations as it may deem proper.—Court order of Jan. 23, 1942.

INDIANA—Students of accredited law schools, entering armed forces before having an opportunity to take bar examination next following their graduation shall be admitted without examination upon law school certificates that they have met the requirements for graduation.—Court order of Dec. 22, 1941. Indiana gave a bar examination on March 2 and 3, 1942.

IOWA—Any applicant in the armed forces who is prevented from taking June 1942 bar examination will be admitted without examination upon showing degree from an approved law school received during 1941-42, is certified by dean of law school as having met all other requirements, and his commanding officer certifies applicant's duties prevent his taking examination. Applications for this exemption from bar examination must be filed on or before June 1, 1942.—Court order of Jan. 20, 1942.

KANSAS—Any student who could complete the regular law course by September 1, 1942, but prior to that date is called into the armed forces or

the F.B.I., or volunteers and is accepted for such service, may petition the court for admission, and if the court finds he meets all requirements excepting the completion of the last year of his legal studies, it may grant him admission. —Court order of Dec. 12, 1941.

LOUISIANA—An applicant who has failed two bar examinations ordinarily cannot be re-examined a second time until the second regular examination following the examination at which he failed, but a new rule provides this restriction shall not apply to applicants in active service in connection with national defense or who will, within six months following the date of such regular examination, be called to or will enter such active service.—Court order of June 7, 1941.

MARYLAND—For the duration of the war, the completion of the full equivalent of the three years of law study, in a shorter period under a plan of acceleration, will be accepted as meeting the requirements.—Court permission of Feb. 4, 1942.

MASSACHUSETTS—The Board of Examiners has announced that students in the present last year law classes, who are going into the armed forces and who in consequence are to receive their law degrees, will be eligible to take the bar examination, and a special April examination is being given this group of applicants only, where it is likely they cannot be present for the regular July examination.

MICHIGAN—Law students who will graduate this coming June were allowed to take the April bar examination.

MINNESOTA—An ambiguous court order was issued, and efforts are now being made to clarify it.

MISSOURI—Authority is vested in the examiners to hold examinations when advisable, to fix and to waive time for filing application to take examination, to permit applicants who have satisfactorily completed first half of their final year of study to take the bar examination, and to make such other provisions as shall be helpful to applicants and not harmful to standards for admission to the bar.—Court order of Jan. 7, 1942.

Under the authority of the above Court order the Board of Law Examiners permitted all students who had completed the first half of the their senior year of law study to take the February 1942 bar examination and extended the time in which applications to take that examination must be filed. No further action has been taken by the Missouri Board.

NEBRASKA—Any applicant prevented from taking regular June 1942 bar examination by reason of being in the armed forces, the F.B.I., or engaged in similar activity essential to national defense, shall be admitted

without examination provided he has received a degree from an approved law school during the school year of 1941-42, is certified by his law school dean as meeting all other requirements, it is certified his duties prevent him from taking the examination, and it is found by the Bar Commission that he has all necessary qualifications. Applications for this exemption must be filed on or before June 1, 1942.—Court order Jan. 24, 1942.

NEW JERSEY—No emergency rules have been adopted, but in certain cases the Court is permitting persons subject to the Selective Service Act to take the bar examination before the completion of their clerkship (12 months office work which may be interpolated into law school vacation periods), but the clerkship must be completed at some future time and before the applicants are admitted to the bar.

NEW MEXICO—This state has the "temporary license," granting all successful applicants such a license for one year. It is now provided that the final license may be granted to applicants if and when they are inducted into the armed forces, provided they have practiced law at least three months of the customary twelve months' period.—Board order of Nov. 15, 1940, and amendment.

NEW YORK—An applicant registered for selective service or who is in armed forces and complies in other respects with requirements may be permitted to take examinations in March and June 1942, upon proof he is or intends to become actual resident of New York upon completing law school course or upon discharge from service; provided that before admission to practice he must prove he has been actual resident of the state for six months immediately preceding such admission. An applicant registered for selective service or who is in armed forces and complies with requirements in other respects shall be eligible for re-examination in March and June 1942.

During the war and for two years from June 15 following the termination of such state of war, a three-year law course at an approved school need not exceed 90 weeks of prescribed attendance, and a four-year law course need not exceed 120 weeks of prescribed attendance, provided that in either case the aggregate required periods of attendance shall be not less than 1152 periods of 50 minutes each. Any one or more completed scholastic years of such a law course shall be deemed the equivalent of a completed scholastic year or years of the regularly prescribed 96 weeks three-year course or the regularly prescribed 128 weeks four-year course, as the case may be, provided the number of weeks in any scholastic year be not less than 30 and the number of required periods of attendance in any scholastic year be not less than 320 periods in the case of a three-year course and 256 periods in the case of a four-year course.—Court order of Jan. 23, 1942.

If a student registered in an approved law school has been in regular attendance upon lectures and recitations during at least one half of any semester, session or quarter, and before the completion thereof enters the armed service of the United States, the school may, in its discretion, waive attendance upon lectures and recitations during the remainder of such semester, session or quarter, and grant full credit therefor, without examination, if the student is in good standing at the time of his withdrawal; provided that such waiver of attendance shall in no event exceed eight weeks. This rule shall apply to students in regular attendance in an approved law school on or after September 1, 1940, and shall continue in force until the end of the present state of war between the United States and Germany, Italy and Japan.

A law school which has been registered with and approved by the State Department of Education shall not be deemed to have lost its status as an approved law school because without requiring full compliance with the provisions of this rule it has granted a law degree to a registered law student who has entered the armed service of the United States or of any of the United Nations or because it has waived attendance upon lectures and recitations for the balance of a semester, session or quarter and has granted without examination full credit therefor to a registered law student who may have entered such armed service though such waiver of attendance exceed eight weeks, or half of the semester, session or quarter. But no degree granted by such a law school to such a registered student, without full compliance with the provisions of this rule shall without further order of the court confer upon its recipient any right or privilege to be examined for admission to the bar or if he shall have successfully passed the examination, to be admitted to the bar without further law study.

Until the end of the present state of war between the United States and Germany, Italy and Japan, application may be made to the Court of Appeals by any registered law student who has entered the armed service of the United States or who may be about to enter such service for the variation or relaxation of any provision of any rule where rigid enforcement according to its letter might cause unnecessary hardship to such applicant.—Court order of March 19, 1942.

NORTH DAKOTA—The date for the bar examination was advanced about a month to June 1942.

OHIO—With respect to the June 1941, the January 1942, the June 1942, and the January 1943 bar examinations, the Court ordered that students expecting to complete their law studies and receive their law degrees at the end of the school term during which bar examination is given, might be admitted to that examination, with the understanding that the results

of their examinations will not be released until such time as final certificates of completion of course and receipt of law degree are presented from law school.

OREGON—Statement of policy: "All men whose study of the law has been or may hereafter be interrupted by service in the armed forces of the United States are assured that upon their return to civilian life every effort will be made by the undersigned law schools to adjust curricula so as to make it possible for such men to complete their legal education in the shortest time possible consistent with proper standards. The Oregon State Bar pledges its fullest cooperation in carrying out this program by way of review sessions, or otherwise. The Supreme Court of the State of Oregon and the Board of Bar Examiners of the Oregon State Bar give assurance to men serving in the armed forces of the United States that the bar examinations to be given after the end of the war will be so planned as to make due allowance for the fact that their study of the law was interrupted by their service with the armed forces."—Resolution adopted by the Board March 7, 1942, and approved by the Supreme Court March 17, 1942.

The date for the Oregon bar examination has been advanced from July to June 22-23, 1942.

PENNSYLVANIA — Completion of the post-examination law practice clerkship, required by Supreme Court rule 12-(c), will be waived in cases of students who have passed bar examination and otherwise complied with requirements for admission to the bar, whose law clerkship has been interrupted or prevented by induction into the armed forces. — Board rule of Sept. 25, 1941.

A registered law student who has failed bar examination and is prevented from appearing for further examination by reason of induction into armed forces will receive certificate of the Board recommending his admission to the bar when, in the judgment of the Board, the particular circumstances and applicant's general qualifications and past scholastic record and other relevant factors justify it. Such a student will likewise be excused from the service of the clerkship mentioned above.

The Board will issue its admission certificate to registered law student who has been awarded a law degree (a) upon successful completion of the regular 3 or 4 year course at an approved law school, or (b) upon the successful completion of two and one-half years or more of the regular 3-year course at an approved full-time law school, or (c) upon the successful completion of three and one-half years or more of the regular 4-year course at an approved part-time law school, and who has been prevented from appearing for the bar examination because of being inducted into the armed forces. Such a student will be excused from taking the bar examination, and will likewise be excused from serving the clerkship mentioned above.

Before issuing a certificate for admission to the bar under above regulations, the examiners will require an application, accompanied by regular examination fee. Other cases will be considered on individual merits.—Board rule of Dec. 17, 1941.

For the duration of the national emergency, a student who satisfactorily completes in an approved law school a course of law study of shorter length than is prescribed in Rule II, but not less than two calendar years, which has been adopted by such law school during the emergency as the satisfactory equivalent of the standard longer course, and who shall have been awarded the law degree by such law school, shall be admitted to the bar examination upon compliance with other requirements.—Court order of Jan. 28, 1942.

The Board will liberally construe the requirements for a degree from an approved college or university, as required for registration as a law student; and in particular cases it will entertain applications for registration of law students who do not possess college degrees, provided that no such application will be considered unless it appears (a) that applicant's pre-legal education will meet minimum requirements of Association of American Law Schools, of two full years of college work, satisfactorily completed, under a normal or accelerated college program; (b) that applicant has attended college for at least two calendar years; and (c) that every such application is accompanied by the favorable recommendation of the law school dean of the law school in which applicant proposes to matriculate, to the effect that he is satisfied the applicant is qualified to begin his law studies as a candidate for its law degree.—Board rule of Jan. 28, 1942.

The Board sanctioned the combined course of academic and legal training to enable students, by three years of college study and three years of law school study or their accelerated equivalents, in the same or different approved institutions, to obtain a college and a law degree.—Board rule of Jan. 30, 1942.

RHODE ISLAND—If an applicant has successfully completed all courses to the close of the first term of the final year of law study, is or intends to become an actual resident of the state upon completing his law course or upon discharge from service in the armed forces, and meets all other requirements except that he has not completed the six months' clerkship, he may take the bar examination if he satisfies the examiners he is likely to be in active service in the armed forces before the date of the examination next succeeding the one for which application is made; *provided* "that the above modifications of requirements shall affect only permission to take the bar examination, and the admission of any applicant to the bar shall not be moved until he shall have in all respects complied with the rules and regulations of this Court and of the Board of Bar Examiners in force prior to the modifications hereby made."—Court order of March 11, 1942.

SOUTH CAROLINA—The Court has provided that any person subject to call into the armed forces or who is in such service, by complying with all other provisions, may take bar examination at times other than in May and November, the time of holding such examination to be determined by Board of Examiners.

TEXAS—In its new rules adopted in October, 1941, Texas extended for one year beyond an honorable discharge from military service the period within which applicants can begin taking their first bar examination or any additional examinations to which they would be entitled under the rules.

UTAH—The degree of LL.B. granted by any law school approved by the American Bar Association will be accepted as meeting the legal educational qualifications for admission to the bar of the State of Utah notwithstanding that some concessions will be made in granting the degree. The examiners were authorized to hold periodical special examinations to accommodate applicants entering military service, but it is provided the results of such special examinations will not be announced until the applicants have entered the service prior to the regular examination, and if such applicants are not inducted into the military service they must take the regular examination.—Board of Commissioners rule of Jan. 23, 1942.

VERMONT—Graduation from an approved law school will be considered as meeting the requirements as to law study, even though the law course has been completed in a shorter period of time.—Court order of Jan., 1942.

WASHINGTON—The date for the bar examination has been advanced from September to June 23-25, 1942.

WEST VIRGINIA—The March bar examination was postponed to June.

WISCONSIN—The date for the bar examination was changed from July to June 16.

WYOMING—The date for the bar examination has been advanced (probably to June).

Action on a Law School

The provisional approval granted on September 30, 1941, to the Southeastern University School of Law, Washington, D. C., was withdrawn by the Council of the Section of Legal Education and Admissions to the Bar, at its March meeting, the withdrawal to be effective June 30, 1942.

Two New Resolutions on Standards

In May both the Executive Committee of the Association of American Law Schools and the Council of the Section on Legal Education of the American Bar Association held meetings in Philadelphia, and, as a result of a uniform policy agreed upon, adopted the following resolutions which are substantially identical in their provisions regulating the granting of residence and hour credit for students entering military service:

Resolution of the Association of American Law Schools

WHEREAS the Association of American Law Schools at its annual meeting in December, 1941, adopted certain resolutions authorizing its members to relax their requirements for residence and hour credit toward their degrees in the cases of students called for service under the Selective Service Act or entering the armed forces of the United States or any co-belligerent during the academic year 1941-1942 and further conferred power on the Executive Committee of the Association to relax or restrict the said privileges as to years subsequent to the academic year 1941-1942.

NOW THEREFORE BE IT RESOLVED that effective with the summer session of 1942 and during the continuance of the present war any student in attendance at a member school called for service under the Selective Service Act or who enters the armed forces of the United States or of any co-belligerent after having completed at least one-half of the classroom work of the semester, quarter or session in which he is then registered and whose cumulative scholarship record at that time as evidenced in previous final examinations, if any, is equal to the average required for graduation, may in the discretion of the member school be granted residence and hour credit for the full work of that semester, quarter or session, provided that (1) he shall have furnished satisfactory evidence that he entered into service as aforesaid within a reasonable time after he withdrew from the school, and (2) that as established by his record of classroom attendance, recitations and interim or mid-term examinations up to the time of his withdrawal, his work in the semester, quarter or session in which his enrollment terminated has been found to be satisfactory. This resolution shall apply during the student's first semester, quarter or session in the law school as well as in any later period.

RESOLVED FURTHER that all action of member schools under this resolution be reported to the Executive Committee at the end of every semester, quarter or session.

Resolution of the Section of Legal Education

RESOLVED that during the continuance of the present war any student in attendance at an approved school called for service under the Selective Service Act or who enters the armed forces of the United States or of any

co-belligerent after having completed at least one-half of the classroom work of the semester, quarter, or session in which he is then registered and whose cumulative scholarship record at that time as evidenced in previous final examinations, if any, is equal to the average required for graduation, may in the discretion of the approved school be granted residence and hour credit for the full work of that semester, quarter, or session, provided that (1) he shall have furnished satisfactory evidence that he entered into service as aforesaid within a reasonable time after he withdrew from the school, and (2) that as established by his record of classroom attendance, recitations, and interim or mid-term examinations up to the time of his withdrawal, his work in the semester, quarter, or session in which his enrollment terminated has been found to be satisfactory. This resolution shall apply during the student's first semester, quarter, or session in the law school as well as in any later period.

RESOLVED FURTHER that any approved school taking action under the foregoing resolution shall report the same to the Section's Adviser at the end of every semester, quarter, or session.

RESOLVED FURTHER that the minimum requirements of the Council for a law degree, to wit, 1,080 classroom hours and 90 weeks of classroom attendance shall not apply in the case of any student coming within the aforesaid emergency rule to the extent that credit for non-attendance is given thereunder.

New York Joint Conference on Legal Education Urges Maintenance of Standards

At a meeting in New York City on April 24, the New York State Joint Conference on Legal Education considered the statements and recommendations[1] issued in March by the Association of American Law Schools and the American Bar Association Council on Legal Education and Admissions to the Bar, and adopted unanimously the following resolution:

Resolution of New York State Joint Conference on Legal Education

The sacrifices our young men are now making in entering the armed services cause all to wish to reduce the hardships on them. For young men still in law school when called into service, there is a natural desire on the part of the schools and the bar admission authorities to make easier their graduation and their admission to the bar, even at the cost of relaxation of standards achieved after a long struggle.

Whether such concessions shall be made to these men must, however, be determined in the light of the public interest and of the benefit to the men

[1] XI The Bar Examiner 32 (April, 1942).

themselves in the long run. These considerations, we believe, call for substantial adherence to the standards of preparation for and admission to the profession, found advisable in peacetime. Any appreciable relaxation of these standards means that men inadequately trained and tested will be held out to the public after the war as fully qualified to practice law, although their capacity to render legal services to the public will be materially reduced. Moreover, men who are allowed to enter the profession with insufficient preparation and testing will discover their inadequacy in practice, to their own disappointment and bitterness, as well as to the injury of their clients. It is false generosity to make such deceptive gifts.

After the war, readjustment will be difficult for many, including those who, prior to entering the Army and Navy, were studying for the bar. The law schools and the bar admission authorities may at that time be of substantial service to these men offering refresher courses or other training appropriate to their needs, and by giving examinations at convenient times, but it is not the part of either wisdom or kindness to sacrifice now the standards of the profession for a supposed benefit to the law students which is wholly illusory.

First, the scholastic prerequisites qualifying for the privilege of taking bar examinations should not be materially relaxed.

Second, no rule should be adopted which permits an applicant to be admitted to the bar merely upon producing a law school degree and establishing moral fitness.

Third, the standards to be met by examinations given should not be lowered or relaxed.

Fourth, provisions for more frequent examinations or special examinations may properly be made.

Fifth, the residence requirements may properly be shortened as to men called into service or whose call is imminent.

Sixth, liberal interpretations of existing rules may fairly be made in justifiable cases of individual hardship, each case to be considered upon its own merits.

At its meeting on June 12, the New York Joint Conference also unanimously approved the two resolutions which were adopted in May by these same accrediting agencies and which are published in this issue.

1942 Review of Legal Education

The Section of Legal Education and Admissions to the Bar of the American Bar Association has published data regarding law schools and bar admission requirements, similar to the material formerly in the "Annual Review of Legal Education." Copies of the pamphlet may be obtained by writing to the American Bar Association, 1140 North Dearborn Street, Chicago, Illinois.

waiving the requirement of six months of study in a Vermont law office provided the applicant is a graduate of an approved law school and successfully passes the bar examination. No definite court order has been issued.

Bar Examinations Militaire

Emergency Systems of California and Illinois

The California Committee of Bar Examiners has adopted a rule permitting general applicants "who are in the armed services of the government of the United States, or of the State of California, at the time of the 1942 bar examination," to take the bar examination "where stationed." Mr. Austen D. Warburton, Deputy Secretary of the California Committee, reports that after June 15, the deadline set for applications under this plan, he had an inquiry from a potential applicant in Alaska and the wife of a potential applicant in India endeavored to arrange for her husband to take the examination where he is stationed.

The customary bar examination will be given simultaneously in Los Angeles and San Francisco on September 14, 15 and 16, and the Committee has approved the following rules and regulations for conducting the examination at the same time at other points under the emergency procedure:

1. The applicant shall be in all other respects qualified as a general applicant.
2. The applicant shall arrange with his commanding officer for the taking of the examination, in the manner prescribed herein.
   (a) Upon reasonable notice to the Committee that arrangements have been made by the applicant with his commanding officer for the administration and taking of the examination at the place where the applicant is stationed, the examination in six sealed unit packages (one for each morning and afternoon session), appropriately marked and labelled, shall be sent to the commanding officer of the applicant, and shall be opened only at the times specified thereon.
   (b) The examination shall be administered by the commanding officer, or, under the direction of such officer, by a proper examining board, in accordance with the forms and instructions to be furnished the commanding officer by the Committee. (See Forms 1 and 2.)
   (c) Upon completion of each examination unit, the commanding officer, or the examining board, shall place the same in a package and seal it, and upon completion of the entire examination all units shall be returned by the commanding officer to the Committee of Bar Examiners of The State Bar of California, by registered mail.
   (d) The applicant shall make and sign the affidavit designated as Form 3.

Form 1 PRECEPT

Place_____ Date_____

From: Commanding Officer_____

To: _____

Subject: Convening Supervisory Law Examining Board, for Admission to Practice Law in the State of California.

1. Pursuant to authority vested in me by the Committee of Bar Examiners of The State Bar of California, a board to supervise the written professional examination, preliminary to determination by the Committee of Bar Examiners of The State Bar of California of the applicant's fitness for admission to the bar of that State, is hereby ordered to convene at_____ (or, on board the U.S.S._____), at_____o'clock, a. m., on September 14, 1942, for the examination of_____.
2. The board will consist of yourself as president, and of_____ _____and_____as members. _____will act as recorder.
3. The examination in six sealed unit packages, one for each morning and afternoon session, is to be held in your exclusive possession and the seals are to remain unbroken until the time specified on each unit package. At the time specified thereon, the unit package is to be given to the applicant and the applicant shall be permitted to answer the questions contained therein. At the time specified on each package unit for the completion of that unit, you will take the examination questions and answers from the applicant and place the same in the proper package provided for this purpose, and seal the package.

   The applicant shall receive no assistance, advice, or information from any source whatever during the time that he is taking the examination.

   If the applicant is called upon by the commanding officer to perform emergency duties arising from the war situation, as soon after the termination of the emergency duties as the commanding officer deems proper, the applicant shall resume the taking of the examination, and the time during which he was so occupied with such emergency duties, not exceeding the balance of the time originally allowed for the examination, shall be added to the time remaining for the completion of the examination, but in no case is the examination to be completed later than September 20, 1942.
4. Upon completion of the examination, the appended certificate signed by each member of the board will be attached to the papers. The board will forward the papers by registered mail in a sealed envelope to the San Francisco office of the Committee of Bar Examiners of The State Bar of California.
5. The procedure of the board will be in accordance with the attached forms and, where applicable, with Naval (Military) Courts and Boards.

Form 2 RECORD OF PROCEEDINGS OF A LAW EXAMINING BOARD FOR ADMISSION TO THE BAR OF THE STATE OF CALIFORNIA

Convened at_____ in the case of_____. Date_____
(name and rank)

Place_____ Date_____

The board met at_____ a. m., September 14, 1942, pursuant to orders, original prefixed.

The proceedings of the Board were conducted in accordance with the procedure governing naval (military) examining boards in so far as applicable.

The examination was completed_____.

The examination questions and the candidates' answers are appended hereto.

(Rank) President	(Rank) Member	(Rank) Member and Recorder

CERTIFICATE OF EXAMINERS

The candidate stated that he desired to take an examination to determine his fitness for admission to the practice of law in the State of California, which examination would be to the same extent and effect and with like consequences as if he did personally appear before the regularly constituted Committee of Bar Examiners of The State Bar of California.

It is hereby certified:

That the examination was received in packages sealed with unbroken seals.

That none of the examination unit packages for any of the sessions was opened by any person or placed in the possession or control of the applicant, or any person other than a duly authorized member of the examining board, prior to the dates and times as set forth on the face of such examination unit packages.

That the units of the examination were taken from the applicant at a time not later than that specified on the face of each unit package.

That so far as known to the undersigned the applicant received no assistance, advice, or information from any source whatever during the time the applicant was taking the examination.

That the examination units were placed in sealed packages immediately upon completion thereof.

That the examination papers in said sealed packages were mailed to the San Francisco office of the Committee of Bar Examiners of The State Bar of California, by registered mail, as soon as possible after completion of the entire examination.

(Rank) President	(Rank) Member	(Rank) Member and Recorder

Form 3 AFFIDAVIT OF APPLICANT

_____, being duly sworn, deposes and says: That he is an applicant for admission to practice law in the State of California and has taken the California State Bar Examination given at_____ under the supervision of_____, on September 14, 15, and 16, 1942; that he has received and returned the examination unit packages at the proper times and dates specified thereon; and that he has received no assistance, advice, or information from any source whatever during the time that he was taking the examination.

Dated this_____day of September, 1942.

_____

(Rank)

THE ILLINOIS PLAN

The Illinois State Board of Law Examiners is permitting applicants in the armed forces to take the bar examination in the law office of an attorney in the vicinity of their respective posts or camps. Under this system, applicants who can arrange leave to take the examination at their posts advise the board in advance and the secretary of the board arranges for the examination to be given in the office and under the supervision of the attorney. The bar examination questions are sent to the attorney in five envelopes,—questions for each session being in a separate envelope, and the applicants receive the questions on the same dates and at the same hours as those taking the bar examination in Chicago. At the conclusion of the fifth session, the attorney places the answer books in an envelope provided for them and mails them to the board. The Illinois Board of Law Examiners remains in session following each bar examination until the grading of all papers is completed and the papers from the applicants in the service are graded along with those of the other candidates.

An order of the Supreme Court adopted on January 23, 1942 (The Bar Examiner for April, 1942, page 38), permits applicants who have previously failed to pass the bar examination (in September or December, 1941, or thereafter) and who enter the armed forces before the examination next following such failure, to be re-examined only in the subjects on which they failed.

It also permits applicants about to enter the armed forces to be examined upon the subjects enumerated in Rule 58 which they have taken in their law courses, provided they have satisfactorily completed at least two-thirds of the work required for graduation from law school. This is called the "Limited Subject Examination." The secretary of the board furnishes each applicant with a memorandum, which is given to him when he appears to take the examination at each session and which shows the questions, designated by numbers, on which he must write, i.e., numbers 4, 7, 10 at the first session; 12, 15, 17 and 20 at the second session, etc.

Lawyers Per Unit of Population

States	Number of Lawyers 1920	Number to each 100,000 Pop. 1920	Number of Lawyers 1930	Number to each 100,000 Pop. 1930	Number of Lawyers 1940	Number to each 100,000 Pop. 1940	Rank According to Number of Lawyers per Unit of Pop. 1940
Alabama	1,416	60	1,598	60	1,636	58	49
Arizona	443	133	542	124	569	114	21
Arkansas	1,338	76	1,512	82	1,546	71	45
California	6,745	197	10,109	178	10,839	157	8
Colorado	1,539	164	1,563	151	1,454	129	17
Connecticut	1,339	97	1,886	117	2,245	131	16
Delaware	171	77	207	87	248	93	35
Dist. Columbia	2,415	552	3,477	714	4,821	727	1
Florida	1,137	117	2,615	178	2,739	144	10
Georgia	2,531	87	2,813	97	2,689	86	38
Idaho	652	151	580	130	521	99	31
Illinois	8,843	136	11,770	154	13,422	170	7
Indiana	3,307	113	3,818	118	3,894	114	22
Iowa	2,494	104	2,634	107	2,869	113	24
Kansas	1,676	95	1,832	97	2,002	111	25
Kentucky	2,382	99	2,639	101	2,661	93	36
Louisiana	1,206	67	1,632	78	1,900	80	41
Maine	801	104	763	96	800	94	34
Maryland	2,118	146	2,782	171	3,557	195	3
Massachusetts	4,954	129	6,940	163	7,435	172	6
Michigan	3,037	83	4,507	93	5,339	102	30
Minnesota	2,613	110	3,145	123	3,083	110	26
Mississippi	1,158	65	1,249	62	1,304	60	48
Missouri	4,506	133	5,560	153	5,373	142	11
Montana	875	160	714	133	658	118	20
Nebraska	1,528	118	1,751	127	1,782	135	13
Nevada	230	297	231	254	206	187	5
New Hampshire	379	86	363	78	393	80	42
New Jersey	3,918	124	6,633	164	7,826	188	4
New Mexico	342	94	350	83	388	73	44
New York	18,473	178	27,593	219	35,210	261	2
North Carolina	1,585	62	2,389	75	2,443	68	46
North Dakota	629	97	600	88	536	83	40
Ohio	6,485	113	8,886	134	9,283	134	14
Oklahoma	2,818	139	3,514	147	3,322	142	12
Oregon	1,424	182	1,595	167	1,586	146	9
Pennsylvania	6,784	78	8,093	84	8,389	85	39
Rhode Island	515	85	675	98	738	104	29
South Carolina	989	59	1,135	65	1,161	61	47
South Dakota	700	110	743	107	626	97	32
Tennessee	2,040	87	2,484	95	2,656	91	37
Texas	5,323	114	6,591	113	7,768	121	18
Utah	527	117	603	119	628	114	23
Vermont	344	98	331	92	345	96	33
Virginia	1,981	86	2,419	100	3,219	120	19
Washington	2,237	164	2,285	146	2,307	133	15
West Virginia	1,326	91	1,554	90	1,467	77	43
Wisconsin	1,978	75	2,600	88	3,405	108	27
Wyoming	268	138	300	133	266	106	28
Total	122,519	116	160,605	131	179,554	136	—

Nebraska Supreme Court Upholds Inherent Power to Prescribe Bar Admission Requirements

An interesting decision, handed down by the Supreme Court of Nebraska on June 5, 1942, in State ex rel. Ralston v. Turner, adds another valuable opinion to the bibliography on the inherent power of the court to prescribe requirements for admission to the bar and denies the right of the legislature to pass acts superseding court rules on the subject.

The rule challenged by the case was one adopted by the Nebraska Supreme Court in June, 1937, reading in part as follows: "A reputable law school within the meaning of this rule for admission to the bar is one on the approved list of the standardization agency of the American Bar Association, or, until July 1, 1940, any other law school now operating in the State of Nebraska receiving the approval of the Supreme Court."

The 1941 Nebraska legislature passed an act, known as L.B. 114 (Comp. St. Supp. 1941, Sec. 7-102) and effective March 12, 1941, which reads in part as follows: "All resident law schools now organized, operating and existing within this state are hereby declared to be reputable law schools; and graduates of any such law school are hereby declared to be eligible to take and may take the bar examinations hereinbefore provided for without discrimination; and upon passing such examinations, they shall be admitted to the practice of the law at the bar of this state."

A student, who began the study of law in an unapproved law school in 1938 and was graduated therefrom in 1941, applied for admission to the bar of Nebraska upon his graduation and his application was refused by the Secretary of the Nebraska State Bar Commission and Clerk of the Supreme Court. He then brought action to obtain a writ of mandamus against the Secretary to compel acceptance of his application to take the bar examination.

The syllabus of the court in this case is quoted below; the entire opinion may be found in 4 N. W. (2d) 302.

Syllabus of the Court

1. The character of police regulation, whether reasonable, impartial and consistent with the Constitution and the state policy, is a question for the court.

2. When the legislature passes an act which plainly transcends the police power of the state, it is the duty of the judiciary to pronounce its invalidity.

3. Territorial courts are legislative courts, created in virtue of the national sovereignty, under Clause 2, Sec. 3, Art. IV of the Constitution of the United States.

4. Establishment by Constitution of judicial department conferred authority necessary to exercise its powers as coordinate department of government. Const., Art. V, Sec. 1.

5. "The term 'inherent power of the judiciary' means that power which is essential to the existence, dignity and functions of the court from the very fact that it is a court." In re Integration of the Nebraska State Bar Association, 133 Neb. 283, 275 N. W. 265.

6. "The supreme court is vested with the sole power to admit persons to the practice of law in this state and to fix the qualifications for admission to the bar." State v. Barlow, 131 Neb. 294, 268 N. W. 95.

7. "The supreme court of this state has the inherent power to regulate the conduct and qualifications of attorneys as officers of the court." In re Integration of the Nebraska State Bar Association, 133 Neb. 283, 275 N. W. 265.

8. Section 25, Art. V of the Constitution of Nebraska contemplates that the supreme court may promulgate rules of practice and procedure for all courts, and does not limit the judicial power with respect to making rules, setting forth the qualifications for applicants to take examinations for admission to the bar.

9. Section 27-210, Comp. St. 1929, contemplates that the judges of the supreme court shall, during certain periods of time, revise general rules of the court and adopt additional rules, necessary or appropriate for the dispatch of business, and does not relate to the supreme court fixing qualifications for applicants to take examinations for admission to the state bar.

10. Sections 27-231, 27-233, 27-235, Comp. St. Supp. 1939, provide in part that the supreme court shall have the power to promulgate general rules of practice and procedure, and do not relate to the supreme court fixing qualifications of applicants to take examinations for admission to the state bar.

11. The classification as contained in rule 3, adopted by this court, is not arbitrary, unreasonable and without rational basis and not violative of the relator's rights under the Constitution of the United States, in that such rule denies him the equal protection of the law, or deprives him of his property rights and liberty without due process of law.

12. The Fourteenth Amendment to the Constitution of the United States does not grant the right to practice law; nor is the right to practice law in the courts a privilege or immunity, within the meaning of the Fourteenth Amendment.

13. Where legislation from and after the adoption of the Constitution of 1875 until 1941 has not attempted in any manner to assert exclusive power to prescribe qualifications of applicants for admission to the bar, or to overrule any rule of the court relating to the qualifications of an applicant for admission to the bar, and the court has recognized that, within the limits of the police power, the legislature has prescribed minimum requirements for admission of an applicant to the bar; *held,* not to constitute acquiescence by the court that the legislature alone has the power to prescribe the qualifications of an applicant for admission to the bar.

14. Where a legislative bill constitutes an endeavor on the part of the legislature to go beyond the concept of minimum requirements of an applicant to take examination for admission to the bar and denies the judicial department the power to place higher qualifications than those specified in the act, and, in fact, usurps the power of the judiciary in such respect; *held*, such legislative act is unconstitutional.

15. Even if the subject of the legislation was a proper exercise of legislative power, the legislative bill in the instant case is unconstitutional and void in that it definitely freezes the class.

Report of the Secretary

The chief concern of the Executive Committee and the members of the Conference "since Pearl Harbor" has been the maintenance of the standards of legal education and admissions to the bar for which we have striven so hard these past ten years.

World War II finds the examiners much better prepared, than they were in World War I, to cope with the heavy pressure exerted by the public and by the law students to admit to the bar immediately those candidates entering, or about to enter, the armed forces of the United States, whether those candidates are fully qualified or not. In this war we have the active and joint effort of the Association of American Law Schools, the American Bar Association's Section of Legal Education, and the National Conference towards high standards of scholarship and high standards of bar admission, and it is gratifying that so far very few states have permitted any material relaxation in requirements for entrance to the legal profession. The definite trend is to cooperate with potential applicants by offering additional bar examinations rather than by lowering requirements. It is true that seven states have inaugurated the "diploma privilege" in the case of applicants entering the service, but only two of those jurisdictions have made this provision a blanket rule to continue "for the duration"; the other five states granted such a privilege only to those applicants graduating in June, 1942, or qualifying shortly thereafter.

The Conference is trying to record all court or board action concerning legal education and bar admission requirements, and asks the continued cooperation of examiners in reporting promptly new provisions or efforts to effect changes. A summary of "emergency rules and orders" so far adopted was published in The Bar Examiner for April and supplemental information appears in the current issue.

During the fiscal year ending June 30, 1942, the Conference made 293 character investigations, and the total number of investigations made since the service began in June, 1934, passed the second thousand mark, the accrued number of investigations for the eight years being 2,003. The peak year was

1939-1940 when 342 investigations were made. The number of reports prepared in 1940-1941 was 303, or 12 percent less than for the year ending June 30, 1940. While this past year the addition of Wisconsin brought the number of jurisdictions using the service up to thirty-five, increased fees and requirements for admission on motion and certain war conditions have brought a further yearly decline of three percent in the number of investigations requested. In 1934 there was a peak of 775 total admissions on motion; in the seven years following that peak the decline has been gradual, and for the year 1941 the total for the United States dropped to 401. In the future the war will probably cause a continued reduction. This is substantiated by the fact that for the three months of April, May and June, 1942, the number of requests for character reports decreased 17 percent under the number requested during the same three months for 1941.

Although the number of reports requested is less, the character investigations themselves are becoming more difficult as the lawyers now migrating are usually older members of the bar with longer careers. Also, the war has caused older men, who have been out of the profession for some time, to return to it in the belief that there will now be ample legal work for all members of the bar. In addition the war is bringing home American lawyers from foreign countries. For example, the Conference is preparing reports on three attorneys who until recently practiced law in China.

The Conference continues to receive the fullest cooperation from the bench and bar, the teaching profession, and the public. Correspondence shows a wide and very live interest in the character investigation service and a deep appreciation of its value.

This past year the Conference made some distribution of bar examination questions to the examining boards and urges the various state board secretaries to continue to send to the office of the Conference fifty copies of each bar examination.

Consideration of the possibility of a standard bar examination has been postponed. It seemed advisable to exert all available energies towards the maintenance of standards, and to let any plans for standardization receive study after the distractions and added work caused by the war are at least reduced.

Respectfully submitted,

JAMES E. BRENNER, *Secretary.*

Directory of Bar Examiners

A complete Directory of Bar Examiners was published in The Bar Examiner for April, 1941. As there have not been many changes in personnel since then, it seems unnecessary to republish the Directory in complete form at this time. However, as the bar examiners, judges, and law schools do

OFFICERS OF THE NATIONAL CONFERENCE

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New York, N. Y.

Secretary
JAMES E. BRENNER
Palo Alto, Calif.

Executive Secretary
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Executive Committee

THE OFFICERS AND
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D. NIEL FERGUSON, Ocala, Fla.
STANLEY T. WALLBANK, *Ex-officio*, Denver, Colo.

The Annual Meeting

THE thirteenth annual meeting of the Conference was held on August 24 in Chicago, in joint session with the Section of Legal Education and Admissions to the Bar of the American Bar Association. In the address by the Chairman, which is published in this issue, Mr. John Kirkland Clark of New York stressed the urgent need for the continued training of liberally educated lawyers who will serve as leaders in preserving the peace for which our country is now fighting; Mr. Ralph F. Fuchs, Executive Secretary of the Committee on Legal Personnel under the Civil Service Commission, presented in detail the work of the government in examining attorneys for federal appointments; and Mr. Herbert W. Clark, Past Chairman of the California Committee of Bar Examiners, presented a strong challenge in his paper, "Standards of Admission to the Bar—Can They Be Maintained?"

GENERAL discussion indicated clearly grave concern over the future of the law schools and the very future of the legal profession itself. In his address at the afternoon session, Dean Albert J. Harno, Chairman of the Section of Legal Education, expressed the sentiment forcefully when he said: "These are dark days for the schools—days in which the values we prized in normal times may easily lose their significance. It is a period in which our adherence to the criteria we acclaimed in better days will be put to a rigorous test. I have wondered sometimes whether through the years some of those criteria have not become stereotyped and barren. Of this, though, I am certain, the substance and spirit of our standards are real and they constitute values that are precious. Their substance was real before the war, and it is no less real now. It would follow, then, if it was indefensible to send a poorly qualified lawyer into society before the war, it likewise is indefensible now. This is the issue on which we must stand firm."

Standards of Admission to the Bar: Can They Be Maintained?

By Herbert W. Clark

*Former Chairman, California Committee of Bar Examiners**

Personal preference and the authority of the Executive Secretary of the National Conference have prompted me to change the title of my discussion from the affirmation "Maintain the Standards of Admission to the Bar", as it appears in the printed program, to the question "Standards of Admission to the Bar: Can They Be Maintained?" The change has been made in order to throw into relief at the outset a question that has been insistently bothering at least a few practicing lawyers since shortly after Pearl Harbor, when some of our law teacher friends who represented a sound tradition of professional teaching, together with a good many judges, began to perform some queer antics with respect to standards for future lawyers and also to show an inclination to insist that others follow their lead.

Notwithstanding several signs of repentance that have become visible since December, 1941, it is fair to ask the question, Can the Standards of Admission to the Bar Be Maintained? Upon the record, in view of what has happened, and after some reflection, my regretful answer is, Probably not. And now, assuming myself to be under cross examination, I shall proceed to explain and qualify my answer.

For slightly more than fifty years the American Bar Association, aided from time to time during forty years by the Association of American Law Schools, has been struggling slowly onward and upward toward admittedly desirable minimum requirements of admission to the bar.[1] In 1892 the American Bar Association adopted a resolution recommending that the power of admission to the bar in each state should be lodged in the highest courts of the state and that the examination of candidates should be referred to a permanent commission appointed by the court. It was also resolved that at least two years of law study should be required before admission to practice.

In 1895, forty-eight years ago, the Section on Legal Education and Admissions to the Bar recommended the adoption of a resolution

> "that the * * * Association approves of the lengthening of the course of instruction in law schools to a period of three years and that it expresses the hope that as soon as practicable a rule will be adopted in each state which will require candidates for admission to the bar to study law for three years before applying for admission."

*Address delivered at the Annual Meeting of The National Conference of Bar Examiners in Chicago on August 24, 1943.

(1) The most convenient secondary source of information about the history of the struggle for better standards is George Harris Smith's address of August 19, 1930, of which I have made extended use. See 7 A.L.S.R. 1.

In 1897 the American Bar Association declared in favor of a three-year law course and at least a high school education. It has been said that this declaration may properly be regarded as the beginning of the present standards of the American Bar Association. Eight years later the Section disapproved of the diploma privilege and approved three years of law study for graduates of law schools and four years for others. In 1916 the Standard Rules for Admission to the Bar were adopted, and in 1918 the American Bar Association approved the minimum requirement of two years of college.

In 1921 a most vital step was taken. Under the chairmanship of Elihu Root, comprehensive standards of admission to the bar were presented and approved by the Section and by the American Bar Association.

A year after the adoption of these resolutions a conference of delegates from state and local bar associations endorsed these standards. In the same year the Bar Association authorized its Executive Committee to take such action as would enable the Council to organize an executive force adequate to carry out its duties, which resulted in the creation of the position of adviser. The record indicates that following that direction an administrative staff was organized that permits a systematic, regular and continuous method of performing the duties placed upon the Section by the American Bar Association.

It may be fairly said that by some time in 1922 the struggle for better and higher standards of admission had been so successful that a pronounced trend had developed in the better law schools of the country toward four years of law study instead of three and toward requiring an A. B. degree, or its equivalent, as a condition of being permitted to study law. Time after time leaders in the law teaching profession publicly called attention to the increasing complexity of social and economic life and to the consequent necessity of lawyers being better equipped to understand the times in which they live. This it was claimed could not be accomplished in the traditional three-year law course: at least four years would be required. And so some 360 hours of classroom recitation, or its equivalent, were to be added to the standard 1080 hours. The agitation for four years of law study in the full time law schools became so strong that many practicing lawyers looked forward to the time when their sons, if they intended to practice law, would be required to devote four years to law study in a full time school after an intensive period of years in college with studies there pointing directly toward law study. The theory that the prelegal years should be supervised had gone even to the extent, in some quarters, of outright advocacy of requiring students who intend to follow the law, to study economics, sociology, psychology, accounting, and several other subjects. Some more or less serious suggestion had been made that some of or all these subjects should be taught in the law schools themselves and as a part of the law curriculum.

Without going into the merits of the question of what subjects a prospective lawyer should study during his college years or how many years he should study them, it may be safely said that prior to December 7, 1941, the whole trend of education for the law was in the direction of better college education and better and longer legal education. The three year course of approximately twenty-seven months was an established fact in the full time law schools and the movement was well on the way to require an A.B. degree or its equivalent as a condition precedent to studying law. Certainly there was no body of informed opinion favoring less than the three-year-twenty-seven month curriculum for the study of law.

A law course of a minimum of three years and the trend toward the requirement of an A.B. degree as a condition of beginning the study of law were so firmly established that no one, or if that is too broad a statement, certainly only a few practicing lawyers in those times immediately before December 7, 1941, would have thought that any competent law teacher would even for a moment consider attempting to prepare students to practice law in less than the usual three years of approximately nine months each. Certainly the practicing lawyer had a right to think, and probably did think, that the next step would be the lengthening of the law course to a minimum of four years.

The trend toward better and higher standards of admission was so clearly discernible that on August 25, 1936, the Chairman of the Section on Legal Education, thinking perhaps that he heard "the murmur of the world" was prompted to state—

> "The gradual adoption of the standards of legal education presented by the American Bar Association in 1921 continued steadily through the country. The progress is cumulatively rapid at the present time.
>
> We have three-fourths of the lawyers of the country now in states which are substantially enforcing or about to enforce standards which conform to the recommendations of the American Bar Association. This year and last, state after state has tumbled into the column. * * * * * * * *
>
> Today that battle is, for all practical purposes, one of history."

That was seven years ago.

Six years ago at Kansas City, the same Chairman of the same Section, after stating that the standards of the American Bar Association are two years of college before admission to a law school, and graduation from a law school requiring three years of study, and having a certain number of special conformities in the way of library, numbers of full time teachers, etc., told his hearers that,

> "* * our problem is first of all to finish the task of establishing these minimum standards throughout the United States. It is moving rapidly; I have no fear of the outcome. The day has come when the states * * * * which do not conform will be almost forced to conform by the fact that students graduating or studying in unqualified schools are beginning to flock to the states whose standards are high.

The consequence is that that particular battle is to a large degree, from my point of view, won, although the flags are not yet hoisted."

A rapid study of the addresses made in past years to this Conference, to the Association and to the American Bar Association, discloses that, with rare exceptions, no real thought was entertained that there would be any recession from the level of standards thus attained. But here and there the voice of a realist was heard.

On September 30, 1941, before this Conference at Indianapolis, one of those realists said that "The fight for standards has been a long and at times a bitter one." He went on to remind you that—

> "The controversy has raged ever since 1900, when the Association of American Law Schools was organized and announced as its chief objective the improvement of legal education in American law schools. The battle was given impetus and the issues were yet more clearly drawn when in 1923 the American Bar Association created its Council of Legal Education and gave it authority and support. In these years much progress has been made, though the fight is far from over. The paramount question today before all who are interested in the advancement of legal education is whether the gains that have been made can be maintained; whether the advance is to be slowed down; whether, indeed, the movement is on the verge of staging a retreat."

Without intending to follow the practices of the psychological school of biographers, one may be permitted to guess that the realistic Indianapolis speaker gave to himself a negative answer to his tripartite question. If he did, he certainly anticipated what happened later to the standards of which he so eloquently spoke at Indianapolis.

What did happen after September 30, 1941? The story is interesting to any practicing lawyer because it shows what is likely to happen even to the most sincere men when, taken by surprise, they are subjected to material pressure, appeals to patriotism, and the natural desire to soften the effects of a blow they see falling upon those in whom they are both professionally and personally interested.

Well, the Association of American Law Schools held a meeting at Chicago on December 29-30, 1941, twenty-two days after Pearl Harbor you will observe. The proceedings of that meeting appear at pages 1411 to 1463 of Volume 9, Number 12 of the American Law School Review, and they make most interesting, if somewhat irritating, reading. The substance of the question under discussion was whether or not and to what extent departure during the emergency created by the war should be permitted from the standard of the American Law School Association, which reads:

> "A full time school shall require of its candidates for the first degree in law residence study of law during a period of at least ninety weeks and the successful completion of at least 1080 hours of classroom instruction in law."

And then the discussion began. Probably no one who was not present during the meetings should attempt to characterize the condition that existed; but certainly the Chairman of the Council of Legal Education of the American Bar Association may be permitted to tell how the proceedings impressed him. He was called upon because, as the presiding officer stated, he might have "a suggestion somewhat different from any that has been made thus far," and he said:

> "I will say, frankly, to you that all of the members of our Council are greatly alarmed by the seeming almost panic by which these various problems are being treated by the courts, the bar examiners and by many of the law school faculties. Frankly we do not believe that we have the facts as yet, two or three weeks after we have been in this war, upon which we can base a sound decision. We don't believe that a group as large as this can possibly agree upon the formula that will solve the problems which you think you are now facing and the many problems which you will face within the next few weeks."

At Detroit on August 25, 1942, the same Chairman of the Section of Legal Education in his opening remarks to the joint conference of the National Conference of Bar Examiners and the Section of Legal Education and Admissions to the Bar had this to say about what happened at the meeting of the American Law School Association in December, 1941:

> "The Association of American Law Schools met in Chicago shortly after Pearl Harbor and voted what we considered to be a very drastic relaxation of standards: a resolution under the terms of which a student could be granted his degree so long as he had merely started the third year of his law course at the time he entered the armed forces."

He did not attempt to soften the blow by telling that at the meeting in December, 1941, there were a few who stood openly and avowedly for the maintenance of standards even during the emergency or that one or two were cool-minded enough to realize, although they did not say precisely this in terms, that the war would inevitably result in some lowering of standards even if the standards were kept formally at their prewar level, or that there was at least one forthright person who made the challenging statement:

> "Now, what I say is, if we are going to have to lower our standards a little bit, let's do it like men. Let's not pretend we are not lowering them."

In August, 1942, at the joint meeting of the Section of Legal Education and Admissions to the Bar with the National Conference of Bar Examiners, Chairman Racine reported that—

> "The Section, feeling that the maintenance of standards was of even greater importance because of the complex problems that will face the lawyers after the war, charted a bold course and agreed on three principles:
>
> (1) No blanket relaxation of any of the standards.
>
> (2) No relaxation of the requirements of two years of prelaw college work.

(3) No relaxation of proper examinations both in the law schools and by the bar examiners."

Chairman Racine made no mention of the quality of student that could be expected to be in attendance during the war, nor of the probable effect of the war upon the number of law teachers that would continue to teach. He did not raise a question concerning the possibility of maintaining exacting bar examinations if the quality of instruction as applied to the quality of student in attendance should result in producing a less well equipped applicant than the Bar Examiners had grown accustomed to meet. These questions were passed over not only by the Section but, generally speaking, by the law schools as well.

After fifty years of struggle for moderately adequate standards of admission, what was the effect of that almost miraculously quick December somersault coupled with the emotionalism of the moment? Well, almost immediately in at least one Pacific Coast State the Bar Examiners were subjected to pressure by some schools to follow the lead of the Association of American Law Schools and of some of the Eastern schools. Probably the same thing happened elsewhere. The next step, prompted perhaps by a little prodding from the business office, was for some of the schools to advocate the "streamlining," as it was called, of the conventional three-year-twenty-seven-month law course into twenty-four consecutive months. Perhaps the same thing happened elsewhere. Then some of the California schools began advocating the freezing of law school standards for the period of the so-called emergency. We have a system which requires that to be accredited by the State Bar as at least a passably good law school, a California school must have a percentage (originally 30 per cent) of success of at least 50 at January 1, 1944, 55 at January 1, 1945, and 60 at January 1, 1946, for applicants taking the bar examination for the first time during the preceding three calendar years, who are allocated to a school under the rules. At present the minimum requirement is 45 per cent success. In the name of and avowedly to further the war effort, several schools, among them a couple of schools of national standing, made earnest efforts to have the standard frozen at 45 per cent; but the effort failed.

Influenced by the clear evidence that the Association of American Law Schools was inclined to slow down its pace and no other organized group had cold-bloodedly probed the situation to the bottom, some California schools presented to the Bar Examiners in February, 1942, the question of whether or not the streamlining of the three-year law course into two calendar years would be approved. Most of the schools were represented by their deans. Only one dean supported the proposal on its merits, his theory being that probably it never had been necessary to devote twenty-seven months during three years to a law course—that twenty-four months was enough and that the product would be good.

The dean of a school of nationally recognized merit was asked by one of the Bar Examiners: "Just what objectives are to be gained by lessening the time,

other than the fact that there is a war?" The dean replied:

> "I was afraid somebody would ask me that, and I have asked myself the same question, and I will be honest again; I am not very sure that I have a very good answer to it; I don't know that I have any answer to it, in fact. I think to some extent that this is one of those things that is in the air. I remember that when President ..... came back from a meeting of university people in the East, and I think McNutt had addressed them, and as it was reported to us, he said to these university presidents, as no doubt I assume McNutt would say it, 'We are all in the war, and the tempo of everything has to be speeded up.' (I think some of us can hope that the tempo of some things is speeded up.) And these university presidents from all over the country got very much 'hepped up' over things. 'We are all working,' he said, 'seven days a week, twenty-four hours a day, and twelve months a year, and there is no time to be wasted by anybody, and we are just squandering time in our educational setup. It is a loafing job. We cannot have delay after delay. We have all got to get in and speed the thing up.' "

The dean of one of our best, although smaller schools, cited facts and figures from which the irresistible inference arose that the traditional law course could not be beneficially completed within two calendar years, and then discussed what was being done by some of the Eastern schools. As to that he said:

> "But I think in most cases the law school men have done it against their own good judgment, and under pressure from the trustees; because in those states they are not fortunate enough to have a statute of this sort which the dean of a law school can take to the trustees and say, 'I am sorry, we can't do it; here's a statute that does not permit us to do it.' I think many of those schools would not have done it if they had a statute with a provision of this sort."

The dean of another school whose merit is nationally recognized, had this to say:

> "In general, I agree heartily with Dean ..... here, and very emphatically with your suggestion that clearly we are interested not only in winning the war but winning the peace. That is where the bar comes in. The bar is, as has been said, going to have greater responsibilities than it has had since revolutionary times in guiding the destiny of the country. We will want able men to do it, and cognizance should be taken of the fact that if the war lasts long enough there is going to be a shortage of lawyers. This specific suggestion we have today has that in mind perhaps, but I agree with Dean ..... that it is the wrong thing to do. It would result in less well trained lawyers without any doubt."

And then taking up specifically the question of the effect upon standards of streamlining the law course, the same dean said:

> "I do not think it would do them any good. The bar would be seriously injured, it seems to me. There would be an inevitable relaxation of the standards of the bar examination; it would be almost necessary. It would have quite possibly an effect that would last for years and years on bar standards. This thing of getting standards of admission to the bar has taken

years of often vicious fighting. If you cut them down now it might take years and years to restore what has taken years of effort to build up. The single little bit of good that might come out of it is perhaps a few more students might be induced to take a crack at the law before entering service; I doubt if a great many men would."

The proposal to streamline the law course was rejected by the Committee of Bar Examiners because (1) its merit was not established; (2) it had no discernible tendency to aid the war effort, and (3) as it stood the California statute probably wouldn't have permitted it anyway.

But what was happening elsewhere was too strong to resist and the next step was that most of the California schools announced their intention to streamline the traditional three-year course. Thus the 1943 Legislature was confronted by an accomplished fact; and the Legislature gave way and amended the statute. So far as I am aware, not a single California law school raised its voice in public protest. And, incidentally, one of the strongest arguments heard in favor of streamlining was that the F.B.I. needed more law-trained men.

The California experience is not unique. Pretty much the same thing, differing only in the degree to which presumably sound standards were abandoned, happened throughout the country under the guise of aiding the war effort. The law schools weren't satisfied to make some concessions to students who were finishing in 1942. They went the whole distance in the face of the obvious fact that only those students who for one reason or another couldn't get into the armed services at all, would be the real beneficiaries of this novel method of waging war.

This spring, even after emotions had had an opportunity to cool off a bit, word reached the Pacific Coast from the East that due partly, it was feared, to the pressure of reduced enrollments caused by the war, many law schools were considering reducing admission requirements and that several had already done so. The report, dated October 15, 1942, of the dean of one prominent Eastern law school indicates that this is true. He says:

"There has been a great deal of discussion during the past year in the various law schools about the desirability of lowering requirements for admission in the hope that more students might be obtained."

Perhaps H. R. Huse was right when he wrote that "We are all born with an original sin—a fatal facility in repeating words without understanding them." The frequency with which standards of admission to the bar are loosely connected with the waging of war seems to indicate that he was right. An additional illustration may be found in the 1942-1943, 1943-1944 Law School Announcement of a great Eastern school. It is there said:

". . . beginning on June 15, 1942, and continuing for the duration of the war, the University has adopted an accelerated program for the purpose of enabling students to complete their academic training more rapidly. This change has been made in furtherance of the war effort. Accordingly,

in the Law School, the two-semester and the ten-week summer session arrangement has been replaced by a three-term plan continuing throughout the calendar year."

That the streamlining of the years of law study and the lowering of requirements in other directions (assuming the first to be a lowering of requirements) will affect only the very few who are in attendance and who intend to practice law, is pretty clearly indicated by even a quick reading of a short article entitled *"A Little History"* in the July, 1941, issue of *The Bar Examiner* in which the effect of World War I on the attendance at law schools is discussed, and the article by Dean Gulliver in the January, 1943, issue of the same journal, in which a considerable volume of interesting statistics of attendance is given. But it is not necessary to produce statistics to demonstrate what has happened, is happening and will probably continue to happen. The result of what was done prior to December 7, 1941, to advance standards and admission requirements, of what happened shortly after that date and is happening with more or less intensity throughout the country now with respect to all standards, was so inevitable, at least so it seems to some of us, that anybody who sat down in December, 1941, and thought calmly about the matter was sure to reach the conclusion that any weakening with respect to standards would tend to bring disaster even greater than the closing for the duration of the war of a good many of the law schools of the country.

Having for a period of years and through a long and bitter struggle adhered to the now traditional three-year-twenty-seven-month law course, with an appreciable tendency toward a four-year-thirty-six-month course, are the law schools of the country now going to tell the public that the schools were on a branch track all the time until the war compelled them to get on the main track by streamlining the accepted traditional law course into two calendar years, or even into twenty-seven practically continuous months? And what about the fourth year we formerly heard so much about? To the innocent bystander it would seem that either the law schools were wrong prior to December, 1941, or that they have certainly been wrong since that date. It is all well enough to talk about war necessity. But a good many of us are so dumb we will have to have explained to us in very simple words what the war has to do with the matter, except to the extent that it reduces attendance and revenues. But is that really relevant?

In addition to taking into the armed services all but a few of the men who would otherwise be studying law, the war has taken a goodly number of the law teachers into the Government service. The students who remain in the law schools and who may be expected to graduate and enter practice, if it is fair to visualize an average situation, are being and will be taught by law teachers whose individual burdens of work are vastly increased. This might not be so bad if it were not for the fact, at least if we can rely upon the accuracy of numerous statements made by law teachers and deans of law

schools, that the average quality of the students now in attendance is far below the average quality of students who were in attendance prior to Pearl Harbor. And this poor quality of students is being put through some law schools now in two calendar years, and through others in not to exceed twenty-seven months.

If the theories and trends of legal education which prevailed before Pearl Harbor were sound and right, perhaps a fair summary of the present situation may be expressed by saying that what has been done since December 7, 1941, permits a comparatively poor quality of law student, mentally harassed by war conditions and taught by a numerically inadequate and overworked staff of instructors, to complete in three academic years or twenty-seven practically continuous months, or even in two calendar years, a law course that a much better quality of student, adequately taught in the undisturbed atmosphere of peace, was not supposed to be able to complete satisfactorily in less than three traditional academic years. And so, in the name of war emergency, there may be foisted upon the public, the courts and the profession successive crops of poorly equipped, poorly taught lawyers to aid in solving problems whose importance, complexity and difficulty can not be equalled in history.

Unless the law teachers can demonstrate that they were wrong prior to December 7, 1941, it seems to follow fairly clearly that they are wrong now. If they are wrong now, it can hardly be expected that the errors committed will continue during the war only. Some practicing lawyers are waiting to hear some informed person contend seriously that the great number of men now in the service of their country will upon their return acquiesce in the restoration of a three-year twenty-seven-months law course for them, when those who continued to study law during the war were put through the course in twenty-four or twenty-seven practically continuous months. It doesn't sound very convincing to say that what is being done now is for war purposes only and after the war we will return to traditional methods or to something better. Privately endowed law schools may not have any difficulty in this connection. Tax supported law schools may look forward to considerable trouble.

And does anyone really contend that bar examinations can be kept up during the period of the war to the standard that existed before Pearl Harbor? Properly regarded, isn't a bar examination a step in the educational process in that its function is to compel a candidate to disclose whether and to what extent he has profited from his years of law study? If the law schools have lowered their standards, isn't it inevitable that the standards of the bar examinations will be lowered, however strong the attempt may be to keep them up? If it is true that the schools are now teaching a less able quality of student than they taught before Pearl Harbor, and are doing it in shorter time and with an inadequate teaching staff, it would seem to follow irresistibly that bar examination requirements will be weakened without any fault of the Examiners.

The picture thus presented is not a pleasing one. It is earnestly hoped that its painting was not caused merely by the "remembrance dear" of "what is lost." Upon the face of the record, considering it broadly, Bar Examiners who wish to maintain the standards of admission at the prewar level will have difficulty finding encouragement in the action of the law schools.

This is the line of thinking that prompted the change in the title of this discussion and the answer, Probably not, to the question, Can the standards of admission to the bar be maintained? Some law teachers have already become a trifle moody about the position legal education is in and they are inclined to be just a little bit irritable when discussing the situation. These, if one may say so, are good signs. If they persist throughout the period of the war, they may aid in preventing wholesale admissions on motion after the war, and meanwhile, in inducing the closest possible scrutiny of the wartime performance of American Bar Association approved schools, in formulating sound plans for refresher courses for returning servicemen, whose law study was interrupted or only just completed, and plans for those who wish to begin law study during the earlier years of peace. If the approved schools can be kept up to an exacting standard and plans can be shortly announced to provide at least reasonably adequate legal education for the first few years of peace, perhaps the current disintegration of standards of admission to the bar can be halted.

Address by the Chairman

JOHN KIRKLAND CLARK OF NEW YORK

It may seem strange to the casual onlooker, even though he be a lawyer and a member of our Association, that we should be gathered here to discuss legal education and admission to the bar. Attendance at our law schools has been, or soon will be, decimated. If the world conflict continues for another year a score, perhaps two score, will close for lack of students. Candidates for admission to the bar number only ten to twenty percent of what they were a dozen years ago. Why not have a moratorium on law schools and bar examinations?

The reasons why we keep on are basic. There is no more liberal education today than that which is received by a well-trained law student. Not only does he get a law school training far better than ever before in the history of law schools—covering little more than a century—but he is required, before he can enter law school, to have enough collegiate studies to indicate that he has a really basic training in the liberal arts—at least two years of study—and, in most cases, three other years of work of college grade.

You may well ask: "What is the use of liberal arts study when the world is afire with war and we need men trained for war duty first of all?" We must grant the force of that argument; we must, necessarily, win the war first! But

what good is it to win the war if we should again lose the peace and chance for the creation of a world of law and order and the abolition of future wars? *That* will be the task of liberally education men, a majority of whom will no doubt be lawyers. Lawyers, because of their training and their liberal education, are the natural leaders in a post-war world.

As Patrick Henry sagely remarked, "I know no way of judging the future but by the past," and when we consider the past of events years ago, we realize how fully liberally educated men are needed in this present crisis. And they will be needed even more in the trying years to come when peace has crowned our efforts.

It was reported, apparently officially, in a dispatch from Washington, published on Saturday, that General Eisenhower was asked last spring, by his brother who was working in the OWI in Washington, whether he should accept an offer to become President of Kansas State College. General Eisenhower's answer "Take it" was supported by his statement: "A large part of the kind of peace achieved after this war rests on the principles laid down in America's schools."

Some still wonder whether we are sufficiently affected by developments abroad to justify us in interesting ourselves in the future of the world outside these United States. I cite one illustration:

Ten years ago, we began, here, to be disturbed over the alleged "overcrowding of the bar". Surveys were made, one of the first, covering more than ten thousand lawyers in New York County, by a committee of the New York County Lawyers Association. In our metropolis, less than fifty percent were earning a net return of more than $3,000 a year, barely a living wage in city life. Some of us felt that this was due largely to the fact that thousands of young lawyers, admitted before it was required that there should be a liberal educational background and a thorough law school training, had "glutted the market," to use trade terms. We felt that, with the higher standards approved ten years before by our Association and adopted in New York a few years before the survey, there would be a marked shrinkage in the number of incoming members of the bar, and later developments sustained that point of view. Yet, during the discussions of that period, the Dean of the Law School which is our host today suggested the desirability of an ordered economy in the limiting of law school students.

Our European brothers went further. Der Fuehrer, in 1935, issued a decree that, for a period of years, no more lawyers should be admitted to practice. We scoffed at it, thinking that such arbitrary action was ridiculous, absurd, that no man had the right or the power to make such an order. We never dreamed what an extra territorial effect Herr Hitler's power gave him. Yet now, less than ten years after his decree, Adolph Hitler has decimated

the number of our law students and has practically suspended the process of liberal education among our young men!

Seriously, is not this one of the basic elements of the free life for which we are fighting? Is it not the truly liberal education of our Nation, and ultimately of the world at large, for which this war is being waged? To be sure, we were far from having reached our goal before this interruption. We must blush with shame to read that 750,000 of our armed forces are being taught the three R's!

Let us consider calmly the problem which will face the world only a year or two hence when this frightful global struggle is over. Cash outlay for war purposes alone is costing our nation alone not merely billions but, before the war is over, the total may reach a trillion, if you count the lives lost and shattered as worth only the government insurance value of $10,000 apiece. The depletion of our national reserves of iron, steel, coal and oil will necessitate a revised national economy. The wholesale destruction of our national assets and those of the other fighting nations passes human comprehension.

Yet we must—and we shall—face these problems and solve them. Otherwise the world will "go to smash." No greater crisis has ever confronted the world. No greater need has ever demanded the service of our ablest minds. To solve these problems, we must intensify our study of history, philosophy, government, international relations, human relations in general, economics, taxation,—to mention the major fields.

What, you may ask, has all this to do with legal education and bar examinations? Much more than is noticed on the surface. Throughout our history lawyers, as liberally educated men, have led our nation,—from the colonial days, the Declaration of Independence and the adoption of our Constitution. In making the new world which will arise, Phoenix-like, after this global conflagration, there must be law and order, and it will be administered in large part by the liberally educated and well-trained law graduates of our schools. Those schools will be guided, in the future, as they have been in the past, by this Association through the Section of Legal Education and by its offspring, the Conference of Bar Examiners.

Some of us are well along in life. This gives us a chance to survey the developments of our day. It is only in the last half century that our law schools have trained the bulk of our lawyers. Now they train almost one hundred percent. It is less than fifty years ago that formalized examinations for admission to the bar were first adopted! It is only twenty years ago that the state and local bar associations at the Washington conference approved the American Bar Association standards of legal education and admission to the bar. It is only fifteen years since the Council began its organized campaign for the adoption of those standards by the states. In that brief time, consider

the amazing progress which has been made. Practically the entire country is now governed by those standards. They, and the law schools, have done a marvelous job in enabling us bar examiners to do our work effectively. We, in turn, hope that we have been helpful to the law schools in pointing out lines in which their work might be strengthened. All of us have affected pre-legal training along lines of liberal education. There is still room for us to do more.

Our lawyers of the future must have a broader base of liberal education. They must have a more intensive and wider study of governmental principles now operating and which will become more important in the years to come.

Despite the crisis which confronts our law schools today, they have a future, quite immediate I believe, which will challenge the ablest leadership in the post-war period. The preparation time is all too short. The opportunity is thrilling. Men returning from the front will, by the thousands, have to be retrained in the law. The interests of the public must be protected.

After the last war, the schools and the bar examiners had no such backing and no such beacon lights to guide them as the past twenty years have brought us. To the men themselves, to the bar and to the public at large, we can not, we must not, fail in our duty.

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are as vital to themselves and to society as the incomes of any other group, and the public ought to understand and recognize the justice of that claim. And a corollary to those principles should be a determined and intelligent effort by the bar to actually make certain that our ranks do not again become crowded with inefficient, uneducated and unscrupulous men and women whom society can not profitably employ and whose actions in order to survive are bound to be very harmful to the citizen and to every member of the profession.

Apprenticeship and Probationary Plans for Admission to the Bar

By William Alfred Rose*

Secretary, Section of Legal Education and Admissions to the Bar, American Bar Association

Attorneys have on many occasions voiced the opinion that the legal profession needs a plan whereby it can effectively supervise the training and keep a watch on the conduct of applicants for admission to the bar during some reasonable period after they have completed their formal legal education and before they are permitted to become full fledged members of the profession. It is thought that such a plan would help eliminate early in their careers some of those who have passed the bar examinations but who are not temperamentally or emotionally suited to the practice of law, and also might help to discover those who do not have the moral stamina to withstand the temptations which confront the practitioner. If such a plan would help in any such case it would serve to protect not only the applicant and the profession but also, what is more important, the public at large.

Preliminary to anticipated discussion of the subject, a study has been made of such plans as are now in force in the several states. It has been found that some form or other of a compulsory requirement of service as a clerk in a law office is currently in force in six states: Delaware, New Jersey, New Mexico, Pennsylvania, Rhode Island and Vermont. The requirements of clerkship service vary, ranging from service being required as a condition precedent to standing the bar examinations, to service in a law office after passing the examinations but before the applicants are fully accredited. The latter is, of course, more in the nature of a probationary plan than the former. No two states have identical requirements. A summary of the plans in effect in those

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*This paper embodies the results of a study recently completed by a committee of the Section of Legal Education and Admissions to the Bar of the American Bar Association, of which the author was chairman.

six states is set out in an Appendix hereto. The plans in all of those states are reported to be proving satisfactory. The remaining states and the District of Columbia do not seem to have any compulsory requirement of any kind.

In addition to the compulsory plans referred to there are two voluntary plans, one in California and the other in Wisconsin. In California, the State Bar Association has recommended to the law schools in that state the adoption of a voluntary sponsorship plan whereby each law student will be "sponsored" by an alumnus of that school who will serve as an adviser to such student, the alumnus to be selected by the school. The question as to whether or not some form of compulsory clerkship should be required of each applicant for admission to the bar has been the subject of much discussion by numerous committees of the California State Bar Association. The recommendation made by the Association is far from an apprenticeship or probationary plan, but if adopted by the law schools it conceivably could have considerable merit. The outbreak of war has prevented the schools from adopting the recommendation.

In Wisconsin, the Law School of the University of Wisconsin has of its own accord adopted a rule providing that before a law degree will be awarded to a student he must serve a six months' apprenticeship in the law office of a "reputable attorney" subsequent to the completion of his law school course, and such attorney must certify to such service. Apparently the student is not on probation during that period and his degree will be awarded as a matter of course when certification is made as to the six months' office service. The plan thus amounts to a requirement that the student must have some practical experience before the degree is awarded.

In Missouri, the Law School of the University of Missouri voluntarily started a plan, now interrupted by the war, under which its law students were required to spend the summer vacation following the end of their second year as an apprentice in the office of a practicing attorney in that state. The dean of that school reports that in the brief experience they had they discovered marked advantages to their students, who invariably returned to their third year after a summer in an office with greatly renewed interest in their studies and with keener ability in the analysis of cases. That plan also is designed to enable the student to acquire some practical experience.

In Texas, a rule requiring that an applicant for admission to the bar must serve a clerkship in a law office or in the office of a clerk of a court of record as a prerequisite to his admission was at one time in force, but was repealed on the ground that there were not sufficient places available to enable law students to obtain the experience contemplated by the rule. It may be that the bar of that state simply failed to meet the responsibility imposed by the opportunity presented of contributing to the furtherance of the legal education of its future members.

In most of the states this subject has never been studied or discussed by the bar associations, although in a few states it has been studied or discussed

without any plan being put into effect. In one state, Colorado, the Bar Association recommended to the Supreme Court of that state that a probationary period be required before admission, but the court never acted on the recommendation. In seven states, Florida, Idaho, Michigan, Minnesota, North Dakota, Ohio and Oregon, the subject has been studied by bar association committees or discussed at association meetings, but no plan has ever been adopted. In one state, Washington, the subject is currently before the State Bar Association and a committee has been appointed with instructions to prepare such amendment of the rules of admission as it may deem necessary to accomplish a five year probationary period and submit the same to the Board of Governors of the State Bar Association.

It is interesting to note that the requirements in effect in most of the states for the admission of attorneys from other states virtually amount to a probationary plan. In most states which admit an attorney from another state on motion and without examination, he is required to produce evidence of good character and that he has practiced in the other state for a specified number of years. Frequently, his conduct and practice in the other state is the subject of close scrutiny. If he fails to meet those requirements he is denied admission; if he meets them then the new state simply accepts the action of the other state so far as passage of his bar examinations is concerned. The result is that during his practice in the other state he has been on probation for admission in the new state. It is difficult to see why, if it is desired to build and maintain the profession on a high plane, a student first applying for admission should be put on a more favored basis than one applying for admission from another state.

It seems to be conceded generally by those who have studied the question that an effective probationary and apprenticeship plan, properly conducted, would be desirable and would prove beneficial to the profession, particularly in the more populous communities. But it is recognized that until the organized bar and the lawyers in general arrange for some worthwhile apprenticeship training and some effective supervision of the applicants during their probationary period, such as has been done by the medical profession, then no such plan should be generally required. The principal objections to a compulsory plan seem to arise out of the belief that the young lawyers would be driven more into the larger law offices, to the detriment of the smaller communities where they are most needed, and that they would be in a position to be exploited by those under whom they serve their probationary periods. Possibly some of the objections might be removed if the term "probation" and its derivatives should not be used, because a young lawyer feels he is under a handicap if he is on "probation". Instead of using that term, the end can be accomplished by issuing a temporary license during the trial period, the final license to issue only after practice for a stated period and only after the requirements are fully met.

APPENDIX

(Unless otherwise noted the requirements herein referred to do not apply to attorneys who are already qualified to practice in one state)

DELAWARE: Applicant for admission to the bar (other than an attorney regularly admitted elsewhere who has practiced in court of last resort of his state for at least three years) must, prior to standing the bar examinations, serve a clerkship aggregating at least six months in office of a member of the bar of Delaware who has been in the practice for at least ten years. Such service must be certified to by the person (designated a Preceptor) in whose office the applicant so served.

NEW JERSEY: Applicant for admission to the bar shall register with a member of the bar in general practice who has been a counsellor-at-law for five years, who shall certify such registration. Applicant thereafter must serve a three year office clerkship. The time, not exceeding twenty-four months in all, spent during such three year period in regular attendance at an approved law school, is allowed in lieu of an equal period of office attendance; provided, that no such credit for law school attendance will be given for any period less than eight months, or multiples thereof, of the law school work successfully completed. Thereafter, upon passing required examination, applicant is admitted as an attorney. After an attorney has practiced for three years, he is entitled to become a counsellor-at-law, but must first pass an examination therefor. Only counsellors may practice in the appellate courts and every bill in equity must be signed by a counsellor. Supreme Court on June 26, 1943, adopted rule modifying clerkship requirement in case of those registered for selective service or who have volunteered for or been inducted into the armed forces, so as to enable them to stand the examination for initial admission without first completing clerkship, but on proviso that clerkship be completed forthwith upon discharge from the armed forces. Attorneys from other states required to be a resident of the state at least six months prior to taking examination for admission to the bar, which is required in any case, and to have been entitled to practice in highest court of another state at least five years. (The requirements are reported to be generally very satisfactory.)

NEW MEXICO: Applicant who meets the prescribed qualifications is first granted a temporary license to practice for one year. A final license is not granted until the applicant shall have established a law office for the period of one year and shall have actively and continuously practiced law in the state for a period of twelve months under such temporary license. When the applicant appears for final license, he must have filed with the secretary of the board of bar examiners his affidavit showing compliance with the year's office and practice requirement, together with a certificate of the judge of the district court of the district within which he has maintained his office stating that the applicant has practiced in his court for the required time and recommending

his admission. The board may recommend extension of temporary license on good cause shown. Exception to the year's office and practice requirement has been made in cases of applicants holding temporary licenses who enlist in or are drafted into the military or naval service of the United States.

PENNSYLVANIA: A law student is required to register with a member of the Bar of Pennsylvania who has engaged in active practice in the state for at least five years immediately preceding such registration in the county in which the student registers and who is willing to act as his preceptor. Before such registration the prospective preceptor must certify to the State Board of Bar Examiners respecting certain matters concerning his knowledge of the student. The preceptor is required to keep in touch with and act as adviser to the student. No person is entitled to take an examination for admission to the bar until he shall have studied law for three or more years after such registration where the study is in an approved law school, or four or more years where the study is in the office of the preceptor, advertisement of his intention to take the examination shall have been made and proof submitted and certain questionnaires shall have been answered by the applicant, his preceptor, two members of the Board of Bar Examiners of the county where he is registered, and three reputable citizens from each community where the applicant has resided during the preceding three years. After passage of the examination the applicant before being admitted to practice must serve a clerkship in the law office of the preceptor for a period of at least six continuous months, except that not exceeding two continuous months of such period may be served prior to such examination.

RHODE ISLAND: Applicant for admission to the bar must, prior to standing required examination, comply with the following requirements: If a graduate of an approved law school, he must further devote full time to study of law for six months in the office of an attorney engaged in active practice in the state, which period may include the vacation periods of the law school years. If he is not a graduate of an approved law school and he seeks admission after four years study of law (in addition to completion of two full years of study in approved college), then six months of such law study must be in office of an attorney in the state. (This requirement of six months' office study has been in effect more than fifty years and apparently has proved very satisfactory.) If the applicant appears likely to be in active military service before the next bar examination, he is permitted to stand the examination without meeting the six months' office study requirement, but he is not admitted until he meets that requirement.

VERMONT: Applicant shall have studied law three years with special reference to the practice. Such study may be in law office of an attorney within the state or in a law school approved by the Supreme Court, but when applicant is graduate of a law school he must study in a law office in the state at

least six months within the two years preceding his application for admission. If less than three years in law school, time spent therein may be allowed as equivalent of study in an office. Court may allow study in an office outside of state as equivalent of study in an office within the state upon sufficient cause shown, but in such event the last year of such study in an office shall be within the state. Attorney from another state admitted without examination by showing practice in another state as attorney of its highest court for three years plus residence in the state and citizenship therein for six months; or in lieu of such three years practice he may be admitted upon examination after six months study of law in a law office within the state.

FIFTY YEARS AGO IN SOUTH DAKOTA

Excerpts from Legal Lore Recorded in the South Dakota Bar Journal

A young man sat nervously before the members of a State Supreme Court, one member of which had propounded various questions from Blackstone, Kent and other legal lights of antiquity. "I didn't study anything about these fellows," complained the young man seriously. "I studied the statutes of the state—studied them hard. Ask me any question about them—I will show you. That is where I received my legal knowledge." The questioning judge answered in sympathetic tones "My boy, you had better be careful—some day the legislature may meet and repeal everything you know."

What a relief it would be to the young man who sits pouring over Contracts, Torts, Conflict of Laws,—yes, even the statutes of the state, in preparation for his bar examination, to be suddenly swept away on a magic carpet and whisked back fifty odd years. Back to the days when bar examinations in the Dakota Territory, as well as in infant South Dakota, were unheard of. Back to the days when admissions to the bar were granted upon motion to the District Court in Territorial days and to the Circuit Court in the early days of statehood.

This statement may seem fantastic to the young practitioner, but it was, nevertheless, the system made use of fifty years ago, in admitting lawyers to practice before the Court.

The practice in those early days was for some member of the bar to move the admission of the expectant lawyer at a regular term of court. The court then appointed some member of the bar, or a committee, to examine the applicant, to ascertain the extent of his legal training and the advisability of granting his admission.

This procedure led to a practice followed in many county seats, where the applicant was required to "wine and dine" the members of the profession and

On the Legal Education Front

REPORT OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR

Sent on February 1, 1944, to the members of the House of Delegates of the American Bar Association

A panorama of legal education today presents the dramatic scene of a company whose numbers are constantly dwindling away. The Section of Legal Education of the American Bar Association conducted a poll last fall on enrollments in the law schools. The schools approved by the Association, 110 in number, had a combined enrollment in 1938 of 28,174 students; in 1941 the number enrolled was 18,449; in the fall of 1942 the number had decreased to 7,887; in the fall of 1943 the number was 4803. The decline in enrollment this year as compared with last year thus was approximately 40%. Of the 4803 enrolled last fall, 1049, or 21.6%, were women. Of the total 2338, or 48.7%, were enrolled in evening, and 2465, or 51.3%, in day classes. Statistics on the evening and day distribution in previous years are not available. The percentage enrolled in evening classes this year is, however, substantially heavier than usual. The largest enrollment in any day school this year is 118. One evening school has 261. The decline in enrollment of law schools located in large centers of population has been comparatively less severe than that of schools in smaller cities. Eight of the approved schools have closed for the duration of the war.

Further supporting data would seem unnecessary to establish the conclusion that the law schools of the country are in a very critical condition. Notwithstanding, it is the firm conviction of the Council of the Section that standards on legal education of the American Bar Association must be observed. In its dealings with the schools, it has been considerate and concessions have been made, but it has insisted that the substance and the spirit of the standards be maintained.

Another phase of this problem relates to the maintenance of bar admission requirements in the various states. The Council anticipates that there will be heavy pressures to relax these standards when the men come back from the war. Indeed these pressures are already being encountered. It is a natural and a very human impulse to want to make every possible concession for them. Our gratitude to these men is very sincere and our desire to help them is genuine. It is the judgment of the Council, however, that relaxations in bar admission requirements for them cannot be justified. Where concessions can be made without risking demoralization in standards, the Council is happy to make them. It now has under consideration a program under which pre-legal

credit can be awarded for correspondence courses taken by the men in the service and for experience and instruction with educational content in the service.

To the end that law students who have had their studies interrupted by the war may readjust themselves to their studies as rapidly as possible, the Section is proposing to the law schools that they introduce refresher courses for them. For the vast number of young lawyers who are in the service, the Section has in mind the setting up of aids to assist them in their reorientation to the practice. It plans to stimulate the various state and local bar associations, working in cooperation with the schools, to conduct short courses for these men, and it is planning the publication of a number of monographs on various subjects of the law and particularly in those fields in which the law is rapidly changing and growing. As the Council and the Section's Committee on Advanced Legal Education view it, these programs, while they are being accelerated on account of the needs of veterans, are but a part of an extensive program of education for the members of the profession that has been gradually taking shape and acquiring content.

The Council is aware that it is attempting to administer a vast program. To assist it in expediting this work, it has appointed committees in each of the States.

Verbal Report Made on February 28, 1944, to the Members of the House of Delegates of the American Bar Association

Chairman Albert J. Harno of the Section of Legal Education and Admissions to the Bar:

The report of the Section of Legal Education has been mimeographed and distributed. I shall not trespass on your time by restating what is there said. I do, however, wish to take a moment to convey a message to you from the Council of the Section and to emphasize the Council's concern over the danger that confronts the profession in relation to the relaxation of the standards of legal education and the standards for admission to the bar. This is a highly important matter and it may well be within another year one of first concern for the organized bar. The fight for standards has been a long and at times a bitter one, but progress has been made. The question now is whether the gains that have been made can be maintained; whether the advance is to be slowed down; whether, indeed, the movement is about to stage a retreat.

As a matter of principle there is no less need for well-trained lawyers today than before. In truth, in view of the growing complexity of social and economic life, there is an increasing need for better-trained lawyers. If the

premise of the American Bar Association in the past was correct, that a lawyer's education should be broad as well as intensive, there is nothing in the panorama of our country's affairs today—indeed, there is nothing in prospect in world affairs—indicating that lawyers should have less training. There is need today for leadership by men who are finely poised, who have insight into the ills of society and who have perspective on and understanding of its problems. That leadership should not be entrusted to narrowly trained specialists. What the country now needs above all else is leaders of broad outlook and comprehensive points of view—men who are capable of making use of the fragments of knowledge possessed by specialists and who can coordinate that knowledge and weld the parts into a working unit. I envisage that assignment for the lawyers.

But this definitely is not a task for a mediocre and complacent bar. The crux of the problem is that the bar, if it is to merit this assignment, must be highly trained and well selected through admission requirements. The Council can do little toward the maintenance of standards unless it has the support of the organized bar. Mere resolutions in the Section or even in the House of Delegates are of no avail. But as members of the bar in our respective states we can be effective. That is the message I bring to you from my Council; that is the way it invites you to carry on.

Resolution Adopted By the House of Delegates

Chairman Albert J. Harno of the Section of Legal Education presented the following resolution, which was adopted:

> "Resolved, That the public interest requires that an over-all study of legal education and admissions to the bar, including a thorough inspection of law schools, be undertaken by the American Bar Association, and be it resolved further that the Council of the Section of Legal Education be directed to make this study as soon as practicable."

Action On Three Law Schools

As of March first, 1944, full approval was granted to the Detroit College of Law, Detroit, Michigan, and National University Law School, Washington, D. C. Provisional approval heretofore granted to Warren G. Harding College of Law, Ohio Northern University, Ada, Ohio, was withdrawn effective June 1, 1944.

Post-War Requirements for Admission to the Bar for Servicemen

By Silas H. Strawn

Former President of the American Bar Association and former Chairman of the Section on Legal Education and Admissions to the Bar

Every good citizen should have a deep sense of gratitude for the great sacrifice our boys are making in the war to preserve our form of government. We must do all we can to help them get reoriented into civil life when they return from the battle front.

Yet, in our efforts to be helpful, we must not yield to an emotional desire to enable them to become lawyers by slackening the rules respecting educational requirements.

At the meeting of the American Bar Association in Cincinnati in 1921, Elihu Root, then Chairman of the Committee, in recommending the adoption of the A. B. A. rule respecting qualifications for admission to the bar, said:

> "Vastly complicated our practice has become. The enormous masses of statutes and decisions have made it so. Twelve thousand to fifteen thousand public decisions of courts of last resort in a year! A wilderness of laws and a wilderness of adjudications that no man can follow, requiring not less, but more ability; not less, but more learning; not less, but more intellectual training in order to advise an honest man as to what his rights are and in order to get his rights for him. Are we doing it? No. The bar stays still. * * *
>
> "Not only has the practice of the law become complicated, but the development of the law has become difficult. New conditions of life surround us; capital and labor, machinery and transportation, social and economic questions of the greatest, most vital interest and importance, the effects of taxation, the social structure, justice to the poor and injustice to the rich,—a vast array of difficult and complicated questions that somebody has got to solve, or we here in this country will suffer as the poor creatures in Russia are suffering because of a violation of economic law, whose decrees are inexorable and cruel. Somebody has got to solve these questions. How are they to be solved? I am sure we all hope they will be solved by the application to the new conditions of the old principles of justice out of which grew our institutions. But to do that you must have somebody who understands those principles, their history, their reason, their spirit, their capacity for extension, and their right application. Who is to have that? Who but the bar?"

If that was true in 1921, it is much more important that a lawyer of today should be well qualified to practice his profession.

We are living in a bewildering age. Every day, problems, political, social and economic, domestic and foreign, become more and more complex. To meet

the present and anticipate the future, whatever our profession or occupation may be, we need more preparation and more understanding than ever before.

With the development of manifold inventions, the multiplication of means of communication and the ever-increasing changes in our social life, there have come into force in the last fifty years, thousands of new laws, directives and regulations respecting transportation, trusts, public utilities, corporations, workmen's compensation, motor vehicles, aircraft, police power, new forms of insurance, investment trusts, revenue, health, food, game, and a vast number of other subjects which time will not permit me to mention.

It is incontrovertible that a pre-legal college education and a law school course develop the desire and ability to maintain the high ideals of professional conduct. If this conclusion is unsound then all education and all systems of training and discipline are a failure. A college training presupposes advantageous environment and opportunity for systematic mental discipline. There can be no tenable argument that a student in a college or university has not a tremendous advantage in the development of habits of application, concentration, industry, manliness, courage, frankness, indeed in everything that goes to make for general culture, influence and power, over one who has not had that experience.

However naturally able or industrious the student may be, the application of his mind in an orderly, systematic way all of the time will produce infinitely better results than a casual application part of the time.

We hear the argument that the poor cannot afford to engage an expensive lawyer and that to meet the requirements of the impecunious there must come to the bar practitioners who have so small an amount invested in their education that they can afford to sell their services cheaply. Experience has proven that a cheap lawyer is an expensive luxury. It is a deplorable fact that the poor usually pay more for blundering legal service rendered by incompetent lawyers than the well-to-do pay for good services rendered by the leaders of the bar.

There is an old story of a lawsuit wherein a man with an aching tooth went to a veterinary who was also a barber and a blacksmith. In the extraction of the tooth the defendant broke the plaintiff's jaw. When the case came to trial the judge dismissed it on the ground that the plaintiff was guilty of contributory negligence in that he must have been an ass to employ such a man for such a purpose.

A stock argument against the necessity of a college education is the examples of John Marshall and Abraham Lincoln, neither of whom graduated from a college or a law school. Both of these men were geniuses of uncommon, natural intellectual power and application. They had the capacity and the inclination to qualify themselves for the tasks which they undertook. There are few Marshalls and few Lincolns, and I submit that if these leaders were alive today and engaged in the practice of the law they doubtless would have

availed themselves of the abundant opportunities of this age for any young man, however poor he may be, to acquire a thorough education, if not, indeed, a college and law school training.

The time has long passed when the lawyer can practice by intuition or impulse. This is true, no matter how great a natural genius he may be. The science of the law is too exacting, the complications of human activities too great. While the ultimate goal of every ambitious man is power and influence, I submit the power and influence of money is infinitely less potential and satisfactory than is the power and influence of mind and character.

For some two years it was my privilege to be a member of the Illinois Committee on Character and Fitness. During that time there came before us for examination more than four hundred candidates. The disparity between the applicants who had a college education and those who were less fortunate was not so manifest in the lack of technical knowledge requisite to passing the examination, but it was very evident in the application of the ethics of the profession and the moral obligation which rests upon a member of the bar.

Many of those with the less general education were imbued by a desire to take a short cut to a license to loot, in order that they might prey upon clients. Others regarded admission to the bar as a badge of honor, without any appreciation of its responsibilities. Our experience was that inability to distinguish between right and wrong and the failure to realize the ideals of the profession were most prevalent among those who had not a college and law school training.

Several trade unions have rules governing the time apprentices are required to serve before they may become journeymen in their respective trades. These requirements run from three years of apprenticeship in some of the trades to five years in others.

The public should be much more interested in the training of a lawyer who is to participate in the administration of justice and who has to do with those questions respecting the property and liberty of our citizens, than in the training of a mechanic. The mechanic must do *certain* things well. The lawyer has a much wider range of activity and generally deals with subjects more vital and personal than does the mechanic.

Assuming that the time fixed by the trade unions represents their deliberate judgment as being necessary for the preparation of those whose life work is to be largely manual, I submit the public should demand adequate educational qualifications of the lawyer.

Therefore I say, in the interest of the public welfare, in the protection of the rights, liberty and lives of our citizens, whether rich or poor, prosperous or unfortunate, those who undertake to practice law should be thoroughly prepared for the responsibility they assume.

Never before in our history has there been a time when a lawyer needed a higher sense of his civic duty, a greater realization of his obligations as a citizen, a more thorough understanding and appreciation of the fundamental principles of our government and a keener perception of the difference between right and wrong. He must be more familiar with the general principles applicable to the business of his client than is the client himself. He must bring to the solution of the problems with which he daily is confronted a broad, general knowledge of what is going on in business, economics, politics and finance, not only in his own country but throughout the world.

The practice of the law necessarily involves a combination of the ideal and the practical. The successful lawyer must be intellectual in order that his knowledge may be constantly increased and his view broadened. Yet, however idealistic or erudite he may become, he will not well serve his client and will accomplish little if he is not able quickly to apply his fund of information to the practical solution of the problems which are his to solve.

I deny the assertion of the carping critics who say that the bar is losing its influence or that the changing conditions which have made necessary the familiarity of the lawyer with the problems of business have caused him to be any less a careful student of the law or a poorer citizen. I submit that he must know more law, more business, more politics and more about what is going on in the world than did the old time lawyer.

Clients are not now content as they were in the olden days to wait a week or even days for the lawyer to do the work required. They want speed—immediate but accurate results. I sometimes think that some clients who state what they want today expect the lawyer to have it done yesterday!!

Lawyers are chosen for these great responsibilities not alone because they have a greater knowledge of government and of laws, but because they have minds trained to think accurately and clearly. They have the capacity to reason dispassionately, to see things objectively rather than subjectively, the will to distinguish between right and wrong and the facility to express their thoughts.

The lawyers of today are not creatures of form and precedent; they do not resist change. That they are continuously engaged in progressive and constructive work is emphasized by the many activities of the American Bar Association, which is intensively engaged in surveying and studying every branch of the law with the purpose, as expressed by its constitution, of advancing the science of jurisprudence and promoting the administration of justice and uniformity of legislation and of judicial decision throughout the nation.

I commend the work of the Section on Legal Education and Admissions to the Bar and of the Bar Examiners. They contribute greatly to the public welfare and to the morale of the profession.

One of the greatest dangers to our nation is the loss of confidence of our citizens in the integrity and justice of the courts. The very basis of our government is the faith of the citizens that their rights, their liberty and their lives will be protected by the government through just laws justly administered.

I would not minimize the work of our Judges. Sometimes, however, politically ambitious officials appoint to positions on the bench men who are not generally regarded as possessing the knowledge, temperament and integrity requisite capably to administer justice. It is deplorable that cheap politicians regard an appointment to the bench as a reward for political activity.

Therefore I reiterate that after an experience of fifty-five years in the active practice of the law and daily contact with lawyers, I am convinced that a condition precedent to the attainment of any considerable degree of success is a well-grounded pre-legal education followed by a three-years' course in an approved law school, or its equivalent.

Our boys who are in the war have had an invaluable experience in the development of courage, self-reliance, discipline and character. But that alone will not qualify them to be as good lawyers as they are soldiers and sailors.

Many of them will be impatient to be admitted to the bar and they will importune the law schools, the bar examiners and the courts to slacken the rules. Yet I submit that any substantial slackening of the A. B. A. rule which has been so generally adopted and so successfully applied, would not be helpful but would be a distinct disservice, which the young men would realize to their sorrow in their future careers as lawyers.

Protect Law Students by Upholding the Standards

By John Kirkland Clark

Chairman, The National Conference of Bar Examiners

Three years ago when you honored me with election as Chairman of the Conference, on the tenth anniversary of its founding, our country was girding itself in preparation for the participation which it anticipated might soon be required by it in the wars which were raging the world over. In this anticipation, the Selective Service Act had been put in operation and the prospect was imminent that, within a short time, the great mass of our law school students would find their studies interrupted and the completion of their law school work, in regular course, prevented.

Within a few weeks, the tragedy of Pearl Harbor and the full entry of this country in the global war made the threat a certainty and began the process which decimated the number of our law school students.

The problems of the law school were acute. Not only the student body but the corps of teachers was reduced to but a fraction of its former strength. Emergency rules were suggested, carefully considered and adopted at joint conferences attended by members of the Council, the Executive Committee of the Association of American Law Schools, and your Chairman on behalf of the National Conference, and a fairly satisfactory working plan for the handling of these emergency cases was approved.

For the most part, there was no material breaking down of the standards of admission to the bar, though examinations were administered to men who had not yet completed their courses, but were likely to be shortly inducted into service, such taking of examinations being dependent upon the subsequent granting of the law school degree. Examinations were given at army camps and at law offices outside the several states which were conveniently located to men in military service. These were, for the most part, merely formal variations and the general structure of the law school and examination system had stood up well under the strain.

Now, ultimate success in the war is definitely expected within a few months, and, as the whole nation is considering the transfer of business from a war-time to a peace-time basis, the bar has its peculiar problem, particularly in dealing with the young men who have not been admitted to practice.

A quarter of a century ago, after the first world war, when there had been no standards of legal education or admission to the bar adopted by the American Bar Association, or approved, generally, among the states, it was not unnatural that courts, boards, and legislative bodies, accustomed to seeing men come to the bar with nothing but a high school education and two or three years of part-time law study, felt that a waiver of the examination requirement might properly be granted to men who had seen service in the armed forces of the country at a time when they would normally have been taking their examinations for admission to the bar. In a state like New York, they affected the admission of several hundred law school students who had not been able to take the bar examinations before entering service.

In this period of a quarter of a century, there has occurred one of the most amazing developments in the formation of public opinion and the operation of public opinion through the courts, boards, and legislatures, in the movement to improve the standards of law study and admissions to the bar which the American Bar Association had under consideration twenty-five years ago. The old sentimental appeal, based upon outstanding individuals who became prominent lawyers though not thoroughly trained in the law, has almost universally given way to the appeal to reason which requires that those who are licensed to practice law should be reasonably well fitted to qualify for that license. Moreover, during the past three years, far more of the men entering service were given

the opportunity of taking examinations for admission to the bar than was found practicable in the earlier war.

The problem which faces your new Chairman and Executive Committee, and the Conference itself, is how can the country be persuaded to maintain the standards for admission to the bar and how can we make all concerned realize that for their own good—for the benefit of the young men themselves, as well as for the good of the bar generally and for the public good—completion of legal study and proof of qualification by bar examination should be required.

Developments in the Improvement of Standards of Bar Admission Between the Two World Wars

By Will Shafroth

Former Adviser to the Legal Education Section and Former Secretary of The National Conference of Bar Examiners

I am very glad to be here, and I am particularly proud to be on a program with Mr. Silas Strawn because I think, and always have thought, that one of the most important things the American Bar Association can do is to work for higher standards of admission to the bar, and in the whole history of that successful effort the great credit for what has been accomplished must go to Mr. Strawn.

You are familiar in general with the story of the effort to increase the standards of admission to the bar, but I shall say a few words about it because it is well for us to realize how much work and effort went into that crusade.

The American Bar Association ever since its inception has worked on the problem of proper standards of legal education, but made no real headway until 1921, when under the leadership of Elihu Root the Association adopted the standards which we have now. It is difficult to go back to that time and realize what a forward step that was. We advocated two years of pre-legal college education; we advocated graduation from a law school having a full-time course of three years or a part-time course of four years; and we also advocated taking and passing the bar examinations in addition,—at a time when there was only one state in the Union, the State of Kansas, which had that pre-legal requirement. That was a very forward position, and in order to sustain that position and to make it apparent to the states that this was not simply an action of a small group which gathered together in a room and decided that law students should have more college education, a three-day conference of bar association delegates was called in Washington in 1922 to discuss the standards which the American Bar Association had adopted.

Elihu Root again was the chief instigator of that movement, and he was the man at that conference who really carried the day. There were two to three

hundred delegates from bar associations all over the country, and they sustained the position that was taken by the Bar Association, and they sustained Mr. Elihu Root. If you ever want any arguments in your own particular states for upholding the standards, you need only to go back to the 1922 proceedings of the American Bar Association, where you will find the speeches made at that time by Mr. Root, Mr. Strawn, Mr. Taft and others. Those remarks set out the fundamental principles on which the movement for higher standards was based.

Of course the mere adoption of a set of standards, and the mere support and affirmation by this group in Washington, were not enough in themselves to accomplish the desired results, and for the next three or four years the Council of Legal Education tried to promote this work. The members of the Council did their best by correspondence and in other ways, but they couldn't make much headway until Mr. Strawn became President of the American Bar Association in 1927 and applied business principles to our situation. Mr. Strawn knew himself, and convinced the Executive Committee, that we must have a full-time adviser who would go up and down the land and preach this gospel; who would go to the states not to tell them what they should do, but to explain why the American Bar Association had taken this action and then to give them literature and supporting data and rally the forces to adopt the standards in each state, because, of course, it was a matter for each state to decide for itself.

I followed Dean Horack as adviser to the Section and the work was organized and well under way at the time I came into that position in 1930. We had at that time fifteen states which had adopted the two-year college requirement as opposed to one back in 1921, and from then on it was simply a case of following the line which had already been laid out and of emphasizing and working toward the goal. Of course as we went along the road became easier because the higher qualifications for admission had been tried out, were found to be successful—being based on sound principles—and so we had a very powerful argument which increased in its potency with our progress.

In 1930 we had fifteen states. Up to a year ago the number had increased to forty-three states plus the District of Columbia and Hawaii, so that we had all the states except South Carolina, Georgia, Mississippi, Arkansas, and Louisiana. We didn't know—we don't know now—what to do about those states except to just keep after them and hope they will finally see the light.

Now, I'd like to talk for a minute or two, if I may, about the early days of the Conference. Dean Horack, when he was adviser to the Legal Education Section, had the idea of calling the bar examiners together and getting some cohesiveness and group consciousness. When I became adviser I picked up the idea, and at our meeting here in Chicago in 1930, when the Section was under the chairmanship of George Smith of Salt Lake City, we called together the bar examiners. We got only a small group but, as is always the case in answer to a

first call, it was a very interested group. From them the chairman appointed a committee which was charged with bringing into the meeting the following year a plan for organizing a national conference of bar examiners under the guidance of the Legal Education Section. Mr. Phillip J. Wickser, colleague of Mr. Clark on the New York Board of Law Examiners, was the chairman of that committee, and the first chairman of our bar examiners' conference.

That first meeting was held at Atlantic City in 1931. We had a good group of bar examiners present, they drew up a constitution, and they started off as a separate entity at that time.

The first problem that the bar examiners had was the same problem which Mr. Strawn had met so capably. We had to have a secretary; we had to have money to pay for our publication; we had to have the sinews of war, because the Conference, in the same way as the Legal Education Section, was dedicated to improving the standards of admission to the bar and to improving the bar examinations. I had a fairly close contact with Alfred Z. Reed of the Carnegie Foundation at that time, and through his good offices I talked to Dr. Suzzalo, the President of the Carnegie Foundation. He was quite enthusiastic about the proposition; in the space of an hour we had outlined the general program; he told me that he would take it up with the Board of Trustees; and I felt certain that he was interested enough to put it through.

The Foundation then gave us a grant of fifteen thousand dollars—what they called a diminishing grant. It was a five, four, three, two, one proposition extending over a period of five years. Their idea, I think, was a very sound one. They said, "If your organization is worth anything, it must become self-supporting. Either the Bar Association has to support it, or you have to find other ways of supporting it."

Our campaign for the standards was fairly expensive. We had a good budget for the Legal Education Section and we didn't feel we could ask for more. Therefore in the next few years one of our chief tasks was the effort of making the Conference of Bar Examiners self-supporting. In that Mr. Reed again was most helpful, and it was he who suggested that we follow the procedure of the National Association of Certified Public Accountants, whereby before a public accountant was recognized in a state other than the one in which he had been practicing, he had to be reported on and certified to by their central organization, for which he paid a small fee. The idea seemed to be sound and fitted in very well with the work in which the Conference was interested, of improving the calibre of the members of the bar.

Up to the time that we started in on our work of character investigation, virtually no investigations had been made and no information obtained except what was found in a blank which the attorney had to fill out or perhaps what was discovered by writing to his references, which a few states—but a very few—did at that time. We conceived the idea that the Conference should

investigate and report upon the character and reputation of lawyers applying for admission to the bar on the basis of a license previously received in another state, foreign attorneys, as we called them, and make these reports available to the boards in the states where they were seeking admission, and we began this character investigation program ten years ago. That has been one of our chief activities since that time, and as the Carnegie diminishing grant grew smaller and smaller, it was supplemented by the fees from this character investigation service, so that our entire program, our impetus, our staff, continued right on without any break because we had sufficient income.

When we got the Carnegie money, we started the publication of The Bar Examiner, and I think a great deal of the progress that has been made in bar examinations since that time has been due to this house organ, you might call it, which has been circulated among the bar examiners, and which has been of great assistance in raising the standards of the bar examinations throughout the country.

Mr. Clark has just handed me a statement showing the number of character examinations we have made. It began in 1935 with sixty-nine. The next year it was one hundred twenty-six; the following year it was two hundred five. The next year the total was three hundred forty, and we have continued around the three hundred mark every year since then. There were four hundred eight investigations for the year ending June 1944, and the grand total to date is two thousand seven hundred twenty-three. The character investigation work has been carried on to a very great extent by Miss Marjorie Merritt, and I think you will all agree with me, you bar examiners who have had a chance to see the reports rendered, that she does a most thorough job. We have found through our long experience that a certain percentage, perhaps ten per cent, of these people who apply for a foreign license are those who have had a shady past and are the kind we want to eliminate from the bar if we can. I think our Conference can take a great deal of pride in being an agency which has worked on that particular line and has worked so successfully.

I hope that in the future we can develop some method of helping on the character investigation of original applicants. That is a much more difficult task because the young fellows as a rule do not have any past to investigate and it would be much more difficult to find out about them. However, there are possibilities there which I think should be explored.

Other possibilities lie in the further improvement of the bar examinations. I think that the work of the bar examiners is a difficult one because they have to try in the course of a short examination to find out whether a man is really qualified for admission to the bar and whether he has the knowledge and the training to become a lawyer. Dean Langdell a long time ago made this statement about bar examinations: that it was impossible that such examinations should be at once rigorous and just; they must admit the undeserving or reject

the deserving, and in the long run they'll be sure to do the former. I think that is the feeling which other people have shared, but the various boards of bar examiners have conclusively demonstrated that he was wrong, because by and large the bar examinations which are given now are very good tests, even though in many states there is still room for substantial improvement. To bring about this improvement, the boards which are not doing so should apply business principles to their giving of the bar examinations. I mean I think they should do just what Mr. Strawn did for the Section of Legal Education. They should have enough funds available so that they could have a permanent full-time secretary, and so that they could pay the members of their boards some compensation.

If you take the boards of New York where the members are all paid, of California where they have a full-time secretary, of Illinois where there is a full-time secretary and paid members of the board, of Minnesota, of Pennsylvania, of the District of Columbia, and of some others, you will find that their examinations are the most thorough and most workmanlike. I do not say that there aren't exceptions; I do not say that there may not be other boards that do an excellent piece of work; but on the whole the lawyer who gives his time to preparing bar examination questions year after year is entitled to compensation for it, and he is entitled to have a full-time secretary available to help him in framing the questions, if he wants it, and responsible, if the board so decides, for seeing that the questions are properly marked,—a secretary who will get up information as to how the bar examination is functioning and how it is affecting the applicants. I think that the Conference should emphasize this feature. The boards that do not have that assistance would like very much to have it, and they ought to have the support of the Conference toward such a program.

During these war years the bar and particularly the law schools have faced, and are still facing, very difficult problems. You all know that the enrollment in the law schools is now but a fraction of what it was. I have some figures on that. After the last war the attendance at the law schools, which in 1916 and 1917 was twenty-three thousand, got down to seven thousand. It is a great deal less than that now. There were seven thousand law students in the fall of 1918, but then attendance increased the next year to twenty-four thousand, which was larger than it was before the war. From 1920 on it increased steadily until in 1928 the attendance reached forty-six thousand. Then it gradually dropped back when the higher standards in the various states began to exclude the students who did not have college education. It dropped back to about thirty-four thousand before the war and now it is probably somewhere around four thousand.

However, you all know, as I know, that after the war we are going to have a great influx into the law schools. One reason for that is the provision in this G. I. Bill of Rights, by which the government agrees to pay for education for

the veterans. The law provides that every veteran who has served over ninety days outside of a school is entitled to one year of schooling after the war, and that he is entitled to an additional length of time in college equivalent to the time he has spent in the armed forces. This means that many of these boys will have one, or two, or some of them three, years during which they will get their tuition up to five hundred dollars. They will also have fifty dollars a month for subsistence if they are single, or seventy-five dollars a month if they have dependents.

Tendencies towards the relaxing of the standards are in two directions. First they are coming in the relaxation of the pre-legal college requirement and, secondly, they are coming in the tendency to admit boys to the bar if they have graduated from law school, and it isn't going to matter much what kind of a law school they have graduated from in most instances. There is no need for me, I am sure, to dwell at any length on the harm done by this. I was looking over The Bar Examiner the other day, and I came across some statistics that Jim Brenner had assembled in California which are convincing proof of the value of pre-legal college education. Over a period of eight years, 1932 to 1940, here are the figures as to preliminary requirements of the candidates who were admitted to the bar of California, or who took the bar examinations out there: of non-high school graduates, fifteen per cent passed; of those having high school only, twenty-seven per cent passed; of those with two years of college, forty-six per cent passed; of those with three years of college, fifty per cent passed; of college graduates, sixty-six per cent passed.

Then there is another figure from the same state worth considering: of those admitted from 1932 to 1940 who have been the subject of disciplinary action, twelve in all, only two of the twelve had as much as a two-year-college education. These figures seemed to me to be very convincing. No argument is needed on the proposition of the necessity for passing a bar examination in addition to graduating from law school.

These problems you will face in your various states, and I hope that every one of you will do your best to fight any movement of this kind to relax requirements, because we simply have to remember that, although we owe every obligation to the men and women in the armed forces and want to do everything we can for them, we are not doing any kindness to the veteran when we admit him to the bar if he is not properly prepared. The paramount consideration, which has been pointed out time and time again,—it was the keynote of Elihu Root's address back in 1922,—the primary consideration is the public interest. The thing to be considered is not the individual; it is the interest of the public in having qualified lawyers, and only qualified lawyers, admitted to the bar. If we use that as our text, we shall reject anything which lowers the standards for admission to the bar and we shall uphold that long continued work the American Bar Association and this Conference have carried on so effectively.

Maintaining Progress on the Legal Education Front

By George Maurice Morris

Former President of the American Bar Association

Inviting a lawyer to speak to the Section of Legal Education on the subject "Maintaining Progress on the Legal Education Front" is somewhat similar to inviting a preacher of the gospel to speak to a ministerial convention on the topic "Keeping Up the Fight Against Sin." Such an invitation may not faze a preacher; he is used to talking to audiences who agree with him—that is why they come to hear him. A lawyer, however, thrives on opposition. It is difficult for him to scale the heights of eloquence when he feels that no one needs to be convinced.

Your program committee knows all this just as well as you and I do. Why then this invitation? The answer must be that there are those among you who have looked upon "Sin" with a smiling eye and need to hear again the word of the righteous.

As a result your committee has selected a snowy haired convert of the mass baptisms of 1921 in Cincinnati and of 1922 in Washington to bring to you "The Word" which he heard in those historic years.

You will recall that it was in 1921 at Cincinnati that after a tumultuous meeting of the Section and a not altogether subdued meeting of the Assembly, that the American Bar Association expressed its opinion that "every candidate for admission to the Bar should give evidence of graduation from a law school complying with" standards set out in detail. Several hundred persons attended both of these gatherings. Of course everyone's mind was made up before the meetings started but that fact imposed no noticeable limitations on the debaters.

The Section's meeting, in particular, was an orator's field day. Because one of the specified standards was "at least two years of study in a college," the proponents of the standards were referred to, in informal conversation among the opposition, as "The Snobs." The opponents, who were impressed with the fact that Abraham Lincoln never went to either law school or college, were classified as "The Coon-Skin Cap Boys."

After the ceremonies at Cincinnati were concluded it was decided that what the movement next needed was a full dress parade. As a result a special meeting of the Conference of Bar Association Delegates was called in Washington, D. C., for February 23 and 24, 1922. Representatives of all the known bar associations in the country were invited to attend, to speak and to vote.

The audience was impressive for its size. The speakers were impressive for their distinction. This group included: Elihu Root, founder and patron

saint of the Conference of Bar Association Delegates, former senator from New York, former cabinet member, et cetera; the then Chief Justice William Howard Taft; former Secretary of the Treasury, William G. McAdoo; Governors of Indiana and Colorado; President Angell of Yale; Dr. William H. Welch of the medical profession; four subsequent presidents of the American Bar Association, namely, John W. Davis, Silas H. Strawn, Josiah W. Marvel and Charles A. Boston. There were many others.

Virtually all of the scheduled speakers favored the new standards. The opposition concentrated upon the financial hardship of attending college for two years and the possible loss of sympathetic contact between the educated lawyer and his uneducated client. The latter argument was phrased by Governor Ralston of Indiana as follows:

> "And, after all, it is the man of average ability who is the salt of American citizenship. The average teacher in our schools makes the greatest contribution in character building. The average farmer, and not exceptionally superior farmers, feed the world and it is to the average lawyer, in point of character and ability to whom the people can look with the greatest confidence for the enactment of wholesome laws and the wise interpretation thereof. Any system of study or training that will produce this kind of lawyer should have the approval of the legal profession."

It seemed to me then, as it does now, that "the grand old man" of the meeting, Elihu Root, asked the questions which framed the issues. These were:

> "What is the vital consideration underlying all the efforts of the American Bar? We are commissioned by the state to render a service. What we have been talking about is the way of ascertaining or producing competency to render that service. Upon what standard of judgment shall we consider an attempt to do that? Of our rights? Of the rights of the young men who come here crowding to the gates of our bar? Is it a privilege to be passed around, a benefit to be conferred? Is there any doubt that that standard is inadmissable? Do we not all reject it?"

Those of us who heard Senator Root's questions knew the answers and gave them—overwhelmingly. The years that have followed have seen the hard work of further education and of implementation: work that has, in a modest sense, glorified this Section of Legal Education and Admissions to the Bar.

Throughout that great Washington gathering the emphasis never shifted. All of the many speakers recognized that we do not admit men to the bar in order that they may make a living; we admit them in order that the community may be served. It is the peculiar function of the bar, whose members are probably best equipped to measure the quality of the service of the lawyer to the community, to see to it that such quality progressively improves.

There is an aspect of this obligation which is amusing. Every experienced lawyer knows that the client who most appreciates a good lawyer is a client

who has had a poor lawyer. Notwithstanding this obvious truth, the most able men in the profession, who would most greatly profit from the inadequacy of their competitors, devote themselves to eliminating the very conditions from which they, as individuals, probably derive the greatest material benefits.

There are current indications that the concept that the lawyer exists to serve the public and that the public does not exist to feed, clothe and house the lawyer, is not as clear as it might be, even among the members of our own profession. We know that the judges of the supreme courts of several of our states have ruled that law school graduates who have served for a prescribed period in the armed forces need not pass the bar examinations. Others have proposed to remove the restrictions on re-taking examinations previously failed. There are those who would lower the pre-legal educational requirement. Some would even abolish the bar examinations for law school graduates.

Most of these proposals stem from a rush of compassion for men and women whose educational careers have suffered some setback by reason of the services these grand people have proffered their country. Public men, particularly those who do not regard with disfavor the good will of their constituents, are prone to do favors for those constituents as contrasted with favoring an inattentive public at large. The admirable virtues of sympathy and kindness add to this motivation. As a result we may expect more and more liberal proposals for lowering the standards for admission to the bar of the veterans of whom we all are proud.

It seems perfectly clear that all of these projects are primarily concerned, not with the service to the community, but with excusing the individual from qualifying himself completely to render that service. In addition one is led to wonder whether by such measures more harm may not be done to the individual than good be done for him. All around us men who are already admitted to the bar are seeking to take "refresher" courses in the law. If their expressed wants are sensible who can convincingly say that it is wise to excuse from the necessary brush-up and review preparation for the bar examinations, boys and girls who have never practiced law and who are a year, or several years, away from their law school studies? If thousands of experienced lawyers are spending their time and money attending post-admission courses given by the schools and such organizations as the Practising Law Institute, is this the time to admit among them men who have failed to demonstrate equal initial ability?

The argument of the prohibitive expense of additional education, which became labelled "the poor boy" argument at Cincinnati and Washington a generation ago, seems to have been largely, and in some case entirely, removed for the veteran who would be a lawyer. We have but to recall that by Public Law 346 - 78th Congress, if he is an honorable veteran of more than 90 days the federal government will pay for his education in college or professional

school up to $500 in fees for one year. In addition, the veteran will be paid $50 per month as a subsistence allowance or, if he has dependents, $75 per month. The veteran is entitled to additional periods of education not to exceed the time he was in active service after September 16, 1940, and not in that time continuing his civilian studies.

If the snobs, who many persons professed to fear would take over the profession, have taken it over, that fact is beyond my observation. Thanks to the increasing social consciousness of the bar, legal aid for the indigent is reaching a volume which seemed fantastic a generation ago. Our experience with the public defender, the neighborhood law office, and the legal service to men in the armed forces and their dependents, are making the services of soundly trained lawyers available on a scale which has stimulated thinking that wasn't done in 1921 and 1922. Far from losing contact with the public and potential clients the lawyers (thanks in part to the efforts of the organized bar) are more sensitive now to the legal wants and needs of the people than, in my time, the bar has ever been.

It is true that the intended careers of many men have been interrupted, or even lost, by reason of this war, but, is a hasty sympathy for that condition, not more an enemy than a friend of the veteran when it would expose him, with less education rather than more, to the competition with men of both better education and more experience?

Possibly there are aspects of the present standards which may admit of debate but the *great* consideration admits, it is submitted, of no debate. The bar exists to serve the community. It is the function of the bar to see that those persons who are admitted to its ranks have the most accurately demonstrated initial capacity for such service which existing conditions and methods will permit. No situation appears to confront us, or gives promise of confronting us, which would warrant a departure from that principle.

A Perspective on Legal Education

By Albert J. Harno

Chairman, Section of Legal Education and Admissions to the Bar

It is my privilege to give an account of the activities for the past year of the Council and the officers of the Section. The major interests that have occupied the attention of the Council can be classified under four main headings, namely: routine functions; status of law schools and the maintenance of standards of legal education; the promotion of programs relating to the education of lawyer-veterans and their reorientation to legal thinking and the practice, and standards of admission to the bar. I wish to express our sincere appreciation to the many lawyers who have assisted in shaping and carrying on the programs of

2. That credit for military training as such shall not exceed eight hours;
3. That credit for study or intellectual growth while the applicant was in the armed forces shall be permitted if the achievements resulting from such study or intellectual growth have been evaluated by a testing program within the armed forces or by examination given by an approved college;
4. That the applicant has completed at least one academic year of study in residence, either as a civilian or in the uniform of his country, in an approved college or university and the quality of his work has been equal to or greater than the quality required for graduation by the approved college or university in which his work has been done;
5. That the applicant presents a total credit equal to one-half of the work acceptable for a Bachelor's degree granted on the basis of a four-year period of study either by the state university or a principal college or university in the state where the law school is located.

For the purpose of evaluating credits under this rule, the Department of Education of the State of New York shall be considered an approved college. *Definition of "Residence" as Used in the Above Rule:* Study while in the armed forces shall be construed to be done in residence if the work was done on a college campus in class under the direction of regular members of the college faculty, and if the college at which the work was given will accept credit for these courses toward its own degree.

Three New York Resolutions

At a meeting of the Committee on Legal Education of the Association of the Bar of the City of New York, held on October 3, 1944, the following resolutions were adopted:

I.

WHEREAS, the G.I. Bill of Rights will make it possible for most of the veterans of the present war to pursue courses of education and training at the Government's expense in any approved institution, the list of approved institutions in each state to be made up by the appropriate state agency with such additions as the Veterans Administration may make; and WHEREAS, the protection of veterans against exploitation by low standard law schools, many of which are operated for private profit, and the protection of the community against the admission to the bar of large numbers of young men and women who are inadequately prepared to undertake the practice of the law, requires that the list of law schools which a veteran may attend at the Government's expense be restricted to law schools which maintain adequate educational facilities and standards; and WHEREAS, the American Bar Association, after careful consideration, has determined the minimum standards of legal educa-

tion necessary to the protection of the profession and of the community; therefore be it

RESOLVED: That it is the opinion of this Committee that only those law schools which are approved by the American Bar Association should be included in the lists of approved institutions which a veteran may attend at the Government's expense; and that this resolution be transmitted to The Joint Conference on Legal Education of the State of New York with the recommendations that it adopt a similar resolution and take appropriate action to influence the Department of Education of the State of New York and the Veterans Administration in Washington to exclude from such lists all law schools that are not approved by the American Bar Association, and that The Joint Conference urge the American Bar Association, acting directly, and acting indirectly through state and local bar associations, to use its influence to accomplish this result throughout the United States.

II.

WHEREAS, the history of the legal profession in this country indicates clearly that the number of new lawyers entering the profession from time to time varies so materially that at a number of periods there have been far more lawyers than the community has needed; and WHEREAS, there has never been an adequate study of the volume of legal business and of the number of lawyers reasonably required to handle such business; and WHEREAS, in the past, after every war, the number entering the profession to fill the gap caused by military service has so greatly exceeded the need as to bring about a superfluity of lawyers and a resultant lowering of the standards of the profession economically and morally; and WHEREAS, in view of the opportunity now afforded to veterans of the present war to obtain a legal education at public expense and the need for intelligent guidance in the selection of their life work, in order to prevent another period of overcrowding of the legal profession such as occurred after the last war, it is essential that as accurate a survey as possible should be made of the need for lawyers during the decade following the end of the war; it is therefore

RESOLVED: That it is the judgment of this Committee that such a survey should be made in each state and that an appeal be made to The Joint Conference on Legal Education of the State of New York to consider the problem and recommend to its constituent members that they cooperate in the conduct of such a survey in the State of New York, and that the results of such survey be made available to veterans through the Veterans Administration, and to the law schools for their guidance in avoiding the acceptance of such numbers of students as would result in the recurrence of the overcrowding of the profession.

III.

WHEREAS, it is a quarter of a century since the American Bar Association made its survey of legal education and adopted standards for the improvement of legal education which were approved by a conference of representatives of bar associations from the entire country and have since been made generally operative throughout the country; and WHEREAS, during that period, great changes have taken place in the practice of the law which are gradually influencing the course of legal education; and WHEREAS, a great majority of the approved law schools have established standards of legal education and are at present maintaining educational facilities in excess of those required for approval by the American Bar Association; therefore be it

RESOLVED: That the time has come to give further consideration to the adequacy of the standards now in force and it is the judgment of this Committee that a study of this matter be made and the desirability of a strengthening of the standards now required of approved law schools be considered, and that a copy of this resolution be transmitted to The Joint Conference on Legal Education of the State of New York with the recommendation that it study the matter and report its conclusions to the American Bar Association and to the Department of Education of the State of New York.

RESULTS OF A QUESTIONNAIRE

A short time ago the Conference asked all state examining boards to answer the questions given below. The replies are summarized beneath each question.

(1) What is your passing grade in the bar examination?

19 states—75%; 16—70%; 4—60%; 4—"not disclosed"; 1—55%; 1—67%; 1—"flexible passmark"; 1—"50 out of 67"; 1—no rule but usually 67%; 1—"210."

(2) Do you allow an applicant, successful or unsuccessful, to examine his bar examination papers after results have been announced?

32 states—no; 8—yes; 7—yes if unsuccessful.

(3) Do you simply notify applicant he has or has not passed the examination?

40 states—yes; 4—no.

(4) Do you tell applicant the grade he obtained in his bar examination?

34 states—no; 8—yes; 3—no if he passed; 3—yes if he failed.

(5) Has any concession been made in the passing grade for men entering the service or for veterans of the War?

All states reported no concession in grading with exception of one state which gives "credit of two points for military service if candidate receives average of 73 or more but less than 75 (passing grade)." Few states mentioned "diploma privilege" under certain conditions.

Enrollment in 108 Schools Approved by American Bar Association

Compiled by Section of Legal Education and Admissions to the Bar

In the last column, attendance for the fall of 1944, the first figure is the total and the figure in parenthesis is the number of women. For example, 28 (8) mean that of the 28 students enrolled, 8 of them are women.

State	School	Fall 1941	March 1943	Oct. 1943	Fall 1944
Alabama	Univ. of Alabama	115	59	13	28 (8)
Arizona	Univ. of Arizona	48	20	30	41 (6)
Arkansas	Univ. of Arkansas	72	26	15	14 (5)
California	Hastings College	188	54	40	44 (13)
	Loyola of Los Angeles	129	55	63	64 (6)
	Stanford University	98	45	42	53 (22)
	Univ. of California	164	32	53	75 (18)
	Univ. of San Francisco	88	49	41	60 (8)
	Univ. of Santa Clara	17			suspended
	Univ. of Southern Calif.	151	68	72	90 (24)
Colorado	Univ. of Colorado	76	28	36	41 (12)
	Univ. of Denver	47	8	11	20 (3)
Connecticut	Univ. of Connecticut	128	39	38	39 (9)
	Yale University	308	66	55	68 (24)
District of Columbia	Catholic University	69	40	59	65 (16)
	Columbus University	462	40	31	19 (4)
	Georgetown University	490	132	135	151
	George Washington	622	280	277	329 (89)
	Howard University	44	31	33	53 (17)
	National University	389	94	57	61 (18)
	Washington Col. of Law	116	38	28	26 (11)
Florida	John B. Stetson	21			suspended
	Univ. of Florida	94	36	24	32 (9)
	Univ. of Miami	40	13	20	28 (3)
Georgia	Emory University	40	14	22	34 (9)
	Mercer University	36	*		suspended
	Univ. of Georgia	96	27	17	20 (4)
Idaho	Univ. of Idaho	42	17	8	12 (3)
Illinois	Chicago-Kent Col. of Law	261	86	76	70 (12)
	DePaul University	458	123	134	162 (35)
	Loyola of Chicago	113			suspended
	Northwestern University	161	55	53	67 (17)
	Univ. of Chicago	183	54	48	58 (19)
	Univ. of Illinois	168	72	36	36 (11)
Indiana	Indiana University	110	30	23	106 (23)
	Notre Dame University	88	62	40	34
	Valparaiso University	22	13	3	5 (1)
Iowa	Drake University	92	21	11	8 (3)
	State Univ. of Iowa	272	44	25	26 (3)
Kansas	Univ. of Kansas	72	20	13	15 (4)
	Washburn Univ. of Topeka	66	29	14	17 (10)
Kentucky	Univ. of Kentucky	80	36	23	20 (3)
	Univ. of Louisville	66	22	13	14 (2)
Louisiana	Louisiana State Univ.	71	26	18	28 (7)
	Loyola of New Orleans	85	32	41	44 (8)
	Tulane University	109	35	41	44 (9)
Maryland	Univ. of Maryland	167	76	76	90 (12)
Massachusetts	Boston College	259	42	57	62 (8)
	Boston University	231	52	31	51 (16)
	Harvard University	820	104	101	162
	Northeastern University	213	117	66	58 (8)

State	School	Fall 1941	March 1943	Oct. 1943	Fall 1944	
Michigan	Detroit College of Law	697	90	86	75	(3)
	Univ. of Detroit	105	62	68	72	(12)
	Univ. of Michigan	408	71	71	91	(15)
	Wayne University	181	65	77	87	(22)
Minnesota	St. Paul College of Law	129	30	26	25	(4)
	Univ. of Minnesota	226	106	64	68	(13)
Mississippi	Univ. of Mississippi	86	20	11	21	(2)
Missouri	Lincoln University	32	14	closed	8	
	St. Louis University	59		suspended		
	Univ. of Kansas City	105	30	39	54	(12)
	Univ. of Missouri	81	40	18	32	(6)
	Washington Univ., St. L.	102	30	28	35	(10)
Montana	Univ. of Montana	74	27	14	11	(4)
Nebraska	Creighton University	61	20	18	13	(2)
	Univ. of Nebraska	105		suspended		
New Jersey	Univ. of Newark	150	30	32	47	(7)
New York	Albany Law School	132	32	24	36	(8)
	Columbia University	415	125	118	163	(67)
	Cornell University	163	43	33	40	(17)
	Fordham University	684	245	213	300	(64)
	New York University	601	217	244	269	(81)
	St. John's University	833	271	271	289	(53)
	Brooklyn Law School	518	223	190	227	(52)
	Syracuse University	79	31	27	33	(10)
	Univ. of Buffalo	73	20	33	32	(8)
N. Carolina	Duke University	66	20	25	30	(4)
	Univ. of N. Carolina	72	14	12	16	(1)
	Wake Forest College	46	14	Included with Duke		
N. Dakota	Univ. of North Dakota	59	31	7	14	(3)
Ohio	Ohio State University	132	69	30	42	(4)
	Univ. of Cincinnati	81	31	13	12	(3)
	Univ. of Toledo	54	31	29	36	(10)
	Western Reserve Univ.	121	30	33	51	(14)
Oklahoma	Univ. of Oklahoma	188	53	25	25	(6)
Oregon	Univ. of Oregon	59	19	7	18	(4)
	Willamette University	32	7	10	5	(2)
Pennsylvania	Dickinson College	126	30	18	26	(3)
	Temple University	211	102	92	77	(9)
	Univ. of Pennsylvania	235	39	50	59	(18)
	Univ. of Pittsburgh	122	30	27	27	(6)
S. Carolina	Univ. of South Carolina	86	36	21	19	(4)
S. Dakota	Univ. of South Dakota	41	17	2	10	(3)
Tennessee	Univ. of Tennessee	63	27	19	21	(2)
	Vanderbilt University	43	12	22	suspended	
Texas	Baylor University	57		suspended		
	Southern Methodist	165	56	41	52	(15)
	Univ. of Texas	500	116	40	81	(20)
Utah	Univ. of Utah	72	26	19	22	(2)
Virginia	College of Wm. and Mary	48	36	22	24	(22)
	Univ. of Richmond	33	37	48	52	(3)
	Univ. of Virginia	234	44	41	44	(7)
	Washington and Lee	85	17	5	2	
Washington	Univ. of Washington	193	69	73	64	(17)
W. Virginia	West Virginia Univ.	81	17	14	14	(3)
Wisconsin	Marquette University	187	50	44	41	(5)
	Univ. of Wisconsin	283	80	49	63	(8)
Wyoming	Univ. of Wyoming	35		suspended		
Total		18,226	5,686	4,803 (1,049)	5,619 (1,222)	

*By agreement 5 students were transferred to the University of Georgia.

"Trade Barriers" to Bar Admissions

By H. Claude Horack*

Dean of the School of Law of Duke University

In recent years much attention has been directed to trade barriers which have been erected to protect local business activities from outside competition. The profit motive has generally been the underlying cause of such restrictions in order to give advantage to local business. Lawyers and physicians have always insisted that theirs was a profession and not a trade or business and should be conducted on a different basis. Yet, an examination of requirements for admission to the bar shows a distinct leaning toward the protection of the local student and the local lawyer with much the same effect as is created by ordinary trade barriers.

These restrictions do not state this as their purpose and it is probably true that in many and perhaps most cases objectives of a much higher nature were originally responsible for the restrictions which are found in a majority of the states. However, they should be viewed as to their actual present-day effect rather than the motive which first suggested their adoption. Is their tendency to improve the profession, or to secure special privileges to a local group? It should be borne in mind that "the licensed monopolies which professions enjoy constitute, in themselves, severe restraints upon competition. But they are restraints which depend upon capacity and training, not special privilege." *United States v. American Medical Association*, 130 Fed. 2d. 233 at p. 246. In so far as the restraints imposed do not depend on capacity and training nor insure proper character investigation, they serve to protect local interests from competition, rather than to secure a better quality of legal service. As such they are not justified from a public and professional standpoint and for the good of the profession should be done away with as "trade barriers" which tend to protect and keep in "business" those who cannot stand professional competition. These barriers affect two groups, lawyers who wish to move to another state, and law students seeking admission to practice.

Many of the provisions are of long standing but have recently been more rigidly enforced since many members of the bar have felt the effects of economic pressure, due in part to the depression of the early thirties, but probably more because of the diminution of business resulting from the failure of many lawyers to keep abreast of the more recent developments in the law, particularly in such fields as taxation, labor law and various branches of administrative law.

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*Reprinted from the Journal of the American Judicature Society for December 1944.

The migrant attorney, shifting from one state to another, has no doubt brought about many of the restrictive provisions originally intended for the protection of the bar. In earlier years it was not unusual for grievance committees to give to an attorney, accused of unethical conduct, a choice of leaving the state or being subject to a full investigation with a possible recommendation for disbarment proceedings. Such an attorney, whose misdeeds had caught up with him, was likely to go to a state where he was not known to begin his unethical career all over again. Lax provisions as to admission on comity made this easy and in some states the problems thus brought about were acute. I remember hearing, some years ago, the chairman of a grievance committee reply, when asked what action had been taken with reference to an attorney against whom complaints had been made, "We gave him a trip to California." California, however, instead of making exclusionary rules for admission of attorneys from other states, met this situation by provisions for careful examinations of all such applicants combined with full inquiry as to the lawyer's antecedents and reputation. It has been the administration of their rule rather than the rule itself that has resulted in a great decrease in the number of comity applicants and the admission only of those who will raise, rather than lower, the quality of the bar.

Most states have some comity provisions permitting an attorney who has practiced a number of years in another state to be admitted on motion, but provisions as to residence or citizenship prior to admission usually operate to exclude the good lawyer, leaving the door wide open for the down-and-out practitioner of another state. If a lawyer must be a resident for one year or more prior to applying for comity admission, it is quite clear that unless he has a substantial income outside of his practice, he cannot abandon his office and settle down for a year in idleness in order to establish such a residence. On the other hand, the attorney who does not have a sufficient practice on which to live can come into the state, get a job of a non-legal nature and thus fulfill the residence requirement for comity admission. For him the requirements are not exclusionary and there is nothing to prevent the bar of the state from being filled up with lawyers whose abilities have not assured them a living elsewhere from their profession. In other words, the residence restriction has worked only to exclude the lawyers of better quality while in itself it is in no way a barrier to the one who has already proven himself professionally incompetent and a failure in another state.

Of course the reason given for a period of residence prior to admission is that it will thus prevent an unknown lawyer of bad moral or professional character from gaining admission, because during this period he will have an opportunity to establish his good moral character where he will be under the

observation of local people. Practically this is of little or no protection to the state and the bar. A mere year of residence does not go far to establish a man's character and only careful investigation at the applicant's former place of residence is apt to disclose those habits or qualities which would make him an undesirable member of the local bar.

Reciprocal Comity Provisions

Another peculiar but frequently found comity provision—a very human one but one which does not tend to assure quality—is the provision that a lawyer from state A will not be admitted on comity in state B unless state A would extend like courtesies to the lawyers of state B. Such a provision has no doubt satisfied local pride but does not tend to secure professional competence. Thus, if state B only requires a high school education and two years of night law school for admission to the bar, the effect of the provision is to prevent comity admission to any lawyer who comes from a state insisting on higher educational qualifications. A lawyer from a state that has fixed high standards to insure competence is in effect barred by that fact.

The difficulty of securing adequate information concerning the migrant attorney has induced The National Conference of Bar Examiners[1] to establish a service for the investigation of comity applicants. After such an inquiry and examination of his record there is apt to be little of a lawyer's shady past history that is not brought to light. This investigation is not limited to the immediate place of the applicant's residence, but his previous activities are traced, wherever they may have taken him. With such opportunity for securing information, it would work for a better quality of the bar if, instead of requiring residence with attendant idleness or separation from practice, it were only required that sufficient notice be given of the desire to become a member of a certain bar and pay such fee as is required to permit a thorough investigation. An organization such as The National Conference of Bar Examiners, with its personnel and its broad contacts, is in position to make an investigation such as few, if any, local bar associations could attempt, leaving it to them to require such further examination as they may think necessary or desirable. The Federal Bureau of Investigation could hardly do a better job than is now done in the reports made by this organization when called on for information on lawyers seeking to become members of the bar of another state.

Problems of the Law School Graduate

As to students, the main hurdles to admission which are exclusionary in effect are provisions for residence as a prerequisite to taking the bar examina-

[1]*The article, as it appeared in the Journal of the American Judicature Society, referred to the investigation service of the American Bar Association. The service is, of course, undertaken by The National Conference of Bar Examiners with the valuable and enthusiastic cooperation of members of the American Bar Association. This article has been corrected with the permission of the author.*

tions and unnecessarily severe requirements as to registration. It is strange to find states requiring an applicant to be a resident and a citizen for a substantial length of time but allowing graduates of local schools to be admitted "on diploma" on the assumption that they are of good character unless the contrary is definitely shown. No state that is interested in the quality of its bar should grant admission to one who does not have the courage to submit himself to a sound bar examination test. It is characteristic of a school having the "diploma privilege" that its curriculum and methods of teaching have seen little if any change during the past quarter of a century, although during that time the members of the profession have been required to adjust themselves to radically changed conditions of practice if they were to survive.

The theoretical justification for rules as to residence or citizenship is that it gives the examiners and the public of the state in which admission is sought an opportunity to become familiar with the candidate and informed as to his moral character. Such restrictions are subject to less criticism where a real attempt is made to secure information which such residence in the state may afford, but the states following this practice are few indeed. True, if a student should be convicted of a serious crime during his period of residence it is likely that this fact might come to the attention of the examiners but it is not likely that they will have any information bearing on his conduct before coming into the state. As a protection to the profession, it seems to contemplate a state composed of small communities in which each individual's personal affairs are known and talked about by the rest of the community. If a real knowledge of the candidate is desired, mere residence does not provide it, and unless the student has been engaged in some disgraceful affair that has given him great notoriety, it is not apt to be brought to the knowledge of the bar examiners. Usually a statement as to "good moral character" given by two or three local residents is all that is required, and these are often furnished without any feeling of responsibility to the profession.

A provision for the registration of law students has been adopted in a number of states with the time set for such registration varying from some months before the beginning of law study to within a few weeks of the bar examination. In theory, this calls to the attention of the examiners those who intend to apply for admission and gives them opportunity to observe them during the full period of such registration. But is this in fact being done? It takes a well organized and efficient board of bar examiners, with a permanent office force and considerable funds at its disposal, (as in New York and Pennsylvania) to operate such a plan so as to make it even fairly effective in the elimination of unworthy candidates.

Must He Go Through Law School Again?

What then is the effect of the restrictions as to residence or registration? In many cases the registration provisions are almost an absolute barrier to a

young man who seeks admission unless he has decided long before he is ready to practice that he desires to make his professional career in a particular state. Add to this the requirements of residence,—as much as 18 months in one jurisdiction,—and the difficulties of making a free choice of school and location are almost insuperable. The solution suggested by one bar examiner shows the extent to which such restrictions may be, from a practical standpoint, an absolute barrier. In this case the young man, a resident of state A, after securing his legal education at a nationally known law school in state B, was offered a desirable opportunity to become connected with a good law firm in state C. He was willing to abide by the results of a bar examination or any character examination given by the state but he found that he was not eligible to take them, both because he had not registered at the beginning of his period of law study and because he had not been a resident of the state for the required period. The happy solution suggested by an official of the board of bar examiners was that he should now register, establish a residence, and begin the study of law all over again! The fact that he only had one life to live and already had a good legal education did not enter into the solution of his problem.

Is it short-sighted or unreasonable or undesirable for a young man to attend that law school where he believes he can secure the best possible legal education? Over one hundred approved law schools grant to their graduates the privilege of putting after their names certain letters to signify they have completed the course of study which the school offers. Yet, the difference in the quality of these schools and the type of education which they offer may be the difference between a knife made of cast iron and one made of the finest steel. Some schools offer no courses in taxation, labor law, or other administrative law subjects although a large proportion of present day practice deals with such matters. In others, though courses are offered under these titles, they are given by instructors having no adequate background for their presentation. The fact that the young man asserts such discrimination at the beginning of his law study as to pick a school which applies high standards of admission and performance to its students and that offers instruction in the subjects of present day importance by men who are experts in their fields would point to his becoming a desirable member of the bar of any state. This seems of more vital interest to the profession than the mere fact that the student had filled in a blank at or before the time he decided to study law, or has resided in the state for a given length of time without being convicted of a crime or being proved to have engaged in immoral conduct. Particularly is this so if there are convenient methods provided by which the bar examiners may ascertain and have available for consideration all pertinent facts concerning him.

Will it raise the standards of the bar if the young man, a resident of another state and a graduate of an out-of-state law school, is required to wait

for a year or perhaps almost two years, if he happens to come into the state just subsequent to the first available examination, and live by his wits or work in a filling station until he has fulfilled this time requirement? If he has no independent means, such a restriction may, as a practical matter, be an absolute barrier to his ever becoming a member of the bar in that state. If he should work in a filling station for a year or more while forgetting a great deal that he has learned in law school, will he be a better potential member of the profession? Will they be more certain at the end of this time that he is of the quality which they desire than if he had been allowed to take the examinations immediately upon graduation from his law school and at once begin his professional career?

Better Methods of Investigation

If the protection of the profession requires a knowledge of the man in his local setting, would it not be better to admit him provisionally and make an investigation after he has been connected with the profession for a reasonable length of time and there has been an opportunity for members of the bar to become acquainted with and observe him? Or, if that is undesirable, to allow him to take the examination and withhold his license for such time as is necessary to investigate him.

But there is another way in which the bar can more adequately protect itself. Here, as in the case of the migrant attorney, the bar can be much more adequately protected by asking The National Conference of Bar Examiners to make an investigation of the student not only at his school but at his home, or if the local bar has its own machinery for such investigation to apply it to the student as well as to the migrant attorney. It is likely that the National Conference of Bar Examiners would undertake this service at a much lower charge for students than for lawyers. But whether it would or not, it would still be worth while for the student to pay the fee whatever it might be rather than to have denied to him the opportunity to start at once in the place where he wishes to establish himself professionally.

Provisions for registration of law students have been found to be of some value to prevent applications being made for the bar examinations by persons who have not spent the required length of time in law study or whose period of study might be certified to by some irresponsible lawyer or law school. But registration should be more than a matter of form and the payment of a fee. To be effective it should be combined with some check of the student's conduct, his course of study and his diligence in pursuing it. With the aid of such an organization as The National Conference of Bar Examiners, a reasonable comity provision applicable to student registration would not only accomplish the purposes for which local registration is required but would prevent the hardship upon an applicant for the bar examinations who is now often

prevented from taking the examinations because at the time of or before the beginning of law study he had not decided upon the state in which at the time of graduation he desires to locate. The investigations might be limited only to those attending schools approved by the American Bar Association, for here the opportunity for careful check of the student would be quite complete since such a school is under the supervision of the American Bar Association, responsible to it, and subject to its inspection as to its standards and quality of work.

Though each state determines who should become members of its bar, such barriers as are set up for admission should be those attempting to secure competency, rather than exclusionary with the purpose or effect of reducing competition for the local lawyer. He needs to be stimulated by higher professional standards and a higher quality of membership rather than to be protected by rules which in effect hold for those of poor ability or inadequate training, already members of the fraternity, such business as they are in position to handle. That the public has an interest surely does not need to be argued.

It cannot be said that the bar in general has deliberately sought to establish trade barriers for the profession yet they are present in many states while the bar looks on,—or fails to look,—with the result that low standards of professional competence are tolerated to the very great detriment of the lawyer in public estimation.

That a great advancement has been made in the last twenty-five years, no one can question. Nor can anyone doubt that there is still left a great field for improvement. No longer can any state afford to seek to protect the present members of the profession by barriers which are not based on professional competence or to bar men from entering the practice merely because it is too much trouble to investigate them. The barriers such as residence and registration have grown up gradually and though perhaps at the beginning had no deliberate intention to place a bar to competency or freedom of choice of location, now, because of changes in viewpoint and conditions, are being used in some states with the deliberate intention of preventing entrance into the profession with the resultant protection of the lower portion of the bar that has not kept up with the changes and advancements which produce the type of lawyer that the public has reason to demand,—a bar prepared to handle the many new types of legal business with which the present-day public is concerned.

Upon being asked to judge a woman lawyer solely as a fellow attorney and to discard "the chivalry of the Deep South," a Mississippi lawyer wrote The National Conference of Bar Examiners: "Neither do I think 'the chivalry of the Deep South' affects the situation. This could go along very well with 'Lavender and Old Lace' but it is very hard to keep up when the women are all putting on the pants or slacks with the seats dragging the ground and with a riveting machine under one arm and a pair of pliers and a hammer in the hip pocket."

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Three Resolutions

The Executive Committee of The National Conference of Bar Examiners has adopted the following resolutions and requests that all courts of last resort, boards of law examiners, and committees on legal education and admission to the bar consider them carefully.

I

Whereas, many organizations and individuals are urging legislation and changes in rules for admission to practice law to permit Veterans of World War II to enter upon the practice of the law in the various jurisdictions of the United States without meeting recognized admission standards, and,

Whereas, it is in the interest of the Veterans, of the bar, and of the public that Veterans returning from the service should not be handicapped by inadequate preparation for the practice of law, and,

Whereas, in the opinion of the Executive Committee of The National Conference of Bar Examiners, it is contrary to the best interests of the public, of the legal profession and of the Veterans to permit Veterans to enter upon such practice without proper legal training by substituting mere lapse of time or military training, or any other non-legal experience or training for a sound fundamental legal education, therefore be it,

Resolved, that the Executive Committee of The National Conference of Bar Examiners is opposed to the adoption of any rule which authorizes the admission to practice law of any individual who has not taken and passed the bar examination normally required, with a grade at least equal to the standard passing mark in the jurisdiction concerned, and be it further,

Resolved, that the Executive Committee of The National Conference of Bar Examiners strongly urges that no action be taken which shortens the period or standard of training for such Veterans for admission to practice law below that now provided for by the American Bar Association.

II

Whereas, the Federal Government as a part of its G.I. educational program for Veterans of World War II has made available $500.00 per year to each eligible veteran for a period prescribed by statute for tuition, books and other authorized expenditures for the purpose of securing additional educational training in a school accredited by the Veterans Administration, and

Whereas, there are many existing law schools and others in contemplation which will not maintain a standard of law school training sufficient to justify the use of Federal Government funds to pay Veterans' tuition and other expenses to these schools, therefore be it

Resolved, that the Executive Committee of The National Conference of Bar Examiners requests the Veterans Administration to refuse to accredit any law school or other institution offering courses in law toward a law degree, which has not established its qualifications and obtained approval by the American Bar Association or by the state agency authorized to accredit law schools in the state in which the law school is located or law courses are being offered.

III

RESOLVED, That it is the sentiment of the Executive Committee of The National Conference of Bar Examiners that, where the provisions governing the admission to the bar of any state of attorneys previously admitted to practice in another state require that a specified number of years of practice in the state of original admission immediately preceding the application be established by the applicant, the requirement that such completion of the period of practice be immediately prior to the date of the application be waived where such practice in the state of original admission has been terminated by the entry of the attorney into the armed service of the United States.

When, however, a specified period of actual practice in the original state of admission is required, it is the sentiment of the Executive Committee of The National Conference of Bar Examiners that the period thus specified should not be reduced solely by reason of such service in the armed forces of the United States.

Legal Education and Admissions to the Bar

By Albert J. Harno*

This is an account of a stewardship that has extended, I fear, well beyond the dictates of propriety. For over three years — eventful years — I have been Chairman of this Section. I am deeply appreciative of the confidence you have reposed in me in entrusting its affairs to me during this period. The balance sheet of the account is favorable, but I would be disingenuous if I did not tell you that it has some entries in the red; if I did not tell you that some harm has come to legal education and admissions to the bar during these years.

On the problem of bar admissions there were relaxations at the beginning of the war. These involved the admission to the bar of men entering the Armed Forces who had not completed their full period of law study. These relaxations were not numerous. In a number of instances movements of this

* Delivered by Retiring Chairman before Section of Legal Education and Admissions to the Bar, American Bar Association, at Cincinnati December 18, 1945.

A review of law-school law, the sort of thing that Mr. Clark was referring to in the review courses which are misnamed "cram" courses, and which can be enormously useful, both educationally as well as in preparation for a bar examination, is the first type.

In the second place, the need for practical instruction to make law-school graduates into lawyers, which we will admit not only that they are not, but also that the law school should not try to make them, is very important.

In the third place, the necessity of continuing education to keep it up on the administrative law and, for that matter, the whole field of law, is also very important.

It seems to me that not only has the bar a duty to drive ahead with the final push on the veterans' refresher program, but that the bar has a norm at any time to go ahead in the field of continuing education of the bar along these lines. It also seems to me that one thing that might well engage the attention, not only of The National Conference of Bar Examiners, but also of the Section of Legal Education is, so to speak, how to make an honest woman out of these bar-review courses, some of which have been far less useful than they might have been because they have been conducted on a proprietary basis, but which can be made, in my judgment, a very important aspect of the process of legal education.

CHAIRMAN CLARK: Thank you. I mentioned in my opening remarks that we now have admissions on motion, after the Section had thought prior to December 1941 that they were pretty well abolished; so we have a question here to be discussed by Mr. Lewis C. Ryan of Syracuse, New York. That question is

Should Veterans be Admitted on Motion?

By LEWIS C. RYAN

President, New York State Bar Association

I think I ought to preface my remarks by saying that I have never been a bar examiner or an educator. I am simply an up-state practicing lawyer in the State of New York.

The question has been submitted to me. My answer is, and I know that it was the answer of the Committee on Legal Education of the New York State Bar Association, that the veterans should be admitted on motion, provided they had completed their law studies in an approved school and were prevented from taking the bar examination by active military service.

I had assumed when I came down here that nearly all of the states had adopted such a rule, and that the question which would be raised here would be whether there should be a further relaxation of standards in favor of veterans. I intended to say that I was sure that the lawyers of New York would be very much opposed to any further relaxation.

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Our Court of Appeals decided to admit veterans on motion where they had completed the requirements for their degree in law school but were prevented from taking two bar examinations because of active military service. Our Court of Appeals also decided that any veteran who had completed two of his three years of law-school work and then went into military service, after which he came back to law school and completed his third year and received his diploma, would be admitted without examination. I will say that many of the lawyers of New York were opposed to this second rule which was adopted by the Court.

I am sure that no decision of the Court of Appeals was ever more carefully or conscientiously considered by the Court. The decision was made only after bar associations, law schools, and veteran organizations had a full opportunity to be heard on the question. I am sure that it was approached with a sincere desire to enable well-qualified veterans to return to fruitful civil life as quickly as possible, but, at the same time, with a purpose of maintaining the standards of legal education for which this Conference is largely responsible. Of course, there was also the impelling motive of the supreme importance to the public of seeing that young men were not admitted to practice law who were not qualified to practice law.

I think it is an interesting fact that the decision of our Court of Appeals was only slightly more generous than was recommended by the Joint Conference on Legal Education of the State of New York, which was headed by Mr. John W. Davis and which was composed of law schools and bar associations and, I believe, bar examiners.

It is also interesting to note that it is slightly more generous than that which was adopted after World War I, and even slightly more generous than was considered to be eminently just to the veterans by the National Commander of the American Legion who happened to be a New York State practicing lawyer.

I think, in considering whether the claims of the veterans have been heeded, we must take into consideration the other things that have been done for the veterans.

We have in our state a pre-law-school credit for military service. We have the half-semester credit, where a young man's law-school courses were interrupted by military service. We have the accelerated program and the refresher courses mentioned by Mr. Simpson, and we have the G. I. Bill which enables a veteran to complete his legal education with practically no expense.

It has always seemed to me that the salary of a lawyer-veteran first employed as a law clerk at a law office is likely to be at the same level, whether he has already passed the bar examination or whether he passes it

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later, should be considered. Usually, the result of his bar examination is not yet known. If there is further opposition to the relaxation of standards in favor of the veterans, it is certainly due to no lack of sympathy with their problem. We are all interested in their welfare, but it seems to me that if we really want to do something for the veterans, we should make a more united effort than has ever been made before to prevent the recurrence of the overcrowding of the legal profession which occurred after World War I, when great numbers of lawyers, including veterans, were in destitute circumstances, and the ethical standards of the profession reached an all-time low.

Since I entered law school in New York State, the number of lawyers in New York State has trebled. I think that the lawyer-veteran has a right to expect that he will have a fair opportunity to make a decent and an honorable living. He certainly will not be able to do so if we now permit the law schools to double their enrollments, and we permit inadequately trained men to be admitted wholesale without examination. If we do these things, I think we are doing the veterans a rank disservice and that we are doing the profession and the public a rank injustice. Therefore, I think we should strenuously oppose any further relaxation of the rules and give serious consideration to the question of overcrowding the legal profession.

CHAIRMAN CLARK: There are two questions raised there that I can see. In the first place, was the admission of veterans on motion justified at all? Secondly, have we gone far enough, assuming that it was justified at all?

Another phase is that of accelerated law courses. We have Dean Bernard C. Gavit who will answer the question, "Should accelerated law-school programs for veterans be continued?" At any rate, he will raise some questions.

Should Accelerated Law School Programs for Veterans be Continued?

By BERNARD C. GAVIT
Dean, Indiana University School of Law

I assume that an accelerated program means either (1) an academic year composed of four quarters each of from ten to twelve weeks duration, (2) an academic year composed of three semesters each year, each semester being of approximately sixteen weeks duration, or (3) an academic year composed of two semesters, each of approximately eighteen weeks duration, plus a summer session of approximately twelve weeks duration. Under either program a student is in school from forty-five to forty-eight weeks and enjoys vacation periods totaling four to seven weeks.

I am one of those who has believed and still believes in such a program of acceleration for the following reasons: