Ideals and Problems for a National Conference of Bar Examiners*

By Philip J. Wickser

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The meeting here assembled is a Conference of Bar Examiners. The phrase connotes two ideas. Each of us is estopped to deny that he knows why a Bar Examiner is, — or, at least, that he did until he came here. Conferences, however, are like suns in the heavens. Some, in full glory, radiate light and heat in every direction. Some are mere burnt-out cinders, illuminating nothing visible to the naked eye. And some, again, are virgin and nebulous—much too gaseous, indeed, even to have acquired an orbit. The function of an address-making chairman varies in respect of these bodies. In the case of the glorious ones, he is expected to promulgate dogma, pontifically. With the cinder-like kind he sometimes gets mislaid, or he can stay at home, if he likes, without being missed. But with the younger, plastic type his duty is to chart a course, and consolidate, through skillful generalization, tangential energies, and divergent aims.

This is not so easy. I remember listening, once, to three philosophers expound the simple problem: "What is the meaning of life?" Said the first: "Thanks to the little red school house, and to the fact that I love my brother, all is for the best in this best of all possible worlds." Said the second: "A horrid man named Rousseau spoiled everything by inventing democracy. Life is made up of annoyances, especially the Eighteenth Amendment." Said the third: "One really can't say. There are too many variables."

What, then, is the meaning, and what may be the aspirations of a National Conference of Bar Examiners? Can anyone say, or are there "too many variables?" The reigning dynasty at Washington holds to the theory that if you want to solve a problem you must first survey the whole field and find out all the facts. For this purpose it usually recommends a commission, risking confusion in the search for truth. Nevertheless, the fact-finding business is usually helpful in the end. There is seldom progress

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without definition. In our endeavor we shall undoubtedly find that there are, indeed, differences of point of view, of scope and situation, to be noted. Some, to be sure, can, upon examination, be cast out, as plainly insignificant. But the task will remain of finding a workable common denominator in terms of effort, which we can all accept and which may serve to measure the obligation of each of us in a common cause.

To the modern mind, the idea of membership in one or another of the great professions has become inextricably entwined with the idea of education. Experience, however wide, if unordered, is no longer a readily acceptable substitute. But education itself is founded on experience. It may be said that education is substantial and varied experience by a mind that is perceptive, rational and retentive. Schools exist to provide such experience, actually, and, vicariously, through a presentation of the records of the race. The science of pedagogy, which once concerned itself chiefly with the relationship between tutor and pupil, or at most, with the relationship between the teacher and an isolated small group, has come to be concerned with vast masses. The units composing them are, for the most part, treated as though they were exactly alike. At the same time, such treatment is deplored on all sides as a great misfortune, for, it is said, we very well know that far from being alike, each is, in fact, quite different from the other. We are supposed, in this country, to have the greatest system of primary schools in the world. We also have a good many colleges, some of sorts. The mechanics and the regimentation of ideas which made the whole structure possible also produced a system of education which, like Topsy, more or less "just growed," without the benefit of conference or introspection. Practical considerations left but little time for articulate theory.

Nevertheless, it is a system. Its component parts are beginning to realize that they, collectively, bear a relationship to the particular problems of life in the Twentieth Century, and that this collective relationship is different, broader, and, perhaps, more important than their individual relationship. As a result, ideas which would, indeed, have been thought fantastic thirty years ago now give rise to investigations in strange new fields. The god of democracy is affronted daily by some who have the temerity to suggest that a considerable portion of those who annually present themselves at the campus gate are not educable at all, and that, in any case, the members of no group are equally educable. Others make the serious charge that, for each student

whose natural aptitudes are developed by his college, half a dozen are channelled wrongly, or are not guided at all, as to the larger aspects of their lives. While admitting that there are doubtless some blacksmiths who would have made good lawyers, these critics insist that there are altogether too many lawyers who should have been blacksmiths, and they are not silenced by the fact that doting alma maters and, unfortunately, nodding bar examiners, have certified to the contrary. The interests of society as a whole are increasingly being used as the test by which to judge the entire educational system, and the ideas upon which it is founded. To discover the net result of the joint efforts of all educational agencies has become more important than to judge them individually.

I shall not labor the point, for it goes without saying that the net results of the system are not altogether satisfactory. Consequently, many assume that there must be something wrong with the system. They are busy examining it to see where it is balanced, where unbalanced. They are investigating the workings of each of its constituent parts. Preparatory schools, it appears, would do well to indicate to the colleges something more about the material they send than can be discovered by the words of greeting and certificates embossed upon a diploma. Professional schools could do better work, it is said, if the colleges would detect in advance the undeniably considerable portion of entrants for whom the law, or medicine, or engineering, as the case may be, is clearly a mistake. And the great world beyond wants help to correct a condition, so dislocated, that agriculture, for example, can not be made to yield a decent living because it is under-organized, and the professions, through overcrowding, bring disillusion, failure, and, often, obliquity, into the lives of quantities of young people, whose native and ineradicable deficiencies had, from the start, foreclosed them from personal success or constructive social effort. Great industries have seen these truths more clearly than we have. The General Electric Company, for instance, maintains a Laboratory of Human Engineering. In the words of its director it asserts that: "The application of (the) science (of education and examination) to the study of man must be inspiring, not disheartening, strengthening, not weakening; must first aim to prove to each individual that he possesses a unique combination of abilities, one which the world has perhaps never seen before, and one which he can use to new purposes, to create new things, new thoughts; and having convinced him of his strengths, must then show him in what practical concrete ways he can best use his particular combination of characteristics."

It will profit this conference nothing to subscribe* to these lofty ideals unless it can see itself in some way related to their achievement. But even the conviction that we are thus related will motivate no very constructive effort unless we first fashion some thought and language by means of which we can easily and smoothly fall into step. Whatever we decide to be true must be true for every Board, wheresoever and howsoever situated. To see ourselves in action we must assume at the start that we are already an integrated group. We may then analyze what such a group could do, if it existed, in the way of constructive social work; in what ways it could be tied into the whole educational system, and wherein it has a power, which no other agency possesses, to correct evils and improve conditions. I freely admit that this implies the reconciliation of tremendous divergencies in our individual situations, and, furthermore, that it involves the slow incubation of ideas, through what shall, perhaps, be painful years of trial and error. Being neither prophet nor autocrat I can not indicate to you, here and now, all the problems you shall wrestle with as those years pass by, but I can set forth a few which undeniably exist today, which are related to the whole scheme of education, and experience with which is peculiarly ours. All of them are of such a nature that, if we are to help solve them, they must be approached by us collectively and not individually.

We know, for instance, that the Bar, today, is overcrowded, and is becoming more so. Each year there is more jostling and less room. Conservative estimates indicate that we are admitting at least 10,000 annually, which is probably twice the quantity necessary for a national Bar of 150,000 to keep pace with the population. Three years ago we examined 17,000 applicants, and passed 54% of them; last year, we passed 48% of a few thousand more. By such severities we persuade ourselves that if the Bar is becoming overcrowded it is through no fault of ours, for do we not certify to the schools that they are but 50% efficient? Into the breach we step with our standards, the perfection of which, we believe, justifies the frustration of some 9,000 individuals annually. These unfortunates, to be sure, had no way of discovering their own deplorable unfitness until they applied to us, for before doing so they had received repeated assurances from our educational system that they possessed both aptitude and equipment for the law. True, the pronouncements of the educational system are not binding on us, but neither are our pronouncements binding on it. Yet, considering the figures cited, we can not both be right. Even

*Johnson O'Connor. *"Taking a Man's Measure."* 147 Atlantic Monthly, pp. 689, 698. June, 1931.

assuming that both are right, the public could justly complain that the whole scheme is crazy and wasteful—and the public is complaining. We, on our part, would be better able to maintain our position, if we could show that the standards of measurement on which we rely worked consistently with themselves. Unfortunately, such data as exist seem to show that nearly all of those whom we initially reject satisfy us after a few more attempts. What have they been doing in the interim? Taking cram courses, serving clerkships wherever they can—and this in the face of an overwhelming opinion that the modern law office is but an indifferent place in which to learn the law—and earning a livelihood in fields other than that in which they had prepared themselves. The class examined in New York last March contained 270 applicants who had previously been rejected three or more times. They had been out of law school from two to five years. Half of them had positions in law offices. Of the remaining half, 27 were doing restricted legal work, such as examining titles, but 69 were occupied as salesmen, accountants, brokers, and the like, and 41 had no occupation at all. Still another hundred, representing a third of those who had graduated the previous June, but who had failed twice, were either unoccupied, or, from morning to night, were pursuing occupations in no way related to the law. Altogether, therefore, there are, each year, several hundred men in the State of New York who are supposed to be continuing their study of the law, not their study of the art of examination cramming. They are doing so in a manner which the state thinks is a poor one, for it declines to allow them to take the examination in the first place unless they study law in a better manner. Certainly, in theory, at least, some inconsistency seems present in our position. In effect, we say to the initial failures: "You were inadequately prepared by the schools which you attended, and are unacceptable. Experience shows, however, that you will probably render yourselves acceptable by taking one or two years of preparation in ways which anyone can see are decidedly inferior to the inadequate preparation which we think the schools gave you. This additional preparation will probably not make you better lawyers, but it will undoubtedly tremendously increase your ability to squeeze through any examination that can be invented."

To generalize, any system of examination which passes less than 60% of those first applying, but which eventually passes more than 80% of the whole number, indicates first, that it has not been properly related to the educational system whose products it judges; second, that it is serving the public but indifferently

well by saddling upon it much of the very material from which it was designed to afford protection; and third, that there is something wrong with the educational system itself, to correct which will require both the knowledge and the cooperation of those in charge of the final examinations.

To state the problem is not to solve it; it is a difficult problem, however approached. We think we know something about examinations but, in fact, there are many aspects of them concerning which we know very little. The same examination functions differently when given to fifty students than when given to a thousand; when given anonymously than when supplemented by personal data or oral test; when tried the first time than when tried by repeaters. It is our business to find out all we can about examinations, to assemble data about them, to exchange critiques of them, and to detect and describe those factors which are constant under all conditions, and those which are variable. These things none of us can do individually; their accomplishment requires a permanent organization with faith and a will to progress.

Again, what should be done about the student who fails? Should he and his examination paper be sent back to the school from which he came, with notice that we shall not examine him again until that school has considered his individual case, helped him to make up his deficiencies, and recertified him to us? Have the schools any moral responsibility as to their failures? Are they, in any sense, guarantors of their products to the public? Some such scheme would, at least, be an improvement upon today's method of allowing the failures to go to cram courses and hit-or-miss offices, and perhaps it is a good idea. But will it work? No one here knows, or could insure its trial, if he did. The law schools do not know, either. We, collectively, are probably in a better position to analyze and set forth what should be the true post-graduate relationship between the law schools and the men who fail our tests than is any other body, but we shall do so only on condition that we first believe we can, and ought to.

The problem of volume appears to be here to stay, for some years at least. It is not at all that it will be dissipated by economic depression or by the raising of pre-legal educational standards. The long range figures are strong the other way. It must be remembered that during the last forty years, while the population doubled, college enrollment increased five-fold, and law school enrollment ten-fold. During the same period the national wealth increased six times, and the per capita wealth, three times. These

figures simply underscore the significance of the belief of the American people in the value of education and in the advantages which membership in a profession secures. The profession of the law is going to be made to stand all the traffic it will bear. This means either that volume shall be fought blindly, or, that what is in fact a flood shall, in some way that is fair to all, be controlled and made wholly useful. It raises a question for courts and legislatures which is both practical and normal, to-wit: Whether a man shall be forever debarred from practicing a chosen profession on the basis of evidence derived solely from an examination which he has failed a given number of times. It raises a question for the Bar, whether wholly or partially organized, of how to assimulate, direct and control more units than it has ever had any experience in handling. It raises a question for every law school, and ultimately for every college, of how something in the nature of a final, negative decision can be reached, with accuracy, in the case of any student, just as soon as the evidence in his individual case shows that it should be reached. It is true that these questions will eventually be solved even though Boards of Bar Examiners ignore them, but it is also true that they will be solved better and more speedily if the combined special experience which those Boards have is made available.

It is not, however, necessary for us to attempt the solution of all the problems of civilization, or to ride at windmills, if windmills they be, in order to find reasons for a National Conference or Association of Bar Examiners. There are many problems lying close at hand, the solution of which awaits our united effort. The Board of any single state by concentrated intelligent effort, unquestionably can improve matters in respect of admission to the Bar in that state. But if its achievements and the technique by which they were accomplished are left to become known only through rumor and legend, thought and effort which were fruitful locally are wasted nationally. It will not do to say that conditions throughout the several states are so different that what is true for one is more than often not true for the others. Though not identical, the conditions under which we work are similar. The most important considerations affecting admission to the Bar are basic, and they are true wherever any pretense of investigation is to be made of a candidate's fitness or worthiness to practice law.

One of such important considerations touches the problem of ethics. Slowly, through the centuries, its leaders have taught the profession that membership in it implied a certain discipline of thought and action. There grew up, if you like, received ideals of

a way of life. The device by which they were vitalized was simple and effective. The young lawyer's mind was stored with certain word-pictures which indicated how the typical lawyer—in psychological terms—how the group, or the clan to which he belongs, acted in a given situation. The voice of the clan, the force of its dictates, is strong in every situation in life. When an individual lawyer struggled with an ethical question touching his own actions, the picture of how the group demanded that that question should be answered had to be dealt with. In his initial missteps, therefore, the ordinary lawyer had, first of all, to obliterate this picture; he had to struggle to do wrong. The struggle itself was a protection to the group. It retarded the formation of anti-group habits, which, in themselves are, functionally, nothing more than a rebellion against group teachings and ideals. But in order to insure that the struggle would take place the group idea had to be kept alive and active in the mind of each lawyer. It was kept active by his being made to feel that he "belonged." Only through membership in it could he become part owner in the economically valuable franchise which, actually and historically, the group alone secured from the public. It alone had made the public believe that the functioning ideals and disciplines which it had developed and proclaimed were, as a social matter, worth the price, and that the special sources of revenue which society consented that the Bar should have, were well earned. Thus, when group consciousness is strong the ordinary lawyer can not easily separate ideal values from economic values. The psychology of ethics, mechanically regarded, is social, not individual. It is founded on the creation of a sense of social values, than group values, before personal ethical values emerge. It is easy to see that a quickened group consciousness, which is an emotional, rather than a verbal reaction, is an integral part of the mechanism. When it becomes dim the functional energy of ethical concepts scatters. Investigations and excursions which result in spanking various wayward individuals are confronting spectacles, but in themselves they do not repair the mechanism. The difficulty in this country is that the last generation has allowed the basic group concept of the Bar to become so attenuated that admission to it imports little more, in the emotional field, than a vague sense of contact with a far-off abstraction called the state. Luncheon clubs and federated ditch-diggers know the value of heightened group consciousness and of solidarity of feeling, as well as of thought. They know how to make them work. The Bar, for the most part, throws them away.

What is to be done to improve ethics and to raise the standards of professional conduct, is, nowadays, much discussed. It seems to be a question which concerns the leaders, the Associations, and their committees. It also concerns the schools where young people are, or should be, taught, not only the law, but how to be lawyers. Can legal ethics be taught in a class-room? Do they take root more firmly in minds which first have been exposed to the arts and sciences? It is yet to be shown that the real absence of ethical sense can be detected by an examination. How early in a man's life can reliable data be acquired upon which to base an estimate of his character? Is a system of universal sponsorship for juniors the solution, or are the sponsors themselves too variegated for evangelistic purposes? But little study has as yet been given to the part which Bar Associations, as such, may play in cooperating with Character Committees. It would be a bold Conference that undertook to answer all these questions. It would be both a generous and courageous one that admitted, for each Examiner and all Examiners, some obligation in the premises, to discharge which involves disinterested study, and consultation and cooperation, with courts and Bar Associations and educators.

If such a Conference ever takes permanent form, it will, doubtless, study and report on these and many other problems. In planning this initial one, your Committee has hoped to stimulate and enlarge interest in some of them by arranging for this morning's session to be followed by four Round Tables. Their leaders, with the help of those who have consented to assist, will present for your consideration the subject matter covered by these topics: (1) Raising the Standards of Ethics, Character Examinations and the Junior Bar. (2) Overcrowding of the Bar, The Problem of Repeaters, Aptitude Tests. (3) Yes-No Questions and the Flexible Pass Mark. (4) The Essay Type of Question and Oral Examinations.

In order to capitalize the undoubted gain which will accrue from our discussions today, it would seem advisable that we formally make provision for serious and intensive work, to be done during the coming year, by a committee of this body, on one or more of these subjects. Perhaps the problem upon which we may most reasonably be charged with having settled convictions is the form and content of an examination for admission to the Bar. There is, unfortunately, no general agreement in practice on this subject. What is a good essay type question? Should a candidate be asked "What is the Rule in Shelley's Case?" or should he be required to analyze the legal significance of a complicated recital

of the activities of A, B, C, D, E and F? Why, if 150 short form Yes-No type questions are asked, do the number of right answers, on each successive examination, tend to average about 112? Why does the examination seem to act as a fairly complete barrier to the men who have tried five times, or oftener, but return as many with high marks, proportionately, from the groups trying the third or fourth time, as from the group trying the first time? I think these are questions which we can tackle and towards the solution of which we can, as a national body, make progress. By giving a little time to them ourselves, and through committees, and by employing such secretarial help and expert assistance as we may need, we can, in a comparatively short time, throw a great deal of light where light is needed. We shall want, first of all, some central office and exchange by which information may be made available for each of us. Naturally, a considerable body of data will have to be assembled. Incomplete and inaccurate data are worse than none; an obligation rests on each of us, therefore, to render full and prompt assistance. Those of you who have received the questionnaire circulated by the Research Bureau of the California Committee of Examiners can appreciate the thorough and scholarly quality of the work it is attempting; and those who have studied the Bulletins which have been issued during the year by Mr. Shafroth's office have some inkling of the tremendous value of the contribution which he has so generously and intelligently made.

Thus far I have assumed that, in form, we already exist as an organization, which, at most, lacks only a driving determination to set it smoothly and efficiently in motion. This, I know, is a violent assumption. Much consideration, reflection and correspondence must ensue before we can grow into anything resembling a working national body. Furthermore, we should be most unwise to be precipitate. We must heed the warning of our own history. In the beginning I suggested that the idea responsible for the Conference here assembled was new and virgin. Actually, I think this is so, though technically it is, of course, not true, for the same urge has heretofore given birth to National Conferences of Examiners more than once. In 1898 only twelve states had Boards of Examiners, but eleven of them sent representatives to a meeting. At that time, and again at a similar Conference in 1904, announcement was made that a permanent organization would be formed, and in 1910, 1914, and 1916 there were gestures to the same effect. None of these efforts came to anything. But conditions have changed since 1916. As Mr. Shafroth has pointed

out, every state but one now has a Board, which is alive and actively interested in the type and kind of examination given by other Boards, and particularly in the actual results accomplished by other Boards. Furthermore, until we can grow in strength and stature, his office is available to us as a focal point at which to consolidate our energies and to initiate our plans.

It is true that to build a machine one must first size up the parts. Before we can successfully organize, some attention, beyond hortatory shouts, will have to be given to the individual situation of each of us. In our work differences in geography, in population, in local social needs and traditions, have expressed themselves, and will continue to express themselves, in apparently different evaluations of our powers and obligation. This is a sufficient reason why our precise technique can never be uniform, however conclusively abstract propositions may be demonstrated. Consider, for a moment, our situation. There are, in all, about 250 of us—a goodly congregation, if not a motley array. In 22 states the number of applicants examined averages less than 100 annually, and in 13 of these the examination is given to only ten men, on the average. Of the remaining states there are 20 whose Boards are confronted by about 300 applicants per year, but there are still six which must deal with more than 1,500. That is quite a spread. It is paralleled by the varying density of the number of lawyers, which is three times as great, per capita, in some parts of the country as in others. Local traditions, too, are firmly rooted. Some Boards, for years, have been admitting, regularly, more than 80% of all who apply; others, less than 40%. In most states there is no appreciable change, year after year, in the percentage admitted. Sudden changes call for explanations; adherence to traditions does not, and, being human, we tend to be defensive. The whole picture is, indeed, a mosaic. The appointing power, in a fourth of the states, believes that Examiners should serve without compensation. Doubtless any of us should, for a limited time, at least, be willing to make the contribution to our profession which is thus implied. But an organization for examining students is like any other educational endeavor. To be fully developed it has to be adequately financed. Perhaps, if this Conference does nothing more, it can do a little missionary work in behalf of our underpaid brethren.

It can do that, and a great deal more. It is true that the factors mentioned, and the contrasts inherent in our several situations, which have here been described with such harsh realism, exist. They exist, and have given rise to a popular and profes-

sional impression, in some quarters, that our jobs are casual, and, of necessity, primarily provincial. This impression has had its influence upon us. But admission to the Bar can never be a casual matter, nor yet one of solely provincial significance, even though a mere handful apply. As to that fact there can be no compromise. Either it is wholly true, or it is false. If it is accepted as true, the loose, unquestioning ideas, which have tended to breed a quality of insularity into our thought, vanish. The contrasts in our situations and traditions cease to dominate and become merely details of a working plan. Realism is not without its uses. It is the best tool a good builder has. Besides defining difficulties, it properly proportions them.

We shall have use for it even after we have succeeded in organizing our own work. Our greatest contributions to the cause of legal education, and to our profession, will not be made until we have succeeded in cooperating with other bodies whose ideals are, ultimately, the same as ours. We must recognize their limitations as well as their potentialities, for they, too, have been beset by the same forces of diversification which have tended to scatter our energies. The picture is, again, a mosaic, but it should stimulate in us neither dismay nor an easy optimism. It is best, perhaps, to try to define conditions exactly as they exist today, but to preserve a balanced judgment as to the possibilities for tomorrow.

To begin with, as Mr. Alfred Z. Reed, in an unpublished memorandum, has pointed out, there exist at present, a great number and variety of organizations whose objective is the improvement of the law, or the lawyer. How shall we co-ordinate their activities? It is true that they are all bent upon the Lord's work, but their aspects are many and varied. They range all the way from the Law Institute and the Commercial Law League, which would improve the functioning of the law, to the Judicature Society and the Association of American Law Schools, which would do as much by the lawyer. A certain amount of confusion inevitably results. The solution of a general problem, such, for example, as: "What should comprise the education of an applicant for admission to the Bar?" is apt to develop somewhat in this fashion: The Court promulgates Rules which outline what the requirements in fact shall be. The American Bar Association and the Association of American Law Schools publish a formula setting forth what they ought to be. A Committee of an individual Bar Association, with an eye to urban complexities, takes a position intermediate between the Rules and the formula, which

has some of the earmarks of a compromise, but, at least, is appropriate locally. Some law schools, which have little connection, and less influence, with the Committee, attack its position; others applaud it. Occasionally, the State Association takes a hand, and with a very small part of the profession assembled, or heard from, passes a resolution. As Mr. Reed has remarked: "If the Court or the Examiners value the advice of the legal profession in regard to their problems, they must be a bit bewildered as to what the profession wants—if anything."

The difficulty in obtaining a consensus of professional opinion upon any proposition less broad than the one instanced is even greater, for we lack the means of capturing the attention of the Bar of a state, or of the nation, when we want it. Problems such as the development of an efficient working relationship between examiners, schools and associations; the diploma privilege for approved or supervised schools; some sensible definition of clerkship; regional examinations, and many another, await solutions which should be substantially national and broadly professional, not local. They should not be left to individual schools, nor individual Boards, nor individual Courts alone, and they need not be. They need not be, if we have regard for the basic truths adverted to before. We have only to appreciate that the core of the problem is a readjustment of the significances involved, and an emancipation from the domination of old ideas half thought out; old inertias, old timidities. A healthy realism will again show us difficulties to be overcome before any kind of unity of action or orchestration of effort can take place, but again it will show us those difficulties truly proportioned. There is no reason whatsoever why detail of plan and operation should confound large objectives which are wholly feasible and desirable.

Any of the subjects or problems mentioned in this paper could be studied by this Conference which could then make its findings and recommendations to a central body such as the Legal Education Section. Such recommendations would be of first importance. Make no mistake on that point. An active and industrious National Association of Bar Examiners has a distinguished role to play. Indeed, without the benefit of its experience and its findings no advancement in the whole field of legal education can take place entirely free from guess work. The law schools through their Association or through a general questionnaire, could do the same. The Section could insure publicity and debate, and, through the Assembly, the Local Councils and the Conference of Bar Association Delegates of the American Bar Association, could de-

velop a thorough cross-section of professional opinion, within a comparatively short time. "Would not a recommendation," says Mr. Reed, "which might thus emerge in its final form, be more likely to be approved by state and local associations, and to result in action by legislatures and courts, than the impatient efforts of unrelated agencies, each trying to short-cut everything because each is so perfectly sure it is right?" It does not seem hard to agree with him.

To be sure, such an idea implies a degree of professional integration beyond anything we now have, an idea indeed, itself not everywhere welcome. Integration, however, is not quite so far away as some may think. We are rapidly being compelled to integrate by outside forces, most of which are ultimately economic, and, correspondingly powerful. We live in an age in which groups compete and individuals fall into line. The unit of thought is now some multiple of the individual; the unit of action, some consolidation of individual energies. The logic of events, in this new and crescent day, compels it. From this logic we shall not escape.

Do we want to escape it? I do not think we do. As we do our part we shall see other agencies, each with its special contribution to make, doing theirs. Nodding acquaintance will ripen into friendly partnership. New patterns of thought, and, then, of action, will emerge, over-mastering old difficulties. And if we build well, our reward shall be a sense of achievement, and of satisfaction, beyond that which any of us, individually, can possibly hope to attain. Whether we shall build is a question, to be answered, in the first instance, by you who have assembled here today.

Conference at Atlantic City

The first meeting of The National Conference of Bar Examiners was held in Atlantic City, September 16, 1931, in connection with the annual meeting of the American Bar Association. Its calling was due to the action of the Council on Legal Education and Admissions to the Bar of the American Bar Association, whose Chairman, George H. Smith of Salt Lake, last year appointed a committee to bring together a representative group of Bar Examiners and form an organization if they so desired. Mr. Philip J. Wickser, Chairman of this committee, together with Mr. Will Shafroth, Adviser to the Council on Legal Education, made arrangements for that meeting and the program which was there carried out.

The Function of Bar Examiners

By Stanley T. Wallbank*
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IF we as bar examiners start with the premise that our function is to admit to the legal profession only those candidates qualified to practice, those of adequate legal training and satisfactory moral qualifications, we commence our consideration of this subject with a truism—one which probably defies successful contradiction, but which in reality is but a high-sounding platitude, neither self-explanatory nor enlightening.

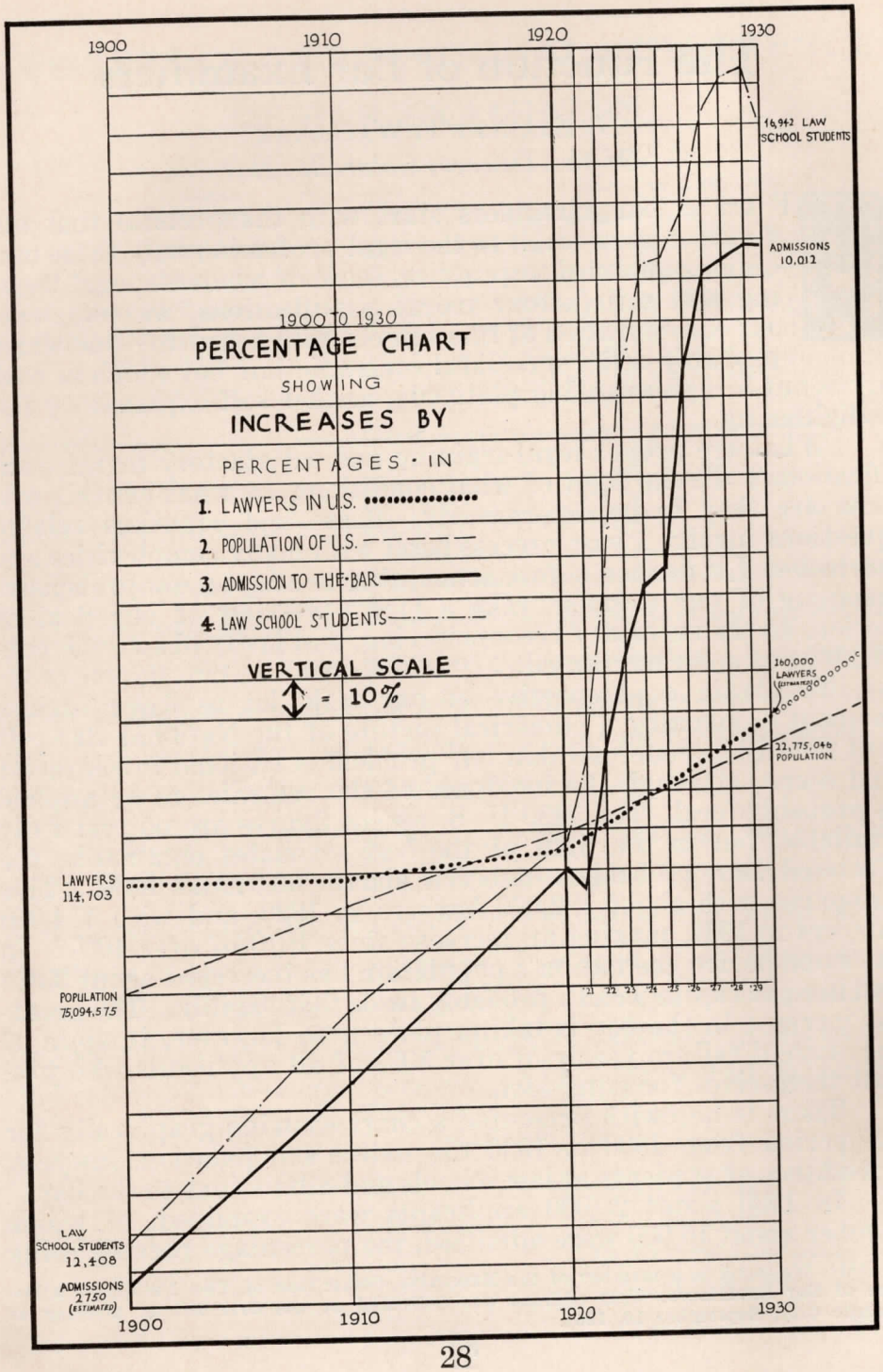
What are proper legal training and satisfactory moral qualifications? In the light of what conditions, by what criteria and how are they to be determined? These and countless related questions involve a vast process beset with many complexities and obstacles. Let us then before attempting to adopt a comprehensive meaning of our premise, take a bird's-eye-view of our field of action, do the necessary reconnoitering, and lastly draw such conclusions as seem warranted.

To obtain a perspective of our task, let us draw back a moment to visualize a numerical picture of the National Bar. It will readily be conceded that our problem is national in character and scope, although the incidence of the remedies to be applied is probably local. The 1930 U. S. census figures are not yet fully available, but in the light of the best estimates obtainable, the National Bar probably numbered about 160,000 in 1930. This compares with about 122,000 lawyers in 1920, and with 114,000 lawyers in 1910, making an increase since 1910 of over 40%. In the same period the nation's population has increased about 33%, and her per capita wealth probably twice that rapidly. The greatest increase in the bar is taking place now, however, in spite of the current failure yearly of over 50% of all applicants who present themselves for admission.

There is herewith presented a chart showing graphically for the period from 1900 to 1930 the nation's population, lawyers, attendance of students at law schools and admissions to the bar.

In 1930 about 20,000 applicants were examined, of which number about 10,000 were admitted, the percentage passing being

*Mr. Wallbank is a member of the Executive Committee of The National Conference of Bar Examiners. This address was delivered at the first annual meeting at Atlantic City, September 16, 1931.


1900
1910
1920
1930
16,942 LAW SCHOOL STUDENTS
ADMISSIONS 10,012
1900 TO 1930
PERCENTAGE CHART
SHOWING
INCREASES BY
PERCENTAGES · IN
1. LAWYERS IN U.S.
2. POPULATION OF U.S.
3. ADMISSION TO THE BAR
4. LAW SCHOOL STUDENTS
VERTICAL SCALE
= 10%
160,000 LAWYERS (ESTIMATED)
122,775,046 POPULATION
LAWYERS 114,703
POPULATION 75,094,575
LAW SCHOOL STUDENTS 12,408
ADMISSIONS 2750 (ESTIMATED)
1900
1910
1920
1930

46.4%. It is readily seen that for the past few years we have been experiencing a crescendo of newly admitted lawyers and are now near the peak of this movement — whether destined to continue that crescendo or to fall back to more normal admissions being for the moment undetermined. Some conservative authorities have estimated that, based upon our present rate of increase, the American Bar in 1940 will aggregate over 250,000 with an estimated total population at the present rate of increase of 137,000,000, or one lawyer for every 548 persons, compared with one lawyer to every 801 persons in 1910. Since 1920 it is estimated about 79,000 new lawyers have been admitted to practice. Incomplete figures now compiled indicate that to keep the profession at its present number, about 4,800 admissions annually are required. To fill this requirement there are about 20,000 applicants annually of which about 10,000 are being admitted. Assuming our present numerical strength sufficient — many assert it is now far more than sufficient — what of the unneeded 5,200 new lawyers being admitted annually? The examiner with his hand on the pulse of the profession is thus faced first with a numerical problem.

You may at once propound these questions: Is it within the province of bar examiners to take cognizance of the comparative rates of increase of the bar? Are we not officers of the court sworn to examine into and pass upon the legal training and moral qualifications of candidates and to admit those suitably qualified regardless of how many or how few are admitted, and regardless of whether the bar is overcrowded or underpopulated?

If our examinations resulted in an underpopulated bar it would undoubtedly be urged that bar examiners should take cognizance of that fact. Perhaps intelligent reasoning may be applied upon both sides of the question, but for the present it will be conceded that bar examiners are entitled to be bar-conscious, are entitled to relate their work as examiners to the entire legal profession and that in any event it is fitting that they should accord due attention to the numbers and percentages of admissions and failures upon examination, so that they might from such a perspective examine introspectively into the character and processes of the examinations given. This will determine wherein those examinations may be deficient or subject to more rational standardization in the various states, or may be unscientific, unfair or unsound, and in general how the degree of perfection in the conducting of those examinations may be constantly increased.

The Examiners' Trust

It would seem that the place to start in such an inquiry is in the examining boards themselves. In this respect a very high duty and sacred trust rest upon the examiner. He is required to test the legal training and moral character of the candidate. In this he is an officer, not only of the court, but of organized society and of the bar, designated to determine who are fit to advise and act for the public in legal matters. His duty is two-fold—he must sift out those with the requisite legal training and knowledge, but even more important, he must select those of such moral qualifications as entitle them to the high distinction of being attorneys at law. In performing his duties, the bar examiner wields vast powers in that he may determine the improvement or degradation in the caliber of the bar, and he wields powers even more far-reaching, for he may to some extent determine the destiny of the nation. The great influence that the National Bar has impressed upon the formation and operation of our government is unquestioned. It is plain, therefore, that as the character of the bar is maintained, to that extent are the affairs of government likely to be maintained. The bar examiner is directly the determinant of the standards of the profession and in this he acts as the protector of the bar and of the public interest. In this trusted capacity he must serve the public interest and the bar in good conscience. The mal-administration of his duties and functions results in endless disaster.

There is a further duty that devolves upon bar examiners that perhaps heretofore has not been fully realized by them. They as a group constitute a branch of the profession which comes into the closest contact with applicants seeking admission. Examiners are in a most advantageous position to determine in what respects candidates are lacking or deficient, what characteristics they exhibit, and what broad tendencies are discernible in their legal training and preparation. It is the examiner's plain duty to make known this first hand information to the profession, the public and the law schools and to assist in the development of remedies for such deficiencies as exist.

If New York, without an effective repeat rule, eventually excludes only about 5% of her applicants, as was recently reported, we have the duty of making known that fact.

If too many illiterate candidates are taking examinations for the bar in Arkansas, for example, where no requirements of general education obtain, it is our duty as examiners to report that fact to the profession. Likewise, if in Missouri, which has no

effective requirement of legal training, an inordinate number of applicants appear who have no adequate preparation, then the examiners have the duty of making that fact known. If law schools are deficient in their courses of training, as evidenced by the class of candidates they present for examination, the bar examiners should inform the profession of those facts. There are no others in the peculiar position of bar examiners who can so directly, fairly and intelligently determine all these facts, and therefore we should regard it as our duty to correlate properly information bearing upon our work and supply the profession with the facts. An interesting example of valuable work that could be done by the bar examiners in each state is found in the reports of the Judicial Council of Massachusetts bearing upon bar admissions, examinations, the percentages of applicants passing from each law school presenting candidates for admission, and containing much other valuable information. Adequate publicity based upon accurate facts is always materially helpful. A professional consciousness must be developed. Wise publicity will help.

The Law Schools

In considering the relation between the law schools and bar examiners, it is evident that these are closely related agencies, if not as closely related as the bar and the examiners. An ideal plan would be to have all law schools so regulated and operated, subject to the supervision of the American Bar, that graduation and suitable clerkship would automatically admit the applicant, but present conditions make that theory too Utopian for present practical consideration. The law school and the examiner are each engaged in developing and then testing students in those undefinable qualities that it is agreed each candidate must have to entitle him to admission. But the law schools have a definite problem and it behooves the part time schools as a class to improve greatly their product if they hope to stem the ever increasing percentage of failures in admission among their graduates. These schools particularly could give serious thought to the effect of encouraging enrollment only to find over 50% of their graduates failing to gain admission to the bar. The sponsor system perhaps would relieve this difficulty considerably. In this and many other respects the Pennsylvania plan has admirable qualities. It could be carefully studied very profitably by all examiners. As to the law schools approved by the American Bar Association, of which there are 77 in the United States, the percentage of failures in bar examinations is much smaller than as to the unapproved schools.

Recently a distinguished dean of a law school writing in the American Bar Association Journal stated that it was not the direct concern of the law school how overcrowded the bar became. It is respectfully submitted that the converse is true. This is a problem that requires the best thought of all lawyers, law educators, judges, examiners and all law schools, and should receive prime consideration at the hands of all bar associations and of our citizenry.

Varying Conditions and Regulations

The several boards are faced with varying conditions and problems. New York State with its 6,000 candidates annually presents a picture vastly different from Montana with its 7 candidates. California, Illinois, Massachusetts, New Jersey, New York and Ohio, each with over 1,000 candidates in 1930, have problems different from those of Delaware, Vermont and West Virginia each of which had not over 25 applicants in 1930. Also, while the District of Columbia has one lawyer to every 181 persons, the ratio in South Carolina according to the 1920 census, was one lawyer to every 1,702 persons. The income of the New York Board is over $100,000.00 per year, while 11 states have boards with an aggregate annual income of only about $3,000.00. At present there are 7 states having no requirements of either general education or legal training, while there are 17 states which require either presently or in the near future that all candidates shall have two years of college education in addition to 3 years of law training. In Texas there is no limit to the number of repeat examinations which can be taken and the candidate there also has the privilege of taking within a year an examination on the subjects in which he failed, successful passing of which admits him to practice. In New Hampshire a candidate must have special leave of court to take a repeat examination after a failure.

The rules of examination are clearly varying. In North Carolina the examination is given by the judges of the Supreme Court and lasts seven hours for the entire class of candidates. In Alabama 24 hours of time are allowed for answering the questions. Fees for taking the examination vary from $5.00 in South Carolina and South Dakota to $30.00 in Pennsylvania. The composition of boards of examiners and the length of their terms are unlike in practically all the states. The board of examiners varies from 3 in Alabama to 15 in Connecticut and the length of term from 1 year in Nebraska to 7 years in Delaware. The types

and kinds of questions also differ very widely. The Yes-No type is a necessity in New York and probably is a distinct advantage in any state. Oral examinations are given in 10 states and a research examination in 8 states. These are but a few of the varying conditions and regulations, but perhaps they are sufficient to justify an inquiry as to the logical basis for continuing such widely divergent regulations in those states where admission problems are quite similar.

Colorado Examinations

It may be of interest to select one of the average states where less than 200 applicants are examined a year and inquire briefly into the method of examination employed. Not that the state selected may be a model, but it affords a starting point of consideration. Colorado is such a state. During the year ending July 1st, 1930, that state had 110 candidates who took the examinations, of whom 48% passed.

The Board has 9 members, none of whom receive any compensation. They are appointed by the Supreme Court to serve for a period of five years. They have a paid secretary, a member of the bar, who receives $1,200.00 per year. The average aggregate time given by each examiner annually for the two examinations each year in the preparation of questions, the attendance upon four meetings of the Board each year, the correction of the examination books and in general examination duties, is probably 15 working days each year.

The written examinations cover a period of 3 days. They consist of 80 questions covering 24 principal subjects, but there is no classification or designation of subjects on the examination questions.

The examination is wholly anonymous, each candidate being assigned a number at the beginning of the examination. The candidate's name appears nowhere upon the examination books. The books when completed are returned to the secretary of the Board who alone and secretly reassigns a new number to each candidate. It is this reassigned number that appears upon the examination books when they are delivered to the examiners for grading, the former number which appeared in the upper right hand corner of the cover of each book having been clipped off by the secretary and the reassigned number appearing on the back of the triangle so clipped off as well as upon the face of the book. Thus, if an overanxious friend of any candidate should by oversight suggest the number of any candidate to an examiner, it would convey no

information to the examiner whatever, in that no one but the secretary of the committee has knowledge of the reassigned numbers. Accidents of this character have happened.

24 Subjects Examined Upon

The examiners individually correct the books in the examinations they have given, each examiner covering 3 subjects. The entire 24 subjects included are contained in a schedule hereto appended. The passing grade is 75. The graded books are returned within 60 days from the taking of the examination at which time the secretary compiles the averages. The high third and the low third of each class are for purposes of the oral examination eliminated, it being felt that it could accomplish little to examine orally these two groups. The middle third are recalled for oral examination, this being conducted by the committee sitting in divisions of at least two members each. The value thus to be placed upon the oral examinations has not been fixed as yet. It is thought that this value might constitute one-fourth of the total grade.

The examination into the moral and character qualifications is conducted by a separate committee appointed also by the Supreme Court, known as the Bar Committee. Excellent results have been accomplished by this committee which examines each candidate personally but its work begins after the candidate applies for admission and in that respect perhaps the Pennsylvania plan of character approval is much more satisfactory. A committee theretofore unadvised of a candidate's background, interrogates the applicant about the Canons of Ethics being "conscious that the greatest rogue may give the most pious answers."

The preparation of the questions by each examiner has proven to be an extensive matter. From time to time notes are made upon proper subject matter for the examination and thus over a period of months a set of questions is gradually evolved by each examiner. About 15 questions are submitted by each examiner out of which 10 are finally selected by the Board as the most desirable. This selection is made at a meeting of the Board which is held about four weeks prior to the giving of each examination. The questions are read aloud before the Board, criticized and discussed, in many cases corrected, and thus put through a refining process.

Types of Questions

The questions have included some of the Yes-No type, although at the last June examination they were entirely of the essay type.

Our Board has definitely discarded the definition type of question, feeling it is too well adapted to the unintelligent memorizer or crammer. Memory is not the ultimate test. The essay type calls not for memorizing but for analysis, the separation of the material from the immaterial, and the ability to apply legal doctrine to the case in hand, displaying powers of reasoning, independent judgment, incidentally the applicant's use of the English language, and other fundamentals that the definition question excludes. Of course, catch questions are sought to be avoided as also are questions of too great or not sufficient length.

It is readily seen that improvement could be made in this set up. An insight into the conditions in other state boards might perhaps be more enlightening, but we now have the chief characteristics of the Colorado Board's procedure which may enable us to prospect for improved methods and plans generally.

A New Era

It is refreshing to realize that today marks the dawn of a new era in the field of bar examinations. The organization today of this Conference of Bar Examiners should signify the beginning of a far-reaching, practical, efficient movement respecting bar examinations. Without doubt the bar examiners of the nation can act effectively if they speak with an organized voice. This Conference can well serve as a clearing house on examination matters. The machinery that we create, though not highly perfected at the start, can be made so effective as to bring incalculable good to the profession and to the public. Among the things that may well engage our attention and be in keeping with our proper functions are the following:

I.

Paid Executive and Staff-Duties

The creation of efficient working machinery in the Conference whereby a paid officer would be the executive in charge, suitable compensation and necessary clerical assistance to be allowed him.

(a) This executive might conduct a clearing house for all examination matters, affording examiners in the various states the opportunity to submit their various problems, including the submission of individual examination questions if desired.

(b) Questions could be interchanged among the various boards.

(c) It is not inconceivable that a plan may be devised similar in operation to the American Law Institute in which the best

legal minds of the country closely affiliated with law schools might be enlisted in the solution of our problem, the framing and criticism of the examination questions, the standard of grading of those questions and all related matters.

(d) This plan would have the beneficial tendency of standardization among the various states and while this cannot be made absolute because admiralty law would be as useful in Colorado as mining law perhaps in Florida, nevertheless many state boards would welcome a decided approach towards standardization in questions propounded. In this respect it is certain that many states would regard themselves as having made definite improvements if their questions were more similar to those given by the efficient boards in New York and Pennsylvania.

(e) Types of questions could be carefully analyzed and studied.

(f) A free interchange of ideas and plans regarding the mechanics of giving the examinations could be carried on.

II.

Committee Within Each State Board

A committee within each state board might be designated to study conditions, to devise ways and means of improving those conditions and to report its findings and conclusions to the board. The state board could in turn recommend desirable improvements to the proper authorities, whether they be legislative or judicial, and exert their utmost influence in the accomplishment of such improvements. It is believed that in the vast majority of the states where the appellate courts have jurisdiction over admissions and examinations, those bodies welcome and encourage improvements in methods of examination recommended by the examiners and that in most jurisdictions a very fine cooperation will prevail between the courts having jurisdiction over these matters and the examining boards. It thus probably rests with the examining boards in most jurisdictions to take the initiative, to examine their own problems, and after wise consideration to recommend desirable changes. The committee thus constituted within each state board, working in close cooperation with the executives of this Conference, could probably accomplish great improvements within surprisingly short periods of time.

III.

Classification of Schools

This Conference could adopt a classification of all pre-legal schools and all law schools so that there might be an accepted

national standard that would be some guide to the individual boards in the various states. For instance, in those jurisdictions where two or three years of successful college work in an approved college or university is required as a pre-requisite to law school study, there is apparently no uniform standardization whatever. One widely-used list of institutions is promulgated by the New York University, one list is set up by each of the regional educational associations of which there are five in the United States and one list is often fixed by the state institutions of learning within the particular jurisdiction. The same confusion exists with respect to law schools, they being classified by the American Bar Association, the Association of American Law Schools, The Law School Blue Book and other organizations. A suitable standardization would be very desirable, for if a board could point to a national standard it would be relieved of much unjust criticism and embarrassment resulting from an application from one who did his work in a local unrecognized school. Such a classification would also produce splendid results in the publishing of the results of each individual institution respecting numbers and percentages of their graduates who passed or failed the bar examinations. The percentage of Harvard graduates for instance, who passed the Massachusetts state bar from 1920 to 1929 was 98%, while the percentage of Suffolk Law School graduates who were admitted in Massachusetts in the same period was 65%. Likewise the "course mortality" at Harvard Law School for the above ten year period was 39% while that of Suffolk Law School was 73%. If each law school in the nation were thus rated the inevitable result would be in the direction of improved conditions within the law schools and the gradual and desirable elimination of those schools that are ill-fitted to prepare students for admission.

IV.

Cooperation With Law Schools

This Conference has an unusual opportunity for cooperation with the law schools of the country. It sees first hand the product of those schools as no others do. It sees that product collectively. Its composite views might be of interest and value to law schools and law teachers. A closer cooperation and means of communication between this Conference and the various law schools would unquestionably be invaluable to both the law schools and this Conference. We would better understand their problems and they would more fully appreciate ours. There are now 180 degree-conferring law schools in the country. It would seem that the

executive of this Conference could use that mailing and visitation list to excellent advantage and thus coordinate our work with that of the Section of Legal Education, and with that of the law schools.

V.

Working Library in Hands of Each Examiner

This Conference could with little expenditure create a comprehensive working library of all material and data bearing upon legal education and admissions and have such data and information available to all examiners, law schools and others interested. Thus, it would serve to collect and disseminate information useful to examiners. It might also be advisable that the executive of this Conference construct a suitable volume of such data and send it presently to each examiner and from time to time also send to each examiner in the country, being about 250 in number, such new data and material as might be collected, sending the same upon uniform sheets or booklets punched suitably for loose leaf binding. The Adviser to the Section of Legal Education has from time to time forwarded very valuable information to the various board members, but little of this is in uniform design, or suitable for satisfactory preservation. Perhaps each state board, and if not, then this Conference would gladly furnish each of the examiners with a standard loose leaf binder in which could be filed this valuable data and information and thus provide a volume or two of most useful information that would be the examiner's handbook and that would be transmitted from retiring board members to new members. As it is, an incoming member of any board, and the membership is constantly changing, has little to go upon except by hearsay and general information, and perhaps it is often two or three years after an appointment before such a new board member comprehends the gist or scope or importance of his appointment and trust. There are appended hereto various charts and a suggested preliminary list of some articles that might be included in such a loose leaf volume, including outstanding papers by such authorities as Philip J. Wickser of the New York Board, Dean Goodrich of the University of Pennsylvania, Rollin B. Sanford of the New York Board and Will Shafroth of the Section of Legal Education.

In this connection it is also suggested that all the examination questions of all the states be furnished to each of the other states for surely we have now evolved to such a point where with our contemplated machinery there need be no further secrecy about examination questions.

VI.

Financing Our Undertaking

This Conference can devise a means of properly financing its undertakings. There would appear to be no duty higher than that of perpetuating the American Bar by first selecting suitable persons for law training, sponsoring them under the Pennsylvania plan during their law study, requiring a suitable clerkship before admission and then admitting such of those students as appear properly qualified. Surely the American Bar, now numbering at least 160,000, and the American Bar Association now numbering 28,000, and the various state boards with an annual aggregate income of $250,000.00 to $300,000.00 from examination fees, can insure the allowance annually of the nominal amount that will be required to carry on the proper functions of this Conference. If 50 cents were collected from each candidate it would provide an annual budget of about $10,000.00 which would be adequate for the present. It would seem desirable that at least one member from each state board should attend each annual meeting of this Conference. Inquiry would determine promptly whether or not each state board would pay one-half the railroad and Pullman fares of at least one such delegate to this Conference, and unless they all agree to do so it would seem clear that our general budget should allow for such amount. Ways and means can and must be found. A suitable committee can do the task.

Thus, this partial survey of a few of the high peaks in the rugged territory of bar examinations, and these prospectings as to our work, our duties, and our function bring us to "sign off." Nothing new may have been here presented, but if these recitals have produced such mental attitudes or differences as are conducive to constructive reasoning and action, then all that is hoped for from these suggestions will have been accomplished.

Schedule I.

SUBJECTS COVERED BY COLORADO EXAMINATION QUESTIONS UPON EACH EXAMINATION

Agency	Contracts	Personal Property
Bailments	Damages	Pleading
Bankruptcy	Domestic Relations	Partnership
Corporations	Equity	Public Utilities
Carriers	Evidence	Real Property
Constitutional Law	Insurance	Sales
Conflict of Laws	Irrigation	Torts
Criminal Law	Negotiable Instruments	Wills and Administrations

The examinations are not given by subjects, the six half-day sessions of each examination being designated as divisions numbered I to VI.

SCHEDULE II.

SUGGESTED LIST OF INCLUSIONS IN EXAMINERS' HANDBOOK

Reports of the Judicial Council of Massachusetts.

Notes on Legal Education, March 16, 1931.....WILL SHAFROTH
Published by Section of Legal Education.

Bar Examinations .....PHILIP J. WICKSER
American Law School Review,
Dec., 1930, pp. 7-17.

The Threatened Inundation of the Bar.....CHAS. H. KINNANE
American Bar Association Journal,
July, 1931, pp. 475-479.

Bar Examiners and Examinees.....WILL SHAFROTH
Published by Section of Legal Education.

Bar Examiners and Legal Education.....HERBERT F. GOODRICH

The New Pennsylvania Requirements for Admission to the Bar.....WALTER C. DOUGLAS, JR.
Thirty-fourth Annual Report of the Pennsylvania Bar Association,
Vol. XXIV, pp. 385-402.

Admissions to the Bar.....WILLIAM D. GUTHRIE
Year Book, 1930, New York State Bar Association,
pp. 231-251.

The Law Schools and the Law.....PHILIP J. WICKSER
American Law School Review,
April, 1931, pp. 121-132.

The Yes-No Type of Bar Examination Question.....
.....ROLLIN B. SANFORD
"Types of Bar Examination Questions,"
published by Section of Legal Education.

Bar Examinations of the Essay Type.....STUART B. CAMPBELL
"Types of Bar Examination Questions,"
published by Section of Legal Education.

The Research Type of Examination.....ALBERT D. AYRES
"Types of Bar Examination Questions,"
published by Section of Legal Education.

Supply and Demand in the Legal Profession.....H. C. HORACK
American Bar Association Journal, Nov., 1928.

The Rising Tide of Advocates.....WILL SHAFROTH
American Bar Association Journal, July, 1930.

Fewer Lawyers and Better Ones.....I. MAURICE WORMSER
Year Book, 1929, New York State Bar Association.

SCHEDULE III.

NUMBER OF LAWYERS IN EACH STATE, 1850-1920, FROM U. S. CENSUS

	1850	1860	1870	1880	1890	1900	1910	1920
Alabama	570	763	758	798	1,313	1,596	1,488	1,416
Arizona	.....	.....	21	118	159	267	366	443
Arkansas	224	467	413	745	1,082	1,381	1,350	1,338
California	191	894	1,115	1,899	3,228	4,278	4,908	6,745
Colorado	.....	89	99	807	1,266	1,633	1,645	1,539
Connecticut	289	468	391	796	833	1,080	1,120	1,339
Delaware	46	87	84	127	176	215	180	171
District of Columbia	99	189	411	918	1,408	1,468	1,542	2,415
Florida	131	173	149	306	574	615	713	1,137
Georgia	711	1,168	851	1,432	1,731	2,391	2,235	2,531
Idaho	.....	.....	42	61	176	348	563	652
Illinois	817	1,602	2,683	4,025	5,789	9,030	8,054	8,843
Indiana	924	1,211	1,685	2,904	3,208	4,285	3,611	3,307
Iowa	272	1,161	1,456	2,610	2,800	3,436	2,579	2,494
Kansas	.....	361	682	1,492	2,964	2,383	1,782	1,676
Kentucky	995	1,190	1,552	1,981	2,356	3,147	2,672	2,382
Louisiana	622	698	663	828	1,071	1,316	1,235	1,206
Maine	560	646	558	725	751	895	860	801
Maryland	535	599	772	1,087	1,464	2,035	1,998	2,118
Massachusetts	1,111	1,186	1,270	1,984	2,589	3,459	4,417	4,954
Michigan	560	791	1,167	2,097	2,648	3,070	2,834	3,037
Minnesota	23	407	449	906	2,142	2,518	2,404	2,613
Mississippi	590	620	632	820	898	1,027	1,218	1,518
Missouri	687	1,187	3,452	2,907	3,954	5,285	4,556	4,506
Montana	.....	.....	67	77	343	543	625	875
Nebraska	.....	130	204	840	2,453	1,930	1,456	1,528
Nevada	.....	18	116	119	100	105	294	230
New Hampshire	326	375	349	382	417	468	407	379
New Jersey	412	537	888	1,557	2,159	2,865	3,236	3,918
New Mexico	11	23	48	128	239	274	386	342
New York	4,263	5,592	5,913	9,459	11,194	14,759	17,271	18,473
North Carolina	399	500	574	772	992	1,263	1,313	1,585
North Dakota	.....	.....	.....	.....	337	457	669	629
Ohio	2,028	2,537	2,563	4,489	5,336	6,655	6,152	6,485
Oklahoma	.....	.....	.....	.....	264	670	2,738	2,818
Oregon	22	104	194	311	662	1,035	1,312	1,424
Pennsylvania	2,503	2,414	3,253	4,992	6,735	8,330	7,206	6,784
Rhode Island	114	96	163	237	283	369	465	515
South Carolina	397	457	387	614	772	854	908	989
South Dakota	.....	8	23	300	740	693	690	700
Tennessee	725	1,037	1,126	1,506	2,064	2,730	2,099	2,040
Texas	428	904	1,027	2,109	3,555	4,617	4,557	5,323
Utah	5	8	23	119	315	434	446	527
Vermont	494 not stated		72	424	457	424	381	344
Virginia	1,384	1,341	1,075	1,355	1,650	2,032	1,812	1,981
Washington	.....	22	56	113	1,204	1,540	2,495	2,237
West Virginia	.....	.....	400	629	937	1,338	1,407	1,326
Wisconsin	471	1,133	785	1,198	1,691	2,249	1,876	1,978
Wyoming	.....	.....	25	34	131	142	205	268
United States	23,939	33,193	40,736	64,137	89,630	114,703	114,704	122,519

SCHEDULE IV.
POPULATION PER LAWYER

	1850	1860	1870	1880	1890	1900	1910	1920
Alabama	1,353	1,263	1,183	1,582	1,152	1,145	1,436	1,658
Arizona	.....	.....	459	333	555	460	608	754
Arkansas	937	932	1,170	1,077	1,042	949	1,166	1,309
California	484	425	502	455	375	347	484	507
Colorado	.....	385	402	240	326	330	485	610
Connecticut	1,283	983	1,374	782	895	841	1,232	1,031
Delaware	1,989	1,289	1,488	1,154	957	859	1,124	1,304
District of Columbia	522	397	320	193	163	189	214	181
Florida	667	811	1,260	880	681	859	1,055	850
Georgia	1,274	905	1,391	1,076	1,061	926	1,162	1,144
Idaho	.....	.....	357	534	503	464	578	662
Illinois	1,042	1,067	946	764	660	533	700	733
Indiana	1,069	1,115	997	681	683	587	747	886
Iowa	706	581	820	622	682	650	862	963
Kansas	.....	296	534	667	481	617	948	1,055
Kentucky	987	971	851	832	780	682	856	1,015
Louisiana	832	1,014	1,096	1,135	1,044	1,049	1,341	1,491
Maine	1,041	972	1,141	895	880	775	863	958
Maryland	1,089	1,146	1,011	860	702	583	648	684
Massachusetts	894	1,037	1,140	898	864	811	762	777
Michigan	710	902	1,014	780	790	788	991	1,207
Minnesota	264	422	979	861	611	695	863	913
Mississippi	1,028	1,276	1,310	1,379	1,436	1,510	1,475	1,546
Missouri	992	995	498	745	677	587	722	755
Montana	.....	.....	307	508	416	448	601	627
Nebraska	.....	221	602	532	433	532	818	848
Nevada	.....	380	255	523	473	403	278	336
New Hampshire	975	869	912	908	902	879	1,057	1,169
New Jersey	1,188	1,251	1,020	729	668	657	784	805
New Mexico	.....	4,065	1,914	934	670	712	847	1,053
New York	726	694	741	537	536	496	527	562
North Carolina	2,178	1,985	1,866	1,813	1,641	1,499	1,680	1,615
North Dakota	a	806a	616a	450	566	698	862	1,019
Ohio	976	922	1,039	712	688	624	758	888
Oklahoma	.....	.....	.....	.....	979	1,179	605	719
Oregon	604	504	467	561	479	399	512	550
Pennsylvania	923	1,203	1,082	857	780	756	1,063	1,285
Rhode Island	1,294	1,818	1,333	1,166	1,220	1,161	1,166	1,175
South Carolina	1,683	1,539	1,823	1,621	1,491	1,569	1,668	1,702
South Dakota	a	806a	616a	450	471	579	846	909
Tennessee	1,383	1,070	1,117	1,024	856	740	1,040	1,146
Texas	496	668	797	754	628	660	855	876
Utah	2,276	5,034	3,773	1,209	669	637	837	852
Vermont	635	.....	.....	783	727	810	934	1,023
Virginia	1,027	1,190	1,139	1,116	1,003	912	1,137	1,166
Washington	.....	527	427	664	296	336	457	606
West Virginia	.....	.....	1,105	983	814	716	867	1,104
Wisconsin	627	684	1,344	1,098	1,001	920	1,228	1,330
Wyoming	.....	.....	274	611	477	651	712	725
United States	968	947	946	782	682	662	801	862

a—Dakota Territory embraced present states of North Dakota and South Dakota.

A Tower of Babel

By Will Shafroth
Secretary of The National Conference of Bar Examiners

Probably of all varieties of state laws governing any one subject, there is nowhere a greater diversity than in the laws concerning the subject of admissions to the bar, including rules of court and regulations of bar examining boards. It further seems to be a reasonably safe statement that of all of the rules, laws and regulations governing admission to the bar, in no particular division is there as wide a difference or as many divergent provisions as in that part which relates to admission of attorneys from other jurisdictions.

For example, in the state of Wyoming a foreign attorney who has practiced in another state, if even for one day, may, in the discretion of the Supreme Court, be admitted to the Wyoming bar without examination; while in Colorado, its adjoining neighbor to the south, the candidate must have practiced ten years out of the last eleven to be admitted without examination, unless, perchance, he comes from a state having equally high qualifications for taking the bar examinations—in which case he is excused from examination if he has practiced five years out of the last six. But it does not do to be too dogmatic about such statements. The day following the preparation of the appended table on this subject, I received a note from Mr. Sampson, Secretary of the Wyoming Board, to the effect that the examiners were recommending to the Supreme Court a period of five years of practice out of the last eight, for foreign attorneys.

The spread in the time of practice required to gain admission for foreign attorneys without subjecting them to the bar examination is quite large, extending from zero to ten years, as shown by the following table:

Years of Practice Required From Any State Regardless of Whether It Has Equivalent Requirements or Comity Provision	Number of States or Territories
0	2
1	2
2	3
3	12
5	13
8	1
10	2

The average period of time is just slightly less than four years.

Admission of Attorneys from Other States

(Note: This table was prepared from latest rules for admission to the bar. Please call to the attention of the writer of this article any inaccuracies you find in it.)

	Examination Required in All Cases	**From Any State** Attorney from any other state is admitted without examination after practice for following number of years	**From States With Equivalent Requirements** Attorney is admitted without examination, from state having equally high qualifications for taking examinations, after practice for following number of years	**From States With Comity Provision** Attorney is admitted without examination, from state which will admit attorneys from this state after like period of practice, if candidate has practiced for following number of years	Admitted Without Examination on Diploma from Following Number of Schools
Alabama		2			1
Alaska		no practice nec.			
Arizona	yes				
Arkansas		3	3	less than 3 yrs.	1
California		left to the discretion of the examining committee			
Colorado		10 out of last 11	5 out of last 6		
Connecticut			3		
Delaware		3			
Dist. Columbia		5		no practice nec.[1]	
Florida	yes				3
Georgia				no practice nec.	4
Hawaii		3			
Idaho				3 out of last 5	
Illinois		5[2]	no practice nec.		
Indiana		3			
Iowa		1			
Kansas			5[3]		
Kentucky		5	no practice nec.		
Louisiana	yes				
Maine		3			
Maryland		5			
Massachusetts		3			
Michigan			3[4]		
Minnesota		3			
Mississippi			3 if comity also in effect		1
Missouri			3[3]		
Montana		2	no practice nec.		1
Nebraska		5 out of last 10	no practice nec.		2

Nebraska	5 out of last 10	no practice nec.		
Nevada			3 out of last 5[5]	
New Hampshire	3			
New Jersey	yes			
New Mexico		3		
New York	5			
North Carolina			5	
North Dakota	3			
Ohio	5[6]			
Oklahoma	5[7]			
Oregon	3 out of last 5[8]	no practice nec.		
Pennsylvania	8			
Philippine Islands			5	
Porto Rico	2[9]			
Rhode Island	10			
South Carolina	5			1
South Dakota		5[8]		1
Tennessee	5	no practice nec.		
Texas	5			71
Utah	3 out of last 10			1
Vermont	1			
Virginia	3			
Washington	5			
West Virginia	yes			1
Wisconsin	5 out of last 8			1
Wyoming	must have practiced—no period specified.			

[1]—In state requiring at least 3 years' study of law and an examination.

[2]—8 years in state requiring less than 2 years of law study.

[3]—Irrespective of what the rule is in the state from which he comes, if applicant has qualifications of state where he applies, he is eligible.

[4]—Irrespective of what the rule is in the state from which he comes, if applicant has qualifications of general education required by laws of Michigan, he is eligible.

[5]—But attorneys from other states with higher requirements for foreign attorneys may be admitted if they comply with requirements of state from which they come.

[6]—After at least 2 years of law study.

[7]—Ex-judges of courts of record of sister states admitted without examination.

[8]—Temporary admission for two years made permanent at end of that time if no objection has been filed.

[9]—Including 1 year's practice in the U. S. District Court for Porto Rico.

It is interesting to note that fifteen states, which we may call "A" states, make distinctions in their rules between attorneys coming from a state having qualifications for admission to the bar equal to those of the "A" state to which he comes and attorneys from a state having lower qualifications; in the first case these "A" states admit such an attorney without an examination if he can show a certain amount of practice, but if he comes from a state having lower qualifications than the "A" state, then he is required by the "A" state either to take the bar examination or to show a longer period of practice than he otherwise would. There are eight states, which we may call "B" states, which grant immunity from examination after a certain period of practice only in case the state from which the candidate attorney comes will similarly treat licensed attorneys coming to it from the "B" state.

In the five states of Arizona, Florida, Louisiana, New Jersey and West Virginia, there is no admission of foreign attorneys without examination. Thirteen states give the diploma privilege to their state university and sometimes to other schools in the state, that is, they admit graduates of certain law schools to the bar without examination. Texas grants such admission to graduates of five local schools and also to graduates of sixty-six law schools located in other states, practically all of which are on the approved list of the American Bar Association. This provision of the Texas law frequently permits the admission of foreign attorneys without examination before they have practiced for the five-year period which the general rule requires. Several states which require practice for a specified number of years to enable an attorney from another state to qualify for admission without examination permit such a foreign attorney who has not practiced for the required period to become a candidate on the bar examinations, substituting a period of practice in his former home for a specified number of years in lieu of other qualifications required of ordinary candidates.

In the rules for the admission of practitioners from out of the state, there are certain general provisions which are in effect in most jurisdictions. For example, the requirement that a foreign attorney should have six months' residence prior to his admission is very common. It is almost a universal rule that teaching in a law school or holding the position of judge is regarded as the equivalent of practice. As a rule, practice in the state from which the applicant comes must immediately precede his request for admission. Some states, however, specify that it must be a certain number of years out of the last ten. In Utah, for example, three

years' practice out of the last ten satisfies the rule. In some of the states the rules give the court the discretion to admit without an examination or not, as it sees fit, provided the lawyer has the necessary years of practice, but it would seem that this discretion is rarely used unless to exclude a person whose moral character is not satisfactory.

Occasionally the privilege of admission without examination is not accorded to former citizens of all of the states and territories but only to those coming from commonwealths "where the common law of England is the basis of its jurisprudence." Under this rule Louisiana lawyers would seem to be excluded since much of its law is civil law. Connecticut prevents the candidates who fail its examinations from going into a state with equivalent requirements, practicing three years, and then obtaining admission without examination in Connecticut as other foreign lawyers may, by providing that the period of practice of such individuals must be extended to five years.

Provisions in reference to admitting from another state where the admission requirements are as high as in the state where the applicant is applying seem generally to refer to conditions in the state of practice existing at the time the applicant was formerly admitted and the requirements of the state where he seeks to be admitted without examination at the time of such application. In other words, the requirements of the first state of admission *then* must be as high as the requirements of the second state of admission *now*. In some states, however, there is a tendency to give that rule a rather more liberal construction.

A survey of these state requirements and their wide variations brings up the question of whether more uniformity in this regard is not desirable. Whatever may be said in regard to rules for admission to the bar generally, there would seem to be no logical reason why a uniform rule could not be adopted as to the admission of attorneys from foreign jurisdictions. Except possibly in the case of the civil law state of Louisiana, there would seem no reason for excluding from the courts of any state a man who has honestly and in good faith practiced law for a reasonable period. What that period should be is a question which should have the fullest consideration. It would seem that at least three years of practice should be required in view of the fact that candidates who have not studied law for any definite period are permitted to take the examinations for admission in Arizona, Arkansas, Florida, Georgia, Indiana, Mississippi, Missouri, Nevada and Virginia. On the other hand, a requirement of ten years of practice,

which is in effect in two states, seems too great. Probably it would be easier to obtain agreement on five years than on any other figure. If that could be done, it would seem fairly safe to drop the requirement that the attorney must come from a state having equally high requirements or that he must come from a jurisdiction which affords equal privileges to attorneys from outside its walls—the so-called comity provision.

In respect to attorneys from other jurisdictions, character provisions are even more important than regulations concerning the amount of time they have practiced law. Generally, it is provided that they must obtain certificates and affidavits from judges and from lawyers of the place whence they come and proof of their good standing at that bar. Sometimes, also, they are required to produce evidences from bar association authorities. Probably uniformity in these provisions, designed to assist character committees, is not desirable. It is the duty of each state board, however, to see that satisfactory information concerning each lawyer who seeks admission on the basis of a foreign license is furnished to it before he is recommended for admission. Certificates and affidavits are generally too easy to obtain to be of much use. Bar association officials should be of some service in this connection, and it may be assumed that any inquiry addressed to another state bar examining board will be put in the proper channels for answer. The permanent office of the National Conference of Bar Examiners is also glad to render any service it can in giving such information as can be obtained regarding any candidate for admission.

This entire complex problem of admission of attorneys from sister states needs further consideration and discussion. Perhaps it can be taken up by a round table group at the time of the next meeting of the Conference. If board members will give it their careful thought, some headway toward more uniformity of rules, or, at least, toward an improvement of the present rules, can be achieved. Even a partial elimination of this confusion of tongues would spell progress.

New rules covering admission to the bar are now in the course of preparation for submission to the Supreme Court after approval by the Board of Commissioners of the State Bar of ALABAMA. Under the incorporated bar act, power to prescribe qualifications for admission is placed in the Board of Commissioners subject to the approval of the Supreme Court.

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The December American Law School Review

The December number of The American Law School Review, published by the West Publishing Company, contains a full account of the proceedings of the National Conference of Bar Examiners at Atlantic City, together with a reprint of the addresses which were made there. The papers read by Mr. Wickser and Mr. Wallbank have been reprinted in No. 1 and No. 2 of The Bar Examiner. Special attention is called to the address of Dean Herbert F. Goodrich of the University of Pennsylvania School of Law, then President of the Association of American Law Schools, entitled "Bar Examinations and Legal Education." This is found on page 307 of the Review.

There is also a report of the proceedings of the Section of Legal Education and Admissions to the Bar of the American Bar Association, and a reprint of the address delivered by Mr. George H. Smith, then Chairman of the Section; the address of Colonel John H. Wigmore, dean emeritus of the Northwestern University Law School, on the subject of "A Law School Course on the Profession of the Bar;" the address by Mr. Robert T. McCracken, Chairman of the County Character Examining Board of Philadelphia County, entitled "Professional Ethics and Candidates for Admission to the Bar;" and the address by Mr. Silas Strawn, former President of the American Bar Association, on the subject of "Practical Ethics."

Character Examination of Candidates

Extracts from a Round Table Discussion Held in Connection with the Meeting of The National Conference of Bar Examiners at Atlantic City, September 16, 1931.

Mr. Paul Shipman Andrews, Dean of the Law School of the University of Syracuse, N. Y.:

Gentlemen, the subject of this round table deals with ways and means of raising the standards of the bar. That there is a necessity of raising those standards is probably apparent, particularly to those of us who are familiar with conditions in the larger cities. The question with which we are to deal tonight seems to me to amount to about this: Is the profession of the law going to be the kind of thing into which we shall be happy to have our grandsons and perhaps even our sons go, or is it going to be a kind of thing so unappetizing that we should hate to have the next generation belong to it?

There has been much talk all over the country about conditions in the bar and about what is to be done to bring it back to its old position of honor and trust. That that position has been at least partly lost there can be little doubt. But in one place that I know of in this country something has already been done, something accomplished toward the end we are working for and I want to ask Mr. Duane, of Philadelphia, to tell us what the Pennsylvania system of handling candidates for admission to the bar has done and how it works.

Mr. Morris Duane, Examiner for the Pennsylvania Board of Law Examiners:

I really think something has been accomplished in Pennsylvania. I must go back to outline the Pennsylvania plan to show you how it developed. In Pennsylvania, in 1834, an Act was passed by which the courts of record were authorized to admit as attorneys "a competent number of persons of an honest disposition" and "learned in the law." Under this statute grew up examinations solely by county boards. In about 1900, the Supreme Court took the bit in its teeth and adopted rules for a comprehensive examination for admission to the Supreme Court alone. They set up the Pennsylvania State Board of Law Examiners.

After negotiations the Supreme Court and the Board obtained the acceptance of the theory that persons admitted to that court would be admitted to practice in the county courts and after further effort secured the enactment of a statute compelling such admission subject to the approval of the County Board. That agreement was followed by a statute. That is the foundation of the Pennsylvania system which is a division between state's rights and county rights. The state, under the Pennsylvania plan, through its State Board of Law Examiners who are agents of the Supreme Court, examines exclusively in Pennsylvania as to the legal qualifications of the candidate, as to his education and whether or not he knows enough law. The State Board looks to the county boards for an examination into the moral character and ethical standards of the candidates.

Until 1928, the State Board did relatively little with respect to character and ethics of candidates.

In that year, due largely to the efforts of the then Chief Justice Robert Von Moschzisker, of Harry S. Knight, a President of the Pennsylvania Bar Association, and of Walter C. Douglas, Jr., the Secretary of the State Board, the Supreme Court finally adopted rules setting forth in detail the Pennsylvania plan. Now to look at the plan as set forth in those rules there are three essential requirements:

(1) An investigation as thorough as is reasonably practical of the moral qualifications of the applicant on *two* occasions, *first* when he registers as a law student, *second* when he applies for final examination. By that means you have a double check on the man. You have him when he first comes up, you give him three years to have his law school education, and then you check his character to see if he is still entitled to practice.

(2) The requirement that each student have a preceptor during the entire period of law study. The preceptor must be a member of the bar approved by the county board.

(3) A six months' clerkship in a law office prior to admission. During that six months the candidate can do nothing else except that but he may, if he desires, split it up so as to take it in summer vacations.

In 189 Pa. 99, Judge Michael Arnold stated this rule: "By admitting an attorney the court presents him to the public as worthy of its confidence."

Justice Sharswood has said, "A horde of pettifogging barratrous custom seeking and money making lawyers is one of the greatest curses with which any state or community can be visited."

Judge Brown has said, "I do not know a more profitable field for gifted rascals to exercise their talents than in the practice of the law. This makes it all the more important that the courts should be vigilant to keep them out."

With these principles in mind the state and county boards have gone to work making their character examinations.

The first step is the questionnaires. Each applicant to be registered must submit seven questionnaires each containing about twenty questions to be answered by himself, his sponsor, business men, and others. The questionnaires are precisely worded, and contrary to expectation have proved of great value. I have sets of the questionnaires. Some of the questions, I think, might be of interest to you. (Questionnaires are printed on pages 74 to 77 of this issue.)

One of the questions requires a statement of the place and date of birth, and every residence, with exact addresses and dates. In New York, in a check-up between date of birth and dates of residence, it was found that a candidate had misstated the date of birth in order to make it appear that he was of full age and eligible for admission.

If claiming citizenship by naturalization, the naturalization certificate should be produced.

Another question is whether the applicant has ever been suspended or expelled from school or college, and if so, to state the facts fully. It was found that a number had been suspended or dropped for poor scholarship, and one expelled from college at the end of the second year for stealing.

Another question calls for a statement of dates and places of employment. It was found that one candidate had been dismissed from his position because of alleged financial irregularities.

Another question requires the candidate to state whether he has ever been a party to a proceeding civil or criminal, and, if so, to state the facts fully. On the civil side, it is conceivable that the facts developed in divorce proceedings, for example, might justify a refusal to permit registration. In fact, this question has already arisen. On the criminal side, it developed that one applicant had been indicted, but not convicted, for forgery.

Another question states that experience shows that the income of the average practicing lawyer is less than that of the average business man, and asks why, knowing this, does the applicant wish

to be admitted to the bar. Quite a number answered that they did not know this to be so; others said that they expected to do better than the average practicing lawyer; others that they were choosing the profession because of the higher social position of the lawyer in the community; others because they regarded the law as a stepping-stone to political preferment. Of course, a majority, more modest, or with higher professional ideals, or not with such high ideals, but desirous of making an acceptable answer, explained their choice as based on other grounds.

Questionnaires must be submitted before the candidate can take the final examination.

In addition to these questionnaires the county board has an elaborate system of personal interviews. In Philadelphia that is done by having two members of the board sit with the applicant before them. The average examination takes between one and two hours. The applicant, one or more of his sponsors, and his preceptor are usually present. Interesting questions are asked. Mr. McCracken this afternoon gave one of the questions:

One man was asked, "Suppose you represented the defendant in a criminal proceeding, and the principal witness for the Commonwealth, without whose testimony your client could not be convicted, was about to leave the country, not to return, would you feign illness, in order to obtain a continuance?" His reply was: "It is your duty to do all you can for your client. I understand those things are done. Yes, I would."

The persons sitting, if they agree, then report to the full county board. If they do not agree, a new committee of the board examines the candidate. The board then votes and makes its report and findings to the State Board.

A right of appeal is given to the State Board and from it to the Supreme Court, thus negativing any possible local prejudice.

I should like to give you the statistical results of the work in Philadelphia County. Between April, 1928, and December 31, 1930, the County Board in Philadelphia County examined 1,715 candidates. Of these forty-two were rejected and thirty-eight withdrew their applications, in many cases on the advice of the Board.

In every instance in which the examining committee believes it necessary to reject the applicant advice is first given to him to withdraw the application. This advice is accepted in about fifty per cent of the cases.

The State Board has reversed the Philadelphia County Board in six cases. Appeals from the Philadelphia County Board have been made in a number of cases to the State Supreme Court. In every case the State Supreme Court has affirmed the action of the State Board except in three cases where it has refused to hear the appeals at all.

MR. ALBERT MOISE, Secretary of the County Board of Examiners for Philadelphia County:

They had a judge in Delaware County, Judge Johnson, and in Media I do not think there were fifteen or twenty members of the bar. At one time there were some signs of influx of the Philadelphia Bar going to Media. Judge Johnson referred to the statute that provided that the court should admit a competent number and said he would sustain it. They passed some rules down there which said that unless a man had his principal office in Media he could not practice there. A first-class young man undertook to go down there to practice and they would not let him do it. He took the case to the Supreme Court and he lost the case.

MR. DUANE:

As Mr. MacCracken has said, the work of the County Board is divided into three classes of cases. First, there is the very easy case, the case of the man whose father or uncle has been known to the Board, etc. He, of course, is immediately passed. There is the other type that comes before the Board, the man who has been convicted of a crime. Such man, of course, is immediately rejected. In between those two classes are the vast majority of cases of people who come before the Board with no background who want to become lawyers, some of whom the Board does not think have been brought up in the proper way, others whose very manners are so unprepossessing that it does not seem logical that they should be admitted. The most difficult question that the County Board has come up against is as to whether they should reject a man because of his appearance, his manner, or general surroundings. They do not think he should practice law but they have nothing against him.

The second thing in the Pennsylvania system in addition to the County Board examinations through questionnaires is the system of preceptors. The County Board has the duty of approving or disapproving members of the bar as preceptors. In Philadelphia County the Board has accepted 615 lawyers and has re-

jected 16 as undesirable. I think it is interesting to show the attitude towards the lawyer devoting his entire time to a corporation. One interpretation of the rules in Pennsylvania by the Supreme Court is to the effect that "No student may register with a preceptor who is permanently retained by a corporation giving his full time to that one retainer with headquarters at the office of his client." Only practicing lawyers with a general practice will be approved as preceptors. The preceptor system has worked out very well. They are getting interested in it and they are trying to associate with the students. The students serve the six months' clerkship in the office of their preceptors. The student is in his preceptor's office for a period of six months, doing work for him and seeing how he does his business. In that way the student is getting an idea of what a practicing lawyer does and if he is a good lawyer, it has a lasting effect on the young fellow wherever he goes. The State Board has sent out a letter to all the preceptors asking them what they thought of the plan. So far approximately two hundred replies have been received to that letter and those replies show almost unanimously that the preceptors are greatly in favor of it.

Agencies have been found to help students to obtain preceptors.

The third thing is the service of the six months' clerkship. I have already referred to it as giving a lawyer the opportunity to see what sort this fellow is when he is faced with legal problems. The enthusiasm which the general plan of preceptors has aroused in Philadelphia I think is shown by the fact that there was a dinner there of over 400 Jewish lawyers. Two points were stressed: *first,* that the older Jewish members of the bar should constitute themselves as a group to aid and advise worthy young men, and *second,* that in the interest of the Jewish members of the bar, the profession as a whole and the public, the ambition of unworthy young men to enter the profession should be discouraged. That second thought seems to me something perhaps beyond the Pennsylvania system although that is the purpose of the County Boards, to discourage unworthy young men. If a lawyer knows that that young man is not worthy it is a great opportunity to tell him so in some tactful way.

That is a brief summary of the Pennsylvania plan.

Mr. Moise has been Secretary of the Board in Philadelphia County since it started. The plan has been in operation for three years. The bar is behind it and it is working very well.

MR. HITCHCOCK, Chairman of the Board of Bar Examiners of Massachusetts:

Did you have any difficulty in putting that plan into operation?

MR. DUANE: At first it was fairly easy. The rules provide that no one office can have more than three persons registered with them. Some of the larger offices have received permission to register up to nine. Of course, some offices have from fifteen to twenty lawyers. Recently, I think, there has been a little trouble in some of the students getting preceptors. Great efforts have been made by members of the bar to place those lawyers with preceptors. Lists are posted. The State Board office tells them where to go. The Pennsylvania Law School, Temple University Law School, and the University of Pittsburgh School of Law have committees of law school graduates to assist students in securing preceptors.

MR. ANDREWS: I suggest that questions be asked now. I wanted to ask this, myself: Has the appointment of preceptor come to take on any connotation of honor? Is it considered an honor to be accepted as a preceptor? Is it in any way parallel to the honor which is attached to the position of King's Counsel in England and Canada?

MR. DUANE: I would say not. Figures show that relatively few have been refused. I think the members of the bar who do it regard it as a duty. In some cases they welcome the opportunity to get young lawyers in their offices especially in the summer to look up law for them for nothing.

MR. WALTER ANDERSON, of the Nebraska Board of Bar Examiners: Has the legislature in Pennsylvania undertaken to say that the graduates of certain law schools shall be admitted on presentation of diploma?

MR. DUANE: No. There were only two cases and the Supreme Court made the statement that the legislature had no jurisdiction whatsoever over the bar examinations.

MR. ANDREWS: We would be very glad to hear now from Mr. Moise.

MR. MOISE: Our Philadelphia County Board is composed of twenty-four members. Due to the close cooperation between our Chairman and the members of the Supreme Court and the Judges of the Common Pleas Courts, the Board is carefully selected in

this manner: That of the twenty-four men selected not all are of one kind. I mean to say by that that there are some men on there, for instance, who are Harvard men. There are other men who are not in a law school, the idea being that all classes of these students should have men who could sympathize with them on that board.

Now, as Mr. Duane pointed out, we have very little difficulty with cases of men who are good and of men who are very bad. We do have a lot of trouble with a great mass of applicants who come before the Board who are perfectly colorless and who have no background. The committee cannot see much before them. It finds that a number of men come up and want to study law. They know nothing about it. We have over three thousand members of the Philadelphia Bar. They do not know any of the lawyers. We ask, "What have you been doing?" Sometimes they have been selling papers, sometimes driving a team, etc. They think law would be a good thing to study. They have no idea about the question at all but just thought they would take it up to pass the time away. Sometimes we ask a man if his parents live here. He says, "Yes." "What does your father do?" "He is a contractor." "Business successful?" "Yes." "Any other children?" "No." "You and your father on good terms?" "Yes." "Father want you to go into business with him?" "Yes." "Why don't you do it?" "I just thought I would like to study law." The man has no education and not much capacity to get one. Then the questionnaires are filled out and they are sent to two men on the Board who have been carefully selected. They come in. There is a man who is practically colorless but we cannot pin any particular thing on him. We cannot prove that he committed any crime but at the same time we think it is silly for the man to waste his time studying law. The question is whether the Board shall refuse to permit that man to enter upon the study of law. The result is that when we first started we always gave them the benefit of the doubt. We could not pin anything on them and had to let them through. But I suppose as time goes on we may tighten that rule up some.

A short time ago the Chairman of the Board gave a dinner to certain members of the Supreme Court, the Superior Court, Common Pleas and Orphans Courts, members of the Board, and some other eminent members of the bar. The Chairman undertook to elicit from the judges and members their views on this subject. Finally, I think, the conclusion of that meeting was, after hearing the judges, that you could not lay down any rules;

that the subject was too difficult to undertake to define by a rule; that the members of the Board were very carefully selected by the judges and they were all men of experience and that the question of whom to pass and whom to reject had to be left to the sound discretion of the Board after the most thorough examination beginning with these questionnaires, which are supposed to be very thorough. After they are filled out they are referred to two members of the Board and if there is any dissension between those two members, it should be referred to a new committee. If there is any appreciable dissent we send for the man and bring him before a Board of twenty-four men. First he is questioned by the Chairman and then the other members of the Board. Sometimes we let him through. Sometimes we do not. Those are the difficult cases. If a man comes up with a fine character, fine background or if a bad man comes up, we have no trouble but it is the intermediate fellow we have trouble with.

MR. W. E. STANLEY, of Kansas, member of the Council on Legal Education and Admissions to the Bar of the American Bar Association: Is a permanent record of those questionnaires made for the sake of future comparisons on the ones who go through?

MR. MOISE: Records are kept. We keep them in case there should be an appeal.

MR. HITCHCOCK: Do you ever have cases where a man is caught lying? You refuse to register him because it is a straight case of bad moral character. Then he says it was all a mistake and has repented and wants to do it again.

MR. MOISE: We have had cases of that kind. We had a most remarkable case of that kind. A case where a young man of good family went to a well-known college and was caught stealing from the rooms of his fellow students. He was expelled from college. The man came before the Board and asked to be recommended for admission as a man of honest disposition and good moral character. He produced evidence before the Board to show that after he had left college the thing kind of awakened him. He came back to the state, went to work and went back to the college, confessed what he had done and after a period of years he was put in a position of trust in one of the largest corporations in Pennsylvania. He came to us with the highest recommendation that a man could bring. We had two or three hearings. We had him come before the whole Board. We went back to the college and talked to the college professor. We went back to the executives for whom he worked in that position of trust. We came

to the conclusion that the man had redeemed himself and he was admitted.

JUDGE OSCAR HALLAM, of Minnesota, Vice-Chairman of the Section of Legal Education and Admissions to the Bar of the American Bar Association: How did this man work out?

MR. MOISE: All right.

MR. DOUGLAS ARANT, of Alabama: I should like to ask if the approving authorities ever have any difficulties with reference to the matter of the law school in which the man proposes to pursue his law studies. Do you approve studies in certain law schools and not in others?

MR. DUANE: The State Board has a list of the approved law schools and can approve and disapprove certain law schools.

MR. GEORGE H. SMITH, of Utah, former Chairman of the Section of Legal Education and Admissions to the Bar of the American Bar Association: As I understand it, in the State of Pennsylvania the pre-legal requirements are substantially a high school education.

MR. DUANE: The minimum is that the candidate shall pass the college entrance examinations given by that board, at least a sufficient number of examinations to qualify him for entrance. The majority of applicants in Pennsylvania have had college degrees as well as law school degrees.

MR. SMITH: In this character examination, have you reached any conclusion as to whether or not a man who has had more education qualifies better as to character than the man with a lesser education?

MR. MOISE: I would say yes.

MR. ANDREWS: Yes. As I remember what Mr. Douglas of Pennsylvania, one of the originators of the Pennsylvania system told me, he said that this was emphatically true.

MR. HITCHCOCK: We have a modern Abraham Lincoln. Do you think he would get by?

MR. DUANE: Easily.

MR. SMITH: Sometimes you have wonderful character evidence displayed even though the applicant is not well educated or his parents were born in Russia.

MR. ANDREWS: That is true of one of the best members of my faculty at Syracuse.

MR. DUANE: The Board has been considering very seriously the question of raising the minimum requirements. The thought

of the Board was that an examination should be given on certain educational subjects covering a broad field at the end of three years after the man had passed the college entrance examinations and in addition to that he should pass these examinations by the Board.

MR. ANDREWS: It is a very desirable and, indeed, indispensable thing that the modern Abraham Lincoln should not be kept out. It is a desirable thing that the wish of democracy should be gratified, that entrance to the law should not depend on money or social position or antecedents but that the door should be wide open to all alike consistently with adequate educational and character requirements.

On the other hand, a bad lawyer can do more harm before he has been stopped by economic processes than a bad plumber, and we ought, at least, to have relatively as high requirements for the profession of law as for plumbing if the public is to be protected from harm.

I think it is apparent from what these gentlemen have said that the fundamental conception of Pennsylvania in setting up these requirements is this: That bearing in mind what I have just said, which Pennsylvania does not forget, and speaking, mind you, as of a time before the applicant has acquired the accumulated equities of three years of time and money spent in law study, the fundamental conception of Pennsylvania is, I think Mr. Duane and Mr. Moise will agree, that no man has an inherent right to practice law and harm the public by so doing.

MR. DUANE: Yes.

MR. MOISE: Yes.

MR. ANDERSON: How about the man that comes into Pennsylvania having studied in some other state? A man who has lived in Massachusetts and has gone to Harvard and has been graduated from there comes into Pennsylvania to be admitted to the bar?

MR. DUANE: He does not have to study three years but he has to take the Pennsylvania bar examinations and he has to petition to be excused from the preliminary examination—from the examination, that is, which is given to Pennsylvania applicants before they start to study law. This petition is almost always granted as a matter of course.

MR. MOISE: He must live in the state for six months and pass the State Board examinations. (Cites Pennsylvania Rule 211.)

PENNSYLVANIA QUESTIONNAIRES FOR REGISTRATION OF LAW STUDENTS

APPLICANT'S QUESTIONNAIRE

Applicant must answer all questions fully and precisely. Any omissions or inaccuracies may be deemed ground for rejection.

Applicant must fill out one copy of this questionnaire in his own handwriting and file the original and one exact typewritten copy. Both copies must be signed and sworn to by the applicant.

1. Name .....
   Date of birth..... Birthplace.....
   State every residence you have had (with exact addresses and dates).
   What other name or names, if any, have you used?
   Has your name or the name of your father ever been changed?
   If so, from what to what; why and when?
   If born in a foreign country, state age at which you came to the United States.
   If naturalized, state when and where, and attach certified copy of naturalization certificate.
   If claiming citizenship other than by birth or personal naturalization, state why.
2. State names and residences of parents, and their occupations during the past five years. Are your parents native or foreign born? If foreign born, are they naturalized?
3. State all schools and colleges you have attended, the dates of attendance, any degrees received, any honors taken; names and present addresses of at least three instructors with whom you came into personal contact.
4. Were you ever dropped, suspended or expelled from school or college? If so, state facts fully.
5. Do you believe in the form of and are you loyal to the government of the United States?
6. In what employment, if any, have you been engaged during attendance at school or college, or since leaving? State places of employment, name of employers, and dates of employment.
7. State (a) whether you have been a party to or otherwise involved in any legal proceeding, civil or criminal; (b) whether you have ever testified or been called as a witness in any such proceeding; (c) whether you have ever been arrested; or (d) summoned for a violation of any law or ordinance. Give full details including facts and disposition of the case, and the judgment of the court if you were a party.
8. With what charitable or fraternal organizations, church or religious body, if any, are you and your parents affiliated?
   State location of church, and name and address of present pastor, priest, rabbi, or overseers, or local head of religious, charitable, or fraternal organization.
9. Give the names and addresses of three reputable citizens* (at least two of whom shall not be members of the Bar) of the community where you now reside who know you well and to whom you refer as to your character. If you have resided for less than three years in the community where you now reside, then also the names and addresses of three reputable citizens of the other community, or communities, respectively, where you have resided for three years last past.
10. Do you wish to adopt the legal profession for a life work?
11. Experience shows that the income of the average practicing lawyer from his profession is much less than that of the average business man from his business; knowing this, why do you wish to be admitted to the Bar?
12. State the name and address of your proposed preceptor.
13. Do you wish to take the preliminary examination, or to register as a law student on a diploma from an accepted college?
14. In what county do you expect to register?
15. State when and where you expect to acquire your legal education.
16. State in a general way the plans for your future in the legal profession.

.....
(Signature of Applicant)

State of Pennsylvania, County of....., ss.

....., being duly sworn, says: I have read the foregoing questions and have answered the same in my own handwriting fully and frankly. The answers are true of my own knowledge.

.....
(Signature of Applicant)

Sworn to before me this.....day of....., 19.....

.....
(Notary Public)

My commission expires.....

*Applicant's proposed preceptor is not to be named as one of the three citizen sponsors.

The candidate is advised that two members of the local County Board will personally interview him and may also call before them for examination his three citizen sponsors and his preceptor.

CITIZEN'S QUESTIONNAIRE
(To be answered by three reputable citizens)

Questionnaire concerning the fitness of.....(Name of Applicant)....., of....., County of....., for registration as a law student, to be answered by.....(Name of Citizen)..... of..... County of....., State of.....

1. State your name, address and occupation:
   Name .....
   Address.....(Street).....(City).....(State).....
   Occupation .....
2. Are you related by blood or marriage to the applicant? If so, state the relationship.
3. How long have you known the applicant?
4. State fully how intimately you know him.
5. How frequently, how intimately and under what circumstances have you come in contact with him since you have known him?
6. What opportunities have you had for forming an opinion of his character?
7. What are the reputations of his intimate associates?
8. What is the applicant's reputation as to reliability, industry, initiative, sense of honor, force of character and general standing in the community in which he lives?
9. Do you believe he has a deep-seated sense of the difference between right and wrong? Answer fully and state reasons.
10. In practicing law, do you believe his conduct would be regulated by a desire to do what he believes to be right rather than primarily for financial gain? Answer fully.
11. How long and how intimately have you known the members of the applicant's immediate family? Give names and relationship.
12. What is the general reputation and standing of his family in the community?
13. Do you believe the applicant has the elements of character necessary to make him a creditable member of the legal profession? Answer fully.
14. If any of the foregoing information is from sources other than personal knowledge, state the sources.
15. Do you recommend the applicant for registration as a law student?
16. If not, why not?

I hereby certify that the information given in the foregoing answers is, where given from personal knowledge, correct, and, where given from information received from others, has been obtained from sources which I believe to be reliable.

Date..... .....

Note.—Two members of the local County Board of Law Examiners will personally interview the applicant and may also call before them for examination the citizen sponsor answering this questionnaire.

SPONSOR'S OR PRECEPTOR'S QUESTIONNAIRE

Questionnaire to be answered by.....(Name of Sponsor)..... of.....(Place of Residence, City or Town. and County)....., sponsor for.....(Name of Applicant).....(Residence of Applicant)..... an applicant for registration as a law student.

1. Are you actively engaged in the practice of law at the present time?
2. How long have you been practicing law?
3. How long have you been practicing in.....county where you are now located? With what firm are you now connected?
4. Are you a member of the Bar of the Supreme Court of Pennsylvania, and if so, when were you admitted?
5. Is your practice general? If not, state it character.

6. Including the above named applicant, how many students are registered with you or your firm at the present time?

7. How long have you known the applicant personally?

8. How frequently and how intimately have you come in contact with him during the past six months?

9. If you have not known him personally for six months past, what inquiry have you made of responsible persons who have known him for that period or longer?

10. What opportunities have you had for forming an opinion of his character?

11. What reasons has the applicant given you for having selected the profession of law as a vocation? State fully.

12. Does the applicant know that the monetary rewards of a lawyer are ordinarily much less than those of a person engaged in a commercial business, and notwithstanding this knowledge does he desire to be admitted to the Bar?

13. Do you believe that the applicant has a deep-seated sense of the difference between right and wrong? Answer fully and state reasons.

14. Do you believe that, if the applicant comes to the Bar, his conduct will be regulated by a desire to do what he believes to be right rather than primarily for financial gain? Answer fully.

15. Do you know the applicant's family; if so, how long have you known them, what members of the family do you know—naming them, as father, mother, brother, sister, etc.—and how long and intimately have you known each? State fully.

16. Are the applicant's parents native or foreign born? If foreign born, are they naturalized?

17. What is the reputation of the parents in the community in which they reside?

18. How long have they resided in the locality where they now reside? If less than five years, state previous residence.

19. What is the father's occupation? If changed in the past five years, so state, and state former occupation or occupations.

20. How many children are there in the family?

21. State the general character of education provided for each of the children by their parents, and especially for the applicant.

22. If possible, interview one of the applicant's last educational instructors and state in detail what he said concerning the applicant's industry, integrity, and sense of right and wrong.

23. If the applicant has been employed, state the character of employment, when and where employed, and by whom, and if possible interview some of his employers and state fully what they say concerning the applicant's industry, integrity and sense of right and wrong.

24. What is applicant's reputation in the community in which he lives, or in that from which he has lately removed?

25. Do you believe that he has a well-defined comprehension of a lawyer's obligation to courts and to clients, and that he distinguishes between the practice of law as a profession and the practice of law merely as a commercial enterprise?

26. If any of the foregoing information is from sources other than personal knowledge, state the sources.

27. What is the reputation of his intimate associates?

28. What elements of character do you consider essential in an applicant to make him a creditable member of the legal profession? Which of these does this applicant possess? Which, if any, does he lack? Answer fully.

29. Are you willing to act as preceptor to the applicant, either by having him read law in your office or, if he pursues his legal studies in a law school, are you willing to keep in touch with him during the period of studentship and have him serve a clerkship of six months in your office prior to his application for admission to the Bar?

30. Will you instruct him in regard to the ethics, duties, responsibilities and temptations of the profession, and endeavor to develop in him a high standard of character?

31. Do you recommend the applicant for registration as a law student?

32. If not, why not?

I hereby certify that the information given in the foregoing answers is, where given from personal knowledge, correct, and, where given from information received from others, has been obtained from sources which I believe to be reliable.

.....

(Signature of Preceptor)

Date.....

Note.—Two members of the local County Board of Law Examiners will personally interview the applicant and may also call before them for examination the preceptor answering this questionnaire.

LOCAL EXAMINING BOARD'S QUESTIONNAIRE
(To be answered by two members of local examining board)

Questionnaire concerning the fitness of.....(Name of Applicant).....
of....., County of.....
for registration as a law student, to be answered by.....
one of the members of the Board of Law Examiners for.....County.

1. How long have you been a member of the local Bar where you are now located?
2. How long have you been a member of the local examining board where you are now located?
3. Do you know the above-named applicant personally, and how long, and during what period, have you known him?
4. If you know the applicant personally, how intimately and under what circumstances have you come in contact with him?
5. State fully what investigation you have made to satisfy yourself of the applicant's fitness or lack of fitness for registration as a law student?
6. Have you interviewed the applicant within thirty days prior to answering this questionnaire?
7. What is your opinion as to his integrity?
8. Do you know personally any of the persons who have vouched for the good character and integrity of the applicant?
9. From what you know of them personally, or from the information you have been able to ascertain from others, do you believe the persons who have vouched for the character and integrity of the applicant are people of good standing in their respective communities?
10. Does the applicant know that the monetary rewards of a practicing lawyer are ordinarily much less than those of a person engaged in commercial business?
11. What reasons has he given you for selecting the profession of law as a vocation? State fully.
12. Do you believe the applicant has a deep-seated sense of the difference between right and wrong? Answer fully and state reasons.
13. From what you know of him personally and from the investigation that you have made among those who know him personally, do you believe that his conduct in the profession would be regulated by a desire to do what he believes to be right and honorable rather than primarily for financial gain? Answer fully and state reasons.
14. Do you know any of the members of the applicant's family (father, mother, sisters, brothers)? If so, how long have you known them; what other members of the family do you know (naming them); how long and how intimately have you known them?
15. What is the reputation of the applicant's parents in the community in which they reside?
16. How long have they resided in the locality where they now live? If less than five years, state previous residence or residences.
17. What is the father's occupation? If recently changed, state former occupation or occupations.
18. What is the applicant's reputation in the community in which he lives or in that from which he has lately removed?
19. Do you believe the applicant has a well defined comprehension of a lawyer's obligation to courts and to clients and that he distinguishes between the practice of law as a profession and the practice of law merely as a commercial enterprise?
20. Do you believe the applicant has the elements of character necessary to make him a creditable member of the legal profession?
21. What is your recommendation with respect to the applicant's registration as a law student?
22. If you recommend that he be not registered, set forth generally the grounds upon which the recommendation is based.

.....

Date.....

The Preparation of Bar Examination Questions

By John Kirkland Clark

President 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.

At no time in the history of the world has the problem of applying accurate tests of mental ability received so widespread attention as today. Never before has so large a number of students been available for experimentation in the development and application of mental tests. The enrollment in our institutions of higher education is at the peak, while the number of those seeking admission to the legal profession is, in spite of higher requirements, counted by the tens of thousands.

It behooves us, therefore, to give careful and intelligent consideration to the adequacy of the means employed to test the personal equipment of each applicant for a license to practice law. The problem necessarily varies materially in the several states. Half a dozen states have 1,000 or more applicants each year. In New York for the past three or four years, from 5,000 to 6,000 examinations have been administered each year. In a score of other states, the number to be examined annually is less than 100. Obviously, methods must vary to some extent to meet the requirements and the opportunities, as the volume varies. Careful individual personality appraisal through oral examinations as well as written can be successfully employed with a group of 100 candidates, while, in groups of 1,000 and more, it would be difficult if not impossible, and has generally seemed inpracticable to undertake to obtain the desired uniformity by applying oral tests.

In every jurisdiction, however, carefully prepared and fairly balanced printed questions constitute the mainstay of the examination, and, in the preparation of these questions, much the same requirements are to be met, whether the group to be examined is large or small.

Obviously, the primary consideration is that the examination shall be fair. The questions should deal with fundamental problems. "Tricky" or "catch" questions—dealing with narrow and unimportant problems—should be avoided, since, for a fair appraisal of any applicant, it is essential that the applicant should feel that the problems presented to him are really well-suited to test his knowledge of the subject matter.

At the same time, it is equally essential that the questions should give a searching inquiry into the depth and the soundness of the knowledge possessed by the applicant, giving one with a better equipment of knowledge and training a chance to display his superior qualifications and enabling the examiner to mark the signs of weakness in those who are inadequately prepared.

When a group of from three to five examiners have to deal in an examination with only fifty or a hundred applicants, it is reasonably practicable for them to grade fairly as many as 80 to 100 answers by each applicant. Such boards are enabled to use, throughout, what have come to be known as the old "long-form" or "essay-type" questions, using two or three questions in each subject embraced in the examination. When, however, the group to be examined by a board of three men reaches the number of 1,000 or more, it becomes a physical impossibility for them to apply a fair measuring stick to answers obtained in such quantities. Even when an examiner is devoting practically full time to the work of grading papers, it is difficult for him to give more than five or six hours a day to such exhausting work. The grading of from 80 to 100 answers an hour is as speedy an assignment as even a well-trained mind can handle. If one man graded 500 questions a day six days a week, it would take almost five months to complete the grading of 1,000 papers consisting of 60 answers each. It is doubtful if any human mind is capable of applying the same test at the conclusion of such a process as is used at the beginning. Therefore, for those who are dealing with a volume of from 500 to 1,000 candidates at each examination, it is clearly impracticable to use an examination with 50 or 60 essay-type answers.

It is essential, nevertheless, if the factors to be appraised are to be at all accurately valued, that there should be a sufficent number of such answers submitted to the examiners to test the qualities which can be accurately measured only by this method. It seems essential that at least from eight to twelve long-form questions must be employed to administer the test in analysis, selectivity, rationalization and clarity of expression. On the other hand, it is doubtful whether any group of eight or twelve questions can be fairly selected to give a reasonably accurate appraisal of the *extent* of a candidate's knowledge of legal principles. For those, then, who have to deal with large numbers of applicants, the method of using "short-form" questions to be appraised on a "true-false" basis,—to be answered simply "yes" or "no,"—has seemed to be desirable, if not essential.

The draftmanship of these two types of questions is of course materially and essentially different. While it is desirable that a substantial proportion of the long-form questions should contain problems involving basic principles in a particular subject without too involved a statement of facts, it is likewise of importance that several of the problems should contain a considerable number of facts not clearly related, some essential and some comparatively immaterial, so that the candidate's power to select and appraise the essential facts may be adequately tested. A candidate may at times be possessed of a remarkable knowledge of legal rules and be able to recite a long series of statements like "the rule in Shelley's case," without having any of the essential ability to select the proper rule to be applied to a specific group of facts. It is therefore always desirable to have from a quarter to a third of the questions contain statements of fact which shall test these two qualities in an applicant—the ability to select material facts, and the ability to select the proper rule of law to apply to those facts. All statements of facts made either in long-form or short-form questions should properly require of the applicant the exercise of the process of rationalization, assuming the essential facts are determined and that there is a rule of law properly applicable to those facts.

The difficulty, of course, is to make a proper balance between the group of relatively simple statements of fact which are designed primarily to give the candidate an opportunity to display his rationalizing ability and his power of expression, and the group of questions containing complicated statements which require the exercise of analytical ability and of the process of making a selection of legal principles, in addition to the other factors.

Probably the easiest and safest method to be employed in a jurisdiction where the higher courts have passed within the past few decades on most of the essential principles in the important branches of the law is to derive a statement of facts from some adjudicated case. In some instances, it is wise to take relatively simple facts, and in others to include a substantial number of things, some of which are essential and some comparatively immaterial. By using a decision of a higher court, the examiner is enabled to have a reasonable degree of certainty as to what are the proper rules and how they should be applied! In order to avoid "cramming" as a method of preparation for the examination, it is far better not to use many decisions made in the course of the preceding three or four years, but to derive the statements used from cases adjudicated from five to twenty years ago.

If only eight or ten long-form questions are to be employed, they will naturally deal with the more important subdivisions of substantive law—torts, contracts, real property, sales, conflict of laws, criminal law, corporations, equity, trusts and wills. It is frequently practicable to include in one long-form question a major question involving one of these more important subdivisions and, also, a problem of agency or suretyship, domestic relations or damages. Frequently, in drafting a question in ethics, a problem can be stated which involves some material question in one of the subdivisions of substantive or adjective law.

For the proper appraisal of a candidate's knowledge of legal principles in general, extensive experimentation has indicated that the short-form questions may be helpfully employed. In the drafting of such problems, two methods have been used, one employing a brief statement of facts with from three or four to twelve or fifteen questions applicable to such statement of facts, thus using a concrete problem with an opportunity for an appraisal of the rationalizing power of the applicant as well as the extent of his knowledge. Another group may be drafted, each consisting of an inquiry on some particular point. This method tests practically only his knowledge of legal principles.

While this whole matter of short-form questions on a "true-false" or "yes-no" basis is still a subject of experimentation, its use has demonstrated such value, particularly in dealing with large groups, that its practicability seems fairly to have been established.

The problem of draftmanship, however, is a far more difficult one than that employed in stating a problem for an old, long-form question. It is essential that the problem shall be so stated that it can be answered by a "yes" or a "no," and equally essential that it should be answerable *only* by a "yes" or "no," without any "perhaps." All ambiguities arising from careless use of terms or the improper positions of words,—all complicated technical constructions,—must be avoided. There is no more difficult intellectual exercise than the proper and accurate drafting of short-form questions.

In both the long-form and short-form questions, the problems employed should be such and they should be so stated that the applicant may be assured that there is involved an inquiry only on some fundamental point of law without unfairly hidden meanings or unimportant exceptions which constitute "catch" questions, which are manifestly unfair. It is essential, in submitting

questions to applicants, that they should be assured of such fair treatment.

It is desirable for the most part in dealing with long-form questions that the problem involved be one that can be clearly and adequately answered without too long and verbose a discussion. In order that grading may be fairly done, one answer should not cover three or four pages. Such verbosity severely tests the ability of one grading the paper to keep his temper and be fair in the appraisal of the candidate. Problems should be selected which can be adequately discussed in one page of an answer book—25 or 30 lines—and never over two pages.

Briefly stated, an examination of an applicant for admission to the bar should contain a series of questions sufficiently numerous to cover from one to three fundamental problems in each of the score or more of the principal subjects in substantive law, and of the twelve or fifteen principal subdivisions of pleading, practice and evidence. If the number of candidates is sufficiently small so that all of these can be covered by long-form questions, the great majority of these (from two-thirds to three-quarters) should consist of problems with a reasonably simple statement of facts, while a quarter or a third should be longer and more complicated, to search out the candidate's analytical ability. If short-form questions are to be combined with long-form questions, the eight or ten long-form should deal primarily with the more important subjects embraced in the examination, with, in half of the problems, some incidental question involving one of the less important subdivisions. In dealing with the long-form questions, the examiner should constantly bear in mind the quantitative requirements of an answer so as to avoid the necessity of undue length of answers and the imposition upon the examiner of a grading problem which becomes impracticable because of the length of time involved. In all questions, long- and short-form, but particularly the latter, absolute accuracy in terminology and the use of language is essential, and, from start to finish, the object should be to make the questions fair and reasonable, but searching.

With these general principles in mind, all that the examiner has to do is to find fifty or sixty statements of facts applicable for long-form questions if all questions are to be of that variety, or twelve or fifteen long statements and from one to two hundred brief statements for use in short-form questions, where the two methods are combined! Otherwise, the problem is comparatively simple!

A Hard Nut for Character Committees to Crack

The following communication has been received from one of the State Boards of Bar Examiners raising a question with regard to the elements to be taken into consideration in connection with passing upon the character of a student. We are asked to publish the question in our bulletin with a view to obtaining a discussion of the questions involved and suggestions as to its proper solution. The general problem has been stated in the form of a concrete example to assist the discussion.

It is hoped that many answers may be received, and we intend to print these answers or the substantial part thereof as far as the same may be of assistance in solving the question submitted and the general problem of what should be the qualifications with regard to character.

A law student who is qualified as far as preliminary and legal education is concerned has taken and passed his bar examination in a manner satisfactory to the Board. The question has been raised as to his qualifications as to character. The facts which come to the attention of the Board are these: He has lived for a long time in a neighborhood where there are many reputed to be engaged in the illicit conveyance, trading in and sale of liquor in violation of both the State and Federal laws. His father has been arrested and pleaded guilty to the sale of intoxicating liquors and paid his fine. He has been employed by his father in driving his delivery team when not engaged in college and law school. A relative of the family living in the same house has been arrested, indicted and tried for the illegal sale of liquor, the testimony showing that it continued over a considerable period and that his violation of the liquor law was notorious. Another immediate relative of the family has been arrested for the sale of liquor, and he and his wife are reputed to be running a speakeasy at the present time. There is no evidence of any attempt on his part to repudiate the course of action pursued by his parents. Under these facts, and having no further information, should his character qualifications be deemed sufficient to admit him to practice law?

We hope that the publication of this problem will produce a discussion upon the general subject of character from bar examiners and teachers that will be of assistance to all those who are confronted by these practical questions.

An Answer to the Problem of the Bootlegger's Son

To the Bar Examiner:

I have been interested in the letter appearing in your issue of January, 1932, raising the question of what constitutes character disqualification.

It is assumed that all are agreed that the primary object of the Board of Bar Examiners in passing upon the qualifications of applicants seeking admission to the bar is the protection of the public. The interests of the public are paramount. The interest of the applicant is secondary. He seeks a privilege, not a right. Not all candidates who are qualified need be admitted if the court feels that there are too many attorneys to supply the needs of the public.

There are two primary and essential qualifications which each applicant should have: First, moral character, second, (a) a general education, and (b) knowledge of law. I feel that the first of these, moral character, is by far the more important as between that and education. An applicant may have a high standard of general and legal education and a low standard of character, and he will do great injury to the public in his subsequent practice. If character is lacking, the greater the knowledge of the law the greater the prospect of injury to his clients, to the public and to the reputation of the profession. If, on the other hand, his qualifications of character are high but his educational qualifications are low, he may make honest mistakes in handling his client's business, but these are small matters indeed as compared with the handling of a client's affairs by a dishonest attorney. A practical knowledge of the law can be acquired as years go on. A new and changed character from one that is bad is rarely ever acquired. Temptations to profit by doing wrong are too great to lead to reformation in this line.

Inheritance and environment are generally conceded to count much in the formation of character. They are among the best tests we have in regard to the young man.

These facts being so, I feel that in the case set forth by your correspondent the inheritance and environments are bad. The contact of the youth with continued violation of the law, especially in his own home, and among his own relatives, is such a detrimental force and so inclined to shape his view of right and wrong as regards the administration of the law, that he is unworthy of trust or of the certificate of reliability to be issued by

the Supreme Court assuring the public that he is fit to practice law and to be trusted by them. His moral concepts must necessarily be impaired. It is true that he may be the exception, but the exception is relatively rare in such instances. Experience has shown this again and again when men have been admitted who have been known to have an inclination to view human conduct from a low standard. I therefore feel that, with an overcrowded bar, with an abundance of candidates who have unquestioned character, every Board should be cautious and not err on the ground of being too lenient in passing upon such shortcomings. I am of this opinion even though the individual has not thus far in his short period of maturity shown a tendency to moral delinquency.

The standards of our profession demand qualifications higher than those of the ordinary man. They require affirmative and not negative qualifications as to character. I appreciate all that will be said about what has been done in the past, the mistakes that have been made, and the leniency with which men have been admitted, but this does not justify continuance of such mistakes, which should only serve to make us more careful. I think the question raised is a very important one and of vital present everyday interest to every Board of Bar Examiners.

I hope that members of other Boards in different parts of the country will explain their views by writing to The Bar Examiner. An exchange of ideas, particularly upon the matter of character, will be very helpful.

Respectfully submitted,

January, 1932. C ————

News from the Boards

Mr. Frank L. Speakman, Secretary of the newly created Board of Bar Examiners of DELAWARE, writes that under the Cupreme Court Rules the Board of Bar Examiners is authorized to submit any applicant who has already practiced in another state to such examination as it may deem expedient, but that the Board, as a general rule, does not subject attorneys admitted elsewhere to the same examination as given to registered students. It does, however, examine them with a view of ascertaining whether or not they are qualified to engage in the practice of law in Delaware.

In the table published in the December number of "The Bar Examiner," Delaware was simply listed as admitting without examination attorneys who had practiced for three years.

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The Real Distinction Between Part-Time and Full-Time Law Schools

Comment Upon A Recent Decision of the New York Court of Appeals

By Alfred Z. Reed
*Of the Carnegie Foundation for the Advancement of Teaching**

My comments have been requested upon the following opinion of the Court of Appeals in the Matter of the Petition of the Association of the Bar of the City of New York to Amend the Rules of the Court of Appeals Relative to the Study of Law (Advance Sheets 257 N. Y. 211. Decided July 15, 1931).

"*Per Curiam.* These petitions, submitted by the Association of the Bar of the City of New York and the New York County Lawyers' Association have in view the amendment of the rules for admission to the bar by distinguishing between training in full-time and in part-time law schools, the proposal being that in the former the period of training shall continue to be three years, consisting of 96 weeks of at least ten hours each, and that in the latter it be extended to four years, consisting of 128 weeks of at least eight hours each.

"A full-time law school is defined as one where the hours of attendance are so arranged that at least two-thirds of the weekly classroom time is scheduled after nine A. M. and before four P. M., and the part-time school is defined as any other.

"Roughly speaking, the distinction corresponds to that between the day law schools on the one hand and the evening law schools on the other.

"The proposed change, even if ultimately accepted in principle, must be at least postponed until a more satisfactory definition can be worked out whereby to distinguish between full-time and part-time courses.

"A definition based upon a discrimination between evening courses and day courses is unjust to evening students, for the evidence is convincing that many day students are employed in gainful occupations during the night time and during free hours of the day, and that evening students do not fall behind others in their standing at the schools or in their ratings by the examiners for admission to the bar.

"A rule extending the course to four years for students in all schools, day or evening, who are engaged for more than a prescribed number of

*Mr. Reed has made some distinguished contributions to the field of legal education. He is well known as the author of the Annual Review of Legal Education published by the Foundation and of the comprehensive volumes "Training for the Public Profession of the Law" (1921) and "Present Day Law Schools in the United States and Canada" (1928).

hours a week in other occupations, would have the merit of equality, but would operate harshly on many young men unable to maintain themselves in law schools without gainful employment, and would not, so far as the court is advised, be satisfactory either to the petitioners or to the law schools of the State.

"The court feels constrained at this time to deny the applications, but the interesting data submitted will be the subject of reflection, and with the co-operation of the bar and of the faculties of the law schools may lead to action in the future.

"Application denied."

The case arose as follows: During the last forty years there has been a great increase in the number and size of so-called "part-time" law schools; schools, namely, that hold their classroom sessions at such hours, whether in the evening or in the late afternoon, as specially serve the convenience of most self-supporting students. To most of those who have no personal connection, present or past, with such schools, two propositions have seemed obvious: first, that legal education in an institution primarily intended for students who can devote only part of their time to their law studies must necessarily differ greatly from a system of education devised for students who are in a position to give all of their time to their studies; and, second, that this distinction is of sufficient importance to be recognized in the rules for admission to the bar.

As to just how this distinction should be recognized, there has been no general agreement. To some it has seemed advisable to discourage the activities of evening and other "part-time" law schools, whether directly, by refusing to recognize their product, or indirectly, by increasing their entrance requirements, or the length of their course, to a level that would greatly diminish the number of their students and thus might lead to the closing of their doors. Others, including the present writer, hold that, for social and political reasons, professional law schools serving this general purpose are highly desirable. These students of the problem would, accordingly, prefer to see the methods and curriculum of existing part-time schools perfected along lines appropriate to their student bodies, even though this might necessitate changes in our conventional system of bar examinations, or in the traditional organization of our bar. The concrete solution recommended in 1921 by the American Bar Association, and, ten years later, by the Bar Association of the City of New York, represents in a sense a compromise between these two points of view. Under this plan, "part-time" law schools are to maintain the same entrance requirements as "full-time" schools, and are to resemble them, indeed, as closely as possible in all respects save one: The law course prescribed for graduation must cover a longer period of time measured in weeks or in academic years.

In denying, or postponing, the application of the Association, the Court of Appeals has not expressed any opinion as to the adequacy or relative merit of the particular plan therein proposed. Instead, it has, in effect, asked two questions which go to the root of any attempt to distinguish between "full-time" and "part-time" law schools. These questions are:

> First, the time of day at which a school schedules its classroom exercises is concededly no safe guide as to the amount of time that any particular student is in a position to devote to his studies. What significance, then, can be attached to this imputed distinction between law schools?
>
> Second, is there not evidence that students who attend evening sessions do as well as other students in examinations conducted either by law school authorities or by the bar examiners?

These two questions will be discussed separately.

I. Significance of Distinction Based Upon Time of Day at Which Law Schools Schedule Their Sessions

The Court finds, quite correctly, that "many day students are employed in gainful occupations during the night time and during free hours of the day." It might have added that evening law schools, likewise, frequently contain students who are not employed in gainful occupations, though in New York City this circumstance is obscured by the tendency of large part-time law schools to divide their student body into separate sections, holding classroom exercises at different hours of the day; students who are not self-supporting usually prefer to attend the division that recites during the regular working hours of the day. The time of day at which classroom sessions are held is, accordingly, by no means a reliable indication of the economic status of any particular student.

It provides, however, an entirely reliable indication of the dominant type of student attendance; and this dominant type of student has, and ought to have, a controlling influence upon the standards and methods of instruction maintained by the school.

A "full-time" school is one that schedules its sessions at hours that conflict with those that obtain in the great majority of remunerative occupations. By maintaining this schedule it advertises that its primary concern is with that type of student who is in a position to devote his entire energies to the work of the school. Any such school is apt to contain, in addition, a few students who depend for their livelihood entirely upon their own exertions, in work conducted at night or at odd hours of the day. It contains a much larger number who support themselves in part.

All such students enter the school, however, at their own risk, as it were. There is no justification for changing the standards and methods of the school, simply to accommodate these ambitious young men; nor, in a genuine "full-time school" (as distinguished from the "full-time division" referred to in the preceding paragraph) is there any reason to believe that the presence of this element actually affects the activities of the school.

A "part-time" law school, on the other hand, exists primarily for the benefit of self-supporting students who cannot secure a legal education in a good "full-time" school. Its schedule of classroom hours is designed to accommodate this particular type of student. It would be untrue to its primary purpose if, having induced students to attend in large numbers, it should then enforce standards or employ methods that are appropriate only to full-time students. A school of this sort is bound to develop standards and methods that are appropriate to its own dominant type of student attendance. Whether this special development, or adjustment, has been carried as far as it ought to be, may be doubted, but this much, at least, is already true: year for year, and week for week, a "part-time" law school necessarily demands less of its students than does a good "full-time" school; and, in this smaller total demand, relatively greater emphasis must be placed upon classroom activities, and relatively smaller reliance upon outside preparation by the student.

Because of this fundamental difference in standards and methods, it makes little difference whether, in particular instances, a student at one of these "part-time" law schools is in a position to devote all of his time to his studies. Students of this description are somewhat under suspicion of having drifted into this school simply because they cannot meet the higher entrance requirements of a good "full-time" law school. For the moment, however, let us waive this consideration, and assume that the student is good material. The fact remains that he is not exposed to the competition of a large number of other able students, who possess a similar command of their own time, and determine the character of the school. He is not in contact with a faculty whose primary business it is to look out for such as he. He may get a little more out of his law course than do his fellow-students, but he will certainly not receive the legal education that is obtainable in a good "full-time" institution.

II. Significance of Relative Examination Records Secured by Products of Different Types of Law Schools

Reference has been made to the fact that several New York City law schools have divided their student body into separate sections, which recite at different hours of the day. In at least one instance, known to

the writer, where the faculty, the examinations, the curriculum, and the length of the course were identical for all sections, there is conclusive evidence that students in the evening division tended to do better work than did students in the morning division. This discovery could doubtless be duplicated in other institutions.

Obviously a comparison of this sort throws no light upon the relative standards of "part-time" and of genuine "full-time" schools. It shows merely that, in the particular institution whose two divisions are compared, students in the morning division do not respond to the instruction provided by the faculty as well as do the evening students. The explanation would appear to be that suggested in the preceding section; namely, that the morning division is largely attended by students who cannot, or will not, meet the higher entrance requirements of a neighboring "full-time" school. Such students are poorer material than the self-supporting evening students, who could not attend a "full-time" school if they would. This deficiency in native capacity or character seemingly more than counterbalances the advantage of having more time available to devote to a "part-time" curriculum.

For the purpose of comparing the products of evening law schools and of genuine "full-time" law schools, the only available common measure is that provided by the state bar examinations. I should hesitate to believe that its figures, fairly interpreted, indicate that evening students are anywhere nearly as successful, in these examinations, as are the graduates of "full-time" law schools. Should such prove to be the case, either of two possible explanations may be adduced.

(1) It may be that the "full-time" schools do not rise to their opportunities. They do not reap the full benefit of the tremendous advantage they enjoy in commanding the entire time of their typical students.

(2) Or, again, it may be that the measure itself is at fault. Perhaps the bar examiners have not solved the problem—perhaps no board of bar examiners could solve the problem—of devising an adequate uniform test to measure the relative attainments of applicants trained by dissimilar methods.

It would be the height of unscientific dogmatism to refuse to take either hypothesis under consideration, as a possible explanation of the alleged fact. Either explanation is more plausible than the suggested inference that no important distinction exists between a school primarily intended for students who devote all of their time to the study of law, and a school primarily intended for self-supporting students.

Preparation for Bar Examinations

By Professor Lyman P. Wilson
*Of the Cornell Law School**

I think that I should be very definite in saying that any remarks that I may make this afternoon are made upon my own responsibility alone. I do not speak for any group. I have nothing to sell and I have not been able to get so very excited over the fact that graduates of law schools do on occasion fail in the bar examinations. There is an apparent inconsistency in talking about ways and means by which the weaker brethren may be boosted over the higher barriers that are being raised by bar examiners at a time when there is universal outcry against the overcrowding of the profession. But passing this by, the failures at the bar do not appear to be ultimately so very serious, for such figures as we have seem to indicate that persistent applicants ultimately pass and are admitted. It may be at the third, fourth or fifth attempt, but most of them do slip through. It sounds rather severe and forbidding to say that fifty per cent have failed a given bar examination, but if most of those who are initially rejected satisfy the examiners after a few more attempts our stern and harsh rejection fades into a mere hope deferred, and leaves but few aspirations permanently blighted. The trouble is, then, not nearly so serious as a first glance would indicate.

I must admit that from the outset I have been somewhat puzzled to know why the topic, "Preparation for Bar Examinations," should appear on this program. In its wording there are certain implications which I believe the members of this association should be and will be quick to disavow.

Our member schools are not at war with boards of bar examiners. We are not engaged in a contest of wits. We are not engaged in bootlegging embryo lawyers across the borders defended by the bar examiners. I can not believe that in this association there will be a single dissent from the proposition that it is our sincere desire to work with and not against these boards. I am certain, also, that the papers which were read before the National Conference of Bar Examiners, last September, at Atlantic City will reveal an equal desire for co-operation upon the part of these examiners. (These papers are reprinted in The American Law School Review for December, 1931.) The law schools and the law examiners have a common goal. It is the high purpose of each to see that

*An informal address given at the meeting of the Association of American Law Schools, in Chicago, December 28, 1931.

those who reach the bar are qualified for admission to the legal profession. The ever increasing numbers of those who seek such admission have created an opportunity for weeding out the less fit, which should be welcomed by law schools and bar examiners alike. There may be too many lawyers today, but certainly there are not too many *good* lawyers.

Agreeing, then, that it is our purpose to work with and not against these boards, we still face the realization that there will be differences of opinion as to just how we may best join in the common enterprise. For example, I find myself in rather prompt disagreement with a statement made by the president of our own association in his address at Atlantic City before the conference of bar examiners. I fully agree with the statement that "A general review followed by examination would seem to be the logical way of completing the formal part of training for the law." But I do not quite agree with the next statement which reads: "This a well conducted bar examination provides. It gives the candidate for admission to the bar the thing which the candidate for the degree of doctor of philosophy gets in his 'generals,' with the added advantage that his general examination is given by an independent examining board." Possibly so, but I do not know of any bar examination that does it. Not even those in my own state do it, and I say this in the firm belief that in their accomplishments the Bar Examiners of the State of New York at present lead the nation. It is physically impossible to make a bar examination, given to hundreds at each sitting, in any sense comparable to the general examination for the degree of Ph. D. If such an examination is at present to be given it must be given by our law schools. We can not smile and pass the buck to already over-worked bar examiners. At Cornell we are trying out just such a comprehensive examination, for its own value and not as a preparation for any bar examination. In this experiment we are favored by our relatively small enrollment. The thing which is feasible for us is wholly impossible for our excellent Board of Bar Examiners.

But to return to our topic. The fact that this subject is submitted for discussion indicates that for some of you the bar examinations have been perhaps a trying proposition. Therefore I may at once divide you into two classes, and say that either an uncomfortably large number of your students have failed the examinations or they have not. If not, your interest in this discussion is purely academic. If so, then one of two conclusions seems open. Either there is something wrong with your school or there is something wrong with your bar examination, or perhaps with both. If you think the trouble lies with the examination, then it should be your especial business to further the fine work of the 1931 Conference of Bar Examiners already mentioned. If you are satisfied

with the type and efficiency of your bar examination, then you will have to examine your own curriculum.

But suppose that you do turn to your curriculum? Should you insert in it a special course of review aimed at passing the bar examinations? I must admit that I have placed a constantly decreasing estimate upon the value of bar review courses. I have no quarrel with those who offer such courses, and no condemnation for those who take them. I confess that I spent some money and twenty-one evenings upon such a course. At the time I thought it was worth it. Now I am convinced that I should have done equally well had I remained quietly in my room making my own review. If there was any gain it was a purely psychological one.

My own experience seems now to be duplicated by that of my students. Year by year some of the better men have doubted whether such a course had proved really profitable. Last year one of them put his feelings into these words: "I've been stung, but I'm glad of it. I have not been told anything of importance that I did not have in my notes." Without being able to give you an actual count, it is my personal belief that, among the men who seemed to me to be properly qualified, the percentage of success of those who did not take a review course was quite as high as that of those who did. It is my conclusion, therefore, that for the better men such a course is unnecessary, since experience seems to indicate that any man, who has had reasonably good training and who possessed average ability, who will review his local law, particularly that of procedure, should be able to pass any fair bar examination. If he can not, the presumption should be against him.

But even though we minimize the value of bar review courses as now given, we have not thereby defined the duty of the law school to its graduates. Obviously, no school can or should guarantee to every untried applicant that he ultimately will be admitted to the bar, or that he will make a successful lawyer. What the schools may do is to withhold their degrees from those whom they do not consider truly qualified for the practice of law. This should be their first contribution to the solution of the problem of an over-crowded profession. There are already too many highly qualified blacksmiths in the legal profession. I suspect that most of us have seen law degrees granted to men who should have received them not cum laude, but "mirabile dictu." The law schools should not by any forcing process attempt to secure the admission to the bar of this "blacksmith fringe." To do so would be to negative that process of selection by which alone there is hope that the quality of the legal profession may be raised. It seems to me, therefore, that this association must withhold its approval from any proposal to furnish that temporary

qualification which for the moment may enable a student to hurdle the troublesome barrier of the bar examinations.

High success by our graduates adds to our prestige. Poor success not only detracts from prestige but forces us to face certain unpleasant questions. But suppose that by the introduction of special review courses we were able to avoid those questions, preserve our prestige and save our faces for the moment. Would it be worth it? We are all painfully aware that too many students are more concerned about "getting by" than they are about the acquisition of sound information. Of these some one has said: "They study to pass and not to know, and verily they have their reward for they *do* pass, and they *don't* know." To put a premium on this sort of thing is to defeat the very thing for which the law schools in this association are striving hardest.

But, you may say, the students are going to drop their course work and begin to cram for bar examination, anyhow, and we can keep them on the job a little longer if we say to them that in due time they will be offered a proper review course in training for the bar examination. My answer to this is that the existence of such a problem is proof that the bar examinations are wrongly placed. In the beginning, the examinations may have been placed in June conveniently near to graduation, as a guarantee that too much information should not be lost by too early evaporation. It would seem better to avoid this annual spring cram by getting the bar examiners to set a different date, than to palliate the situation by special courses.

You may urge the giving of special review courses upon the ground that in the past the examiners have not always recognized or emphasized those things which we in the law schools have thought to be best designed to fit a man for the practice of law. Grant it. Then what? Shall we yield to the expediency of the moment, surrender our hope of improving the type of bar examination at the very moment when we seem to be on the eve of a better co-ordination of effort between the law schools and the examining boards? The conference at Atlantic City may prove vastly important to the cause of better legal education and higher standards of the bar, but we in the schools must stand ready to do our part and to encourage every reasonable advance.

In conclusion, let me say that to me the bar examination seems only an incident in the training for professional service. It is an important incident, it is true, but it remains only an incident, which must not be magnified into prime importance in its present form. Students must pass such examinations and the law schools are not doing their duty if they award degrees to persons not believed to be qualified to pass a proper

bar examination. On the other hand, the school which has done no more than prepare for such a test has most emphatically failed in its duty. We must not lose the substance in reaching for the shadow. Sound training in fundamental legal theory is still the best training for bar examinations, and sound training in fundamental legal theory is the job of the law schools. Law schools have a higher aim than mere bar examinations; that aim is sound preparation for the years of service which continue long after the quirks of the bar examination are forgotten. I do not know a better statement with which to close this paper than the words of Dean Goodrich spoken at Atlantic City last fall: *"If the law student has been properly trained, he need not fear a bar examination. If he has not been, it is high time that such a fact be revealed."*

Another Answer to the Problem of the Bootlegger's Son*

To The Bar Examiner:

The answer to the specific question put in the character problem you have published, that is, "under these facts, and having no further information, should his character qualifications be deemed sufficient to admit him to practice?" turns, it seems to me, upon the point as to where the burden of proof is. The facts recited are obviously insufficient for a decision on the merits. It is consistent with them that the applicant is of the proper character, for it may well be that he is actually at odds with his environment and its character. It is possible that his failure to remonstrate has been prompted by the very desirable characteristic of submission to parental authority. If, however, we place the burden of proof on the applicant (which I have no doubt we should) rather obviously his case fails, for he has not made out a prima facie case; or at least the burden is now on him, in view of the facts disclosed, to produce further evidence. Whether or not he could finally convince the character committee would depend upon the man's actual character, which is a subjective matter the proof of which is difficult. The decision would have to rest upon the reasonable inferences from all of the evidence. The evidence recited is far from conclusive.

Professor Bernard C. Gavit,
University of Indiana School of Law and Member of the Indiana State Board of Law Examiners.

*For statement of problem see January issue.

A National Board of Law Examiners

By Will Shafroth

Secretary of The National Conference of Bar Examiners

The question of a national board of bar examiners has been mentioned at various times but has never as yet received careful consideration. The bar examiners themselves, as a group, would be the last to claim that their examinations are all that they should be, and yet practically the only suggestions which have been made for improvement have concerned the technical methods of preparing examinations, grading, and other things which might be of help to the individual examiner.

If we scrutinize the question closely, however, we are driven to the conclusion that the principal reason our present examinations are in many instances unsatisfactory is because the bar examiners do not have sufficient time to devote to the preparation and marking of questions. The preparing of questions and answers well in advance of the examination, the thorough discussion of each question by the entire board, and the careful grading of answers all are important, but the fact remains that until the examiners are adequately compensated for their labor, they cannot give and cannot be expected to give more time than they are devoting at present. In only four or five states do the examiners now receive anything like reasonable compensation for the time they spend. We are thus in a blind alley for there is very little possibility, in most states, that this compensation can be increased.

The fact that many examinations which are now given are faulty is no discredit to the bar examiners. They are men of high caliber who, in almost every case, are making a sacrifice by devoting such time as they do to the bar examinations. However, the fact that the art of examination is a science is becoming more and more widely recognized. The American Council of Education has recently received a grant of five hundred thousand dollars from the Rockefeller Foundation for the preparation of scientifically prepared and thorough examinations or achievement tests to be given in colleges all over this country, designed to test scientifically the assimilated knowledge of college students, the obvious inference being that the present examinations do not do this.

In order to give the most thorough examinations in law which will test both knowledge of legal principles and reasoning ability, we must enlist the services of the most competent men available to a degree which

has not been done in the past. To the question "Who are the experts in legal education?" there can be only one answer and that is "The law school men." They are devoting their lives to the profession of teaching law and it is entirely logical that they should know more of the subjects they teach than the practicing lawyer. It is only reasonable to suppose that a better examination can be given in the subject of Torts by a man who has taught Torts for five years than by the average bar examiner who, though he has a sound knowledge of the basic principles in this field of law, comes in contact with it only in perhaps three or four cases a year dealing with a specialized angle of the subject. Can anyone doubt that Wigmore can prepare a better examination on Evidence or Williston a better examination on Contracts than could the average bar examiner?

If, then, law teachers are experts, why not improve the quality of bar examinations by putting them on the examining boards? As a general rule this does not seem feasible, for the reason that a teacher has a direct interest in the students from his school, and this would take away, at least in the minds of the members of the bar, that attitude of impartiality which is so necessary for a board of examiners. Moreover, the pupils of any particular teacher would have a decided advantage in the bar examination in that subject over the students from other law schools. A teacher is likely to ask questions on points which have been emphasized in his class, and this would inevitably result in charges of undue advantage and of favoritism to the students from his school. Furthermore, the mere fact that he was a teacher would not necessarily qualify him to be a bar examiner. A third obstacle is the fact that the bar examiners, as a rule, are appointed by the court of last resort, and the task of influencing the courts to appoint law teachers cannot be undertaken with any great hope of success. If the help of law teachers is to be enlisted on any considerable scale in preparing bar examinations, it must then be through a national board or through regional boards.

It will probably be conceded without a great deal of argument that there is a need for improvement in most state bar examinations. At the meeting of the Association of American Law Schools in Chicago last December, a statement was made by one of the law school men discussing preparation for the bar examinations, that the result of a questionnaire which he had sent out to law school deans showed the opinion of two-thirds of them to be that their state bar examinations were not adequate and fair tests of the legal knowledge and reasoning power of the candidates. It is safe to say that this view is held by most of the law school fraternity and that it is not the result of prejudice or a desire to belittle the bar examiners whom they recognize in general as being lawyers of high ability. While we, as a group, would be unwilling to accept this

view, still we must admit it deserves the most careful consideration since it is the opinion of men who are experts in the field of teaching law.

If it is conceded that bar examinations are not now being prepared by experts and that experts are available for this task, obviously then it is worth while to consider any plan which involves the use of these experts and which would result in the improvement of bar examinations.

When it was decided to make a re-statement of the law and the highest authorities in the various fields were sought out, it was the law school men who were put in charge of re-stating the various subjects, with the aid and assistance, of course, of both practitioners and judges of standing. A national board of bar examiners should attempt to follow this scheme and to combine on the board teachers of law, men who have had experience as bar examiners, and a few judges and practitioners of wide reputation. It is important that any national board should not supplant the present state board organizations, as they constitute one of the most constructive forces which we now have for raising the requirements for admission to the bar and for insisting on proper moral qualifications of applicants. Moreover, as is pointed out below, even under a national board plan, it would still be necessary for the local boards to give examinations on procedure and local and statutory law. There are already some models from whose experience it is possible to draw in forming such a bar examining board.

The National Board of Medical Examiners has become a very strong influence in medical education. It was organized in 1915, and, while it still only examines a comparatively small number of the candidates for a doctor's license, its certificate is now recognized in forty-one states as entitling its holder to admission to practice in those states. The Board is made up of twenty-seven members, twelve of whom are elected at large with special consideration for their geographical distribution and their position in medical education. Of the remaining fifteen, six represent the Federal Medical Services; five represent the Federation of State Boards of Medical Examiners; two, the Association of American Medical Colleges; and two, the Council on Medical Education and Hospitals of the American Medical Association. Approximately half of the present membership teach in medical schools.

The examinations are divided into three parts, the first two of which are written and the third of which is practical and clinical. Part I may be taken by the candidates as soon as they have finished the first two years in a class A medical school; Part II, after they have finished four years in such a school; and Part III, after the applicant has served an internship. Parts I and II are held three times a year in between thirty and forty

class A medical colleges throughout the country, while Part III is given in nineteen centers throughout the United States under the supervision of subsidiary boards organized for this purpose, whose chairmen in most instances are members of the National Board.

The Board is divided into ten departments, each of which prepares and submits questions on one of ten principal subjects. These questions are then reviewed by the examination committee of five members including both clinical and laboratory men. The questions are largely of the essay type.

In order to keep the examinations as representative as possible, the heads of the various departments frequently ask the heads of the corresponding departments in the medical schools to submit questions which they consider suitable for use in future examinations. The comments and criticisms of the heads of departments in medical schools are invited and given careful consideration.

The grading of the papers in each subject is under the direction of the head of that department. As soon as the answered papers are returned to the office of the National Board, they are forwarded to the head of each department, and he either grades the papers himself or supervises the grading by an assistant. In all cases the department head gives his personal attention to all papers marked below the passing grade and the papers graded just above the passing line.

The members of the Board do not receive salaries, but do receive a ten dollar per diem fee while attending meetings of the Board or its committees and are paid fifty cents per paper for grading the answer papers. During 1931 some 419 candidates passed the final examination and received the certificates of the National Board. Since applicants are required to have graduated from a class A medical college and have had a year of internship, the number of failures is much smaller than is the case in law examinations. From 85 per cent to 95 per cent of those taking Part I pass, approximately 90 per cent of those taking Part II, and 95 per cent of those taking Part III. The failures in state board examinations have averaged considerably less than 10 per cent for the last five years. In the beginning the National Board was financed by an appropriation from the Carnegie Foundation, but as the number of applicants grew, income from fees increased until now it is very nearly self-supporting.

The success of the National Board of Medical Examiners is all the more striking because there has been no great need of an additional searching check-up of candidates for a physician's license. A great majority of states require such candidates to graduate from a class A

medical school requiring two years of pre-medical education and four years medical training, and not more than 10 per cent of the applicants, either to the National Board or to the state boards, fail. This is a great contrast to the situation in the legal profession where the majority of neophytes still come from sub-standard law schools and where over half of the candidates are so badly prepared that they fail their state examinations.

A National Board of Dental Examiners was created in 1928 and follows very much the plan of organization of the National Board of Medical Examiners. Its examinations are divided into three parts, two of which are written and the third of which is practical. It is just beginning to operate so it is as yet impossible to say what its success will be or what recognition it will receive from the states.

A third organization, from the experience of which much can be learned, is the College Entrance Examination Board, an organization which now examines some twenty-two or twenty-three thousand students a year who are seeking admission to our colleges. This Board was formally organized in 1900 and President Nicholas Murray Butler of Columbia was largely responsible for its coming into being. At first declared impracticable and idealistic and subject to the objection that no school would give up its own sovereign right to examine in such a way as it saw fit candidates for admission to its student body, it has now come to be the only method of admission to some forty universities, colleges and scientific schools of this country, which have entirely supplanted their own admission examinations with those of the College Entrance Board. The results of its examinations are accepted by every university, college and scientific school in the United States.

These examples show the possibility of forming such an organization and meeting the mechanical requirements involved. They do not, however, prove its advisability and that is a question concerning which a full discussion is warranted and desired. The purpose of this article is to bring the matter to the attention of the examiners and to point out certain advantages which it may have. Whether the disadvantages outweigh these is something which can only be determined after both sides of the situation have been heard and given careful consideration.

The objections to this plan, which seem most obvious, may be catalogued as follows:

(1) The states will not give up their sovereignty or permit any foreign organizations to dictate to them what candidates they shall admit to the bar. This local right to supervise admission is more important in law than in medicine, dentistry, or any other profession, because of the public character of law.

(2) Rules of law differ very considerably in different parts of the country. No national examination could cover statutory provisions or local rules of procedure, about which each candidate for admission to the bar should know something. For example, the applicant in Louisiana must have a familiarity with the civil law, which would not be required in any other jurisdiction.

(3) Regional boards would be preferable to national boards, because they would be in a better position to take into consideration local differences in law and statutes.

(4) In some nineteen states candidates must have two years of college education before being eligible to take the bar examinations, and if the standards for the passing of candidates with this type of education were used, it would exclude too many from the other states.

(5) In states with strict requirements of preliminary training and law school study, the candidates have already been submitted to a sifting process. State boards in jurisdictions where this is not the case are inclined to supplement the lack of these requirements by a stricter grading of the applicants and by rejecting a greater per cent of them. If the marks were all given by a national board, this process could not be resorted to.

(6) The mechanical difficulties would be too great. If examinations were given at the same time all over the country, the candidate in New York could communicate the questions to one in California in time for the latter to make some preparation. It would take too long to mark the papers and to get the marks back to the candidates. It would be more difficult to safeguard the questions.

(7) Since the national examinations would presumably be more difficult than most of the local state examinations, students would not take them but would continue to take their state examinations, and the national board would thus serve only a few students and would not be worth while.

(8) The expense of the undertaking is prohibitive.

(9) It would be impossible to get outstanding men to sacrifice the time which would be required to serve on such a board.

(10) State examining boards would have no legal authority to accept the findings of a national board as to whether a candidate was properly qualified for a license from the standpoint of law training.

(11) If the states simply accept a certificate from the national board as admitting to the bar without further examination, but still retain their own examinations, will students in those states where the bar

examinations are easy not prefer their own local examinations; and, if this is the case, does not the plan fail to give help where it is most needed, that is, in improving conditions in those states where the examinations are weak?

A full answer to these objections would take more space than is available. The matter is one of sufficient importance to deserve full argument and debate and will probably be on the agenda for discussion at the next meeting of the National Conference of Bar Examiners. However, a partial answer will be attempted with the hope that it will arouse some further interest in the subject.

(1) The board would have no power to compel any state to give up its own examinations and require all its candidates instead to pass the national board examinations. There is no likelihood that any state would do this until the national board had fully proved itself, but it is entirely reasonable to suppose that in North Carolina, for example, where the examination is still given by the Supreme Court, the judges of that tribunal might be willing to recognize students who had passed an examination given by a board of which many of the leading authorities in the country on various subjects were members. To receive the certificate of such a board would be an additional honor which would mark its recipient as a more ambitious student than the man who was simply content to take a state board examination. This would, of course, require a considerable degree of confidence in the national board examinations, which could only be secured by an outstanding personnel. Both the National Board of Medical Examiners and the College Entrance Examination Board are proofs that this recognition can be achieved. Despite the fact that the lawyer is an officer of the court and the state is vitally concerned with whom it admits to such a position, nevertheless today in thirteen states this power of admission is delegated to certain law schools in those states whose diplomas admit without examination.

(2) It is true that no national examination could hope to cover the field of local statutory law and decision and local procedure. It would be entirely impractical for Louisiana to adopt the national board examinations. However, in other jurisdictions a separate examination could be given by the local boards covering these matters, to be considered as a separate part of the examination, in the same way that the clinical examination is a part of the National Medical Board examination. If this were done, the candidate, before admission to the bar, would not only have to pass the national board examination but he would also have to pass the examination on local and statutory law and procedure. The giving of this as a separate examination might result in the candidate's devoting special

time and attention to these subjects, which many practitioners now consider he does not emphasize sufficiently.

(3) Regional boards might be preferable to national boards if they could have as distinguished a personnel to give them authority. However, the organization of half a dozen of such groups would seem to involve too great an expenditure of energy to be warranted, particularly in view of the fact that the examinations of such regional boards would be subject in a lesser way to the same criticism which could be made of the national board, that is, that they could not adequately cover the statutory law, local decisions and procedure in any given state.

(4) As to there being different standards for candidates in different parts of the country, it is presumed that the standards of the national board would be high and that this would have at least some persuasive influence in getting the more backward states to raise their standards.

(5) The facts do not bear out the statement that the bar examining boards are stricter in those states which have no requirements of preliminary study. For example, in the states of Arizona, Arkansas, Florida, Georgia, Indiana, Nevada and Virginia, which have no requirements either of general education or of law study, the average of the percentage who passed the bar examinations in the three years ending July 30, 1930, was 53.3 per cent, while in Colorado, Illinois, Kansas, Michigan, Minnesota, New York, Ohio and West Virginia, where two years of general college education have been required before beginning law study, the average of the percentage passing during the same years was 51.7 per cent.

(6) The mechanical difficulties are not insurmountable as has been proved by the National Board of Medical Examiners and the College Entrance Examination Board. Examinations could start at the same moment even though this was a different hour in widely separated sections of the country. Leakage of questions could be safeguarded, and the probability is that arrangements could be made for the examinations to be marked more promptly than they now are. The College Entrance Board, with 23,000 examinations, finishes the marking in less than three weeks.

(7) It is probably true that at first only a comparatively few students would take the national board examinations, but undoubtedly the best law schools would encourage their students to do so and, as in the case of the Medical Board, a diploma from a national board of bar examiners would soon be recognized as being a distinct and special honor separate from the license to practice law.

(8) As to the expense of the undertaking, if it is worthy the finances can be obtained.

(9) As to getting outstanding men to make the necessary sacrifice of time and energy which such a project contemplates, lawyers have always been among the most public spirited of professional men. On the work of the Law Institute or Bar Association committees, on civic and national boards of all kinds, there has been no difficulty in getting lawyers of ability to serve. The law schools, by their contribution to all manner of research in the field of law, have shown themselves ever willing to cooperate. If the plan deserves it, there can be no doubt that this would prove to be the case in forming a national board of bar examiners.

(10) The authority of state examining boards to accept the results of a central body depends in each case on the statutes and court rules of the states concerned. Since the state boards would continue to give examinations on procedure and local law, they would probably have authority to accept national board credentials if they so desired except in those states where by court rule or by statute they are required to examine in certain subjects. However, it is presumed that this step would be taken by the boards only with the consent of the court, with whom they invariably work closely, and if the court consented, it would be willing to amend its rules in cases where this was necessary. In the comparatively small number of states where control of the mechanics of the examination process is regulated directly by the legislature, it would probably require an act of that body.

(11) It is true that if the states did not substitute the national board examinations for their own, except as to the procedural and statutory part, the main weakness in our present system would not be met. Even if this is true, it could not be doubted that an adequate national bar examination would have a most salutary effect in showing to some local examining boards the weakness of their own examinations. As a model of the lines which an adequate and thorough examination should follow, it would be of great value even though no state recognized it. Moreover, it is entirely possible that as a national board gained the respect and confidence of local examining boards, they might substitute its examination for their own, as forty colleges have now done with the National College Entrance examinations.

It cannot be doubted that the profession would regard with profound respect a bar examination compiled by leading law school teachers, representative judges and practitioners and delegates from the National Conference of Bar Examiners and the American Bar Association. It does

not seem improbable that such a group could be induced to serve considering the success which has attended similar efforts in other fields.

Bar examiners are busy men; they come from a high stratum in the profession; they do their work, for the most part, out of a sense of public duty. If they could feel that a large part of this work could be taken over by men of competence in whom they could have confidence, they would not be loath to see that done.

No detailed plan of organization for such a board has been suggested here. Its composition, the method of financing it, the manner of giving examinations, fees to be charged, methods of grading papers, and all the other details would have to be worked out, but if the plan in its broad outlines should meet with the favor of the bar examiners, then a tentative plan of organization could readily be drawn up by a joint committee from the bar examiners' Conference, the American Bar Association, and the Association of American Law Schools. The make-up would have to be so worked out that the theoretical viewpoint of the law school men, if they had such an outlook, would be balanced by the practical viewpoint of the bar examiners and practitioners. One of the very salutary effects which could be looked forward to from the appointment of such a committee, if it were given a broad field of activity, would be to bring closer together the law examiners and the men who are giving their lives to the work of legal education. The question is not so much whether the scheme could be worked out. The question is rather: "Is the profession ready for it?" This question the bar examiners must decide.

Answers to the Sample Legal Aptitude Questions Given on Page 157

4. Answer, 3
9. Answer, 3
43. Answer, 2 and 3
45. Answer, 1 and 2
91. Answer, 2
98. Answer, 3
195. Answer, 2, 3 and 6
197. Answer, 1, 2 and 5
244. Answer, 224 and 448
247. Answer, 35 and 47

News from the Boards

The Board of Examiners for the State of TEXAS has submitted to the Supreme Court for approval a rule raising the requirements of general education to a high school education and providing for registration of law students. The proposed rule is in the following language:

"As a further prerequisite, effective June 1, 1932, there is prescribed an educational qualification of, at least, high school graduation or the equivalent of a high school education, which requirement shall be satisfied by

(1) High school diploma
(2) State teacher's certificate corresponding to high school graduation
(3) Certificate of passing of the college entrance examination of the University of Texas or any other college with like entrance requirements
(4) Certificate of passing the high school examinations for college entrance under the State Department of Education in the following subjects: the four years of high school English, Ancient History, Mediaeval and Modern History, American History, English History, and Civics.

"All applicants at examinations held after January 1, 1934, must file with the Clerk of the Supreme Court at least two years prior to the examination at which he presents himself a written declaration of present intention to begin the study of law, of which the clerk will keep a record.

"The applicant must have devoted at least two years of adequate study to the legal subjects prescribed in Rule III or to a substantially equivalent course."

This Is Not a Straw Vote on Prohibition

January, 1932, Examination	*Kansas*	*Massachusetts*
Total Taking Examination	31	693*
Number Passing	24 or 77%	130 or 19%
Number of Candidates Taking Examination for the First Time	29	157
Number Passing	24 or 83%	28 or 18%
Number of Candidates Taking Examination Who Failed Previously	2	536
Number Passing	0	102 or 19%

*2 are held up for further consideration.

Of the number of individual applicants taking the examination in California during the years 1922-24, the number of candidates that have succeeded in passing and the number that have not succeeded in obtaining admission up to the present time are as follows:

337	passed in 1922
391	passed in 1923
327	passed in 1924
35	passed in 1925
27	passed in 1926
16	passed in 1927
5	passed in 1928
2	passed in 1929
3	passed in 1930
1	passed in 1931
1	passed date unknown
238	have not passed
1,383	examined in 1922, 1923 and 1924.

A Layman's Comment on the Rules for Admission in California

Chester Rowell, well known newspaper writer, prominent in California in politics, and eminent political scientist, makes the following remarks about the bill passed last year by the California legislature giving the power to the Board of Governors of the State Bar, with the approval of the Supreme Court, to fix qualifications for admission not exceeding, as far as general education is concerned, the requirement of high school education:

"From now on, in California, the law may gradually become a learned profession. Governor Rolph has signed the bill requiring high school graduation or its equivalent for admission to the bar examination. Thus we shall have lawyers with the minimum of education demanded of motor bus drivers, and half as well educated as the average service station attendant. They will have had a fraction of the preparation required for physicians, engineers, school-teachers, dentists, drug clerks and librarians, and about that of the printer's devil. That is progress. We long ago recognized that there is no such thing as a 'right' to practice medicine or pharmacy. The only right is that of the public not to have poisons pre-

scribed or compounded by unskilled persons. Some day we may discover that justice is quite as important as health, and that dealing professionally with either is not the common right of ordinary men. No matter how many ordinary people there are in the world there should be no place in it for ordinary lawyers. Unless a lawyer has qualifications to which most of us cannot attain we should be protected against him."

(Note: Quoted by Professor J. E. Brenner of Stanford University Law School in an address before the fourth annual meeting of The State Bar of California.)

French Law Students Protest Against Attempt to Make Admission to Bar Easier

Ten thousand law students of the Sorbonne and fifteen French provincial universities went on strike on the 8th of March as a protest against a recent bill passed by the Chamber of Deputies making the baccalaureate degree no longer a qualification for taking the examinations for admission to the bar in France. This degree is a passport from the secondary school to the university in the French educational system and is equivalent to something more than our high school diploma. Supporters of the bill claimed that the baccalaureate degree, with its Latin, Greek and mathematics, was not necessary for a knowledge of law, but the students had different views and their spokesman stated that if future lawyers are exempted from the baccalaureate, the profession would be congested with ignoramuses who might elbow out more worthy members. The law faculties in general sympathized with the demonstration of the students.

The Council of the Order of Advocates of the Court of Appeals of Paris joined in this protest by issuing the following statement: "Taking cognizance of the bill voted by the Chamber of Deputies on the 29th of February, 1932, on the qualifications for admission to the bar of certain classes of candidates for a license to practice law, and convinced of the grave danger which any lowering of the requirements which are today imposed for a license to practice law would bring about, and of the necessity of maintaining for the professional careers their traditional prestige, the Council makes an energetic protest against the bill passed by the Chamber and expresses the hope that the Senate will refuse to adopt it."

The strike lasted but one day but was rather an impressive example of the unity of law students, teachers of law and the bar on the question of qualifications for admission. Up to the time this was written the Senate had taken no action.

Legislative Power Over Bar Admissions

*"No statute can control the judicial department in the performance of its duty to decide who shall enjoy the privilege of practicing law. * * * Statutes respecting admissions to the bar, which afford appropriate instrumentalities for the ascertainment of qualifications of applicants, are no encroachment on the judicial department. They are convenient, if not essential, to enable the judicial department properly to perform this duty. * * * When and so far as statutes specify qualifications and accomplishments, they will be regarded as fixing the minimum and not as setting bounds beyond which the judicial department cannot go. Such specifications will be regarded as limitations, not upon the judicial department but upon individuals seeking admission to the bar. There is no power in the General Court (the legislature) to compel the judicial department to admit as attorneys those deemed by it to be unfit to exercise the prerogatives and to perform the duties of an attorney at law.*

"These conclusions in our opinion flow irresistibly from the provisions of the Constitution." — In re Opinion of the Justices to the Senate (Massachusetts), 180 N. E. 725.

Editorial

During this month of June about ten thousand young men who graduate from our law schools will begin looking about for a place in which to practice their chosen profession. Some of these will be turned back temporarily by the bar examiners, but most of them will eventually qualify for a license. But where will those who are successful find offices which will open their doors to them, or where will they find clients if they set up independent offices?

The same problem is faced by all college graduates in this particular year of grace, but it is more serious for the bachelors of law — they have spent more time and more money on their preparation than most of the others. Moreover, their attitude toward the profession, their professional ethics and the direction which their future careers will take will be shaped largely by the experience of their first years as officers of the court. Not only for the sake of these young men themselves, but for the sake of the profession and for the sake of society, the practicing lawyers must give these neophytes a helping hand. The firms which will be needing additional recruits at this time are comparatively few in number, but there are a great many, especially in the larger cities, which can afford office space to the right kind of law school graduate, a chance to pick up some business of his own, and perhaps a nominal salary. The opportunity to gain some practical experience is something which the members of the bar can still extend to those who are just entering it, and it is a part of their professional duty to do so.

The present situation emphasizes the overcrowded condition of the bar. If our practitioners begin to realize this duty which they owe to take care of their young, they will cease to display an attitude of indifference toward the subject of qualifications for admission to the bar; they will become concerned about the large number of schools which are turning out inadequately trained law students — to the great profit of the proprietors of those schools and to the great detriment of the communities in which they operate. Recent bar examination figures, such as the ones from Massachusetts where 81% of the candidates failed, from California where 80% failed, from Rhode Island where 74% failed, and from Utah where 75% failed, will take on a new meaning to them. Already, in a small group of states candidates who qualify for the examination by law school study must come from schools which the Board approves. If low-grade schools are forced to improve the training which they give and are compelled to meet certain standards to secure approval by examining boards, then present conditions, though an ill wind, may be said to have blown some good.

that of members of the profession who speak with first hand knowledge of their work.

The better schools have nothing to fear from an intelligent and wide-awake bar. If they can not maintain their positions under critical fire they will be forced to improvements which can be maintained. Nor should the bar have anything to fear, inasmuch as it would be harnessing the schools, as an integrated part of the profession, to the needs of the profession, and that under the supervision of its own agency—an agency that would for the first time attain the dignity to which it is entitled.

Is Admission to the Bar a Judicial or a Legislative Function?

The decision handed down by the Supreme Court of Massachusetts, on April 20, 1932, denying the power of the legislature to compel the bar examiners to mark personally all papers of candidates, has been sent out in pamphlet form to all bar examiners and will not be quoted here except for the small excerpt which appears on page 210 of this issue. It is undoubtedly a source of gratification to all examiners that the decision of the court operated to support the Massachusetts Board which was the subject of bitter attacks during the time the matter was before the legislature.

In connection with the opinion, the following article, quoted from "The Bar Bulletin" issued by the Bar Association of the City of Boston (No. 58, April, 1932), is timely:

"There has come to our attention only one Massachusetts decision, Bergeron, Petitioner, 220 Mass. 472, which seems to bear directly upon the matter. This was a petition for permission to be examined for admission to the bar. In deciding that there was no conflict between a certain rule of the Board of Bar Examiners specifying certain educational requirements and a statute dealing with educational requirements, the court, speaking through Chief Justice Rugg, said,

> 'It is not necessary to determine the constitutionality of this statute, a question adverted to in the argument, as to which authorities in other jurisdictions are not in harmony, for the reason that the statute does not affect the rule.'

"The question, therefore, as to whether admission to the bar is a judicial or a legislative function in Massachusetts seems to be left open, and, it is believed, has never been raised since 1915, the year in which the Bergeron case was decided.

"The development of the judicial thinking throughout the country upon the question has been gradual, but, as the authorities seem to show, in the main toward unanimity of view.

DECISIONS PRIOR TO 1915

"New York in 1881, *re* Cooper, 22 N. Y. 67; California in 1864, *ex parte* Yale, 24 California 241; and North Carolina in 1906, *re* Applicants for License to Practise Law, 143, N. C. 1, seem to have decided that the fixing of standards for admission to the bar is a legislative and not a judicial function.

"On the other side stand Illinois, *in re* Day, 181 Ill. 73, decided in 1899; New Jersey, *in re* Branch, 70 N. J. L. 537, decided in 1904; Wisconsin, *in re* Goodell, 39 Wis. 232, decided in 1875; Pennsylvania, *in re* Splane, 123 Pa. 527, decided in 1888; Hoopers v. Bradshaw, 231 Pa. 485, decided in 1911; and South Dakota, Danforth v. Egan, 23 S. D. 43, decided in 1909.

"In the Pennsylvania case of *in re* Splane, Paxson, C. J. said:

'No judge is bound to admit, nor can be compelled to admit, a person to practise law who is not properly qualified, or whose moral character is bad. . . . The relation between attorney and client is a very close one, and often involves matters of great delicacy. The attorney is an officer of the court, and is brought into close and intimate relations with the court. Whether he shall be admitted or whether he shall be disbarred is a judicial and not a legislative question.'

"In Hoopers v. Bradshaw, the same court said:

'Judicial powers and functions are to be exercised by the judiciary alone, and a century ago . . . it was held that the admission of an attorney to practice before a court is a judicial act. This has never been doubted or questioned since, and, if the act of 1909 is an encroachment upon the judiciary, it must be regarded as a vain attempt by the Legislature to exercise a power which it does not possess.'

"In the Illinois case, *in re* Day, the court said:

'An attorney is an officer of the court, and the power to prescribe the qualifications which will entitle an applicant for admission to the bar is judicial, and not legislative. . . .

'In the state courts the power of the legislature to prescribe the amount of learning upon which the court must admit to the

bar has never been recognized, so far as counsel have discovered, with the single exception of Matter of Cooper, 22 N. Y. 67. . . .

'It is our duty to maintain the provision of the constitution that no person, or collection of persons, being one of the departments of the government, shall exercise a power properly belonging to another; and if the legislature, by inadvertence, as in this case, assumes the exercise of a power belonging to the judicial department, it should only be necessary to call its attention to the restraint imposed by the Constitution.

'The function of determining whether one who seeks to become an officer of the courts, and to conduct causes therein, is sufficiently acquainted with the rules established by the legislature and the courts governing the rights of parties and under which justice is administered, pertains to the courts themselves.'

CASES SINCE 1915

"Arizona, 1929, *in re* Bailey, 30 Ari. 407.

'The courts are, of course, a separate and independent division of the government, and within their constitutional rights, not subject to control by the Legislature. Article 3, Constitution of Arizona. We think there is no more important duty, nor one whose performance is more necessary to the proper functioning of the courts, than to see that their officers are of proper mental ability and moral character. The Legislature may, and very properly does, provide from time to time that certain minimum qualifications shall be possessed by every citizen who desires to apply to the courts for permission to practice therein, and the courts will require all applicants to comply with the statute. *This, however, is a limitation, not on the courts, but upon the individual citizens,* and it in no manner can be construed as compelling the courts to accept as their officers all applicants who have passed such minimum standards, unless the courts are themselves satisfied that such qualifications are sufficient. If they are not, it is their inherent right to prescribe such other and additional conditions as may be necessary to satisfy them the applicants are indeed entitled to become such officers. In other words, they may not accept less, but may demand more, than the Legislature has required.'

"Illinois, 1931. People, etc. *ex rel* Illinois State Bar Association and The Chicago Bar Association v. Peoples Stock Yards State Bank, 342 Ill. 462.

'Having inherent and plenary power and original jurisdiction to decide who shall be admitted to practice as attorneys in this State, this court also has all the power and jurisdiction necessary to protect and enforce its rules and decisions.'

"Pennsylvania. 1928. Olmsteds Case, 292 Pa. 96:

'Statutes dealing with admissions to the bar will be judicially recognized as valid, so far as, but not further than, the legislation involved does not encroach on the right of the courts to say who shall be privileged to practise before them, and under what circumstances persons shall be admitted to that privilege. . . . .'

"Wisconsin 1932. State v. Cannon, 240 N. W. 441.

'While the legislature may legislate with respect to the qualifications of attorneys, its power in that respect does not rest upon any power possessed by it to deal exclusively with the subject of qualifications of attorneys, but is incidental merely to its general and unquestioned power to protect the public interest. When it does legislate fixing a standard of qualifications required of attorneys at law in order that public interests may be protected, *such qualifications constitute only a minimum standard and limit the class from which the court must make its selection.* Such legislative qualifications do not constitute the ultimate qualifications beyond which the court cannot go in fixing additional qualifications deemed necessary by the courts for the proper administration of judicial functions. *There is no legislative power to compel courts to admit to their bars persons deemed by them unfit to exercise the prerogatives of an attorney at law.* The power of the court in this respect is limited only to the class which the legislature has determined as necessary to conserve the public welfare.'

"The very brief excerpts from the opinions in the foregoing cases are merely indicative of the views expressed. In the Cannon Case, particularly the Wisconsin Court makes an intensive examination of the precedents, and an elaborate citation and comment upon them.

"If there are any decisions since 1915 holding that admission to the bar is a legislative function, they have not come to our notice. It is fairly obvious, we think, that the decided trend of the courts is away from the old theory advanced in New York that lawyers are made by the legislature. In fact, there is some reason to doubt whether in either California or New York, the decisions mentioned above stand today invulnerable to attack.

"In a California case of 1928, *in re* Cate, 270 Pac. 968, it is somewhat surprising to find a district court of appeals speaking in following manner:

> 'As an act of grace and upon principles of comity the courts, out of regard for the general welfare, will sanction and put into effect such legislative enactments affecting the admission and control of attorneys as may be reasonable aids to them in the discharge of their duties in that behalf. This concession does not admit a power in the Legislature as one of the coordinate branches of government, and as illustrating that truth the courts have not hesitated to ignore unreasonable legislation upon the subject.'

"In the Cannon Case, above mentioned, the Supreme Court of Wisconsin detects a possible doubt raised by the New York Court of Appeals itself as to the validity of its former views expressed in *in re* Cooper, saying:

> 'It seems unnecessary for us to review the many cases which may be cited bearing upon the question of the right of the legislature to prescribe qualifications for those who shall be admitted to the practice of the law. They are exceedingly numerous, some of which have grappled with the question in a fundamental and helpful way while others have given it but superficial consideration. No doubt the leading case in this country holding that the legislature may prescribe the ultimate qualifications for admission to the bar is *in re* Cooper, 22 N. Y. 67. It must be conceded that that is a well-considered case, but it has not been generally followed in this country, and apparently is not regarded as settling the matter in New York, as we find an expression in People *ex rel.* Karlin v. Culkin, 248 N. Y. 465, that 'the question does not now concern us whether the power may be withdrawn or modified by statute (*In re* Cooper, 22 N. Y. 67, 68),' a quite unnecessary statement if it were thought that the Cooper Case settled the question. Neither does our present examination of the question impress us with the soundness of the conclusion reached in the Cooper Case.'

"It is significant of the judicial trend that while there appears to be no court since the North Carolina decision of 1906, which has squarely held that bar admission is exclusively a legislative matter, at least five courts have declared since 1915 that admission to the bar is the court's business."

Note—In this connection, for further citations, see note 45 *Harvard Law Review* (*February,* 1932), *page* 737.

Bar Examinations and the Integrated Bar

By Leon Green,
Dean of Northwestern University Law School

I.

The bar examination as a method of determining the intellectual capacity and fitness of a candidate for admission to the bar has not proved successful. A large segment of the bar which has successfully passed bar examinations is conceded on all sides to be unfit for professional duties. Few who have persisted have been kept out. Massachusetts, California and Pennsylvania are showing distinct advances in their use of examinations, but in each instance supplementary measures are being employed which are of more significance than the examinations themselves.

The failure of bar examinations to do the work expected of them accords with the experience of law school men (probably also of college teachers) as to the efficacy of examinations generally. Law schools give many examinations—many more than bar examiners. They have made all sorts of experiments with many types of examinations. They have studied the results, and what is more, they have made use of these results both in admitting and excluding students from the schools. They would probably agree that the greatest value of examinations is found in their *in terrorem* effect—the holding over a student's head the fact that a judgment day is coming. Law school examinations are probably not as ineffective as bar examinations generally, yet they are not believed in many quarters to be either the only or the best means for determining the fitness and capacity of law school students.

The underlying difficulties of examinations are to be found; first, in the *formulation* of questions; second, *a common understanding of the questions* by students and examiners; third, *a common understanding of the answers to the questions.* All of these difficulties are primarily subjective ones. What problem a question involves, what solution it calls for, and how that solution is to be rated, are all questions of judgment, unless, of course, the problem is an insignificant one which calls for mere memory. There are no hard and fast meanings or answers. Any problem worthy to be used as a test is subject to at least several analyses, and the shadings of its discussion and perhaps its solution will vary very greatly. *The improvement of the type of questions does not remove the difficulty. In fact, the better the questions, the more the difficulty is accentuated.* Any lawsuit demonstrates the validity of these observations. Examiners fully realize this and make all the allowances possible. Nevertheless, except

in the extremely good and extremely poor papers an examiner who knows nothing of a candidate other than through his written paper has a very poor basis for rating the intellectual power and fitness of the candidate. On these points there is very little difference of opinion among people who have examined papers, and all of these considerations lead me to say that bar examinations as means of protecting the profession against the admission of poorly prepared and unfit candidates, as well as means of choosing the best trained candidates, are inadequate for the purpose.

It is believed that examination is at its best when conducted by the teacher both in propounding the problems and grading the solutions given by students who have studied the subject matter of the examination with him. This would seem to condemn wholesale the claims made for the so-called true-false method which has had considerable vogue during the past few years; also what is claimed for the so-called comprehensive examination, of which the bar examination is a type. I would not attempt to sustain this wholesale condemnation, for the conflict is doubtless not a real one. At least it is not necessary to insist upon it for present purposes. I merely remark the fact in passing, that there is a bulk of intelligent judgment which thinks such methods are relatively poor, whether employed by bar examiners or elsewhere, and especially so where there is a better choice. One quick argument is that such examinations are not and can not be objective, but in final analysis are equally as subjective as those sought to be avoided; and have none of the many other advantages which the admittedly subjective examination has.

But the subjective type of examination as here considered is not merely examination. It is a means of *rating* a student in the light of all that the teacher knows about him from all sources, *the examination paper being only one source—though an important one—of that information.* In other words, the teacher reads into his grades in any subject matter his judgment of the relative standing of the students of his class. This use of the examination is thought to be its most legitimate use, and one which represents what actually takes place with much variation in most schools. It has many implications. For instance, it implies the teacher and student relation. It implies intimacy on the part of student and teacher which in turn means small numbers. It implies a constant study of the student by the teacher, and his observation of the student, with a constant revision of judgment as to the student's powers and habits. But in the end it implies a considered judgment based upon a period of observation which permits a fair summing up in terms of a single grade what are believed to be the student's power and capacity. From the judgments of many teachers over a period of several years a composite judgment is rendered which is believed to have the highest degree of reliability obtainable from the examination process. For most purposes one should

prefer to risk judgment based upon close association and first hand observations over an extended period, rather than upon any single process of examination. The attitude is valuable for law school purposes in that it necessarily means every effort must be made by both student and teacher to develop close relations as a basis of the judgment the student must undergo and the teacher must pass. But clearly it is an ideal which can not be more than approximated even under the best conditions. Nevertheless even the attempt in its direction is thought to be more reliable than any other form of examination, an especially so in any school worthy of professional recognition.

Obviously this method is not available to bar examiners. It is not a method that can be employed for *quantity production* anywhere.

Bar examinations may be, and are believed to be, extremely hurtful to the profession. They necessarily encourage young men, as well as many of those who hold themselves out to train young men for the bar, to turn their energies toward meeting the requirements of inadequate standards of examination, instead of seeking and giving preparation which will enable the candidate when admitted to be an asset to the community and the profession. This result of bar examinations is probably the most hurtful influence the profession now has to combat. Thousands of young men every year are attracted to the profession because they find it so easy to prepare for bar examinations, the passing of which is taken to mean professional preparedness. Numerous so-called schools, wholly proprietary in their purpose, flourish upon this one idea of passing the bar examination. No other single problem is so difficult to meet. This is no fault of bar examination boards; nor is it a problem solely for them. They can no more make examinations bear the burden of selectivity than can law teachers.

II.

Does the integrated or otherwise highly organized bar offer any help in this direction?

The control of admissions is generally conceded to fall within the power of the courts. It has been largely exercised by the courts along with legislative direction. The courts, however, have the final word if they desire to speak it, but neither court nor legislature alone or combined can do more than direct and supervise. They can not administer upon the problem except in extreme cases and at long distance. Moreover, they can not supply the motivation of good administration. That must come from the profession at large and it will not come unless the profession itself is a going concern. The bar examination board, therefore, is the *administrative agency* for the admission of candidates. It comes directly

under the supervision of the supreme court. It exercises such power by way of legislative direction as the court may recognize. *It should also exercise such power on the part of the bar organization as the court would recognize.* For it is from the bar organization that the board should receive both the spirit which makes the application of its power effective, as well as the support for a detailed administration which would make the exercise of its power acceptable. In last analysis it is from the bar organization itself that the support must come which will make the work of the bar examination board effective.

Thus, the bar examination board (which might better be called the *bar admissions board*) should be recognized as an administrative agency of government drawing its power and support from court, legislature and profession at large. As such it should be an integral and important part of the bar organization machinery. It should have an executive secretary who should devote his full time to the job. In smaller states this might be joined with the secretaryship of the bar organization itself. In larger ones the secretary would be a different person but would be a member of the bar organization office, which should have a permanent location as it now has in most of the larger states.

The board, as at present, would be made up of distinguished members of the profession appointed by the supreme court. The supreme court or legislature would, as at present, define certain minimum requirements for admission such as age, residence, periods of academic and professional study, and the larger matters of policy. But the putting of these policies into effect should be left as at present within the power of the board. Applications for admission would come to the secretary. The application would call for such information as would give the board the maximum of information as to the candidate's history. Especially would it reflect the candidate's academic and professional training, and that in detail. Much of this information could well come from the colleges and law schools directly.

But at this point I would suggest a wide departure from present practice. It would involve expansion of the board's administrative power and a corresponding shrinkage of the formal examination practice. Administration would be substituted almost entirely for examination. For this purpose the junior bar idea would be made a part of the board's machinery of administration. Instead of giving an examination to every applicant, a provisional license would be granted, say for a period of five years, to candidates whose collegiate and law school records or other professional training were of good standard. On the other hand, if the applicant's academic and professional record were unsatisfactory, that is, either of poor quality or from poor schools, he would be refused a license

until he had taken such additional training or such examinations as the board might consider desirable.

While the average state does not offer great obstacles to such a plan, the larger states, as New York, Illinois, Pennsylvania, do. Clearly no one secretary could do all the work a board of one of these states would require. There would have to be a staff of assistants possessing somewhat the same qualifications as the secretary. To the secretarial staff would fall the heavy details.

The work required for preliminary admission, that is, to the junior bar, would be different from that of final admission. As to preliminary admission, one of the biggest problems would be that of rating the law schools. To begin with, some basis would have to be found, and it would be contemplated that this basis would have to be revised from time to time. In the case of local or nearby schools furnishing many candidates, a few years of experience would soon indicate the standing their graduates should receive. But in cases of candidates coming from very widely scattered schools it would be necessary to rely somewhat at least on the ratings given by the boards of other states more intimately acquainted with the schools in question. Reciprocity arrangements could doubtless be developed between the various state boards whereby information of one would be available to the other boards. But methods for handling large numbers of applicants would have to be evolved. There would be many applicants with good records from the better schools and some from the poorer schools who would doubtless be admitted upon mere inspection of their formal records of scholarship and proofs of character. There would also be many candidates from the poor schools and some from the better schools who would be as clearly rejected upon the inspection of their formal records. These rejections would in some cases be final, but probably in most the passing upon the application would be deferred until the applicant could present a satisfactory record. But there would be a troublesome middle class. Here a number of things might be done. Some candidates would probably be deficient in one or more subjects, as local practice, real estate law, etc. Admission would be deferred in these cases until the candidate qualified himself in such subjects by further study. Other records might be doubtful as a whole. In such cases the candidates could be required to take further study generally. In some cases a candidate might be given a particular problem on which to write a comment or note, such as is required by the better law reviews. He might be given two or three days in which to do this work. In the end it would tell far more than any sort of examination. In some cases the board might see fit to give a general examination of its own. But this would probably be unusual. Doubtless most cases would suggest the procedure which should be followed. There are many possible ways of

checking up a candidate's capacity to handle legal questions. In any event, the staff of the secretary, in consultation with the board in the more difficult cases, would deal with each case as intelligently and adequately as possible. There would be no examinations en masse, no great glut of papers to terrify the members of the board, no rush, no hurry. The process would be continuous. A few years of experience would doubtless develop a routine for the minor points, but the individual application would retain its identity and its merits or demerits, as the case might be.

The difficulties at this preliminary stage would be small or great, depending upon whether the board dealt decisively or indecisively with the problem of *rating* the law schools and their products. This is the key at this stage. More attention will be given it later in the discussion.

The difficulties of the final stages of admission would be of another sort. Here there would be definite records for review extending over a period of professional activity. First, the annual reports by the junior himself showing his activities for each year—the matters handled by him case by case—the parties, the opposing counsel, the judge, the results, and where he was employed in a firm, the comments by one or more members of the firm upon the junior's work. In addition, the local bar association, through committees, might be required to report upon the work of the junior, either independently or by way of checking his report, or both. Also, complaints, if any, filed against him would be reviewed. In many cases there would be no difficulty in determining the junior's qualifications for final admission. Likewise, many other cases would be as clear the other way. Juniors who had turned to some other activity, who had left the state, or who had definitely showed their unfitness, would be finally refused admittance. The middle class would give trouble. In this group each case might be the subject of further investigation, and if so, the record of the junior would furnish many avenues for inquiry. If further investigation did not satisfy the board either way, additional time might well be extended. It is possible that many lawyers would never get beyond the junior bar.

The keys to the problem of final admission are the intelligence brought to the development of records which would reflect the significant things about a candidate, and the intelligent eye of the secretary and his staff in catching the cases which should be reserved for further study by the board as a whole. *The whole process would resolve itself into a day by day study of the records of candidates, either for preliminary or final admission, by a small group of lawyers whose proficiency in such matters would grow with their experience.* They would in large part relieve the board from the details and drudgery of the office but would carry out the policies developed by the board and act under its supervision in the

troublesome cases. On such cases the board, at convenient times, could focus its full attention. In any case of rejection the board could review its action, but its action on such review would be final. On the other hand, the board's recommendations for admission would always be subject to the approval of the supreme court.

III.

This sort of arrangement would mean that almost the entire burden of examination would be left to the law schools. This is as it should be. The great value of examination, as already discussed, is as part of the discipline of serious study under close supervision, a thing bar examiners do not pretend to offer. After many years of effort, law schools have developed methods for training young lawyers far superior to other processes. Any success the boards may have had with examinations could doubtless be claimed by the schools. And the point I would insist upon is that *whatever good is obtained from the examination process is obtained by the school.* Certainly law school examinations taken as a whole rate far above those given by the boards. The problem here is to refuse recognition to the school that gives inferior training. With scholarships and opportunities for work, loan funds available, any superior young man, however poor, can get training at a good law school. Nearly all states maintain a law school in connection with their state universities. There are also many reputable private schools. Law schools as one branch of the profession not only ought to be trusted with this phase of the student's training, but that duty should be rigorously imposed upon them. Incidentally, the board might well assume the function of advising young men as to their training, and also to assist worthy ones in securing financial aids where needed. A bar loan fund could be built up. Benevolently inclined individuals in the state could be interested in supporting very promising young men. Reliable recommendations could be sent to the various schools which have scholarship funds available for worthy students. *In other words, the board of admissions, instead of doing the detailed drudgery of an almost futile undertaking, could well assume the functions of an educational department of the bar organization, study and lay out its larger policies regarding education, and thereby lend a powerful influence not only in advising the schools as to what the professional needs are, but in assisting the schools in meeting such professional needs.* In this connection the boards of each state could join hands with the committees of the American Bar Association. I can think of no more desirable or beneficial movement for legal education.

IV.

Along with this matter of admission goes the general problem of bar discipline. The two functions would necessarily be served by the same

organization. What a powerful lever there would be over the younger contingent, the junior bar, and as the years went by this power would become cumulative and operate as a check upon the entire profession. Through the junior bar the profession would have a means of cleansing itself of many license holders who do not practice law regularly but who cause much of its disrepute. The technic developed in handling a junior bar would be in large part applicable to the permanent bar. So that at any time a charge were serious enough to require drastic proceedings, the bar would have at hand a large part of the information and many sources for obtaining additional information, which would be necessary to deal intelligently with the case. In some such fashion admission and discipline would become amalgamated and be dealt with as but two phases of the same problem.

Again I would emphasize the necessity under such an arrangement of an executive secretary who had no duties except to look after the matters of the bar. In every state there can be found men of the highest character, of the highest intelligence, of the highest learning and practical experience, who would find in such a position, either as secretary or as a member of his staff, the opportunities to make the contributions to the community and their profession which they desire to make. They are frequently overlooked in present day haphazard bar organization. And the intelligence of such men, plus the support of a strong board, would be as high a guarantee as can be imagined for the successful development of a strong as well as an ethical bar. Inasmuch as there would be no mass examinations, a small clerical force could care for the demands of the average state. In many states probably one secretary and one intelligent clerk could keep all the records, conduct all the correspondence, and care for all the business of the bar, including admission and discipline, so that the expense necessary to maintain the central office would be a very small charge against the revenues of the profession or the state, or both as the case might be.

Two serious objections can be raised to this suggestion. First, would the secretary and the board become too soft-hearted if they were not hardened by the necessity of grading many worthless examination papers? Second, would such an office develop a mass of arbitrary routine and red tape which would become intolerable? These are difficulties which always threaten any organization. It is a matter of administration, and that means at bottom, personnel. Some organizations would be fortunate and some unfortunate in the selection of secretaries and boards. But probably not more so than at present. Moreover, a vigorous bar organization invited to take a hand in such matters would doubtless be well prepared to deal with any weaknesses that might develop. And under the vigilant administration of an intelligent secretary and able board, supported by an

aggressive bar organization, the belief is that the admission problem would be more acceptably handled than at any time since the numbers clamoring to become members of the profession have made it impossible for the examiners to know personally the candidates who presented themselves for admission. Boards of examiners and bar examinations are the devices which have come into use for dealing with large numbers of applicants. The undue emphasis upon examination has absorbed practically every phase of the admission problem except that of good character. It is thereby given far more weight than it deserves. It is now believed, therefore, that the functions of the admission board should be so changed that examination should practically drop out of view, and in its place administration be set up along lines which will be far more selective of candidates and exert far greater influence upon the whole problem of legal education.

Finally, there is need for a group at the bar which is intimately acquainted with what the law schools are doing. Most practicing lawyers are taking the law schools on faith. Most of them hope that their faith is not ill founded, but sometimes they are doubtful. An examining board may know as little about law schools as do other lawyers. Many bar examiners are employing technics of examination employed in the law schools twenty years or more ago. Many are treating as significant, phases of law which the schools no longer consider significant. Even more of them are giving little, if any, attention to the phases of law that are now receiving a great deal of emphasis by the better schools. In other words, there is a great gap between the practitioner's thinking and law school thinking. To disguise this fact does not strengthen the faith of either group in the other. Without condemning one or supporting the other, I simply say that there ought to be a group of lawyers at the bar in whom the bar has the greatest confidence and who can speak with assurance based upon first hand acquaintance as to what the schools are doing. That body should be the board of bar admissions. If such a board existed, with power to rate the schools and to refuse to recognize the unfit ones, any serious undertaking to perform that responsibility would have at least two results: (1) It would cause the elimination very quickly of most of the *proprietary* schools. (Night schools not operated for a profit are not included.) Most of them are menaces to the profession and the community. At present they are dealt with on a plane of respectability to which they are not entitled because the bar does not appreciate the differences between a well prepared and a poorly prepared product, and bar examinations do not tell the tale. (2) The better schools would be greatly stimulated and caused to examine and improve their own work. They need this stimulation, and they will re-act to no criticism so quickly as

that of members of the profession who speak with first hand knowledge of their work.

The better schools have nothing to fear from an intelligent and wide-awake bar. If they can not maintain their positions under critical fire they will be forced to improvements which can be maintained. Nor should the bar have anything to fear, inasmuch as it would be harnessing the schools, as an integrated part of the profession, to the needs of the profession, and that under the supervision of its own agency—an agency that would for the first time attain the dignity to which it is entitled.

Is Admission to the Bar a Judicial or a Legislative Function?

The decision handed down by the Supreme Court of Massachusetts, on April 20, 1932, denying the power of the legislature to compel the bar examiners to mark personally all papers of candidates, has been sent out in pamphlet form to all bar examiners and will not be quoted here except for the small excerpt which appears on page 210 of this issue. It is undoubtedly a source of gratification to all examiners that the decision of the court operated to support the Massachusetts Board which was the subject of bitter attacks during the time the matter was before the legislature.

In connection with the opinion, the following article, quoted from "The Bar Bulletin" issued by the Bar Association of the City of Boston (No. 58, April, 1932), is timely:

"There has come to our attention only one Massachusetts decision, Bergeron, Petitioner, 220 Mass. 472, which seems to bear directly upon the matter. This was a petition for permission to be examined for admission to the bar. In deciding that there was no conflict between a certain rule of the Board of Bar Examiners specifying certain educational requirements and a statute dealing with educational requirements, the court, speaking through Chief Justice Rugg, said,

> 'It is not necessary to determine the constitutionality of this statute, a question adverted to in the argument, as to which authorities in other jurisdictions are not in harmony, for the reason that the statute does not affect the rule.'

"The question, therefore, as to whether admission to the bar is a judicial or a legislative function in Massachusetts seems to be left open, and, it is believed, has never been raised since 1915, the year in which the Bergeron case was decided.

Restrictions on Reexaminations

By Bessie L. Adams
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The following information concerning restrictions on reexaminations for admission to the bar is derived, unless otherwise specified, directly from published rules received from the bar admission authorities in the various states.

I.

In 20 states, so far as appears from the printed rules, there is no restriction upon the privilege of reexamination, except as provided in some instances by the system of fees. These states are:

Alabama	Georgia	Maryland	South Dakota
Arizona	Idaho	Mississippi	Texas
Arkansas	Iowa	Missouri	Vermont
California	Kansas	Nevada	Virginia
Delaware	Kentucky	South Carolina	Wyoming

Of these, seven states do not in their printed rules mention reexaminations—Arkansas, Delaware, Georgia, Nevada, South Carolina, South Dakota, Vermont. Alabama and Idaho speak only of keeping a permanent file of rejected applicants. In California, a candidate who fails may inspect his examination papers, and apply to take any subsequent examination. A stated restriction as to interval of waiting before reexamination in Iowa and in Kentucky proves to be meaningless in actual practice.

Three of the twenty states listed—Missouri, Texas, and Kentucky—loom up as outstanding examples of laxity in that they give partial credit in examinations. The Missouri statutes require that in case of failure the commissioners must specify to the candidate the branches in which he was not qualified; and at any time within one year thereafter he may appear before them without further charge for another examination on the subject or topics in which he was found deficient. In Texas the applicant must secure at least 65 in each subject and an average of 75 in all subjects. These marks must be obtained within one year. A partial reexamination may follow a full examination or a full reexamination, but may not follow a partial reexamination. One who barely passes may request a reexamination for a higher mark, but must abide by the result of the second examination. In Kentucky if the applicant receives less than 75% in not more than four subjects and not under 60% in any subject,

he may take another examination in said subjects at either or both of the next two succeeding examinations, and on receiving 75% in each of said subjects is considered to have passed the examination.

In only ten of these twenty states is it clear from the printed rules what the situation is as to payment of additional fees for reexaminations. In Alabama, Arizona, Mississippi, and Virginia, the original fee of $10 must be paid each time. In Kentucky, the original fee of $10 is reduced to $5 for each reexamination. In Kansas the original fee of $25 must be paid again for all reexaminations after the first, when, with the consent of the Board, it may be omitted. In Wyoming an original fee of $15, and in Missouri one of $10, must be paid again except in the case of the first reexamination; for this no charge will be made if it is taken within one year. In Texas the original fee of $20 must be paid for all reexaminations after the first. Maryland charges the original fee of $25 for all reexaminations after the first two.

II.

In the following 15 states a certain period of waiting, generally to be spent in further study, is enforced before some or all of the reexaminations:

Florida	Michigan	New York	Tennessee
Indiana	Montana	North Carolina	West Virginia
Louisiana	Nebraska	North Dakota	Wisconsin
Massachusetts	New Mexico	Oklahoma	

Of these, North Dakota, while requiring a reexamination in all subjects, permits an unsuccessful applicant to take any subsequent examination "provided that no applicant shall take the examinations more than four (4) times running." In Wisconsin, three successive examinations are allowed, after which the applicant must wait a year, unless he can persuade the Board to consent to his trying the next examination. Both in Tennessee and in Nebraska a rejected candidate must wait six months, during which he must study law diligently. A Louisiana applicant who fails on the first examination must wait six months; if he fails again, he must wait a year. New Mexico permits an applicant who fails to take a second examination at once, but after two or more unsuccessful attempts he must wait two years. Likewise, in Massachusetts, after two failures the applicant may not take the next succeeding examination. In Montana, a rejected applicant may take a reexamination within one year without further fee, but after a second failure he must let one examination pass, and must prove diligent study during the six months preceding the third attempt. In Indiana, after a second failure, one examination must intervene before the applicant tries again; after a third or fourth

failure, two examinations must intervene; and before a third or subsequent examination, diligent study between his reexaminations must be proved. The rejected applicant in Michigan may apply again in six months, but must prove that he has studied during those months at least 4 hours a day 6 days in the week for 18 weeks or equivalent. In this state no one is eligible to more than three examinations in three years. A requirement of study during the six months also exists in Oklahoma, where another qualification is also emphasized—moral character. Here a second failure must be followed by a year of study, as well as another fee. If rejected three times, the applicant must wait two years. In North Carolina no applicant who has been refused admission because of lack of good moral character may apply again for two years. Florida candidates who fail on the first examination may not take the one immediately following.

In Section I we found three states that permit a reexamination merely in the subjects or topics in which the student failed. The present group of states includes two—New York and West Virginia—which divide the subjects of the examination into two groups, and allow a reexamination in one as well as in both of the two. New York forbids applicants who fail in both parts of the June examination to take the next examination. Applicants who have previously failed cannot take the June examination. After three failures, the applicant in New York must omit the next two succeeding examinations. If he fails in one group only, however, he may be reexamined in that group only at any subsequent examination for which he is eligible. In West Virginia an applicant who passes one group only must pass the other group not later than the second examination held thereafter. Here failure in both groups in two examinations necessitates eight months of study in residence at an approved law school.

Of these 15 states, ten have explicit provisions as to fees. The original fee must be paid for each reexamination in Louisiana ($25), in Massachusetts ($15), and in Wisconsin ($10). It must be paid, subject to certain qualifications, in Tennessee ($10 for residents, $50 for nonresidents, but in the discretion of the Board no charge is made for the first reexamination); in Montana ($25, but no charge for a reexamination within one year); and in West Virginia ($20, but no charge for one examination at either of the next two succeeding examinations). For all reexaminations after the first, the original fee must be paid in New Mexico ($25) and Oklahoma ($10); also a fee of $10 (reduced from $15) in Michigan. New York provides by statute that no applicant shall be required to pay more than one examination fee.

III.

In six states an absolute limit is set upon the number of examinations that an applicant may take.

In Connecticut and Illinois, and in Washington (except by special permission) this restriction is combined with that noted in the preceding section. In Connecticut, after two failures, a candidate must omit one semi-annual examination before trying again, and before the third attempt he must submit evidence to the committee that he has studied law diligently since his last examination—at least 20 hours a week for at least 38 weeks in the year. Candidates in Connecticut who fail four times may not try again. In Illinois, an applicant rejected at either a first or second examination must let one examination intervene before he tries again. If he fails at a third or fourth examination, he must allow two examinations to intervene before trying again. Before taking any reexamination after the first, he must prove to the Board that he has "diligently pursued the study of law since his last examination." If he does not apply for reexamination till after six years have elapsed, he must apply and qualify as in the first instance. Only five examinations in all are allowed. The State of Washington cuts the number of examinations permitted down to three. Unless otherwise ordered by the Board, an unsuccessful applicant must wait a year before trying again, and must show what study he has pursued since his last examination. In none of these three states is it clear from the printed rules what the situation is as to fees.

In three other states an absolute limit is set upon the number of examinations allowed, but this restriction is not combined with enforced intervals of waiting beyond the next regular examination. In Ohio five examinations in all are permitted. An applicant for reexamination pays $10 instead of $15. He may be admitted to the next examination after his failure, on filing a certificate from a law school or an attorney that he has studied law for six months subsequent to his former examination. New Jersey permits four failures in all. An applicant who fails to pass an examination must, before he can try again, file with the Clerk of the Court proof that he has served a four months clerkship since his latest attempt. After the first examination (costing $25), the fee is $15 for each examination. In Minnesota, an applicant who fails may take any succeeding examination within the next two years without additional affidavits or certificates, but twenty-five days before the examination, he must send in his application, and he must pay again the original fee of $25. After three failures a candidate in Minnesota cannot try again.

IV.

Eight jurisdictions have a rule limiting the privilege of reexamination by requiring the candidate to secure special permission from the Court or the Board.

In Maine and New Hampshire, special permission must be secured

to take any reexamination. Maine allows a rejected applicant to apply again after six months, but he must 'show the board' that he has diligently pursued the study of the law for six months prior to the examination; if the second application is within a year after the first examination, he need not pay an extra fee for the second examination. New Hampshire provides that one who fails must have a special order from the court before he can try again, this order to be secured by proving that since the failure he has 'devoted himself exclusively to the study of law, under a competent instructor.'

Three jurisdictions — Oregon, District of Columbia, and Rhode Island — insist that special permission must be secured to take any examination after the second or third. In Oregon no applicant may take a third or subsequent examination without having obtained permission from the supreme court, petition for which order must be supported by affidavits of at least two attorneys of this court that applicant has diligently pursued the study of law since his last examination. The District of Columbia rules that an applicant who has failed three times in succession must submit an affidavit with his fourth application showing the studies pursued by him since the third examination and the time occupied with them. If this additional work does not satisfy the committee, applicant may be denied an examination. Here an applicant who fails to pass the first examination may take one additional examination on payment of $15, but a third or subsequent examination must be at the same rate as the first ($25). In Rhode Island, since July 10, 1931, no applicant can take more than three examinations except by special order of the court.

Finally, three states have a rule very similar to the preceding, but requiring, in addition, that a period of one year must elapse between the second and third examinations. These are Colorado, Utah, and Pennsylvania. In Colorado, unsuccessful applicants may take the next succeeding examination (i. e., after six months). If they then fail, they must wait a year before trying again. If they fail a third time, they will be reexamined only by special permission of the Court en Banc and for good cause shown. Utah has recently adopted a similar rule, the special permission being given, in this case, by the Board of Commissioners of the State Bar.

Pennsylvania, with all its careful detailed rules regarding admission to the bar, is naturally not falling behind in this particular. The original fee of $25 must be paid again. The Secretary of the State Board of Law Examiners, under date of June 1, 1932, informs us that the following rule has also recently been put into effect:

"An applicant who fails to pass a final examination for admission to the bar will be given two more opportunities, provided

that an interval of one year must elapse between the second and third examination; and provided that if he fails the third time he will be reexamined only by special permission of the Board and for good cause shown."

Provision has been made, likewise, for applicants who failed before this new rule went into effect.[1]

This method of treating the problem—leaving a certain administrative discretion to officials—seems preferable to the more rigid rules discussed in the preceding section.

[1]If they were unsuccessful in less than four examinations, they may try twice again, at intervals of a year each from the date of the last failure; but after four failures, only one more reexamination is permitted, and that not until a year has elapsed since the last failure.

Corrections to Bar Examiners' Directory

Those interested in keeping their "Who's Where" of Bar Examiners (page 111 in the February issue) up to date, should make the following changes:

MISSISSIPPI: The personnel of the Board, known as "The Board of Bar Admissions," is as follows: Gov. Sennett Conner, Chairman, Jackson, Mississippi; Judge A. J. McIntyre, President, West Point, Mississippi; S. E. Travis, Vice-President, Hattiesburg, Mississippi; and W. H. Cox, Secretary, Jackson, Mississippi.

MISSOURI: Thomas F. McDonald, Central National Bank Building, St. Louis, is now Secretary of the Board, Mr. Lohman having resigned.

NEVADA: Wm. J. Forman, Jr., United Nevada Bank Building, Reno, has succeeded Clyde D. Souter as a member of the Board.

OHIO: Horace S. Kerr, 22 W. Gay, Columbus, Ohio, has been elected Chairman of the Board, and Mr. H. G. Mosier, Guarantee Title Building, Cleveland, has succeeded G. Ray Craig as a member.

OKLAHOMA: A. W. Rigsby, Secretary of the Board, has changed his address to 1519 Petroleum Building, Oklahoma City.

OREGON: Edgar Freed, Mohawk Building, Portland, has succeeded Hall S. Lusk as a member of the Board.

VIRGINIA: John B. Minor, President, has a new address: Central National Bank Building, Richmond.

Believe It or Not

The following question under the subject of "Legal Mentality" was given in the last Nebraska bar examination.

"Answer the question below. There is no catch in it, but every fact stated is relevant and must be considered. Whether you answer the question or not, give a synopsis or diagram or both of how you worked at it:

"A train is operated by three men — Smith, Robinson and Jones. They are fireman, engineer and brakeman but not respectively.

"On the train are three business men of the same names.

"Consider also the following data about all concerned:

1. Mr. Robinson lives in Detroit.
2. The brakeman lives half way between Chicago and Detroit.
3. Mr. Jones earns exactly $2,000.00 per year.
4. Smith beat the fireman at billiards.
5. The brakeman's nearest neighbor, one of the passengers, earns exactly three times as much as the brakeman, who earns $1,000.00 per year.
6. The passenger whose name is the same as the brakeman's lives in Chicago.

"This is the question: Who is the engineer?"

We refer you to Walter Anderson of Lincoln for the answer and suggest for the next examination the one about the hen and a half who laid an egg and a half in a day and a half.

Kansas Goes on Three-Year Pre-Legal Basis

The Supreme Court of Kansas has recently promulgated the following rule in reference to pre-legal qualifications for admission to the bar:

> "From and after June 1, 1936, the applicant shall show in addition to equivalent of a four-year high school course, the equivalent of three years' study in a general college course."

Kansas thus becomes the only state in the Union requiring prospectively more than two years of college education, although in Pennsylvania, owing to the wording of the requirement in that state, the great majority of candidates for the bar have college degrees before they start the study of law.

which he can demand shall be granted to him. Rather, he humbly submits himself as one who would seek admission, if found to conform to proper standards.

The applicant has shown a weakness of character which is very serious in the case of an attorney, i. e. the unlawful taking of money entrusted to his care by others. It is a fault which is all too common among many who, unfortunately, have become members of the Bar. It is a temptation to which every member of the Bar is constantly exposed. The excuse which he offers may possibly excuse the act in this particular case, but even if true it shows a natural weakness of character in the matter of handling the property of others which is very unfortunate in the case of an attorney. The incident has exposed the weaker side of his character, — his inability to recognize the property rights of others. He is quite liable, when exposed to temptation, to fail again.

Is it wise to take that risk when there is an abundance of attorneys already admitted, and many excellent candidates seeking admission to the Bar? Would a bank passing upon an applicant for a clerkship where a Clerk would handle money employ an applicant if all these facts were known to it? Presumably it would not. Yet the bank has many checks upon his acts which the profession does not have. The interests of the client are more subtle; and the opportunity of the attorney to conceal his wrongdoing from the client, who is ignorant of the ways of the law, are many times as great.

The Bar Examiner may well consider that the applicant has the whole range of business enterprises before him in which to seek his fortune. The practice of the law is not his only opportunity. Why should the risk — and it is a serious risk for the public — be taken by the Nebraska Commission?

On the facts as stated the Nebraska Bar Commission may well exercise such care and caution. It is a case for conservative action. The error, if error is to be made, should be at all times on the side of the protection of the public.

"With a Hey Nonny Nonny and a Hot Cha Cha!"

We learn from the public prints that Rudy Vallee has enrolled as a student at the Suffolk Law School in Boston, with the intention of being admitted to the bar, Mr. Hitchcock and his colleagues of the Massachusetts Board being willing. This notice is published to give all practicing members of the profession ample time to get a firm grip on their feminine clients.

Report of the Executive Committee of The National Conference of Bar Examiners to the Second Annual Meeting

In the resolution of organization adopted at the first meeting of the Conference in Atlantic City last year, it was stated that the Conference was "formed for the purpose of increasing the efficiency of the state boards in admitting to the bar only those candidates who are fully equipped both from a standpoint of knowledge and of character to serve as lawyers, and also to study and to cooperate with the other branches of the bar in dealing with problems of legal education." In pursuing these objectives your Committee has believed that the best methods by which they can be achieved are through making available to every bar examiner and every member of a character committee the experience not only of other boards and committees but also of other experts in the field of legal education.

A permanent office for the Conference was set up by the Secretary in Denver, Colorado, on his return from the meeting, and a full-time assistant for the work of the organization was engaged. This office was designed as a clearing house of information for the state boards, and in connection with it a monthly journal, "The Bar Examiner," was published under the direction of the Secretary. This was sent out to a mailing list consisting of all members of law examining boards, such members of character committees as expressed a desire to have it, to all judges of courts of last resort, to all law school deans, and to certain other individuals such as members of the Executive Committee and of the Council on Legal Education and Admissions to the Bar of the American Bar Association. Twelve numbers of "The Bar Examiner" have thus far been published, completing the first volume, and while your Committee feels that it is serving the purposes of the organization in an admirable manner, it and particularly the Editor of "The Bar Examiner" would welcome any suggestions as to the kind of material which should be included and how the magazine can be made more interesting and of more use to bar examiners. A list of the contributors during the last year shows both the national character and scope of our organization and also the importance which attaches to it in the eyes of leading members of the law school profession. The list includes the following:

James C. Collins of Rhode Island.
Philip J. Wickser of New York.
Stanley T. Wallbank of Colorado.
John Kirkland Clark of New York.

Alfred Z. Reed of New York.
Professor Lyman P. Wilson of Cornell University.
Albert J. Crawford of Yale University.
Dean Albert J. Harno, University of Illinois.
Dean Leon Green, Northwestern University.
Professor Samuel Williston of Harvard.
Dean Henry M. Bates of Michigan.
Miss Bessie L. Adams of New York.
Professor Philip Halpern of Buffalo University.

Your Committee feels that the cooperation by eminent law school professors in our work is important and significant.

Statistics in reference to the number of candidates at each examination, the number passing, and the number admitted to the bar by diploma and on motion are being gathered and have been published from time to time in "The Bar Examiner," including statistics showing the numbers admitted to the bar in each state during the last ten years. These facts are being compiled accurately for the first time and have considerable value to the profession. Each board has been requested to send fifty copies of each examination to the Secretary of the Conference, and during the last year he has distributed to the state boards copies of bar examinations from the following states:

California	Massachusetts	New Mexico	Rhode Island
Connecticut (3)	Minnesota	Oklahoma (2)	Virginia
Illinois	Missouri (4)	Oregon	Washington (2)
Maine	Nebraska	Pennsylvania	

Another activity which has been undertaken is the preparation of a list of all those individuals who have been disbarred or refused admission on character grounds in any state during the last fifteen years. Complete lists of disbarments have been furnished by the following states.

Colorado	Maryland	New Jersey	South Carolina
Connecticut	Minnesota	New Mexico	South Dakota
Delaware	Montana	North Dakota	Utah
Idaho	Nebraska	Oklahoma	Virginia
Kansas	Nevada	Oregon	Wisconsin
Maine	New Hampshire	Rhode Island	Wyoming.
	District of Columbia		

Incomplete returns have been received or cooperation has been promised in securing such lists in the following states:

Arkansas	Indiana	Missouri	Tennessee
California	Kentucky	New York	Washington
Florida	Louisiana	Pennsylvania	

The following states advise that it is impossible to furnish this information for past years:

Alabama	Mississippi	North Carolina	Texas

It is hoped that other states which find it possible to do so will make some arrangements to furnish these lists to the Secretary as it is important that his information on this matter be as complete as possible. The lists will be used in checking the names of candidates coming up for examination or for admission on motion and should prove particularly useful to character committees passing on the application of attorneys from other jurisdictions. Already in several instances the Secretary has been able to report to state boards the names of individuals applying to them for admission who have been previously disbarred in other states. In this connection also, the Secretary's office stands ready and willing to lend such assistance as it can in the investigation of the character of an applicant from another state. No information as to the causes of disbarment or of refusal to admit on character grounds is kept in the Secretary's office. When he receives from any state board a list of applicants for checking, in case he finds from his card index that any of those applicants have been previously disbarred or refused admission on character grounds in another jurisdiction, he reports the name of the individual, the citation of the case if it is in an available printed report, and the name of the state where the action was taken, which enables the board before which the applicant is appearing to get full information from the state where the action was taken.

Previous to meeting in Washington your Executive Committee held one meeting during the year, in New York City on February 5. At that time the general policies of the organization were discussed and various suggestions were made. The Secretary was then authorized to initiate the disbarment and character index referred to above, and tentative plans for the annual meeting were formulated. The matter of recommending the inclusion of an examination in legal ethics in all bar examinations was discussed and a resolution on this subject will be presented to the coming meeting.

Your Committee desires to record its grateful appreciation to the Carnegie Foundation for the Advancement of Teaching for its generosity in voting a five-year grant to the Conference in a total sum of $15,000, $5,000 of which has been available this year, $4,000 of which will be turned over to us next year, and $3,000, $2,000 and $1,000 in the three succeeding years, respectively. Without this financial assistance it would have been impossible to carry on the work of the Conference on the scale

in which it has been conducted, or to look forward as confidently to the future as we may with this assurance of help.

A further source of great help to the Conference in its initial efforts has been a contribution by the American Bar Association in the amount of $2,500. Approximately $1,400 of this fund was spent in paying part of the transportation expenses of delegates to the first annual meeting and the balance was used for general purposes of the organization.

Your Committee also desires to express its thanks to those states which have contributed and particularly to the Board of Governors and the Committee of Bar Examiners of the State of California for a contribution of $500.

The diminishing grant given us by the Carnegie Foundation for the Advancement of Teaching was made in that manner on the theory that if our organization was of real value to the profession, it should, in the course of five years, be self-supporting. This is not an unreasonable argument. While application was made this year to all states to assist in the work, as will be seen from the accompanying report of the Treasurer only nine actually made contributions. This was doubtless due to the critical financial conditions prevailing over the country, the inability of some states, due to statutory provisions, to make contributions for this purpose out of the bar examiners' fund, and perhaps in some cases to a skepticism as to the value of the organization. The National Conference of Bar Examiners has now had a year to prove its value, and if the examining boards of the several states feel that we are justified in continuing as we have begun, it will be necessary for them to secure contributions from the appropriate agencies in their states for this purpose. Even a slight increase in the examination fee would seem to be warranted for this purpose in those states where the number of applicants is large enough to bring in a worth while amount by this means. Several of the larger states have indicated that they will take on their share of the burden during the coming year.

The overhead of the organization has been kept down to a minimum, and although the Secretary-Treasurer, who is also Editor of "The Bar Examiner," has devoted a considerable amount of time to the enterprise, he has done so without receiving any remuneration from the Conference for his work. It is essential that every bar examining board give the matter its individual attention, because if contributions are not forthcoming it will be necessary to curtail the work which is being done.

Respectfully submitted,

JAMES C. COLLINS, *Chairman,*

A. G. C. BIERER, JR.	WILL SHAFROTH
STUART B. CAMPBELL	STANLEY T. WALLBANK
CHARLES P. MAXWELL	PHILIP J. WICKSER

Members of the Executive Committee.

Progress in Adoption of Bar Standards

On September 1, 1932, Mr. Guy A. Thompson, President of the American Bar Association, issued the following statement to the Associated Press:

"On September 1, 1921, the lawyers of the United States, acting through the American Bar Association in session at Cincinnati, received and adopted the report of a distinguished committee of which Elihu Root, former Secretary of State, was Chairman, advocating certain standards of admission to the bar. These included a recommendation that every candidate for the bar should be a graduate of a law school requiring for admission two years of college education and having a course of study three years if a full-time law school or a correspondingly longer course in the case of a part-time school. At that time Kansas was the only state which had a rule requiring two years of college education, effective in the future, and there were twenty jurisdictions which did not even require any high school education.

"Today, eleven years after the adoption of that report, it is well to take stock and see what has been accomplished. At the present time there are nineteen commonwealths, in which 53 per cent of the lawyers of the United States practice, where either presently or prospectively two years of college education or their equivalent are required of substantially all applicants. In addition, in fifteen more jurisdictions the standards of the American Bar Association have been approved by the State Bar Associations. Only nine states remain which still have no requirement of general education. In 1921 only one law school out of five required two years of college education for admission, whereas today seven out of every ten make that a prerequisite.

"Census figures show the number of lawyers in the United States in 1930 to be 160,605, an increase of 31 per cent during the preceding decade as against a 16 per cent increase in population. This flood-tide of aspirants for a lawyer's license emphasizes the necessity for a continued effort to bring about the adoption of the wise recommendations made eleven years ago by the Root committee.

"The substantial progress made since 1921 is being carried on, not with the idea of excluding any deserving applicant from an already overcrowded profession, but rather with the object of protecting the public against unfit practitioners. The purpose of the qualifications favored by the American Bar Association is to assure the people that those licensed as lawyers shall be not only men of character, but also men who have had sufficient educational instruction and background and adequate legal training to entitle them to public confidence as honest and competent members of the bar."

An Interesting Correspondence

To The Bar Examiner:

The enclosed correspondence raises points that it seems desirable to refer to the Boards of the several states, and in particular to those of Virginia and New York. Your columns constitute the most convenient medium of communication.

Very truly yours,

September 14, 1932 ALFRED Z. REED.

* * *

"MR. ALFRED Z. REED,
Staff Member of the Carnegie Foundation,
522 Fifth Avenue, New York City.

"My dear Mr. Reed:—

"May I trouble you to ask for a little information and advice about the U. S. Kent School of Law?

"I have a nephew who is very much interested in taking up the study of law but has not completed his high school education. He is twenty-four years old, his parents are dead and he has to support himself. He, therefore, feels that he cannot take the time to finish his high school education and take two years of college before even starting the study of law. He heard of this Kent School and has enrolled but only paid for the first month. He comes from Maryland and thinks he can take this one or two years study of law at the Kent School, take the bar examination in Virginia and by studying while practising there for five years he can work up so he can come back to New York. He thinks the work and practise along the line he wants will do him as much good as the scholastic training.

"This Kent School seems to be the only one where you can study under such conditions. I do not know and cannot seem to find out much about it so do not feel in a position to advise him.

"I will, therefore, appreciate it very much if you will give me some information and advice about it.

"Thanking you, I am

Very truly yours,

(Signed) ....."

September 14, 1932.

"My dear .....:

"Replying to your enquiry of September 13, your nephew, at the age of twenty-four, is old enough to make his own decisions. In deciding as to his future education, he might do well to pay some attention to the following considerations:

"(1) Most people, including the present writer, who have looked into the matter believe that the best way to ensure success in the precarious career of a lawyer is to devote a considerable amount of time to preliminary preparation. This includes what you describe as 'scholastic training,' whether received in a high school, in a college, or in a school of law.

"I appreciate your nephew's impatience, and sympathize with it. If he were to decide to fulfill the regular requirements for admission to the New York bar, by education received while he supports himself, he will be obliged to postpone his admission for several years. On the other hand, he would have the satisfaction of feeling that he had made real sacrifices to secure a sound preparation. And—if he will take the word of one who once had to face a similar problem—he is not as far behind his fellows, in life's race, as he is now sometimes tempted to believe. By all means, he has no time to lose. But if he spends his time to good purpose, and does not merely fritter it away, then I can assure him of one thing: Ten, or even a dozen years from now, he will not seem—either to himself or others—to be hopelessly superannuated.

"(2) If, none the less, he prefers to try to beat the system, by the method which he outlines, it is only fair to warn him that bar examiners are quite capable of changing the rules of the game on short notice. Whether, after one or two years' study in the U. S.—Kent School of Law he would be qualified to pass the Virginia bar examination, is a question as to which I can pass no opinion—I do not know enough about either the U. S.—Kent School of Law or the Virginia bar examination. But even if he should be qualified, it is entirely possible that by that time the Virginia bar examiners might have so changed their rules that he would not be permitted even to take the examination.

"(3) Similarly, if he pictures his five years of practice in Virginia merely as a part of his education, that will enable him eventually to secure what we might term a 'backdoor' admission to the New York bar, he runs the risk that the New York examiners might regard this as an evasion of their rules. If they and their allied committees of character and fitness should so regard it, and should nevertheless feel technically bound to admit him, they have considerable opportunity to

postpone the admission of applicants of whom, for any reason, they disapprove. And if they have not already power absolutely to exclude an applicant who comes up by so devious a route, they might acquire this power in time to make short shift of your nephew's ambitions.

"I have written to you quite fully in regard to a matter as to which your nephew must finally make his own decision. If I can be of any further assistance, either to him or to you, please command me.

Very sincerely yours,

ALFRED Z. REED."

Program for the Second Annual Meeting of The National Conference of Bar Examiners.

Sunday, October 9

Meeting of the Executive Committee of the Conference at the Mayflower Hotel, 8 P. M.

Monday, October 10

United States Chamber of Commerce Building

Morning Session: 10 o'clock

Mr. James C. Collins, Chairman of the Board of Bar Examiners of Rhode Island and Chairman of the Conference, presiding.

Report of the Executive Committee to the Conference.

Address by the Chairman.

Address by Dean Albert J. Harno, President of the Association of American Law Schools, on the subject of "Lights and Shadows in Qualifications for the Bar."

Address by Mr. Alfred Z. Reed of the Carnegie Foundation for the Advancement of Teaching on the subject of "The Opportunities of a Board of Bar Examiners."

Address by Mr. William Harold Hitchcock, Chairman of the Massachusetts Board of Bar Examiners, on the subject of "Recent Bar Examination History in Massachusetts."

Afternoon Session: 2 o'clock — Round Table Conferences.

1. Overcrowding of the Bar and Repeaters.
   Discussion by Mr. Stanley T. Wallbank of Colorado, Dean Paul Shipman Andrews of Syracuse University College of Law, Mr. Alfred L. Bartlett of California, and others.

Lights and Shadows in Qualifications for the Bar

By Dean Albert J. Harno*

President of the Association of American Law Schools.

When I was asked to speak before this Conference I readily consented. Too readily I thought later, when in serious communion with myself I was faced with the problem of gathering my thoughts into a bundle, for then only did I begin to question my qualifications for the undertaking. I doubted my competency and was puzzled. Why was I given this privilege? Perhaps the situation bears some resemblance to that which arose, I am told, in a southern community some time ago. A colored minister who was beloved by his people had accepted a call to another church. The Sunday following his departure a member of the congregation arose and spoke: "Bretherns and sisters, you know our pastor Rebend Jones has departed down Mobile way. I move ye dat we pass de collection box to gib him a little momentum."

I never have had the privilege of serving as a bar examiner. Yet, I do not believe I am utterly unqualified to appear before you, for I have passed through your workshop, and you have worked on me. If credentials of experience are necessary to address you, I truthfully can affirm, I have had an experience—or, should I say, an ordeal. Once I appeared before you as a humble suppliant—a neophyte. Never was there anyone, I verily believe, who was in greater awe of you than I, and though years have passed since then, the memory of that occasion remains, and something of the old regard lingers.

I presume, though, that the principal reason for my being here is that I am an officer of the Association of American Law Schools, and that as such I am a representative spokesman, though unofficial, on this occasion. If such be my commission, I welcome the opportunity to discuss some problems with you, for, as I see the situation, your group and my group are travelling paths which, in the main, lead in the same direction. The task which I had set for myself was to explore these paths with the aim that I might find whither they lead and that I might define the objectives we seek to reach. As I now give you this account of the results of my explorations, I wish frankly to confess that often in the process I fell short of my expectations, for much of the region through which I travelled, and through which our paths must lead, still remains unex-

*Address delivered at the second annual meeting of The National Conference of Bar Examiners, October 10, 1932.

plored. These points I have labelled on my chart with question marks and have contented myself with the hope that others may in time follow with more detailed studies and more accurate descriptions.

Hardly had I set upon my journey when I was drawn off the main road to what I now believe to be a by-path, by a will-o'-the-wisp. There is complaint that the bar is over-crowded. To this I listened. There can be no doubt that the problem is a serious one. Mr. Wallbank has dealt with this question in an excellent article.* He shows that the National Bar in 1910 numbered 114,000 lawyers; that in 1920 it numbered 122,000, and that the estimates for 1930 are 160,000. This represents an increase since 1910 of over 40%. In the same period the nation's population increased about 33%, "and her per capita wealth probably twice that rapidly." He estimates that 4,800 admissions annually would keep the profession at its present number, yet approximately 10,000 are being admitted. Assuming our present numerical strength sufficient, Mr. Wallbank inquires, "What of the unneeded 5,200 new lawyers being admitted annually?" "The examiner," he continues, "with his hand on the pulse of the profession is thus faced first with a numerical problem."†

The Problem of Over-Crowding

These are the questions I met at the beginning as I prepared for my explorations. Is the bar over-crowded? From the facts available, can it be said that such is the case? If it should be found that it is, what is the significance of such a situation? With this established, would it follow that steps should be taken to the end that the yearly admissions be decreased? Could it not be said with equal truth that other professions and callings are over-crowded? And if it could, on what ground can the bar justify taking steps to decrease its members, or to hold them in check, when such action may have the effect of forcing young men into other lines which are also over-crowded? Should it be determined that the bar is over-crowded, and that it is desirable to check the influx of admissions, the question still remains, whose task is it to deal with this problem? Is it the responsibility of the examiners, the schools, the bar, the legislatures or other agencies? A few moments ago I said that I had charted some questions for further study. Many of these are so labelled. They cannot be answered until careful studies have been made. They are marked on our map with an inscription underneath that the explorer has viewed these regions as peaks rising on the distant horizon but which, with the time and resources at his command, he was unable to explore.

Whoever reads Mr. Wallbank's article cannot fail to be impressed with his statistical materials and will be inclined to follow the trend of

*(1931) 1 Bar Ex. 27.
†(1931) 1 Bar Ex. 29.

its inferences to the conclusion that the bar is over-crowded. I should not wish to be understood as taking the position that he is wrong, for I am inclined to believe that he is right. The influx of lawyers each year appears to be overwhelming. I raise this question, however,—have all the determining factors, all the variants been accounted for? Has Mr. Wallbank given sufficient study—he mentions this factor—to the rise of per capita wealth during the period covered by his investigations? Must it be assumed that there were enough lawyers in 1900 or in 1910, the period with which he begins his studies? Has he considered the kind of legal work which was brought to a lawyer's office in 1900? Has he compared that with what a lawyer does now? American life was certainly far less complicated in 1900 than now. May not its very complexity have given impetus to a rising tide of legal work, and if that be true, how far does that factor tend to absorb the increases in bar admissions?

Let us assume that the bar is over-crowded. It probably is, yet on what ground can we justify taking steps to check admissions? There are factors here, I verily believe, which should cause us, before going on, to define carefully our position and then only to proceed wary of Charybdis and chary of Scylla. Probably never before in American history has there been a greater outcry about the over-crowding of the various agencies which make up our modern life. The farms are over-crowded and they have over-produced. The same is true of industry and business. All are over-crowded, and all, through one means or another, have taken steps to check the flow of man power in their direction. Not only have they checked the influx, but they have ejected large numbers from within their ranks until today millions of men and women are without means of livelihood other than public charity. The advice once freely given to many aspirants to the profession to seek another calling has today become but a mockery or an empty sound.

The American bar can never forget that it is a public agency. It is not an organization *sui juris;* it is not a specially privileged group which can set its own standards and conduct its affairs irrespective of the effect they may have on other public groups. In the last analysis it is a service agency which can maintain its position only so long as it is useful to society through the services it renders. And if this be true, it must follow that it cannot justify acts restricting admissions to it merely as measures protective for itself, but must find support for them on more general and altruistic grounds. These, I take it, would involve consideration of the question whether such acts further the best interests of the public which lawyers must serve.

This appears to me to be the heart of the problem. Would the general welfare be promoted through more stringent restrictions in bar admis-

sions? Or, stated differently, would the people who make up the social group be so interested in and benefited by an improved personnel of the bar that they would be willing to deny to individuals in considerable numbers the privilege of becoming lawyers? I am willing to assume that they would be, but I believe also that this question needs more careful study than it has had. How many lawyers can the country well absorb? When is it saturated with lawyers? In 1910 there was approximately one lawyer to every 801 persons, and Mr. Wallbank estimates, at the present rate of increase, in 1940 there will be one for every 548. Can we say with assurance that the number of lawyers in 1910 was sufficient, and that since then there has been an over-production? Once more this territory has not been fully explored.

Please do not understand me to be critical of the studies which have been made. They have been excellent, and they show a commendable effort to improve the situation of the American bar in its relations to the public. I have said that I am willing to assume that the bar is being over-crowded, and that it is to the public interest to restrict a too-great influx of lawyers. With an over-crowded bar, and with one not carefully selected, surely the struggle for existence among lawyers must become acute, and this, in turn, must account for much that is unethical in the practice. But here again I should wish for more detailed and specific data. Is it theory only that economic pressure causes unethical conduct, or can we get the facts? My point in raising these questions, I wish to be clear, is not because of any desire or motive to appear meticulous or pedantic; neither do I wish to place obstacles in the way of the movement to improve the personnel of the bar. I am fully in sympathy with what is being done, yea, I rejoice in it. I wish only to suggest that we walk circumspectly and with caution, lest our enthusiasm lead us into grief.

My belief that over-crowding, if there be such, does not present the principal problem which confronts us was indicated earlier in these remarks. It is, at best, a subsidiary issue, and this, I believe, becomes plain once we have conceded that it is the public which is primarily and principally concerned in the acquisition of a better bar. The public is no more concerned in the fact that the bar, as such, suffers through over-crowding than it is in a similar condition in the ranks of labor, or wholesale or retail grocers, or farmers or of any other agencies. The public interests are touched when any group becomes over-crowded. But, I repeat, lawyers are not a special concern of the public merely because the bar is over-crowded. It is only when unfavorable conditions, which beset an agency, peculiarly affect the general welfare that the public becomes specially interested. What then is the situation of the bar? The lawyer works in a representative capacity. He is the agent for other individuals in matters of trust and confidence. He also is a public agent, for by virtue of his

position in society much responsibility falls on him for shaping and developing the law. No one, I believe, will deny it is to the interests of the public that services of this nature be intrusted only to persons of outstanding character and integrity and who have, in addition, a perception of social values. And if this be true, the personnel of the bar is a peculiar public concern. From this vantage point I believe we may glimpse the goal toward which the paths we have been exploring lead. We seek a bar whose members are qualified through mental training and through attributes of character to accept commissions of trust and confidence and to undertake the responsibilities of leadership in public affairs. When once this becomes apparent the question of over-crowding slips into its proper place. It is a factor to be dealt with when it makes movement toward our goal more difficult.

Responsibility for Improvement

Now that our objective has been defined, progress should be easier, but as yet we see it only as a goal in the distance, a peak towering high above its surroundings. There lie between it and us numerous obstacles and impediments which make travel difficult. That this peak be reached and scaled is to the interests of all. By all I do not mean a particular group but the public. However, there is a lack of definiteness as to whose responsibility it is to organize, equip and maneuver the expedition. The public is concerned, but obviously it cannot, as such, undertake the task. It must act through agencies, several of which are at work, but none of which has been commissioned to proceed with sole responsibility. Particularly, to mention only the more prominent ones, these agencies are the schools, the bar itself, courts, legislatures, character and fitness committees, and the bar examiners. Each plays a more or less important part in this work, but it is exceedingly difficult to define their several jurisdictions and responsibilities. If it were but possible to coordinate their efforts, progress would be greatly facilitated and there would be less reluctance on the part of each group to accept its share of the burden, but that is another story. To it I will return.

The Schools

Of the agencies which I have mentioned, I choose first for consideration that with which my own work has made me most familiar—the schools. Even here I feel my self-reliance faltering, as it frequently has before while I have attempted to fashion thoughts into words for this paper, in fear that I cannot adequately fit this agency into the scheme I am seeking to describe. Many law schools have grown up so irresponsibly and in such a helter-skelter way that it cannot be said that they are amenable to any plan. They have come into existence often, I fear, with-

out regard to social needs, and as the ravens, they have sown not and neither have they reaped. Frequently they have been set up to furnish means of subsistence for their operators through fees collected or to prosper the budding ambitions of some fledgling college which wants forthwith to become a university boasting of professional school connections. It is unfortunately a fact that a law school, so-called, can be organized, and after a fashion operated, with a thin pocketbook and an oily tongue.

In many schools which hold out professional training there is, I fear, a want of appreciation of those finer qualities needed in individuals seeking admittance to the profession. Ideally a law school should take account not only of the responsibility it owes to its students, but also of that which it owes to the public. The stamp of its approval should be placed only on those who have shown marked promise to measure up to the standards society rightly should demand of members of the profession. It should select for advancement in its courses only such aspirants as have demonstrated high mental caliber. These it should educate to the end that they may extend to the fullest their knowledge of the law. Likewise and equally, it should seek to develop in them an appreciation of the highest ethical standards and to inspire a consciousness of the place a lawyer should assume in society in coordinating social and economic forces and in promoting the wise development of the law. This I believe to be the high objective peak all agencies affecting and influencing the type of individual who is given the privilege of entering the professon should seek to reach, and no law school is worthy of the name which does not set its course by that goal. Unfortunately there are way-stations along the trail which leads to this peak, among which might be named bar examinations, book knowledge of law and familiarity with legal quirks, which often are mistaken for the goal itself, on the reaching of which many who travel this path stop.

This story would not be complete if I did not mention the fact that a number of law schools are conscious of these larger responsibilities and are fashioning their programs to meet them. There has been during the last three decades a distinct movement among law schools toward higher standards. There has been a standardization of the period of professional study at three years for full-time students. There has been a constant trend toward advancing the admission requirements to law study. The Association of American Law Schools which includes seventy-six schools has set a minimum admission requirement of two years of college work for all schools within its membership. The American Bar Association has adopted a similar standard for schools placed on its approved list. Several schools are exceeding this requirement; some prescribe a degree as condition to entrance and others three years of college work. A number have set up standards of quality involving grade requirements and

other tests for admission, and so are further sifting the mental caliber of those students they are willing to enroll. Many have grade or quality standards as conditions to advancement in school and to graduation. The poorer materials are eliminated by these sifting processes. And finally there is a well defined movement in these schools to broaden the scope of their teachings to the end that students will acquire an appreciation of the purpose and workings of the law in its relation to other social institutions and of the function and place of the lawyer in the social scheme.

There cannot be any question of the place and importance of the law school as an agency for furthering a better qualified bar. By this remark I do not mean to suggest that I hold lightly the work of other agencies. Each in its respective sphere has important services to perform. The point is that the bar examiners, may they labor ever so efficiently, cannot adequately remedy the situation if a tide of poorly trained materials is continually washed up to them. Character and fitness committees cannot do it; neither can the bar. The barriers must be located at a more strategic place. I take it they must be inserted in the schools. But even here, the schools working by themselves are unequal to the task. They might succeed if they would work concertedly; but this they are not doing and they are not likely to while the public regulations bearing on admission are so loosely drawn that they permit those schools with little or no perception of social responsibility to provide recruits for the profession. The result is that those schools which are seeking through teaching and administration to improve the quality of their students are decreasing their output, while others less conscientious are swelling their enrollments and their products. Here lies, I believe, the crux of this problem. If the personnel of the bar is to be strengthened, work must be done at this point, but no agency working single-handed can hope to accomplish much. Improvement, if made, must come through the co-operative efforts of all the agencies concerned.

The Bar Examiners

And now may we turn our attention to the place and function in the scheme I am seeking to describe of some of the other agencies involved? Here is territory I am even more reluctant to explore than that of the schools, for in it I find myself little better than a stranger, and though not a trespasser I can claim here no greater privileges than those of an invitee.

It has been said of bar examinations that they have not proved successful as methods for determining the intellectual capacity and fitness of candidates for admission to the bar.‡ I shall present a different view—one

‡Green, "Bar Examinations and the Integrated Bar" (1932) 1 Bar Ex. 213.

that will not be taken, I suspect, to be uncritical, and yet one that will leave to the bar examiners a highly important function to perform. I shall begin by suggesting that it would be helpful if the examiners would undertake to define their objectives. It would be desirable if they would seek to determine the position they occupy, particularly in its relation to other agencies. As I see it, the examiners are the official gatekeepers to the profession. Their sphere of influence is important, but their task is soon performed, for they ask only the password of those who seek to enter the gates and if it is spoken as they believe it should be, the candidate is passed into the jurisdiction of the profession.

It is of interest to observe that the password, on this occasion, is taught to the candidate by another agency—the school—with which the examiners frequently have no contact, and where one exists it often is no more than a nodding acquaintance. Since it is important for the school to teach the candidate the proper password, it would seem that there should be some understanding between the examiners and the schools, as to the nature and pronunciation of this word, but all too often there is none. Stated differently, and without the figure, there is, I fear at times, a gap between the teachings of the schools and the examinations of the examiners. When this occurs, the principal mourner is the unfortunate and helpless candidate. Both agencies should guard against such circumstances and to that end should cooperate in seeking a common understanding. The schools, when they are meeting their responsibilities in that larger sense which I have sought to describe, take cognizance in fitting candidates not only for bar examinations but also for usefulness after the examination as professional members of society. The bar examiners, in shaping their examinations, should seek to test candidates not only on their legal learning, but also on their qualifications for professional responsibilities.

This should be and no doubt is their aim, but examiners wherever found, be they on the staff of a university or official interrogators for the bar, cannot long remain insensible to and uninfluenced by the quality and class of materials they examine. Whatever their hopes and ideals at the inception of their work, they will, before they have gone far, yield to this influence. I speak not heresy, but fact. May we assume for purposes of illustration that there exist in a given jurisdiction five law schools, three of them poor and two of them good. No doubt, if conditions are normal and the examiners alert, a greater percentage of the candidates from the better schools will pass, but so also will some of the output from the poorer ones, and the unqualified material from all the schools, weighted as it is from the poorer ones, will influence and lower the examiners' standards. This factor alone probably accounts for the admission of many who are unfit.

As the scheme for bar admissions stands, the examiners are compelled to bear the full brunt of this constant surge of candidates. These come not singly so as to lend themselves to individual inspection, but in numbers and in some places like a mighty host. Some, to be sure, are well equipped and properly prepared for the ordeal, but many, too many, are ill-prepared. That the examiners struggle conscientiously and valiantly over their assignment, no one will seriously doubt, but the time allotted to them to perform their task and the devices given them with which to work render improbable the accuracy of their assortments and classifications. Bar examinations are not sufficient precautions with which to select those who are qualified to practice law. The marvel of it all is that the examiners are able to work as efficiently as they do under these circumstances.

The difficulty has been stated cogently by one of your members in these words: "Any system of examination which passes less than 60% of those first applying, but which eventually passes more than 80% of the whole number, indicates first, that it has not been properly related to the educational system whose products it judges; second, that it is serving the public but indifferently well by saddling upon it much of the very material from which it was designed to afford protection; and third, that there is something wrong with the educational system itself, to correct which will require both the knowledge and the cooperation of those in charge of the final examinations."§

Such is the problem; the solution will not come through badgering the examiners, for in most jurisdictions they are performing to the limit of their capacities. Neither can we lay the weight of the responsibility upon the schools, at least not while under public regulations each remains, for the most part, a law unto itself. So long as these regulations remain as they are, the poorer schools will continue to thrive and to thrust their products onto the examiners. This, I believe, gives us the key to the situation. A first line of barriers should be erected to carry the brunt of turning back the unfit, and these barriers, in my opinion, should be placed at the gates of and within the law schools. An adequate selective process should be employed under which only candidates of promise would be permitted to begin the study of law. The movement to establish a requirement of college work as a condition to entrance is a step in that direction. Other selective processes might comprise scholarship requirements and various tests including personal interviews with the applicants. A number of schools have initiated such programs. To make the scheme effective

§Wickser, "The Ideals and Problems for a National Conference of Bar Examiners" (1931) 1 Bar Ex. 4, 8.

only those schools which sift their materials both before and after they begin law study, and which give a type of training conceived to develop candidates for the responsibilities of professional life, should, under public regulations and rigid inspections, be permitted to exist. If it be said that such a program is undemocratic and tends to make a caste of the profession, the answer is that we are trying to develop a class—a class of individuals possessed of high ethical and mental qualities such as would fit its members for professional duties and for responsibilities of trust and confidence.

Such a program in its scope would not exclude the bar examiners. If properly conceived it would have within it a place for them, a place less arduous and less thankless than they now occupy, but one of greater dignity and influence. They would be relieved of much of the responsibility of making selection of candidates, as this task would have been performed, for the most part, before the candidate reaches that final stage of his journey toward the profession. Bar examiners should remain in this scheme to make the final check on the qualifications of the aspirants, and they should also be the means, as public representatives, through which the profession and the public may learn of the way the schools are performing. The examiners would thus continue to discharge the important function of guarding the doors to the profession, and as public agents they would assume the responsibility of informing the public of the progress of legal education and of the status and standing of law schools.

Of the assignments mentioned, I should rate highly that of furnishing information to those who wish to study law, to the profession and to the public generally of the standing and rating of law schools. It would be beneficial if these facts were made known. Often it has come to my knowledge, and I speak not hastily, that a school through alluring publicity has raised itself to a high position in the public estimation when in any statement of accurate facts it should have a low rating. An official agency should have the duty of making these facts known. I know of no method that would improve legal education more rapidly than this. I should assign this responsibility to the bar examiners working in cooperation with the schools and the bar itself. Such duties, if given to the examiners, would presuppose that they be men fully in sympathy and conversant with the problems and the trends in legal education. To assure this and to secure a program which would function with a minimum amount of friction, a plan should be devised for conferences with the schools and with the bar. I regard these contacts as essential to this or any other program which looks to the improvement of the bar's personnel. The public depends on these agencies for leadership. Each has a part in

the program, but as yet they have not seen clearly the advantages to be derived through an understanding of each other's problems and through effective cooperation. Whatever else is done, this should be the next step in the program.

Other Contributing Agencies

Other agencies are at work. Of these it is difficult to evaluate the functions of character and fitness committees. Perhaps their duties might be merged with those of the examiners, allowing them to judge both the ethical and mental qualifications of the candidate. Some agency should continue the work of scrutinizing the applicant's ethical qualifications, but there should be no overlooking of the fact that this is a task most difficult to perform. My work brings me into constant contact with young people preparing for the profession, and I know it to be well-nigh impossible to form accurate judgments on this question. It is only in the more flagrant cases in which a student has shown tendencies unmistakably impeaching his integrity and moral fiber that data exist upon which to act. Such conduct, however, is not frequent among students. The point is that a man does not acquire character until he has been confronted with the problems of practice. Many men, I am sure, lead upright lives only because they have never met the pressure of temptation. A man's worth shows up under the tests of practice, but at that time he is out of the jurisdiction of character and fitness committees. The functions performed by such committees should be retained, but we should not make the mistake of overestimating their importance. Professional character is and must remain the concern of the profession, and it is to the profession that we must look for action to purge itself of the ethically unfit.

Let us while we continue, and as we approach the end of the journey, be ever mindful of the high peak which we have taken for our objective, and which we have on several occasions viewed from the distance. The goal we seek to reach is a bar the members of which are endowed with the highest type of ethical and mental attainments. We have discussed the various safe-guards desirable to assure high qualification in those who enter the profession. We cannot, however, attain our goal unless the bar itself gives to this question whole-hearted consideration and unless it performs its part in solving it. We cannot have a qualified bar, such as we have been describing, unless the bar adopts more effective means than are now being employed to expel from within its ranks unprofessional and anti-social members—the tricksters and the shysters. This peculiarly is the responsibility of the bar; it cannot escape it. If it performs not this task, we cannot reach our objective, for that is essential to our expedition. Would that these statements could ring out as a mighty challenge to the bar to shoulder its part of the responsibilities in raising the

quality of its membership, for this it must do if it is to gain and retain the respect and the confidence of the people.

The bar also should assume responsibility for familiarizing itself with the status of legal education. Good work in that direction is already being done through its Council on Legal Education. And though this enterprise is of recent origin, the effect of it already has contributed materially toward the improvement of the educational situation. This work should go on and should be strengthened. In this connection the bar can perform useful services, working in cooperation with the examiners, in promoting higher standards for legal education and in securing for them sanction through public regulations. The bar and the examiners also should assume the responsibility of informing those agencies empowered to raise and improve standards—the courts and the legislatures—of the problems and needs of the profession; and, moreover, the bar should seek to develop a consciousness, permeating its whole membership, that whatever is done primarily concerns it and its welfare, for we are seeking to improve other agencies in order to improve the bar.

This brings us to the end of our exploration and I fear also the end of your patience. But I beg the privilege of making one further observation, and this time one of hope and encouragement. Much progress has been made during the last few years, more than ever before, in furthering this expedition in which we are engaged. The action of the American Bar Association when it adopted its standards for legal education gave tremendous impetus to the enterprise. This movement once begun has been carried forward splendidly by the Council on Legal Education. The Carnegie Foundation for the Advancement of Teaching has performed excellent services. The work of the Association of American Law Schools likewise has promoted the cause. Finally your own Conference was dedicated to a high ideal, when it was formed "for the purpose of increasing the efficiency of the state boards in admitting to the bar only those candidates who are fully equipped both from a standpoint of knowledge and of character to serve as lawyers, and also to study and to cooperate with the other branches of the bar in dealing with problems of legal education." This statement of ideals and your splendid work have given new direction and strength to our undertaking. These forces, originated in different sources, but all having a common aim, give great promise for further success. May the next movement be one looking toward the combination and coordination of all the agencies at work—of the schools, the examiners, and the bar—and as one may they all, toiling shoulder to shoulder, press ever onward toward that distant peak which represents the goal of our endeavors.

The Opportunities of a Board of Bar Examiners

By Alfred Z. Reed*

Of The Carnegie Foundation for the Advancement of Teaching

Your chairman, in his introductory remarks, spoke of the generous advice that has been showered upon you from certain quarters. The title of my paper—"The Opportunities of a Board of Bar Examiners"—is a frank warning that this generosity will continue. Gifts of this sort usually are held more blessed by the giver than by the receiver. In order to even up matters between us, I have, accordingly, been at pains to assemble a few dull, but still possibly significant, preliminary facts bearing upon attempts to restrict, by law, the practice of other professions.

An old college teacher of mine once laid down what I have always considered a valuable principle—that there is nothing quite so useless in this world as a fact that you don't do something with. I have conscientiously tried to "do something" with the facts that I have assembled in the past with respect to legal education. None the less, I have consistently borne in mind that the collection and compilation of authoritative information, which the legal profession, the law schools, and the bar admission authorities can put to use as the spirit moves them, is a service of more fundamental importance than are those deductions and conclusions which any one is free to draw. Facts are among the necessary evils in this world of sin. I propose, therefore, to start by giving you some, so that if you think best to disregard what I shall later say, you will still feel that your time has not been entirely wasted.

I.

Restrictions Upon Professions Prior to the Civil War.

Before the Civil War, the only professions in this country that were not open to everybody were law, medicine (of which dentistry was occasionally considered a part), and, in a few large cities, pharmacists or apothecaries. Even in these three professions, the restrictions, at one time of some importance, gradually diminished, until they ended by amounting to very little. The licensing movement wore especially thin in the case of the physicians. So far as concerns the lawyers, at least ancient forms were sedulously preserved. There has never been a State—there has never been a Federal Territory subsequently organized as

*Address delivered at the second annual meeting of The National Conference of Bar Examiners, October 10, 1932.

a State—in which statutes were not enacted, at an early date, affecting admission to legal practice. The complete absence of effective regulation during the generation before the Civil War was due to defects of detail in the rules themselves as expressed either in the statutes or in rules of court adopted—whether on not pursuant to—certainly subsequent to antecedent legislation; or it was the result of inadequate administrative machinery or of lax administration of such machinery as existed.

This was bad enough. In medicine, however, the situation was even worse. In addition to the uncurbed spirit of pioneer Jacksonian democracy, which affected all callings equally, three special causes contributed to demoralize the physicians. In the first place, the early attempts at regulation had taken the form of legally authorized control by medical societies. The notion of a self-governing profession appeared in the early bar admission rules only of New England, and soon disappeared even here, only to be revived, during the past few years, in a decidedly different form, in the West and South. In the medical profession, the same idea was more widespread, and lasted much longer. Some natural confusion attended the transition from this to the more modern concept of control by State Boards. Again, proprietary medical schools were more numerous than proprietary law schools, and more zealous in securing exemption from licensing examinations, by virtue of the so-called diploma privilege. Finally, the rise of medical sects was an important complication; homeopaths were naturally averse to control at the hands of regular practitioners. The net result was that not merely did medical licensing laws, surviving in mangled form in the older states, cease to have any practical significance; in the newer states they were sometimes omitted altogether. It has been stated, for instance—I have not verified the date—that not until 1877 was medical practice restricted in Illinois—nearly sixty years after this state was admitted to the Union. Doubtless the situation was similar in many other states.

Law and the Professions Dealing with the Human Body Beginning with the Seventies

The seventies mark the real birth of the modern licensing movement, which, since then, has spread to a multitude of occupations. A study made by the Commonwealth Club of San Francisco in 1929 enumerated no less than 210 callings or businesses that were then licensed in one or more of eighteen representative states. If we confine our attention to seven professions or occupations, including your own, which have elaborated their organization up to the point of establishing independent associations of State Boards, we find that between 1868 and 1878 the first State Board of Bar Examiners was established (in New Hampshire); the first statewide licensing law for Pharmacists was enacted (in the same state);

and medical licensing laws were first paralleled by similar legislation affecting Dentists (New York, Kentucky, and Ohio) and Embalmers (Massachusetts). As early as 1883 (nearly fifty years ago) the dentists founded their National Association of Dental Examiners. For a time, the physicians seem to have been satisfied with conferences of State Board members, meeting under the auspices of the American Medical Association, and the pharmacists, after one unsuccessful experiment of this sort, developed regional associations. About ten years after the dentists, however, the National Confederation of State Medical and Licensing Boards—one of the two progenitors of the present Federation of State Medical Boards of the United States—was organized; and about ten years after this—in 1904, or nearly a generation ago—the National Association of Boards of Pharmacy and an organization that later developed into the present Conference of Embalmers Examining Boards of the United States, Inc., came into being. It was during these years, also, I may remind you, that the two unsuccessful attempts were made to establish a National Conference of State Boards of Bar Examiners or of Law Examiners—in 1900 and again in 1904.

Accounting, Architecture, and Engineering

The preceding sketch gives the salient facts with respect to the medical profession and its three off-shoots or ancillary professions. Accountants were first licensed in New York in 1896. I say nothing further in regard to them for two reasons: first, because my understanding is that their State Examining Boards have not been organized into an independent association but merely hold annual conferences under the auspices of the American Institute of Accountants, like similar conferences held in the Section of Legal Education of the American Bar Association in 1898, 1899, 1914, and 1916; and, secondly, because a representative of the Institute is scheduled to address you tomorrow, and can give you first-hand information. Licensing acts for architects are said to date from about 1900, and for engineers from 1908 (Louisiana). The National Council of Architectural Registration Boards and the National Council of State Boards of Engineering Examiners were organized in 1920. These three professions that I have just mentioned—accountancy, architecture, and engineering—differ from the law and from the group concerned with the healing arts, in two respects. They have been made subject to licensing legislation much more recently—only within the last generation—and the license itself is often either a mere permit to practice under a particular safeguarded title or degree—"Certified Public Accountant," "Architect," "Engineer" or "Professional Engineer," or is so loaded with exemptions as to amount practically to the same thing. Attempts have been made actually to restrict practice to those who have

been licensed, but the tendency of the courts is apparently to hold such legislation unconstitutional. Accountancy acts have been passed in many states, but Architectural and Engineering legislation has been enacted in only about one-half of the total number.

Reasons for the Relative Backwardness of National Organization in the Law

A question naturally suggests itself at this point. In view of the fact that the concept of restricting admission to practice is older in the law than in any other profession (being, indeed, one of the commonplaces inherited by us as part of our Anglo-American common law), why did we have to wait until last year to see the establishment of a successful national organization of State Boards—nearly fifty years after the dentists, forty years after the doctors, thirty years after the pharmacists and the embalmers, eleven years after even the architects and the relatively modern profession of engineering?

Conservatism of Lawyers

The easiest explanation of the delay is to ascribe it to the ultra-conservatism of lawyers; and if we remove from this explanation any connotation of abuse, there is some truth in it. Lawyers, because of the nature of their training and their occupation, undoubtedly are predisposed to do traditional things in traditional ways. They are a conservative element in the community, and help to keep wild-eyed reformers from running off the rails. It is no insult to members of the legal profession to recognize that they usually prefer to move slowly—that their critical minds often see the objections to hastily formulated ideas more clearly than they do the desirability of innovation.

There are, however, two special reasons for the backwardness of American lawyers in this respect: one grounded in the nature of American law, and one in the nature of American rules for admission to legal practice.

Greater Importance of State Lines in the Law.

The first reason why the members of State Boards of Bar Examiners have been slow to recognize the mutual advantage that is to be derived from meeting together and exchanging ideas is that state lines affect the principles and rules of law in a manner that they do not affect medical or engineering science. The natural sciences, and the arts that are based upon these sciences, are not affected by political divisions. Malignant germs multiply or diminish and steel bridges rise and fall in much the same way throughout the entire country—and, indeed, throughout the entire world.

On the other hand, the substantive rules of law and, to a still greater extent, its procedure vary quite definitely from state to state. Superficially considered, therefore, the lawyers of, let us say, New York and Oklahoma have less in common with one another than have the physicians or engineers of these two states. And to the extent that differences do exist in the problems that must be faced by physicians and by engineers in different localities—if there is more hookworm, for instance, to be combated in one part of the country than in another, or more oil to be taken out of the ground—the differences are geographical and natural. They are not crystallized within artificial political divisions.

Now, of course, the lawyers of New York and of Oklahoma undoubtedly do recognize, and with increasing clearness, that, despite these differences, they have much in common with one another. The great service that has been rendered to legal education by the Harvard Law School, and by the numerous law schools which have followed its lead, is that these schools have abolished the superficial parochialism of the traditional law office, and have substituted, as the content of their instruction, what may loosely be termed national law—the general principles, namely, which underlie the law of all the states. The American Bar Association, the Commissioners of Uniform State Laws, and now recently the American Law Institute are additional agencies that have inculcated this national point of view. The fact remains that, so long as our federal system of government endures, the law that is practiced in one state will always differ from the law that is practiced in any other state, and will differ in many particulars. We may airily dismiss these differences as having to do only with matters of detail; but details are of very great importance to the client. These differences undeniably complicate the problem of organizing a mutually helpful conference of State Boards, even today. And, in the past, an exaggerated appreciation of these differences, on the part of older practitioners—an instinctive focusing of attention upon local peculiarities rather than upon principles common to all states and qualifications requisite for any lawyer anywhere—has undoubtedly been a deterrent upon cooperative organization.

Great Variety of State Systems of Bar Admission

Another factor that has made for disunion has been the development of widely different systems of bar admission. Immediately before the Civil War, in the great majority of states—in all except nine, to be precise—the single test for admission was ability to pass a bar examination. If the country as a whole had remained true to this system, then, although the bar examiners might have varied the content of their examinations, according to the content of the law, substantive and procedural, statutory

and judge-made, in force in their respective states, they might at least have seen the value of interchanging views in regard to the method of conducting these all-important examinations. They might even have learned, as already suggested, that to a great extent, even in content, their examinations might be made uniform. I hope that they would also have learned that even the best bar examinations of this sort—examinations, I mean, that do not rest upon antecedent prescriptions of study—must be hopelessly inadequate.

As a matter of fact, the authorities in many states did learn this truth, of themselves, without meeting together. But with what result? Reforms that struck under the examination and changed the system itself produced widely different results in different states. We have today states which continue to place their sole reliance upon a bar examination. We have others in which the examination is open only to those who have studied law during a definite period of years—sometimes three, and sometimes two—under conditions that vary widely from state to state. We have two states that substitute, as a prerequisite, the possession of a certain amount of general education. Finally, we have states that open their examinations only to those who have both a certain amount of general education and have studied law for a certain number of years; and these again vary greatly among themselves in many features; as to whether the general education must or must not have been completed before the period of law study begins, and as to the amount of general education—high school or college—that is sooner or later demanded. It is obvious that the problem which confronts a board whose applicants have been winnowed out, before they come up for examination, by a requirement of two years of college study followed by three years of study in a full-time law school, yielding a law degree, and in other cases four years of law study, is very different from the problem that confronts a board whose examination may be taken by any one who is able to pay a small fee. Later, I shall say a word as to how these differences in the admission system must necessarily affect the activities of this organization. For the moment, I am simply bringing to your attention what is undoubtedly one of the reasons why the birth of your organization has been so long delayed. Superficially regarded, when examining boards operate under widely differing admission systems, their special problems likewise differ so widely from one another that little seems likely to be gained by meeting together.

I will conclude this part of my remarks by laying before you such facts as I have been able to secure with respect to the financing of these national associations of State Boards. Only three of the six have as yet given me the requisite information.

Financing of National Organizations of State Boards.

(1) The physicians' organization—the Federation of State Medical Boards of the United States—comprises about 40 state boards, which pay membership dues of $25 a year, and 150 individual members known as Fellows, who pay $1 a year. The total annual income is thus about $1,150. One of the inducements to join is the publication of a monthly periodical, the *Federation Bulletin,* of which ten copies go to each Board and one copy to each Fellow; and an important asset is that the rich and powerful American Medical Association shares in the editorial work and in the publication expense.

(2) The National Council of State Boards of Engineers publishes no periodical. The Constitution provides that each Board shall pay the expenses of its own delegates, and that other expenses shall be divided equally. In practice, it is found convenient to collect an annual fee of $50 from each of the twenty-four member Boards, giving an annual income of $1,200, out of which a small balance is at present being carried forward at the end of the year.

(3) The most interesting of the three organizations, from the financial point of view, is the National Association of Boards of Pharmacy, which includes the Boards of forty-six states (all except New York and California), the District of Columbia, Alaska, and Porto Rico. The membership fee for each Board is only $25, yielding an income actually received from this source, during the year 1930-31, of only $1,115. The Association, however, has devised a system whereby a pharmacist who moves from one state to another can transfer his registration, without additional examination, on proof that he has had one year's experience, that he originally passed a satisfactory examination, and that his other qualifications (years of study, etc.), at the time he took this examination, came up to a certain prescribed minimum and would have been sufficient, at that time, in the state to which he now removes. Each applicant pays a fee of $25 for this service. Since there were, in the year in question, 850 applicants for reciprocity, the income from this source was over $21,000, and the total income of the Association, including membership fees and miscellaneous, was over $23,000. The president's comments, in July of last year, were as follows:

> "The past year has proved most conclusively that we can definitely count on an income in hard times as well as in prosperous eras. The demand for reciprocity seems to be stable. Therefore, I believe that so long as we limit our total annual expenditure to $20,000 we shall not run into any financial difficulties."

II.

I turn now from these unadorned but possibly suggestive facts to the benevolent advice which I warned you would be forthcoming.

I do not propose to outline either a comprehensive plan for an ideal system of bar admissions, or a detailed programme, drawn up in the light of such a plan, for the conduct of your organization. Either topic would be too long, and the realization of the ideal is too distant. It may be worth while, however, to suggest a few principles that, it would seem to me, you might profitably bear in mind when you put your own thoughts upon the problem of how to remedy the present admittedly unsatisfactory conditions.

I will begin by intentionally phrasing these principles in such a way as to challenge your attention.

In my judgment, there is some danger that your organization will be misled both by its name—and the names of its constituent Boards—and by the character of its individual delegates, as law school graduates and as practicing lawyers.

Name of Organization Misleading

Let me take first the matter of your name. Your title—"National Conference of Bar Examiners"—inevitably suggests that whatever direction your activities may ultimately take, your primary function, after all, is to study the technique of the one element that you all have in common—the conduct of bar examinations.

Undeniably, there is great room for improvement, and for mutual interchange of ideas, in this field of bar admission technique. How the papers shall be drawn up—the principles upon which applicants' answers shall be graded, in the first place, and divided into the two groups of "pass" and "failure" in the second place—whether the examination should be, as now, uniform for all applicants, or whether it should be keyed to differing types of legal education, so that, for instance, graduates of a full-time law school take an examination that no graduate of a night law school could possibly pass, and graduates of a part-time law school take an examination that no graduate of a full-time school could pass—the extent to which the privilege of re-examination, with or without payment of an additional fee, shall be accorded to those who fail once, or oftener,—the devising of a system of statistical records that shall be sufficiently simple to be workable and yet sufficiently complete to yield the information needed in order that the work of the Boards may be intelligently appraised, both by themselves and by others—finally, and especially, the organization of proper and adequately financed machinery of ex-

amination, including the question of whether it may be possible to set up a Central Board that would relieve State Boards from some of the technical details—all these are certainly matters of importance. And yet I make bold to say that, so far from being the first things you should consider, they should be the last things—that other matters are not only more important in themselves, but are more fundamental in the sense that some solution of the problems they bring up must be devised before you can secure a permanent basis upon which to erect your superstructure of examinations.

Independent of Law Schools

Again, all of you gentlemen who are here as individual delegates are, I presume, graduates of law schools. Nothing would be more natural, therefore, than that you should be influenced by your loyalties. By law school loyalty I do not mean loyalty to your particular institution; for, although, as an alumnus, each of you will always believe in your own school (with perhaps some diminution of enthusiasm when you see younger members of the faculty trying experiments that your honored teachers never tried upon you), as a public official you probably can be trusted to lean over backwards when the need arises for impartial discrimination among particular institutions. What I have in mind is, partly, your loyalty to law schools in general. The law school has so completely won its original battle against the law office—it has so justifiably displaced the law office as the purveyor of the fundamental professional training which the legal profession requires, that you may unconsciously go too far in allowing the present claim of the schoolmen, which is that there should be no supplementary training not provided or supervised by them—that the university law school, after the university college, should be the sole educational agency involved in the preparation of lawyers. (When I say "the schoolmen," I do not mean, of course, "all schoolmen." The preceding speaker, for instance, has definitely taken himself out of this category.) And I refer even more, to your loyalty to the particular type of law school with which you have been most closely identified, and the characteristic virtues of which, therefore, you most clearly recognize. I make bold to say that, as public officials, you should guard yourselves against instinctive prepossessions of this nature, and should cultivate an independent attitude toward law schools of every sort—good ones as well as bad ones.

Not Primarily Serving the Legal Profession

Finally—and this is the hardest of my three sayings—it is natural that as members of the legal profession you should feel a peculiar responsibility in safeguarding its honor and integrity. Of course no one would deny that you have this responsibility. But, again, I make bold

to say that if you conceive of this as your entire duty, you are faithless to the trust that the state is reposing in you.

These are the three general principles that I want to place before you. We have not time to elaborate them completely, but at least a few illustrations and applications are desirable, in order to make their meaning more clear. *My hope is that as I proceed, I can make* you feel in some, though probably not in all, cases that these suggestions—while doubtess still highly debatable—are still not quite so objectionable as, at first hearing, they may sound.

Bar Admission Rather Than Bar Examination

First, as to my point that you have more important things to do—even—than to perfect the technique of bar examinations.

To some extent, in an earlier part of this paper, I forestalled discussion of this matter. My precise point is this. There is a theory abroad, that is entertained by the bar admission authorities of several states, by the American Bar Association, and by the Association of American Law Schools, and even—for whatever significance that may possess—by the humble individual who is now addressing you, as to which is the best of the several fundamentally different varieties of bar admission systems that are now in force. According to this theory, the best system is one in which applicants must first prove that they have acquired a certain amount of general education; they must then, preferably after registration as a law student, spend a certain number of years in law study; and then finally, and only after they have proved that they have done all this, they must pass a bar examination. There are numberless varieties of detail involving the amount and the character of the general education; the number of years of law study; how these shall be apportioned between law school and law office; what sort of law school shall be recognized; whether night law schools shall be frowned upon or shall be encouraged and made better, and if so, how; whether actual graduation from a law school shall be demanded; whether, in addition to the bulk of the professional training, supplementary training shall be required, and, if so, whether before the bar examination, or after the bar examination but before admission to practice, or after the applicant has been allowed to practice, provisionally, for a specified number of years, (the so-called Junior Bar). Ignoring all these details (as to which there is a considerable divergence of opinion), a minority—and only a minority—of our states exemplify the general plan. Of course they may be wrong in doing so. In view of the fact, however, that there is a slow but general movement in this direction, backed by the authority of several influential bodies, it seems fair to say that there is at least something like a presumption

in its favor. Do not the meetings of the present organization provide an unusually convenient opportunity to test this presumption, in the first place? And, in case it is upheld, to perfect the formula?

My imagination pictures your membership as divided into two groups, according as they already have this system, or have not. It would seem to me that the members of boards that have not this system might profitably secure first-hand information from those who have, as to whether it really does work as well as, in theory, it is supposed to; and that those who already have, and believe in, this system might profitably confer among themselves as to the numerous and, to some extent, controversial details in which they differ.

Initiative in Securing Reforms.

After all this conferring and interchange of views—whether through formal papers in Round Table meetings, through committee reports, or through informal personal interviews—then what? Then I should hope that those delegates who feel that their present system ought to be changed, either by substituting this recommended plan (or any other that seems to them better), or by perfecting the details of the system that they already have—I should hope that those delegates would assume the initiative in securing the requisite reforms in their own state. I need not dilate upon the obstacles that must be surmounted in order to secure any advance, however small. Before it is possible to convince the legislature, the court, or the self-governing bar—whatever authority is in control in the particular state—the local bar associations and the local law schools must be reckoned with—their cooperation secured when they will give it, and their hostility discounted when they are wrong. Above all, their apathy, and the apathy of the controlling authorities, must be shaken. Who can more appropriately begin and prosecute this long and painful process than you gentlemen who have been in a position to profit by the experience of others? You know, through your own work, with a sureness that no outsider can possibly equal, both how important is your task, and how unsatisfactory is your accomplishment.

If one opportunity among the many that are open to you were to be singled out as preeminent in its appeal, it is that of regarding yourselves, not as subordinate operatives of the bar admission system that you already have, but as informed propagandists for something that is better than this—as ministers, if you like, of the true professional gospel.

When you have made some headway in this direction, then you can profitably discuss those interesting problems with respect to the examination itself, of which I have already given you a partial list. I hope that

you will not think that I am suggesting an unreasonably rigid schematization of your programme. I do not mean that you are wasting your time if you pay some attention to problems connected with the bar examination proper, even now. There is bound to be some overlapping of your activities, and conscientious study of the examination problem will throw much incidental light upon these other, more fundamental matters. Indeed, in a moment, when I say a word or two as to what is undoubtedly a matter of fundamental importance—your relations to the law schools—you will find me repeatedly referring to bar examinations. I do urge upon you, however, to remember which of these two general fields of activity come, logically, first. Each of you can best perfect your own system—each of you can best determine which other boards have had the experience upon which you can profitably draw—if you bear in mind how different are the bar admission systems now in force in your several states as regards matters other than examination.

Bar Examiners and the Law Schools.

A word, now, as to the delicate topic of your relations—as members either of this national organization or of particular State Boards—with the law schools.

Respect for Academic Freedom.

First, a disclaimer. In urging you to assume an independent attitude toward the law schools, do I have in mind that you should attempt to prescribe the conditions under which they shall operate? I am so little of that mind that, in my judgment, the bar admission rules of several states already go too far in this direction, in prescribing, for instance, the minimum number of classroom hours in a recognized school. Academic freedom is a very precious thing. We should all of us be most scrupulous not to impair it. And if your souls do not intuitively ring responsive to this emotional chord, we libertarians have a good fund of experience to draw upon, in fortification of our position. Some of the Canadian Law Societies have deliberately reversed their previous policy of rigid specifications of detail, having become convinced that these were positively harmful to the free development of the young Canadian law schools. Something of the same sort occurred in the early history of this country when law schools had difficulty in establishing themselves in the Middle States, under traditional bar admission rules regarded by old and influential members of the bar as essential to salvation. Nor is it only in the law that this sort of thing has occurred. Similar dangers have beset the development of medical licensing. Nearly twenty years ago, Abraham Flexner, who, under the auspices of the Carnegie Foundation, had recently jarred the medical profession in somewhat the same way—though

of course much more effectively—as a representative of the same Foundation is now trying to jar you, contributed to the periodical which was then analogous to your *Bar Examiner*—namely, the *Quarterly of the Federation of State Medical Boards of the United States* (issue of January, 1914) two pages on "The Function of the Examining Boards." His concluding sentence could hardly be improved upon as a pithy statement of the principle in which—I hope—we all believe:

> "The upshot of my position is then this: The state boards are enormously important and influential bodies, but they may somewhat obstruct progress if, in the effort to force bad schools to be less bad, they in any degree keep good schools from becoming better."

State Boards Finally Responsible for Professional Standards.

It is one thing, however, to avoid prescriptions to law schools as to how they are to do their work. It is quite another thing to abdicate, in favor of law schools, the entire responsibility that the state has placed upon bar admission authorities, and especially upon yourselves—that of determining who shall be regarded as competent to practice law. Speaking as a layman—a member of the public at large who is just as much interested in securing good lawyers as you are—I hope that you will never do this.

The June number of your periodical contains an able and well written article, by the dean of a leading mid-western law school, entitled "Bar Examinations and the Integrated Bar." This article is the subject of a careful review in the October issue by the gentleman who follows me on your programme. I hope that I do justice to his position—he will correct me if I do not—when I say that his language, although moderately phrased, expresses quite definite dissent from the views expressed in the article. The disagreement concerns, in terms, the question of whether the bar examination should be abandoned. As such, it is a question that, as I have already said, seems to me to be agitated too soon. I can imagine conditions under which it might be proper to abandon the State Board examination—or even the suggested substitute of a National Board examination—for that part of the educational process that is given by the law school, and to replace it by an examination given by a single, or preferably by a group of law schools. We are a long way, however, from having reached in this country conditions that would make this desirable. Meanwhile, it would be unfair to the writer of the article in question to assume that he is intentionally arguing in favor of a different and much broader proposition—namely, that if an applicant for admission to the bar has graduated from a good law school, a board of bar examiners has

only one function to perform in the process—to determine the preliminary question of whether the school in question really is "good." Once this matter is determined, then those of its students whom its faculty believe to be competent to practice law really are competent, and should be admitted without any further check—or at least any serious check—applied to the individual. I repeat that it would be unfair to this particular writer to ascribe this position to him. I find in his article, however, no explicit denial of this position; and this is undoubtedly the position that is taken by many law school teachers.

Reasons Why Law Schools Distrust State Boards.

I can understand the reasons which impel many law-school men to assume this position. But I cannot agree with them. Their reasons I believe to be, first, an unwarranted extension of the hostility which early advocates of law office training inevitably brought upon themselves when they denied that law schools were good for anything; and, second, a recent distrust of particular boards of bar examiners whose examinations, so far from being an adequate test, have often penalized the good schools in favor of cram schools or other inferior institutions. The grievances that the more scholarly type of law school has sometimes had to suffer, at the hands of practitioners who have been in control of bar admission systems, and of bar examinations, have been real ones. None the less, I do not think that the correct remedy is to abolish bar admission control. It is rather to take steps to ensure that it shall be more intelligently exercised.

Professional Ethics as a Subject of Law School Instruction or State Board Examination

Let me give a couple of illustrations of my meaning. The suggestion has recently been made that a compulsory course in legal ethics ought to appear in the curriculum of every law school. Anybody is free to suggest anything to anybody, but nothing, as it would seem to me, could be more unfortunate than for any organization having large powers—whether of legal control or of moral influence—to interfere in this way with the curriculum of law schools. But this is a very different proposition from a denial of the right of a State Board to insert questions on legal ethics in its examination paper, or even to insist that correct answers to such questions shall be indispensable prerequisites for admission to the bar. That may or may not be a wise step for any board to adopt, or for you to recommend, but the question of whether it is wise is a matter of public policy, which the bar admission authorities, rather than the law schools, ought to decide. The academic freedom of the schools is in no wise imperiled by any such step; for if they regard all

such questions as foolish, they are at entire liberty to refrain from giving the course. They can leave it to the student to study up the matter either by himself, or with the assistance of some other agency that may grow up to satisfy this particular need. Similarly, the bar admission authorities reserve the liberty of testing the applicant's knowledge of legal ethics, if they so prefer, not immediately after his graduation from a law school, but at some later date, with a view actually to having the instruction provided by some other agency; as, for instance, a bar association.

As a matter of fact, I think that we should most of us feel that instruction in legal ethics, or in the traditions of the profession, is a very natural extension of law school activities, and is quite likely to receive increasing attention in the curriculum of most schools. If this be true, then the distinction that I have attempted to draw between your duty, on the one hand, to respect academic freedom and, on the other hand, to determine the qualifications requisite for admission, really boils down to this, in this particular instance. To insert these questions on your examination papers is a more tactful way of accomplishing the results that you seek than if you were to refuse recognition to a school that does not offer a course in legal ethics. And it is also, of course, a more effective way. You have legal power to make any law school go through the forms of teaching anything that you want. (By "you" I mean, of course, not simply the State Board acting within its specially defined province, but the whole complex of bar admission authorities of which the State Board is the appropriate leader.) But it is just as impossible for you to force adequate teaching of professional ethics upon a reluctant or apathetic law faculty as it is for the government, under similar conditions, to enforce a liquor prohibition law. This point, I should suppose, does not need to be elaborated.

Local Peculiarities of Substantive Law and Procedure

Let me take another illustration, however, where independent action on your part would work out very differently. I refer to the matter of testing the applicant's knowledge of local peculiarities, both of substantive law and of procedure. I will put to you two hypotheses. Let us suppose, first, that in a sparsely populated Western state the Board of Bar Examiners frame their entire examination with deference to the rules of law that are there actually enforced, passing or flunking applicants solely on the basis of their familiarity with local statutes and decisions. Let us suppose, further, that a young resident of this state goes to the Harvard Law School, becomes an honor graduate, and shortly thereafter takes the bar examination. Under the conditions stated, unless he does an inordinate amount of extra work in preparation for the examination, he is almost certain to fail.

Now that would be a very bad situation. But it would be bad because an examining board of this sort would clearly be animated by an old-fashioned conception of its responsibilities, and not because the applicant was an honor graduate of the Harvard Law School. Indeed, I should have more respect for this Board if they stuck to their guns than if they made a special exception in this case because of the prestige of the school in question.

Suppose, however, that the old gentlemen, who alone could constitute a board of this description, in the fullness of time passed away, and were succeeded by a board of younger men—graduates, in all probability, of the Harvard Law School or of some one of the many other schools that now have a similar conception of law. Suppose these young men were to say to one another,

> "Now, you know, in our school, there were a lot of fellows who were on the 'Law Review'—brilliant chaps, but they didn't have much interest in the actual practice of our profession. They were primarily interested in making the law better than it now is—and, Heaven knows, the law needs to be made better. We should hate to entrust to them, however, the conduct of any lawsuit, or to follow their advice on any business matter—and particularly in this state, where, as we all know, there are lots of curious statutes and rules to which no attention was ever paid in the law school. What do you say to our drawing up an examination in two parts, of which the first—the main body of the examination—is of a character that any graduate of a good law school, if he isn't panic-struck or physically below par, ought to be able to pass; but of which the second part—the passing of which shall be equally requisite for admission—shall test his familiarity with our local, concrete, and often arbitrary but none the less authoritative rules of law and of procedure?"

The practical result of inserting questions of this sort into the bar examination paper would in most cases be quite different from the inclusion of questions upon legal ethics. No law school that draws students from many different jurisdictions can possibly offer courses upon the local peculiarities of every jurisdiction. Harvard, for instance, today offers a practice course for Massachusetts students, and what might be called a regional course in Mining Law. At one time it had a special course for New Yorkers, but it could never do as much for the hypothetical small Western state whose educational development I have so movingly described. If the board were to insist that applicants must show some familiarity with local peculiarities, one of two results would follow. Either Harvard would display stony indifference; or it would be suggested to the

bar admission authorities that a Harvard Law School graduate, and particularly an honor graduate, can surely be trusted to acquire for himself the supplementary detailed information needed for practice in any state; and that such an applicant is undoubtedly already better prepared than are most of those who in that state are now actually being admitted to practice.

Does not the answer to this argument run as follows? If an applicant who is soundly trained in fundamentals can acquire this supplementary information after he is admitted to practice, can he not also—and better—acquire it before? And if any bar admission authorities are at present admitting applicants who are not fully qualified for all the privileges of a practicing lawyer, should not steps be taken to remedy this situation rather than to let a good man start his professional life under a handicap that may prove to be injurious both to him and to his clients?

In this hasty sketch I omit, of course, all consideration of details, as to which it would certainly be desirable to secure the judgment of well-informed law-school men. Should the required supplementary information be so slight that it could easily be secured in the law school library, before the student returns to the state? Or should it be so extensive as to require a special course conducted by an examination crammer, or by a bar association, or offered in the summer school of a State University? These are questions which I certainly am not competent to answer; nor I suspect, at present, are some of you. My plea is that not only is it part of your responsibility to look into problems of this nature, of which these two that I have mentioned are merely illustrations, but also that it is your duty, after having looked into these problems, to provide your own solutions, influenced but not controlled by the views of legal scholars.

Bar Admission Authorities and the Legal Profession.

My third point I will touch upon more briefly. Doubtless every lawyer, who has any professional spirit, feels that when he serves or improves his profession he is at the same time benefiting the community, in the conduct of whose affairs lawyers play a necessary and important part. And of course he is right. But I do not think that the converse is true; namely, that public officials, in matters affecting the legal profession, need consider nothing except its welfare—even if we use that word in its highest and most idealistic sense. On the contrary, I think that it is within the realm of possibility that State Bar admission authorities may sometimes be obliged to take a line of action—positive or negative—which does not, in itself, benefit the profession except in so far as all lawyers are also members of the public at large. They may even, on occasion, have to consider adopting a policy that is in some degree detrimental to the immediate interests of the profession.

Again, let me give two illustrations, the one affecting the quantity, and the other the quality, of the legal profession.

Number of Lawyers

It is generally believed that the legal profession is overcrowded. I will not forestall discussion of this question further than to say that—like the preceding speaker—I know of no calling in which the same complaint is not heard; and that the problem seems to me to be, partly at least, one of distribution rather than of production. There can be found small towns, even today, which do not have enough lawyers. If an individual wishes to fight a bank or a public utility company, he cannot find anyone who is willing to take his case. This hardly seems to be the situation in our big cities. Legislation limiting the number of attorneys who may practice in large cities may or may not be in order. The point which I wish to bring to your attention is that, in discussing this question of demand and supply, you do not, as lawyers, need to consider whether there is a downward limit, below which a community would have too few lawyers, as well as an upward limit, above which the community would have too many lawyers. From the point of view of the public at large, there is such a thing as a downward limit, even if we do not seem often to have come anywhere near it. But from the point of view simply of the legal profession, I fail to see why any downward limit need be set. The fewer lawyers there are, the better it is for them. And I say this not with any cynical suggestion that the only effect of diminishing the number of lawyers would be to increase, *pro tanto*, their individual fees. I say it in full realization of the fact that one of the things that bring disrepute upon the legal profession in our large cities is that the supply of lawyers so far outruns the legitimate demand as to encourage shady practices both in securing and in retaining legal business. A regime of cutthroat competition does not provide an atmosphere in which any profession can preserve its self-respect. The highest, as well as the lowest, in the profession are adversely affected by these conditions.

Social and Racial Discrimination

This illustration that I have just given, I am inclined to think, is, after all, of not much more than academic interest. Theoretically, the legal profession, if left to itself, might go too far in limiting its numbers. Practically, I do not believe that bar admission authorities will ever go too far in this direction. I think that we should all of us agree as to this. But I am by no means sure that we should all agree as to the considerations suggested by my second illustration, which concerns not the quantity, but the quality, of lawyers.

It has seemed to me that I have sometimes discovered, among high-class lawyers, traces of an emotional reaction against the riffraff with whom they are supposed to have a professional bond. Underneath all their protestations as to education and character, as to quantity or quality, what they really have in mind has sometimes appeared to be this: The profession ought not to include anybody whom a cultivated gentleman would be ashamed to be seen talking to on the street; that really is the crux of the problem.

Do not let me give you the impression that many lawyers—in my experience—seriously feel this way. They talk this way more often than they really mean it. But in some cases, I fear, they really mean what they say. In some ways, I have great sympathy with their feelings. But I think that the place to draw social and racial lines of this sort, if anywhere, is at the portals of bar associations. Whether any particular selective bar association wishes, or does not wish, to operate on the lines of a gentlemen's club, must, of course, always be left to its now existing membership to decide. But I am greatly mistaken if the public profession of the law in this country can be, or ought to be, organized on these principles.

Conclusion.

Briefly to summarize the three points that I have tried to bring out: Your organization would rise, as it seems to me, to its highest opportunities if its members should be stimulated into taking the lead in securing reforms even more important than the improvement of bar examination technique. Representing, as they do, the power of the state, they would do well to assume an independent attitude toward even the strongest law schools, while yet being careful not to invade the particular all-important province over which law professors rule. For the same reason, while maintaining the closest possible relations with the American Bar Association, and with State Bar Associations, they should nevertheless look at their problem from a point of view somewhat different from that which is natural to even the highest type of practicing lawyer. If you should be unable to do all this, your organization will still be a useful addition to existing professional machinery that operates on a technical plane. I shall always have a special personal affection for it because I have been honored by having been brought into touch with it from its beginning. I have witnessed both its early struggles and the high idealism which has animated its founders. It is, above all, to be congratulated upon the fact that its moving spirits are young men, whose faces are turned toward the future and who are not afraid to take some risks in making that future better, both for lawyer and for layman.

Character Investigation

*A Discussion of the Pennsylvania System**

BY JOHN B. GEST

Of the County Board of Law Examiners of Philadelphia County

Mr. McCracken was very much disappointed in not being able to be present here today on account of litigation in the Superior Court, and I am sure you will all likewise be very much disappointed in having me substituted on the record as his personal representative. However, I believe I can give you, in a short time, an outline of what we are doing in Pennsylvania, and particularly in Philadelphia County, and then I understand that I am to be turned over for cross-examination by you. Let me make clear at the start that I am not attempting to draw any conclusions concerning the merits of our system, but simply to acquaint you in general with the efforts which we are making to carry out the rules of our Supreme Court.

A few years ago there was considerable discussion in the State Bar Association of the question of requiring a college degree for admission to the Bar. The college degree has not so far been required. However, as a result of the agitation, the attention of the Supreme Court and the State Bar Association was directed rather to the question of ethical fitness than of intellectual preparation of candidates for admission to the Bar, and with a view toward the prevention of the admission of the ethically unfit the Supreme Court adopted its new rules under which we have been operating since January 1, 1928.

These rules require that each candidate for admission to the Bar must first have been registered with a preceptor of good standing at the Bar of the County in which the applicant proposes to practice; and that he serve a clerkship in the office of his preceptor for a period of six months before admission to the Bar. The period of registration may be spent in a law school or in a full time clerkship in the office of the preceptor, or in a combination of these two methods. In the case of a part time law school the period of registration is four years. The six months' clerkship may be served during the period of registration and is often divided into periods of two or three months during the summer vacations.

Each applicant is required upon application for registration to file with the State Board a questionnaire† signed by himself and to give the

*Given before a round table group in Washington during the second annual meeting of The National Conference of Bar Examiners, October 10, 1932.

†The questionnaires mentioned in this discussion were published in The Bar Examiner, January, 1932, 74-77.

names and addresses of the proposed preceptor and three citizen sponsors. 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. The two members of the committee then appoint a time and require the applicant to call, bringing his sponsors if desired, although these 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.

The same procedure is applied in the case of applicants for permission to take the final examination for admission to the bar. As we have been working under these rules for nearly five years, these applications of this class have additional light thrown upon them by the questionnaire of the preceptors with whom they have been registered, and, indeed, we attach considerable importance to the recommendation of such preceptor.

Our applications are of three classes:

1. *Applications for Registration and Preliminary Examination.*

These are the applicants who have not received a college degree prior to their commencing the study of law. Under the new rules, they are required to pass the examinations conducted by the College Entrance Examination Board with a mark of sixty per cent in fifteen units. During the four years, January 1, 1928, to December 31, 1931, our County Board of Philadelphia interviewed 373 applicants of this class. There were rejected 34 and 15 withdrew their applications, making a total of well over ten per cent. Some of these withdrew upon the advice of the committee of the County Board.

2. *Applications for Registration Without Examination.*

The second class of applications is of those who apply for registration without examination, that is to say, those who receive a college degree prior to registration. We examined 933 of such applicants in the same four-year period. We rejected 9 and 22 withdrew, making a total of about three per cent. It will be seen at a glance that there was a considerably smaller percentage of casualties in this class.

3. *Applications for Final Examination and Admission to the Bar.*

The third class of applications is of those who are applying for final examination and admission to the Bar. In the same period, we interviewed 883 of these, about 8 were rejected and 5 withdrew, making a total of 13, or about one and a half per cent.

We have been reversed by the State Board in some cases and sometimes our rejection of the applicant has been modified by changing it to rejection for one year as a disciplinary measure. However, the figures given above show fairly well the percentage of rejections, totaling 51 during the four-year period and 42 withdrawals. The percentages show that the class of registrants who have not received a college degree has been found to contain the highest percentage of undesirables. Whether or not higher education has enabled some by shrewdness to conceal their disqualifications more successfully may be a matter of some speculation, but, of course, generally speaking, the college course in itself would tend to eliminate certain undesirable aspirants.

We regard the application of registrants as the most important and at the same time the most difficult of all. This is particularly true of the first class who have not been to college. We feel that it is only fair to the applicant that if it can be ascertained that he is unsuited to the study of law our adverse findings should be made known as early in his career as possible and thus prevent unnecessary hardship to him and the disappointment of realizing the impossibility of attaining his ambition after spending three or four years in preparation for it. The difficulty, however, lies in the fact that the character of the applicants for registration is not well formed and the reaction to ethical situations is not pronounced. In this connection, it seems that members of our Board are apt to divide themselves, naturally, into two schools of thought: (a) those whom I might call liberal, who feel that an applicant should not be disqualified on more or less intangible facts in the absence of some definite indication of serious defects of character, and that such an applicant should be given the benefit of the doubt; and (b) the strict school, who stress the view that the practice of law is a privilege rather than a right and that character examination cannot accomplish the purpose of these rules unless they rather throw the burden on the applicant. However, there are a great many clear cases where there is no clash between these two schools of thought.

For example, a man who has distinguished himself in school or college, whose family traditions are in accord with the highest ideals of professional conduct and who has favorably impressed himself upon citizens of unquestioned reputation may be passed without hesitation. On the other hand, if the applicant has plainly been guilty of fraudulent

practices, there would be no question. In the no-man's land between such typical cases, however, there is room for considerable diversity of view, and if time permitted I could mention some very interesting questions which we have debated.

We have in our short history of less than five years passed on so many questioned applicants at our Board meetings that we have in a sense developed a body of precedent or case law which is "locked in the breasts of the members of the Board," and to a certain extent crystallized in the special confidential reports which are kept in the files of the State Board.

In difficult cases we use a paid investigator. Of course, we do not rely on him except for the accumulation of facts and if an applicant is rejected as a result of such facts we believe that it is only fair that he should be confronted with the facts and permitted to explain. The investigator has been helpful in the case of bootleggers and fraudulent bankrupts. We do not believe the sins of the father should be visited upon the son in the case of such transgressors, but if the son of a bootlegger or of a fraudulent bankrupt has been of such age as to know what was taking place and been associated, for example, keeping his father's accounts, we have no hesitation in disqualifying him. One applicant whose father had become bankrupt a few years before was asked if he was working his way through college, and he replied that he was going through on the money which his father had saved in the bankruptcy proceeding. Another applicant resented the inquiries of the investigator and ended by attempting to persuade him to receive a stipend from him in consideration of his kindness to the applicant (to some extent past, but largely future).

Hypothetical ethical questions are proposed by some members of the Board. The difficulty, however, is, as has been suggested, that "the greatest rogue gives the most pious answer." Another objection is that the frequent use of such questions is apt to crystallize in a few types of questions which undoubtedly will leak out to future applicants; and then again, it is hard to realize that the ethical sense of the applicants is naturally still undeveloped. But there are cases where the replies to such questions have indicated a pronounced blind spot in the ethical vision. For example, where a man stated that he would recommend the husband in a divorce proceeding to go out and get the evidence for divorce on "statutory" grounds, or where an applicant plainly shows that he has no higher conception of the practice of law than a means of acquiring wealth. Again, it has been obvious in questioning some applicants, that they believe that in the practice of law the end justifies any means whatsoever. One applicant was asked his attitude toward cheating on examinations, and while he was very much against it, he gave as his reason that he did not think a man should take the risk of detection—possibly an indication of what

is not a good "yes or no" question. Of course, in such a case, due allowance should be made for the tension under which the applicant may be speaking and his inability to express himself.

Where there is a division between the two members of our examining committee, the case will be discussed at the next meeting of the Board, and either a third member will be added to the committee, or a new committee appointed. Sometimes the applicant is brought before our Board for questioning.

The question of preceptors is a serious one. With something like two hundred applicants for admission each year in Philadelphia County who must be registered for three or four years (or more in the case of repeaters), we should have about one thousand registrants at a time. The rules do not permit more than three students to be registered in any law office, including one suite shared by different members of the bar, except on special permission granted by the Supreme Court. The number has been increased to seven and even nine in the case of a large office.

A preceptor is not considered qualified if he is devoting his entire time in the offices of a corporation, such as an officer of a trust company, an attorney in the legal department of a railroad, etc. Furthermore, we do not hesitate to reject as preceptors those who, after careful inquiry, are known by the Board to be engaged in practice of a questionable character. In the four years ending January 1, 1932, our list of disqualified rejected preceptors had reached thirty and a number have been added since then. It has been suggested that it is an anomaly to have at our Bar men whom we do not recognize as fulfilling the requirements of a preceptor and who are still not subjected to censorship or disbarment proceedings. However, we feel that we should take a strong position and that a preceptor must be one from whom the registrant will receive proper exposition of the ethics of the profession. The duties of preceptor 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."

It has been hard for some students to get a satisfactory preceptor, but the condition is being helped by two committees of the alumni of the two large law schools in the city and the Bar has been circularized by the Chief Justice and the Chairman of the County Board in regard to the responsibilities of a preceptor. Sometimes students wish to change preceptors and the substituted preceptor must be approved. Again, we have received information from the preceptors either during the period of registration or upon the final questionnaire indicating the unfitness of the applicant.

Our Board consists of twenty-four members of whom the Chairman and the Secretary do not conduct the oral interviews. The remaining twenty-two during the four-year period mentioned above interviewed 2,189 candidates and since the work was done in pairs, this means about fifty interviews per year for each member. This, together with the attendance at the eight meetings of the Board throughout the year, means that each member devotes a considerable amount of time to the work. This is the situation in Philadelphia, but, of course, among our sixty-seven counties there are many boards to whom applicants would often be personally known.

We believe that 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 disqualification may not always extend to other professions or trades.

Each member of our County Board has been assigned, through the kind offices of the Law Academy of Philadelphia, a younger member of the Bar to assist in the work, but our work is of such a personal and confidential character that it has not, as a rule, been possible to avail ourselves of their cooperation to a very large extent.

Now that is, briefly, gentlemen, the experiment which we are conducting in Philadelphia. It has required a very great deal of conscientious hard work on the part of our Board members. I cannot present to you statistics or facts of tangible character to show what results have been reached. We do feel, however, that something has been accomplished in the rejection of certain applicants. We also believe that the vigilance with which we have watched the incoming applications must have acted as a deterrent to certain undesirable applicants, and we are hopeful that our efforts have not been in vain. I will be glad to answer questions regarding anything I have touched on.

Q. Mr. Gest, do the candidates think it unfair to be under the tutelage of a lawyer?

A. Of course, we only hear from the students at a time when they are anxious to please the County Board, and they usually praise our rules. We do come across students who are resentful of the system and their resentment is not entirely persuasive of their qualification.

Q. Do you ever find the students objecting to the standards of the preceptors?

A. In one case I recall a complaint on the part of a student, and while the matter did not seem to involve unethical conduct, we advised the student that if he would feel that way about it, he should choose another preceptor, which he did.

Q. If a student has made misrepresentations to his preceptor, how serious an offense would you consider this?

A. Very serious. We had such a case and it resulted in our withdrawing our approval of the registrant.

Q. Suppose the preceptor would be a party to deceit on the part of the student, and upon examination this was found to be true—what then?

A. The preceptor would be listed as unapproved.

Q. Is ambulance chasing considered bad on the part of a preceptor?

A. Ambulance chasing as I understand the term involves unethical practice, such as soliciting and the splitting of fees with the man who procures the business, etc. We would reject a preceptor whose practice was known by us to be unethical. Of course, being engaged mostly in representing plaintiffs in accident cases would not disqualify a preceptor if the practice was properly conducted and the office afforded an opportunity to become acquainted with other branches of law practice to some extent.

Q. Has this procedure helped in determining the number of men of high ability who fall down, and vice versa?

A. The results of our four years show that the college degree men have been more successful with us than the others and that the casualties after the three-year registration are relatively small.

Q. How do preceptors report?

A. In the form of a further questionnaire at the end of the registration period, and they can at any time before if they have occasion to.

Q. Are the questionnaires made known to the candidate?

A. Candidates do not see the questionnaires.

Q. Have you experienced cases where men whom you have approved have turned out badly?

A. No; but we expect there will be such cases. Unworthy characters will undoubtedly get past us and others may take a turn for the worse later.

A Discussion of the Overcrowding of the Bar

In the December number of The American Law School Review, published by the West Publishing Company, the speeches made at the recent meeting in Washington of the Section of Legal Education and Admissions to the Bar of the American Bar Association will be reprinted. Formal addresses were made by the chairman, Mr. John Kirkland Clark of New York, Dean Young B. Smith of Columbia, Mr. James Grafton Rogers, Assistant Secretary of State, and Judge William Clark of the United States District Court for the District of New Jersey. These are of great interest to the profession and particularly to bar examiners. A small portion of Mr. Rogers' address, which we regretfully state is all we have space for in this issue, follows:

"The lawyers, assuming an oversupply in the profession and concerned naturally with their own interest in it, have been discussing a series of remedies for the situation. * * * First, a remedy has been sought in the increasing severity of bar examinations. * * * It seems to me that the conditions justify and support its severity but I am equally clear that it is not solving the question of numbers. While 50 per cent of those who apply each year fail in the examination, experience shows that they repeat the effort and the indications are that 90 per cent of those who prepare for the bar are ultimately admitted. * * * The second remedy most discussed is an increase in what might be called the formal requirements for admission as distinguished from the test by examination. The American Bar Association's program for legal education has recognized this sort of requirement as healthy and useful. The requirement of graduation from a law school, the requirement of a certain minimum general education before admission to a law school, the approval or non-approval of the schools themselves in which study shall be recognized, all fell within this zone of thought. There is a slow but steady progress throughout the United States in this direction. The bar has carried on a persistent and, I think, intelligent program of improvement. The trend is all towards more rigid formal standards. The only argument presented against it has been that the severity of these formal requirements checked the democracy and opportunity of the bar. With our widespread, modern system of education before our eyes, with the liberal policy of the Bar Association in approving the existence of schools which extend the preparation in easy stages over a long period of afternoon or evening classes, I think the observer will find no infringement in the bar program on the opportunities or democracy of the legal profession."

Recent Bar Examination History in Massachusetts

By William Harold Hitchcock*
Chairman, Massachusetts State Board of Bar Examiners

Your chairman has referred to the recent decision of our Supreme Judicial Court relating to the power of the court over the bar examiners and their activities. It seemed to me that it would be helpful to this gathering if I should attempt to outline what our Massachusetts Board has been doing during the past few years, and how those activities led up to the controversies which resulted in that decision; not for the purpose of reviving those controversies and emphasizing them, but more for the purpose of being able to bring before you the setting of that decision and incidentally to tell you the sort of work that we are trying to do.

The situation in Massachusetts which led up to this decision has been rather peculiar for a good many years. There had been no decision as to the limits of the judicial and the legislative power over admission to the bar and neither the court, the bar examiners, nor the bar cared to bring the matter to an issue. Back in Chief Justice Shaw's day there was some legislation that was inconsistent with the rules of the court. The court repealed its rules and followed the rules laid down by the legislature.

Some twenty years ago, an attempt was made by the Bar Examiners to stiffen the requirements as to pre-law education. That resulted in a legislative enactment setting a low standard of such education. It was deemed best by the court, the bar examiners, and others interested to acquiesce for the time being and not attempt to force a court decision. Indeed, it would have been rather difficult to bring that matter to an issue for a court decision unless it happened by chance to arise in some disbarment or bar examination case, or unless the court definitely and positively, on its own motion, laid down a rule that was in conflict with the legislation.

So for many years we went along, not really knowing where we stood as to the definite limits of the jurisdiction of the legislature and the courts, but with a rather positive idea in the minds of most of us that when the question was really raised the court would assert for itself most, at least, of the jurisdiction.

So our bar examinations for many years have been opened widely to persons with a varying degree of education, often with too little prelim-

*Address delivered at the second annual meeting of The National Conference of Bar Examiners, October 10, 1932.

inary education. Doubtless some persons, I do not believe so very many, unqualified either by preliminary education or by law study have gotten by our Board.

When I went on the Board four years and a half ago, I found the procedure, to outline it very briefly, was this: We had only a one-day examination and had thirty questions, half in the morning and half in the afternoon. Six questions were prepared by each member of the Board and passed on by him. The books were divided into five different sections so that they could be separated and each member of the Board could take his own answers and have them separate from those of the others. Then each member of the Board read and marked the answers to his own questions. After that had been done, and when we got up to the point of 800 or more applicants it was grilling work, we met to pass upon the results of the examination.

As far as I can determine, it has never been the point of view in Massachusetts that the admission to the bar should be a matter of arithmetic. The translation of intellectual attainments into figures is a most doubtful performance, as we will all agree. It may mean attempting to pass upon the qualifications of candidates merely by an arithmetical figure, sometimes determined in part by what the examiner had for breakfast the morning when he read that particular paper, and sometimes reached after a great deal of difficulty in ascertaining what the applicant was trying to say. So far as I know our Board has always felt that a mere percentage mark should not be the sole guide, that the marks on the written examination were *prima facie* evidence only as to whether or not the applicant was entitled to admission; that the marks should be fixed after as careful consideration as possible and with as little opportunity for favoritism or unfair discrimination as possible, but that such marks should be subject to control, as in every other case of *prima facie* evidence, by other evidence, where they do not of themselves clearly indicate the result.

At my first meeting with the Board after an examination, I found the practice was to go through the records and to put into the "Yes" division certain applicants whose marks clearly indicated that there could be no doubt of their right to be admitted; to put into another class those who on their marks must be rejected. In these cases there was nothing further to be done. Then we had a third class, the doubtful list, which we held for further consideration. Perhaps out of 800 there would be 100 or more of these. Then we proceeded to attack this doubtful list. We considered the mark, the educational record, the business or practical experience and all the evidence then before us in the applicant's record. On that record, without taking a view of the premises, we decided whether or not each applicant on the doubtful list should be admitted or rejected. When we had reached that conclusion in all cases we notified the success-

ful applicants that they had passed the examination. After that we proceeded, through the assistance of the character committees and otherwise, to go into the matter of character. That is, we divided the two issues of legal qualifications and character.

After I had been through two or three examinations in this manner, I felt that we needed further evidence. If I were hiring an office boy I would see him before I hired him. I disliked exceedingly to pass upon the qualifications of a person to be admitted to the bar without seeing him, talking with him and getting further evidence by discussing the examination or other matters with him. Then I found, not often but occasionally, that we had cases where after we had told an applicant, "Yes, you have passed the examination," some complaint would be made in reference to his character and then we would see him. Sometimes as far as an absence of moral character was concerned, we could not, on the evidence, say that he failed to possess such character, but we found that he was close to the line in his marks; that his personality, his education, his entire record which we then had more clearly before us than before from our interview with him, indicated that he was not qualified in the broad sense of the term to practice law. But we had said "Yes" to him and, therefore, we could not do much more than continue to say "Yes" unless we could find something in his moral character to refuse him admission on that ground alone. We had already determined the issue of qualifications independently of that of character and it was too late to change. We had determined that issue on insufficient evidence.

As a result I personally suggested, "Let us see the members of this doubtful list before we pass on their cases." Some of the Board members had been on it before I was admitted to the bar and others had been there for a much longer time than I had. They saw some of the charges of unfairness that might be made if we undertook such a method of dealing with it. They were loath to adopt such a procedure and so we continued for a little longer in the same old method.

In December, 1930, our Judicial Council, which had been asked by the legislature to make recommendations on the general subject of admission to the bar, made a report in which they criticized the results of the work of the Board of Bar Examiners and pointed out the advisability of having something in the nature of an oral examination. They suggested that in order for the Bar Examiners to have time to devote themselves to such an examination they should be given some assistance in the detail work that they had theretofore done themselves. The report came about the time of one of our semi-annual examinations. The Board determined to attempt to put into effect that suggestion. To do so it was essential, in order to release us from the duty of reading and marking all these books, that the books should be marked by others employed by us

to work under our supervision. We could then devote our time, as soon as the marks began to come in, seeing the individual candidates.

We went to the Chief Justice of the Supreme Judicial Court, who is required by law to approve our expense accounts, and got his approval and that of the Court of what we proposed to do. We went to the legislature and told it what we proposed to do and asked for a larger appropriation for the purpose of employing assistants to mark the books under our supervision. This we obtained.

We put the proposed change in practice into effect immediately. Each member of the Board, with the approval of the others, selected a capable reader who should mark his section of the examination books under his supervision. As soon as the marks began to come in, at this first examination, we sent for every one who took the examination and interviewed them. Some of those who had very low marks of course just walked in and walked right out again. Those with very high marks, unless something in their records required consideration, did the same thing. To many of the others we devoted considerable time. We called it an oral examination. That seems to imply that we talked or asked about law. We soon found that, aside from occasionally asking a candidate about some answer to an examination question or trying to get from him an explanation as to why he had not done better, it was more practical to talk with these applicants as to their education, personal history, employment, interests, in fact their entire record. There were unfortunate repercussions due to misunderstandings by applicants of our purposes in asking certain questions. Sometimes, for example, they thought that we intended to reject them if they had a position at a good salary outside of the law. These misunderstandings we are gradually correcting.

Our fundamental method of procedure is just the same after the adoption of this oral examination as before. We still have the sure "Yeses," the sure "Noes," and the doubtful list. In handling the doubtful list, the oral examination greatly helps us. We still feel that the marks are *prima facie* evidence and that it is only when a mark in a particular case is by a narrow margin below or above our provisional passing mark, we have a right to go beyond the mark and correct the result suggested by the marks alone by all the evidence before us, including this view of the premises which we have taken.

At the first examination we saw every applicant. Seven hundred and fifty-four took that examination and it proved foolish to see them all. In subsequent examinations we set a mark which is somewhat below the mark at which anybody would pass and fixed that as the mark for the oral examination making it an absolute deadline so that nobody who gets below that mark is summoned for the oral examination. Everyone who gets above it is summoned. The members of the Board are anxious to correct any possible

errors that may be made by the men who read the examination books. When we find applicants have marks that are slightly below this dead line and that from their record they possibly should have done better, the papers are personally re-read by the Board itself. At our last examination in July, 1932, out of 700 applications we re-read fully 100. Those who are summoned before us are treated in the way that I have outlined. Some of them require a casual consideration. Their records are clean and the marks are high. They are clean-cut and the type of men we want, no matter what law course they have taken. They are passed as a matter of course. With others we spend a large amount of time, asking them all sorts of questions about their experience, their education, about some of the foolish answers that they have made to the examination questions, and anything else that seems pertinent that we ought to have before us together with their marks in order to determine whether or not they are qualified to practice law. I have not the figures of this last examination as to how many finally were called for the oral examination, but on the first call, without any re-reading, we found that quite uniformly about a third of those who took the examination were entitled to be called for this oral examination. That proportion was increased by re-reading so that possibly it was as high as forty per cent.

I will now touch on the story of our controversy. In the beginning of this year, in January, after this procedure had gone through two examinations and we were about to apply it to a third, I, for one, was considerably startled to have a rather violent attack upon the motives and procedure of the Bar Examiners launched upon us by Dean Archer of the Suffolk Law School. He introduced two bills into the legislature. One was to the effect that our statutes should not be interpreted as permitting the bar examiners to "farm out" the books—using the expression which he invented—to others to read. Another bill was that no two members of our Board of five members should be graduates of the same law school. Two of us were graduates of Harvard and the others were from different schools. So the issue was whether I or one other member should be decapitated.

We had newspaper statements, radio broadcasts and much grief. It was, of course, not my duty to indulge in public controversies, either by newspapers or by radio, but merely to appear before the legislative committee at the hearings on these bills, to put the facts before it and to answer the various charges of discrimination and improper conduct that were made against us.

But, of course, the Dean is most persuasive and there were many factors which contributed to the situation which eventually developed. The committee of the legislature reported leave to withdraw on these bills but only by a rather narrow margin. This report was made to the

Senate. The first bill to come up was a double-headed one, to the effect that we must not "farm out" the books, and that we must not discriminate between law schools. When it first came up, the report of the Committee was accepted. The next day the action was reconsidered and the bill substituted omitting only the provision forbidding discrimination, a harmless prohibition since we have no intention thus to discriminate. But they left in the direction that the statute should not be construed as permitting books to be read by anyone other than the Board. This would as a practical matter, if it became effective, require us to abandon our plan for oral examinations. This bill went through one or two legislative stages. Then, as a result of the suggestions of leading members of the bar and of lawyers in the Senate who were not in favor of this legislation, the Senate, acting under our rather peculiar constitutional provision, asked the advice of the Justices of the Supreme Judicial Court first, as to whether this proposed bill would be unconstitutional, and second, as to what power the legislature had over admission to the bar.

Since the beginning of our Commonwealth, we have had in Massachusetts this provision for advisory opinions in our Constitution. It has proved most useful and has enabled the Court many times to settle controversies in their inception, either by approving or by disapproving the constitutionality of proposed legislation. But it has one disadvantage—the Court will receive arguments from no one. No statements of any sort will be received in deciding such questions unless the legislature itself sends up some brief or material of that sort, to accompany the request for the opinion.

Nothing of that sort was sent in this case so that our Judges had to deal with these questions without any assistance from counsel. They took their time about it and produced the excellent result which you have seen. The only thing that worried most of us, I think, was not as to what fundamental principle they would lay down, but as to how far they would say, if at all, the legislature had the right to go into mere matters of detail in procedure. This legislation was directed to a matter of detail as to how the examiners should do their work. You will see that the Justices have made very clear—if it was necessary to make it clear—that the limitation and control of details would be an interference with the powers of the Court and would prevent it from retaining the control over admissions to the bar to which it was entitled.

So, without the question being raised by the bar examiners, bar associations, or the courts, it was raised and decided once and for all as a result of the attacks made upon us and decided in a way of which most of my audience here will approve.

I do want to say two things. One is suggested by something that has already been stated here. Our Board never considers the percentage of

candidates who should pass any examination. One of the things that has concerned Dean Archer is the variation of the percentages that have passed from the different schools. We give that matter no consideration. We have no idea as to what percentage of the whole list is going to be passed or as to what the percentage of success will be from the different schools until the final result is reached. We do not believe that the law of supply and demand, any more than the law of gravitation, should affect the decisions of our Board. Our duty is to pass on individual cases and it is not our duty to determine what percentage of applicants should pass a bar examination any more than it is for a court to determine, in advance in any particular year, what percentage of the verdicts should be for the plaintiff.

The other thing I would like to suggest is, what is the next step for us? The decision gives us a free hand, but we have a situation in Massachusetts that must be dealt with fairly from the point of view of the public, it is true, but also from the point of view of the large number of persons who have studied in law schools authorized to give degrees, by our legislature. These men and women must be treated with justice. I was rather sorry to read, during the course of a year, an editorial in one of our law reviews based upon some remark that was made at one of our bar association meetings in Boston. The thesis of this editorial was that in Massachusetts we are not much interested in having college education as a preparatory requirement for entrance to the bar. Of course we are desirous of a highly educated bar. In laying down rules, however, for admission to the bar, both for preliminary and legal training, we have to deal with the situation as we now have it, a situation that we have not created but that has been created by the public whom it is our duty to protect. We must move forward cautiously and in such a way as not to be unfair.

I feel that we can substantially raise our woefully low preliminary requirements as to education and that we can make our requirements of legal study much more effective, but we must go slowly. If you see us coming out with a rule to the effect that high school education, or its equivalent, is all the preliminary education actually required to take our examination, do not think that that represents our ideal but realize that we are dealing with a problem, one phase of which I have told you something about, and that we are trying gradually to work out that problem. Remember that the mills of the bar examiners, like the mills of the gods, must grind slowly, but that we hope some day that they will grind exceedingly sure.

Note:—The decision of the Massachusetts Court (In re Opinion of the Justices to the Senate 180 N. E. 725) is referred to with further citations on the question of the power of the court over admissions to the bar at pages 210 and 222 (June, 1932) of Vol. I of The Bar Examiner.

German Bar Association Favors Three-Year Moratorium on Admissions to the Bar

An article appearing in The New York Times, December 11, 1932, is quoted herewith as giving interesting information about the legal profession in Germany:

"Berlin, Dec. 9.—The German bar threatens to become engulfed in a maelstrom of economic depression which is already menacing the other professions. The 'proletarianization' of the bar and 'radicalization' of the growing body of law students are some of the menaces envisaged by the leaders of the profession.

"The German Bar Association has just adopted a resolution demanding that for the next three years there shall be no admissions to the bar and that, when this complete closure has been lifted, in 1936, only a limited number of candidates shall be admitted in any year.

"Since the issues involved are symptomatic of the economic trend, the association's action has precipitated an intense public debate. There is strenuous opposition to the measure outside of the legal profession.

Revival of Guild Spirit Feared.

"The opposition charges it would mean a revival of the guild spirit which would not stop at the profession of law. Physicians, it is contended, and other 'liberal' professions soon would follow suit. They would convert themselves into 'close corporations' and businesses and trades would try to do likewise.

"Another criticism is that the three years' embargo would work injustice and hardship upon hundreds of young lawyers and law students now ready or preparing for admission to the bar. For those who have undergone the effort and expense of twelve years in school or college, four years of law study and then three years' apprenticeship as required for entrance to the legal profession—to summarily bar them is held to be monstrous.

"Dr. Rudolf Dix, president of the German Bar Association, frankly admits the proposed measure was dictated by desperation. He defends it as a stern necessity if the legal profession is to be saved from utter pauperization. Viewed in the cold light of statistics the profession's present condition looks bad enough.

"In 1914 there were 1,250 practicing lawyers in Germany. On Oct. 1 of this year there were 18,791. Pre-war Germany had one attorney for every 5,213 of population; now she has one for every 3,450 inhabitants. Concurrently with the numerical increase there has been a decrease of litigation. Further, suits wherein the so-called poor man's privileges are operative make up a constantly growing percentage. Last year they comprised 42 per cent of all suits tried in the superior courts and 49 per cent of those in the upper courts. This condition has brought on a shrinkage of lawyers' incomes. One-third of the German lawyers earn less than $1,400 a year and 16 per cent earn $600 or less.

"The gap between the relatively high incomes of leaders of the profession and the small fry is steadily widening. But the top-notchers also are feeling the pinch. In 1930 incomes in excess of $12,000 were reported by 5.4 per cent and last year the percentage was 3.1. Incomes of $7,000 and upward were recorded last year for 7 per cent of the bar.

Law Schools Crowded

"Overcrowding the bar is the more distressing because of the jamming of law schools. The number of students has doubled since the war, and it was 20,800 last year.

"Dr. Dix contends there is more at stake than the issue of material existence.

" 'Proletarianization of the bar must inevitably lead to its decay in competence and a loss of integrity,' he said. 'And if the bar decays justice also decays. This means an end of the lawfully ordered existence of a nation. For Germany especially the independent, incorruptible administration of justice is a life-and-death matter. The problem of how to save the bar is, therefore, not simply a matter of safeguarding an occupation, but a problem of national self-preservation.'

"While its opponents admit the bar is in a bad plight, they insist it is tackling the problem at the wrong end. What is to be gained, they ask, by endeavoring to cure proletarianization of the legal profession through making radicals of thousands of its aspirants in these politically tumultuous days? The proposed measure, its critics argue, inevitably would force lawyers into great dependence upon the State; they would cease to be members of an independent, self-governing profession and would be degraded to guild status.

"Whatever may issue from the bar association's action, it has posed a problem that will be hotly debated in and outside the profession."

Law Schools, Bar Examiners and Bar Associations: Cooperation vs. Insulation

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I propose to divide my contribution to this symposium into three parts. First, I shall describe the operation of bar examinations in New York as they have been conducted during the years 1922-32. Secondly, I shall make inquiry as to the extent to which the profession has become overcrowded since 1920, and, thirdly, I shall endeavor to relate the conclusions to be drawn from the foregoing to the general subject: Cooperative Efforts to Raise the Standards of the Legal Profession.

Quantitatively and qualitatively, we are chiefly concerned with newly admitted lawyers. We want to know more about their individual characteristics and about their mass reactions. 76,858 of them were admitted during the last decade. They now constitute more than half of the practising bar. As they stand before us, they have been moulded into what they are, chiefly by three forces or agencies: the schools, the bar and the examiners. If we wish that some of them had been differently made and that they would perform their duties with more competence and probity, we must do what, so far as I know, we have never done: examine very carefully just how each of the three agencies which made them is operating. We must distinguish between what these agencies are supposed to be doing, what they are doing and what they can do.

Bar Examinations Generally.

After a man passes his bar examinations, he is sworn in and given the right to exhibit publicly a certificate of competence and fitness to practice law. This procedure is now in force nationally. As a system, it implies uniformity of standards in the judgment of applicants and it also implies an ability on the part of the examining mechanism to make sound decisions concerning those whom it examines within the time afforded for that purpose. More importantly, it implies an ability by the examining mechanism to detect and to reject those individuals who by any other criteria may be shown to be indisputably incompetent or unfit to practice law. Such assumptions as to uniformity of operation and capacity for accurate appraisal on the part of the bar examination system in this country are

*Address delivered at the annual meeting of the Association of American Law Schools, Chicago, December, 1932.

faulty. Uniformity of standard by means of a properly adjusted technique can, theoretically, be achieved, through conference, the growth of professional public opinion, and the removal of provincial and traditional impulse and interference. But even if such uniformity is achieved, the examining mechanism alone cannot discharge the obligation which the implication places upon it. It is an indispensable factor in the whole process of manufacturing the lawyer, and it has a very important role to play within a properly limited field, but it should not be overtaxed and overcharged in order to shift onto it responsibilities which belong elsewhere.

In order to analyze the presumed requirements of uniformity and capacity, I shall first describe the national situation as it now exists and then, using the New York State examinations as an example, test the mechanism as to its actual and potential capacity for consistency as to operation and result.

The requirements now blithely placed upon the national system are that it examine and judge about 10,000 new and 10,000 old applicants annually. It is presumed to be and charged with being sufficiently flexible to handle less than a score annually in some states, and more than 1,000 in others. It must likewise avoid the danger of letting its standards of grading intellectual qualifications be influenced by the wide sweep in volume indicated when the law school population doubles and then drops a third in twelve years. It must compensate for economic variations, shifting business trends and professional overcrowding or scarcity.

It does not do these things very well. In seven states, it certifies less than 40% of those who apply; in thirteen others more than 80%. Obviously, not all of the 80% could meet the tests which were met by the 40%. The intermediate 40% are either being imposed upon or are themselves being imposed upon the public. It passes from 54% to 48 % of those who apply, which is what it will probably always do until some very great change takes place in the whole picture, because all examination systems dealing with large volume tend to certify about 50%. The reason is that the median eventually imposes itself as the only fixed norm ascertainable. Furthermore, any system which annually passed 30% or less could not withstand public pressure nor scholastic presuppositions very long, while any system which passed 80% or more would quickly lose prestige and soon want justification. Altogether, and especially when geographic and traditional variations are considered, final examinations can not act much differently than they do, and should not be asked to, though they can do many things better than they do, less raggedly and with less inexcusable leakage. Bar examinations *per se* can exercise only a limited control over the standards of the profession, but they do aggravate the problem of that

control and accelerate unnecessarily many of its difficulties when they are given carelessly and without study or insight.

Bar Examinations in New York

Bar examinations in New York State are divided into two sections, one an examination in Substantive Law, and the other in Adjective Law. These are given on separate days. If the applicant passes one part, he need not retry it. In addition to a question on ethics and an essay on constitutional law, the Substantive Law examination consists of eight long form essay type questions, and 150 short form so-called Yes-No questions. In Adjective Law, the ratio is four long form to 150 short form. The short form questions are scored, clerically. The long form questions are read in groups of four to a book, by separate groups of examiners. There are no set answers to the long form questions, the applicant being marked upon his power to analyze and reason. There is a presumptive scale of ten points to the question, but the candidate's rating is expressed in terms of percentages. Taking the Substantive Law examination as an example, the A book and C book each containing four long form questions, and the D book 150 short form, the relative position, in terms of the whole class, which any applicant attained on each book is entered, and his percentage on all three is averaged. This average percentage becomes his final mark. By means of it, in a class of say, 2,000, we know where each individual student stood in relation to all the others. Theoretically, all of the students who stood in the first one per cent of the class on the A book, could stand in the 99th or 100th per cent of the class in the C book, and somewhere else according to the D book. The number of sharp variances, however, calling for review, usually include but about 10% of the class. There is no pre-determined pass mark. There is, however, an attempt made to establish a definite and constantly operating norm, which is modified by our general impressions of the whole class. Computations are made before the pass mark is determined, showing the relative standing of differently qualified groups, such as men trying for the first time, men who have college degrees, men who have degrees from graduate law schools, and also according to different groupings comprising men who have tried once before or twice, or several times, and sub-divided as to whether they failed both parts, or only one part on previous attempts. We have enough men trying each examination for the first time, who have graduated from graduate schools to afford a constant. We assume that from 70% to 80% of these men are qualified to be admitted to the bar. We test this assumption by finding out what percentage of that group will be included if 40% or 50% or 60%, or some other per cent, of the whole class is passed. If, before review, 45% of the whole class will include 80% of those best prepared, and if the re-

maining 20% of those best prepared are not bunched but straggle along down into the poorest ratings, we conclude that 45% is presumptively a proper pass mark. If this presumption is confirmed by further analysis in terms of the other groups, it becomes conclusive. In 1932 pass marks of 34 in March, when we have the largest proportion of repeaters, 50 in June when we have no repeaters, and 40 in October when we have the largest number of single part second timers, produced substantially uniform yields from each differently qualified group. Thus, fairness to all is insured.

The true-false question book constitutes by weight one-third of the examination in Substantive Law, and one-half of the examination in Adjective Law. There seems to be some doubt and a good deal of speculation as to how the true-false questions operate, and to what extent they prejudice or advantage the applicants; also to what extent they are mere memory tests, or are susceptible to guessing methods. Ever since we have employed true-false questions, we have attempted to test their operation in these respects. Each book of 150 questions is divided half into abstract questions and half into concrete. The abstract questions are such as "Has a state the right to coin money?"; the concrete involve summary statements of fact with five to ten questions appended. Care is taken that each of the subjects examined in shall be represented among the 150 questions in order to insure balance of subject matter. The number of questions correctly answered by fifty per cent of the class is called a median. It is noticeable that the medians for each half of the book are always nearly the same. Thus, if the median for the seventy-five abstract questions is 56, it will generally range from 54 and 58 for the other half. This indicates that, functionally, the two halves of the book exert about equal pressure on the class. Individual students very rarely show a differential of more than ten correctly answered questions. The medians for the whole book on successive examinations usually range from 108 to 116 right answers. Note that 112 right answers is mid-way between 75 and 150. It has been suggested that, by the laws of chance, if all the students guessed, the median should be 75, and such tests as we have made by applying, say a dozen guessing systems to a particular examination, confirm this assumption. Since the median is usually 112 to 114, it will appear that the class is, so to speak, spotted seventy-five answers, and that the differentiating process operates in the range from 75 to 150. Whether this is true, I do not know, but it is clear that students who get as few as 105 answers right get too low a mark to pass, from which it would seem that guessing is not profitable, since to equal the median, the student must guess three answers correctly to each one he misses. The manner

in which the D book sub-divides the class follows quite closely the manner in which any other book taken independently would sub-divide it.[1]

To test the final weight of the D book in its effect on passing or failing men regardless of grading, the results for June, 1932, with 1,755 men all first timers in Substantive Law, are as follows: A thousand men passed. Of this thousand 25 were passed solely because of the D book, the other books having failed them, and of the 755 who failed, 27 were failed solely because of the D book, the essay questions having passed them. By weight, therefore, the net effect of the D book was 3%. In 203 additional cases, in which the essay books disagreed, the D book cast the deciding vote for passing or failing. The gross effect of the D book was, therefore, 15% when it comes to interference with final results.

Analysis of four essay type questions in the C book in October, 1931, by the final decile test above described, produced a scattergram almost exactly parallel to the D book scattergram, except that a slightly larger number of isolated cases crept into the wrong deciles. Extremely severe essay type questions have a tendency to clearly distinguish the best 20% of the class and the worst 20% of the class, but do not differentiate very effectively in the middle groups. On the other hand, easier questions will produce almost perfect descending gradations. Both types are valuable, because, in point of fact, no class is divisible into equally graded tenths. The middle thousand of a class of 2,000 men are, in fact, almost identical.

Before describing the tests to which the whole examination is submitted, I shall indicate the volume of intake during the decade from 1922 to 1931 inclusive. The total number of single day's examinations given was 72,769, of which 45,655 were given to men trying for the first time, and 27,114 were given to repeaters. The total number of new applicants, that is, first timers, each of whom took both parts of the examination was

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[1]Thus, in October, 1931, with 1,772 cases, the percentages of first timers, second timers and all other repeaters who would have passed had the essay questions alone been considered, were 46, 49 and 32, and had the true-false questions alone been considered, were 42, 58 and 31. It is possible to divide the class into deciles according to the final mark on the examination, and also to divide the D book into deciles. In this same examination, of the first 10% of the class by final mark, 44% fell into the first D book decile. The percentages diminished with successive D book deciles, and included none at all in the last five deciles. Of the worst 10% in the class, none fell in the first four deciles of the D book, 47% in its last decile. None of the men in the first decile of the class by final mark got worse than 44 on the D book, and no man in the last decile by final mark got better than 49 on the D book.

In March, 1932, we had 1,656 applicants, of whom over 1,400 were repeaters. Medians for the two parts of the D book for the whole group were 56 and 57½, and on the whole paper 113½. They were 114 for the first timers and 120 for the first timers who were graduates of graduate law schools. For the repeaters who were trying one part only for the second time or more frequently, there were, successively, 117, 116, 109 and 107, and for the repeaters trying both parts 113, 110, 108 and 103. While the excellence of this distribution is equalled by the long form questions, it is not surpassed.

22,859. Of these, 45% passed both parts. In order to give effect to the number passing half of the examination, as well as to the number passing all of it, we have kept comparative percentage records known as the "Average of Success." To the number passing the whole of the examination this formula adds one-half of the number passing half of the examination. The Average of Success for the whole group for the decade was 59%; for the 7,048 applicants who were college and law school graduates 70%; for the 14,563 law school graduates who lacked a college degree 55%; for the 769 who graduated from neither college nor law school 48%; and for the 193 who qualified entirely on clerkship 33%. We have kept individual records pertaining to twelve law schools. Variation in the averaged Average of Success of these law schools for the decade ranged from 84% for the best to 44% for the worst. In only twelve instances out of 109 recordings did any law school's Average of Success vary more than eighteen points from its high or low for the decade.

The figures just mentioned have reference to men trying both parts of the examination for the first time. They are intended to demonstrate the extent to which 30 examinations given in 10 years have been consistent in rating the products of individual schools, and according to classification by general qualifications. It is possible, also, to test the examination in reference to its consistency in passing and failing men trying for the first time, as against those trying one part or both parts for the second time, the third time or more frequently; in other words, to test its handling of the repeaters.[2]

The last type of test which we have designed is a comparison between the rating which the examination gives to the graduates of any individual law school as between themselves, and the rating which the same men obtained while at the law school. This is perhaps, the most severe test which can be imposed. We have made a good many comparisons to test

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[2]We have these figures for individual examinations, but to put the test on a very broad base a compilation was made covering the combined results of the six examinations given during the years 1930 and 1931. During those two years, we examined 10,952 applicants in Substantive Law, and about the same number in Adjective Law. 46% passed each (not both) examination. The percentage variations of those passing in Substantive Law only follow; they were quite similar in Adjective Law. 49% of those who tried both parts for the first time passed. The repeaters who were trying this part only for the second time, or more frequently, were passed in the following ratios: 71%, 64%, 43%, 42%, 19%, and, for those trying from the seventh to the fifteenth time, 14%. For those trying both parts for the second time, or more frequently, the ratios were 39%, 27%, 13%, 3%, 9% and 6%. The results at the examination last given in October, 1932, were even more consistent, for a pass mark of 40% yielded 72% of the graduates of graduate law schools, and 41% of all others trying for the first time, and for repeaters, 58, 55, 41, 32 and 23 per cent for single part repeaters, and 26, 24, 15, 14 and 25 per cent for double part repeaters. The foregoing gradations are those indicated by the examination before review, in order to test its mechanical operation. At this examination, 6% of the whole number were reviewed over in Substantive Law, which, in effect, raised the pass mark from 40% to 46%.

various examinations, but I will cite only two examples: A graduate law school sent us 19 men who were mixed in with a class of 2,500. Our marks placed the first eleven of these men in exactly the sequence which their averaged law school grades placed them, except that we placed their eighth man seventh. Of the men who stood twelfth to nineteenth on their grading, we failed, in one or both parts, all but one. At the same examination, another school sent us 575 men. The school divided them into five descending classifications of excellence. The applicants in these classifications were passed by us in the following proportions: 100%, 82%, 55%, 28% and 10%.

We are not willing to assert as an abstract matter that the results indicated can not be improved. It is not, however, readily apparent to us how we could have expected much more consistency. Conceivably, it may be asserted that methods can be so perfected that no poorly qualified applicant could pass, and that no applicant who has been rejected more than twice could pass, but we look upon such an assertion as the counsel of perfection. We observe, when it comes to repeaters, that until after they have tried for the third time, those who have only one part to try are usually more successful than the first triers. It may be that those who are trying one part only for the second or third time, and who have had less than the whole examination to prepare for, acquire a special technique. On the other hand, it may be, since they are drawn from those whom we originally rated as fairly good because they passed one half, that all they needed was to study harder, or to brush up on the part in which they were failed, and it may be that they do actually improve themselves and continue their education between examinations. We do not know which of these suppositions is the truth, but we have been unable to perfect any examination which will keep out repeaters simply because they are repeaters.

Turning from this appraisal of the mechanism in terms of itself, let us examine it in terms of its actual results. According to The Bar Examiner, about 90% of all those who applied from 1922 to 1925 in five states eventually passed. The figures for the State of New York since 1922 are as follows: Of the 22,827 applicants who applied from 1922 to 1931, inclusive, 87% have now passed.[3] The effect of an individual examination on the outstanding repeaters may be judged by the examination given in October, 1932. There were 3,433 outstanding before that examination, not all of whom were eligible to take it. This figure was reduced to 2,922 by that examination. That is to say, 511

[3]The percentages for the individual years range from 96½% for the applicants of 1922 and 1923, to 92½% for the applicants of 1925 to 1928; to 82½% of the applicants of 1929 and 1930; and to 76½% of the applicants of 1931, those of the last three years, of course, having had only three or four opportunities to try as against the ten or more opportunities of those from the earliest years.

repeaters passed. Of the 3,433, however, only 469 were men who first applied during the years 1922 to 1927, and of these 469 only 5 got in, though many of them did not reapply, having probably abandoned their determination to become lawyers. The 469, however, represented only 6% of the 8,000 who first applied during those five years, so that even if we consider that the examination is in effect acting as an absolute bar in reference to the 469, we can not conclude that such debarment is particularly significant. Finally, it is interesting to note that 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 per cent of the 11,937 upon whom they were called to pass judgment.

I have been testing the mechanism as a mechanism, and endeavoring to ascertain the absolute limitations of its efficiency. It might be hastily assumed that there is social justification for refusing reexamination to an applicant who has failed more than a stated number of times. This is a matter of opinion and social philosophy. I have always been dubious, however, as to our right to refuse reexamination on the evidence disclosed by the examining mechanism alone on previous attempts. My difficulty arises from the fact that if inquiry is made as to the proportion of the men who are trying a single part of the examination only for the third or fourth time, it is invariably found that a disproportionately large number of them are placed by any individual examination in the very highest per cent of the class. For instance, in March, 1932, 199 men tried one part of the examination for the third time, and 82 men for the fourth time. The examination placed 20% of these men in the first 10% of the class. That is to say, as to 56 men it contradicted itself very badly. The fifth or more frequent single part repeaters, and fourth or more frequent double part repeaters, on the other hand, make a very poor showing by this test, and as to them the examination functions well. But the difficulty is that even if these facts were used to support a rule which would prohibit reexamination after four attempts, not very much would be accomplished, because by their fourth attempt approximately 90% of those who apply have passed.

A proper bar examination should be conducted anonymously and should act indifferently toward all applicants. After it has set a standard, it must pass all who meet that standard, regardless of whether, after their qualifications have been disclosed, it seems almost certain that some of them should not have passed. Its first requirement is consistency of operation in terms of itself. It may hope for socially desirable results, but it can not guarantee them. The results of its operation are bound to be

tested by external criteria, positive as well as negative. It can not, therefore, exclude quantities of the men who have been successful at the finest institutions of study our civilization affords in order to arbitrarily limit totals. Unless it can be constructed and implemented so as to possess the opportunities for personal judgment which the old apprentice system afforded, it must acknowledge the deficiencies inherent in any system of snapshot judgment and acknowledge the existence of a constant element of error and leakage in its intermediate ranges of classification. This should not constitute a serious charge against it when its limitations are considered, whether or not they raise difficulties which other agencies are better fitted to cope with.

Thus, the examining mechanism suffers because too great a strain is placed upon it. This increases somewhat its propensity to do harm but, more importantly, the ostrich-like attitude which overcharges it, prevents response to the necessity for collateral action, and even obscures the perception of such necessity. The examining agency also suffers because it is insulated from the other two agencies. With the need for a genuine transfusion definitely indicated, it clings to an individualism more anemic than potent.

The Schools and the Bar

The other two agencies are also almost perfectly insulated. Until recently, the public believed that their implied individual certifications were broad and general and meaningful; it had an odd notion that they were interrelated in the assumption of responsibility for the quality of their product. Thus, they too are overcharged in terms of fact, if not in terms of obligation. To what extent they can heighten their individual efforts and to what extent still greater capacity awaits them through cooperation is the subject of our inquiry, to answer which requires reinspection of what they are in fact doing.

The orbit of activity of the schools is restricted, and, unfortunately, the attitude of the bar generally is one of denial and inaction. Stated narrowly, what the schools certify amounts to this: that the individuals whom they have instructed and examined have been found to possess an academic mastery of the law. No school certifies anything concerning the products of any other school; they have all been exceedingly careful as to that. The profession, whether organized or not, is equally indefinite. It exhorts the public to believe that certain of its affairs can not properly be handled by uninitiated outlanders, the degree of whose incompetence is conclusively established by their failure to get initiated. It especially exhorts the public not to risk being misled and abused by Philistine instrumentalities such as trust and title companies. In support of this position, it allows the inference to be drawn that there is a solidarity within the profession and among the initiated. Its members address each other

as brothers, and adopt for the benefit of the outside world the pretense of a collective obligation. The insinuation is, that immediately upon entrance to this brotherhood, young lawyers will either be found to possess complete capacity, or else that they will be afforded adequate shepherding, both for their benefit and for the benefit of the public. Unfortunately, the brand of shepherding which they receive is often more lupine than brotherly.

The principal criticism must, of course, be visited upon the bar, because of its failure to sense the prodigal waste of opportunity, which results from its inactivity, both in its organized and disorganized phases. This symposium itself would be academic, if the bar was properly co-ordinated. The major problem of co-ordination embraces as one of its sub-divisions our whole inquiry. But the bar is not yet co-ordinated. Indeed, quantitatively regarded, it is so unintegrated that it can hardly be said to be even insulated against anything in particular, unless it be consciousness. In so far, however, as it is organized and group conscious, its attitude has been one of insulation. Within its own isolated field its narrowed horizon checks, and, in effect, frustrates the evangelism and the effort of its more enlightened elements. Broadly regarded, its attitude is negative.

As matters stand today, the three agencies we have been considering may therefore be said to be insulated from each other and to be either afraid or unwilling to extend the fields of their individual activities. There are present, however, potentialities of great power. The most important ingredient lacking is organized leadership, properly equipped and financed.

But if we were to assume such leadership to be presently forthcoming, there are yet factors in the whole problem which require measurement before we deploy whatever forces we may be able to muster. These factors relate to two faulty assumptions. One of them blinds us to the growing tendency in modern life to regard and weigh all problems predominately in their sociological aspects. For instance: Many urban courts are years behind and, since their out-put is less than their new business, they do not catch up. This is a social problem more than it is a problem of legal technique. The pressure rises and the public becomes determined to correct the problem regardless of what happens to legal technique. Accident litigation, which the bar thinks a legal problem, to the public is also a social problem. The bar seems to have made some vague promises that it will produce a solution about the year 1940, or possibly 1950, but these promises are not enthusiastically received. The ethics of the profession is a social problem. The public is mildly interested in its consideration as a professional problem, and in being led through a museum where that ancient device, known as the Grievance Committee, is exhibited, but the public does not have to regard legal ethics as a professional problem. It

can just as easily enact laws for the control of legal miscreants, as for the proprietors of bucket shops or fortune tellers. In justification, it does not need to theorize, though the elements of its position may easily be stated. It can point out that, to justify monopolistic privileges, the bar, as a group, must show, by its service to society, that it is entitled to more than society pays other skilled labor which it has left unprotected from competition. Lawyers are not supposed to capitalize their professional talents for competition with the public, which, however, is what they do, by indirection, when they gamble with indigent plaintiffs, and, by stubborn adherence to practices whose dilatory qualities are not unprofitable for them, exasperate commerce and industry, and the owners of automobiles. Society is fretful and annoyed at the prospect of having to apply its standard remedy of regulation by legislation to lawyers, being sufficiently distracted already by the difficulty of regulating more important matters, such as unemployment, alcohol, taxes and traffic. Not that the American public does not enjoy regulating, but it can not understand why a group, which, for over a century, was, technically and socially, so far in the van, should now seem wholly unable to regulate itself, especially since its members are ushered in with so much ceremony, and, apparently, with such ample certification that they are both superior and honorable beings. The social dilemma, therefore, becomes acute. Its significance for our present inquiry should be to heighten our alarm over the dangers of inaction, and to warn us that our assumption of oracular privileges in the appraisal of the social usefulness of our particular technique is rapidly becoming groundless.

General Overcrowding and Local Congestion.

The other assumption which is misleading us is the widely held idea that, because of forces which we cannot hope to control, except through entrance requirements so high that they will discourage study of the law for many, and frustrate the legitimate aspirations of others, the bar is becoming nationally and generally overcrowded. We have been misled, because the bar today is absolutely larger than it has ever been, and because its rate of acceleration since 1920 has been more rapid than in any other decade. Until an analysis has been made which will include and weigh such subtle forces as the changing nature of commercial and legal business, the degree of permanence in the growth of competing agencies, and the geographic changes in *per capita* wealth, it cannot be said whether the bar is overcrowded or not. The change in the ratio of the bar to the population is a faulty norm when used alone, but it has the advantage of affording ascertainable data.

From 1880 to 1920, there averaged, throughout the country, 786 persons to one lawyer. In 1900, there were 704; in 1920, 863; and in

1930, 764. If the average of 786 is the proper standard, the bar is now only very slightly overcrowded; if the ratio of 1900, which was 704 to 1, is normal, it is not overcrowded. The ratio of 863 to 1 in 1920 was higher than it was in any year since the Civil War, but the decline since 1920 —and the corresponding relative increase in the size of the bar—has been more rapid than during any other decade, and far greater than during most.

Admissions during the last five years have averaged 9,400. If this keeps up until 1940, the net gain will be a little over 40,000, because about 5,000 of the 160,000 now licensed drop out each year. That means a bar of 200,000 in 1940. If the population increases as it did from 1920 to 1930, the result will be a ratio of 710 to one, just over the ratio of 1900.

For the sake of argument, however, let us make the widest possible admission: assert that the bar of 1920 was normal and adopt the ratio of 863 to one as a standard. What happened from 1920 to 1930? Underneath all the speculation, the figures show that lawyers settle in communities where commerce and trade and industry, rather than agriculture, are predominant, and that they are especially influenced by rapid growth and boom markets such as Florida, the new south and the industrial east experienced during the last decade. In the main, the law of supply and demand controls. Now, in 18 states the bar declined during the decade and the population per lawyer increased. Most of these states lay west of the Mississippi; none, outside of New England, lay in the east. At the opposite extreme, there were five states in which the bar increased as against the population most rapidly of all. Nevertheless, by 1930, in Florida alone of these five was the ratio under 863 to 1; in the others it was always over 1,000 to 1. In eleven other states, the relative increase was also greater than in the country at large. Viewing the entire sixteen geographically we find that they start at Massachusetts and follow the Atlantic coastal line around to Louisiana, with Ohio, Michigan, Wisconsin and Missouri as out-posts. This indicates concentration in the area of greatest relative increase.

If we abandon ratios and look at absolute increase, we find that ten states absorbed most of it between 1920 and 1930. All of them lay in the northeast, except California, Florida and Missouri. They absorbed 73% of the total increase.[4] There are sixty-eight large cities in the country. Both in 1920 and in 1930, there were about half as many people per lawyer in these cities as in the rest of the country. An analysis of their bars confirms the figures concerning the states. The eleven cities in which the bar grew most rapidly, relative to the population, were not large

[4]In 1920, they had 47% of the country's population, and 53% of its bar, with a ratio of 772 to 1. In 1930, they had 49% of its population, and 58% of its bar, and had a ratio of 648 to 1. The rest of the country had a ratio of 953 to 1 in 1920, and 912 to 1 in 1930.

cities, and in every case they were tremendously underlawyered in 1920. On the other hand, in twenty cities the bar lost ground, and in thirteen others it gained only slightly. In twenty-four out of these thirty-three, the bar was overcrowded in 1920, the ratio having been then less than 500 to 1, which is why it did not increase. Of the twenty largest cities in the country,[5] ten absorbed most of the decade's increase. They alone took 37% of it. The other ten absorbed only 6½%. But the first ten grew nearly twice as fast as the second ten, and their bars grew twice as fast also.

As matters stand today, there are sixteen cities in which there is overcrowding. In them the ratio is less than 400 to 1, and but only four of these got into the list since 1920.[6] The large cities in that list are New York, Los Angeles, San Francisco, Kansas City and Washington. On the other hand, there are a great many cities in which the bar lost ground, especially in the northwest; cities ranging in population from two to four hundred thousand, such as Denver, Portland, Spokane, Birmingham, etc., and in the case of nearly every one of them there was overcrowding in 1920 which the law of supply and demand has checked.

Finally, to exactly test the operation of the law of supply and demand, we may assume that an ideal ratio would be 800 to 1, and that that law should work toward an equalization at that figure. Thus, it should increase the bar in some states, and decrease it in others. Analysis shows that in thirty states the law operated satisfactorily, and made progress toward equalization. In Maine, New Hampshire, Vermont, North Dakota and Mississippi, it failed to work. Their bars declined instead of increasing, as they should have. It failed to check the rush in California, Oklahoma, Florida, Illinois, New Jersey and Massachusetts. Their bars needed to grow during the decade, but they grew too fast; the pendulum swung too far. The worst failure was in Washington, Oregon, Nevada, Colorado, Missouri, Maryland and New York. These states had too many lawyers in 1920 and needed to have their bars diminished, but instead, they gained, and became more congested. However, most of the thirteen states last mentioned are above the average in per capita wealth, and if this factor is taken into account, three of them drop out of the list and conditions in five others are seen to be practically normal. We are left in the end with California, Oklahoma, Florida, Maryland and New York. In those states, and in the sixteen cities to which reference was previously made, there is undeniably definite congestion.

Conclusion.

For our purposes, it is important to distinguish between general overcrowding and congestion. They are conditions which call for different

[5]The twenty possessed 30% of the national bar in 1920; 33% in 1930.

[6]There are six states definitely overcrowded, with a ratio of less than 600 to 1, but only two of them got into the list since 1920.

remedies. It is noticeable that the loudest complaints that the standards of the profession have fallen come from areas where there is the greatest congestion. But general national limitation of admissions, even if justifiable, would not relieve local congestion. It is an unattainable remedy which would operate tardily even if it could be employed.

If we cannot prevent congestion, we ought to try to counteract its effects. One way would be to take counsel as to how to improve our product and stop washing our hands of him and of each other. Apparently he is not well enough made to stand the increased stresses of modern life, so he breaks down. In order to improve him we shall have to know more about him. Remember, there are 90,000 of our recent models running about. We do not really know very much about them, nor well understand their point of view.

Modern psychology is still in a controversial state, but it is gradually demonstrating that mass reactions vary in definitely predictable ways when certain factors are preponderant or diminished. It emphasizes the importance of preadolescent environmental and educational factors in the development of emotional stability, and is disclosing the amazingly close relationship between emotional immaturity and eccentricities of behavior. And finally. it is demonstrating that, after behavior patterns are once set up they can be only slightly modified by a purely intellectual approach. All of which means that sooner or later we shall probably have to take part in the newer movements which have for their object the reconsideration of the whole theory and practice of education in modern industrial America.

Meanwhile, we are certainly wasting time when we set in motion no counteractive forces. A storm rages in Germany over a proposal to deny any admission at all to its bar for three years. The opposition complains that, with other professions and trades following suit, such a measure means a return to feudalism and death to initiative. The proponents reply that further proletarianization of the bar means death to the administration of justice and to the bar itself. Should we in this country risk becoming more truly a guild? Philosophically, that question states the whole problem. The answer, it seems to me, must be in the affirmative, if we wish to believe in ourselves and in our ability to serve society. If this be true, the three agencies we have been considering: the examiners, the schools and the bar, must abandon insulation, effect definite contacts and pool their efforts. The research, the patient study, the wide organization and the leadership necessary can be more promptly and more efficiently provided by the schools than by either of the other agencies in their present state of underdevelopment. Is it too much to hope that soon the schools will accept the challenge?

However it may be that law teachers and bar examiners should set similar tests and grade on like standards, probably it is too much to expect, at present, that such desirable result is possible. It should be added that in a law school examination, the professor would very reasonably expect the addition to the above answer a final paragraph substantially as follows:

> "Some courts entertain a view of adverse possession that would mean on these facts that A's possession of the strip from 1900 to 1922 was not adverse. Under this view a possessor is not deemed to be an adverse possessor if he mistakenly believes that the land he occupies is really his own. It is said that this mistaken belief interferes with the requisite "claim of right" which is the essence of adverse possession. This view, it is submitted, is not desirable for the reason, among others, that in its operation it has the effect of placing an intentional wrongful occupant of the land of another in a better position to rely on the statute of limitations than an honest possessor. In this view, B's entry upon the land would be an entry upon his own land and therefore justified. However, there remains still another possibility: some courts taking this view of adverse possession may nevertheless arrive at the conclusion first stated, not on the basis of adverse possession but upon a doctrine of boundary line settled by acquiescence."

Why Not Admit Him on Motion?

The authenticity of the following communication is vouched for by the chairman of the board of bar examiners in a western state:

"POLICE DEPARTMENT

————, Oklahoma, Jan. 18, 1933.

"Secretary ———— State Bar Dear Sirs

I want tow Get some infermashion reards Licence to Practice Law I red Law years a go in mo and have had Lots of Experence with Law I have Just Served 2 years as Justice of Peace and Poliece Judg of ———— I have red Black Stone and other atharity on Law and Holey and mcgragor on Criminal Law and have helped to try a number of cases and have wone them before a Justice court Lots of my Friends want me to handle thir Suits for them if I just had licence is it Posable For you to fernish Licence to me Please write me and tell what I must do hoping to her from you soon I remain

———————— Okla

"P. S. Some of these young attorney dont want me to get in the Law Bisness I Spoke to one of them and Said what about me Practicing Law Befor the Justice Court and he dident want me to they have a late Law aganst it It usto be you could Practice Law exsept before a Court of Record I havent any Thing to do now and if I had licence I could make a living out of it They wont have me on Public work on account of my age I dont Drink or have any Imorel habits
Some and most people think I am a Grate orter"

Should the Standards for Bar Preparation Be More Exacting?

By John H. Wigmore*
Dean Emeritus, Northwestern University Law School

My answer is, They should.

Any one familiar with today's conditions in law and justice must find himself in accord with this conclusion, after careful reflection. The law has ceased to be static, as it was when I was admitted, forty-five years ago. It is now in a state of flux. Economic and social conditions are changing, and Law must adapt itself to the change.

This means that the law student today has a double task and burden. He must study and learn the law as it has been, and he must look ahead and prepare to shape the law as it is becoming. In all the best schools the students are being set to this double task. The law student of today will be the law reviser of tomorrow. He cannot do this without being both a master of the law as it has been and a predicter of the law as it is going to be. Three years of thorough law study are short enough for this task.

More than this, he cannot achieve his task intelligently by the law alone. The law follows social and economic conditions. He must have a working knowledge of other sciences. When one looks about and sees the innumerable new methods in transportation, banking, production, invention, medicine, social control, and engineering,—when one peruses the long lists of special college courses in all the social and economic sciences,—when one sees the business man himself going to schools of commerce,—he realizes that the lawyer, if he is to maintain his pristine position as a leader in the community, must at least know as much as these men of other occupations. He cannot guide them with his law unless he knows what they know, as well as his law. And to do this, he must prepare by going to college.

Those good citizens who recoil at requiring a college education, and deem anything more than a high school education to be undemocratic, are still living in the days of their own youth. For they forget one startling fact of change. That fact is that a college education today bears only the same relation to the total population that a high school education bore a generation ago. In the national Census of 1910, some

*Reprinted from the February, 1933, number of the Tennessee Law Review.

200,000 youths were recorded as being in colleges; about 150,000 of these were young men. Today there are nearer 1,000,000 in college. It is, therefore, today no more undemocratic to require a college education than it was in 1910 to require a high school education. Any bar which today is content to require only a high school education is still living by the standards of 1910.

The medical man today is everywhere required to spend in preparation as much time as is required by the very highest law school standards, viz. seven years,—and that is more than is required (five years) by even the American Bar Association standard. Ten years ago the American Bar Association standard was in advance of most law schools. Today it is equalled by all the good ones, and falls short of that of the best ones. The least that any bar can do is to measure up to the American Bar Association standards.

Is our profession to be outrun by the medical profession? Where is our leadership of two generations ago? It is slipping. In the days of our near forefathers, the lawyer was the best educated man in town. Everybody looked up to him.

Is he now? And do they?

How can we hold fast to our intellectual leadership?

Harvard and Yale Offer Joint Course in Law and Business

A new and interesting development in law teaching has just been announced in the bulletin of Yale University, which is quoted herewith:

"Law and Business

"The Yale University School of Law and the Harvard Graduate School of Business Administration announce a joint course in law and business with the purpose of training men for the practice of law in those fields involving contact with or the handling of business problems.

"This joint course is a novel experiment in American education, where both Schools contribute and both hope to gain by exchange of professional knowledge. The interrelation of law and business has long been appreciated, but heretofore no systematic graduate training which combines the

Rule Recognizing Law Study Only in Approved Schools is Sustained by Connecticut Court

On March 22, 1933, the Supreme Court of Errors of the State of Connecticut handed down a decision in the case of *Jacob Rosenthal vs. State Bar Examining Committee,* sustaining the rule of the Examining Committee recognizing law study only in schools approved by the Council of the American Bar Association on Legal Education and Admissions to the Bar. The opinion further states that the admission of attorneys is undoubtedly the function of the judicial department of the government, citing the recent Massachusetts case *In re Opinion of the Justices,* 180 N. E. 725. The Connecticut opinion which is to be found in 165 Atl. 211 is quoted herewith as of interest to all bar examiners.

Jacob Rosenthal vs. State Bar Examining Committee

Decided March 22, 1933.

"Avery, J. In his petition, the applicant sets forth that he has complied with all the requirements for permission to take the examination for admission to the bar; that he had attended the session of the Examining Committee at New Haven June 23d, 1932, for the examination of applicants; and that, thereafter, he was notified by the secretary of the Examining Committee that he had satisfactorily passed, but the committee refused to certify his name to the clerk of the court for admission on the ground that the school in which he had studied law was not approved by the committee in accordance with the rules of the court. He further alleges that the Bar Examining Committee had adopted the following rule: 'In the case of students beginning the study of law after January 11, 1929, the schools approved under the rules are the same as those approved by the Council of the American Bar Association on Legal Education and Admissions to the Bar'; that the Brooklyn Law School, which the petitioner attended after January 11th, 1929, was not on the list of schools approved by the American Bar Association since the year 1929; and he asked to be heard by the court as to his qualifications, and, after such hearing, to be admitted as a member of the bar.

"The Bar Examining Committee filed an answer admitting the allegations of the petition and setting forth that on January 25th, 1932, the petitioner was informed that the evening course in the study of law conducted by the Brooklyn Law School was not approved by the committee of the State Bar under the rules of the Superior Court; that if the applicant's studies were limited to such evening classes, he could not

be permitted to take the bar examination; that, thereafter, with full knowledge of the rules and disapproval of the State Bar Examining Committee, the petitioner filed with the clerk of the court for Fairfield County his application, in which he stated that he had entered the Brooklyn Law School in September, 1929; that he had spent three years there and would be graduated on June 9th, 1932. The answer further sets forth that if the petitioner's application had disclosed that his studies had been limited to the evening classes of the law school, he would not have been permitted to take the examination; that while he was actually taking them, the committee received from the law school information that the studies of the petitioner were limited to the evening classes; and for that reason the committee refused to certify him for admission to practice.

"The petitioner demurred to the answer of the Bar Examining Committee on the ground that it furnished no legal excuse either in fact or in law for the failure of the committee to certify his admission. The demurrer was overruled by the court; and the petitioner refusing to plead further, judgment was thereafter entered dismissing the petition.

"On this appeal, the petitioner contends that under section 7 of the rules all successful candidates at any examination shall present themselves in the Superior Court and the court may admit them as attorneys, as well as the provision that the Bar Examining Committee shall certify to the clerk of that court the names of all applicants who have been admitted to and have passed the examination, entitles him to admission upon the basis of his having passed the examination without regard to his having properly qualified under the rule concerning attendance at an approved law school. The provisions of section 7 pre-suppose that all persons successfully passing the examination have been admitted to it in accordance with the previous provisions in the rules limiting those who may take it. Section 7 cannot be construed as applying to other candidates than those who have been properly admitted to and have passed the examination.

"The petitioner further contends that the rule of the Bar Examining Committee is invalid; and that even if valid, by permitting him to take the examination and notifying him that he had satisfactorily passed it, the committee had waived compliance with the rule. General Statutes, Section 5343, provides that the Superior Court may admit and cause to be sworn as attorneys such persons as are qualified therefor, agreeably to the rules established by the judges, who may establish rules relative to the admission, qualifications, practice and removal of attorneys. This section has existed substantially in its present form since at least 1866. Revision of 1866, page 223, section 43. At least as early as 1890, the judges of the Superior Court adopted rules pursuant to this statute, pro-

viding for the requirements necessary for admission. Among the rules so adopted was one providing for the appointment of an examining committee by the judges of the Superior Court, consisting of fifteen members, of whom one or more should be judges of that court, and the rest attorneys residing in the state. An examining committee was appointed and has continued to function to the present time. The rules adopted specified subjects in which the candidates were required to pass a satisfactory examination; and provided for the examination of the candidates in such additional subjects as the committee should prescribe. Additions to these rules have been made from time to time since 1890, but it is unnecessary to set them forth at length. At the time when the petitioner commenced his legal studies, Paragraph 4 of Section 4 of the rules provided that a candidate must have pursued the study of law for a period of three years in a law school approved by the committee. Practice Book, 1922, p. 237. The basis of the petitioner's claim upon this phase of the case is that the court could not delegate to the Bar Examining Committee the power to determine the law school in which the petitioner should be required to study in order to be entitled to take the examination for admission.

"The practice of law is not a craft or a trade; it is a profession whose main purpose is to aid in the doing of justice according to law between the state and the individual and between man and man. The occasions upon which an attorney may be required to act, touch, in many instances, the deepest and most precious concerns of men, women and children. They may involve the liberty, the property, the happiness, the character and the life of his client. Obviously, one not possessing an adequate degree of intelligence and education cannot perform this kind of service, nor should he be permitted to attempt to do so. *Bergeron, Petitioner,* 220 Mass. 472, 107 N. E. 1007, 1008. In Connecticut, from the earliest times, to prevent the admission of unqualified persons into the practice of the profession, the courts have employed the members of the bar for the purpose of ascertaining the character and qualifications of those applying for membership. This is a reasonable usage. *O'Brien's Petition,* 79 Conn. 46, 53, 63 Atl. 777. Since the institution under the rules of the State Bar Examining Committee, it has performed the function of determining and testing the educational qualifications of those applying for admission, a matter formerly wholly in the hands of the local bar. The claim of the petitioner, that to commit to an examining committee the power to determine the educational qualifications of candidates for admission is an unlawful delegation of judicial power, is without force when we consider that from the earliest times in this state, it has been the uninterrupted practice for the court to rely on the bar for investigation as to such matters.

"The admission of attorneys at law to practice before the courts is

undoubtedly the function of the judicial department of the government. *In re Opinion of Justices,* 279 Mass. 607, 180 N. E., 725; *Brydonjack v. State Bar,* 208 Cal. 439, 281 Pac. 1018; and over their admission the court should maintain oversight and control. It does not follow that the proceedings by which admission is to be obtained are in all respects judicial acts, in the sense that power to determine the qualifications of candidates for the office of attorney may not be reposed in persons not performing a judicial function. The ultimate purpose of all regulations of the admission of attorneys is to assure the courts the assistance of advocates of ability, learning and sound character and to protect the public from incompetent and dishonest practitioners. *In re Peck,* 88 Conn. 447, 450, 91 Atl. 274; *Fairfield County Bar v. Taylor,* 60 Conn. 11, 17, 22 Atl. 441. Proceedings for the admission of attorneys are not actions or suits at law; they are in the nature of investigations by the courts or their representatives to determine whether particular candidates are qualified to become its officers. *Fairfield County Bar v. Taylor, supra,* p. 15; *In re Durant,* 80 Conn. 140, 148, 67 Atl. 497. Such an investigation, like that authorized by the statutes to determine the fitness of physicians and surgeons and other persons, to carry on professions or callings in which the public has such an interest as to bring them within the regulatory scope of the police power, is really administrative in its nature. *Brein v. Connecticut Eclectic Examining Board,* 103 Conn. 65, 85, 130 Atl. 289. Courts or their judges must of necessity perform many acts of an administrative nature, acts which so far pertain to the judicial department of the government that they could not properly be performed by the representatives of its other branches, as, for example, the appointment and removal of clerks of courts and other such officers; but in the method of the performance of such administrative functions, courts are under no more stringent limitations than are the executive or legislative departments in similar situations. It is required by the statutes that any person desiring to take an examination to be admitted to practice any branch of the healing arts must satisfy the state board of healing arts that he is a graduate of a 'standard approved high school' or possesses equivalent educational qualifications; and that any person desiring to practice medicine or surgery shall satisfy the proper medical examining board that he is a graduate of a college, high school or preparatory school the standard of which shall have been approved by the board or that his education is equivalent thereto and that he has received a diploma from some legally incorporated and reputable medical college. General Statutes, Sections 2736, 2747. Cum. Sup. 1931, Section 436a. That the functions reposed in these boards are valid and do not involve an improper delegation of power has never been and could not well be questioned. See *Mower v. State Department of Health,* 108 Conn. 74, 79, 142

Atl. 473; *Douglass v. Noble*, 261 U. S. 165, 168, 43 Sup. Ct. 303; *In re Thompson*, 36 Wash. 377, 379, 48 Pac. 899. While the determination of the qualifications of attorneys to be admitted to practice in our courts pertains to the judicial department, the decisions which must be made in carrying out the procedure established by the rules of the judges to accomplish that end are not judicial in their nature and may properly be vested in the Bar Examining Committee, including the power to determine what law schools shall be approved as furnishing a sufficient educational basis for admitting a candidate to the examination.

"Nor can it be maintained that the Bar Examining Committee exceeded its powers or acted unreasonably in approving the same schools as the Council of the American Bar Association on Legal Education and Admissions to the Bar. It is a matter of common knowledge that the American Bar Association is a representative body composed of members of the bar from every part of the Union; an organization national in scope, whose purpose is to uphold and maintain the highest traditions of the legal profession. There is nothing in this record to indicate either arbitrary or unreasonable action on the part of the Examining Committee in approving the same schools as the Council of the American Bar Association on Legal Education and Admissions to the Bar. Furthermore, the petitioner concedes that at the time he commenced his studies, he was aware of the requirements of the Examining Committee, and knew that the evening course in the law school which he proposed to attend was not approved, so that no hardship has been imposed upon the petitioner by the operation of the rule, except such as he voluntarily elected to encounter.

"By the demurrer, the allegations of fact in the respondent's answer are admitted and taken to be true. From them, it appears that the petitioner would not have been permitted to take the examination by the Examining Committee except under a misapprehension; that it did not know that his studies had been limited to the evening classes of the law school, which were not approved by the Examining Committee; and if it had so understood, he would not have been permitted to take the examination. The petitioner's claim, therefore, that the committee, by allowing him to take the examination, had waived the requirement of previous study in an approved law school, is without foundation. A waiver cannot arise under such circumstances. The basic conception of a waiver is that it is intentional; it cannot be established by a consent given under a mistake of fact. *Crawford v. Bridgeport*, 92 Conn. 432, 439, 103 Atl. 125; *Grippo v. Davis*, 92 Conn. 693, 696, 104 Atl. 165.

"There is no error.

"In this opinion the other judges concurred."

Recent Bar Examination Results

	Colorado	*Connecticut*	*Florida*
Total Taking Examination	39	68	63
Number Passing	32 or 82%	18 or 26%	24 or 38%
Number of First Timers	12	22	44
Number Passing	10 or 83%	6 or 27%	17 or 39%
Number of Repeaters	27	46	19
Number Passing	22 or 81%	12 or 26%	7 or 37%

	Idaho	*Illinois*	*Kentucky*
Total Taking Examination	8	341	80
Number Passing	7 or 88%	153 or 45%	37 or 46%
Number of First Timers	7	149	21
Number Passing	6 or 86%	77 or 52%	9 or 43%
Number of Repeaters	1	192	59
Number Passing	1 or 100%	76 or 40%	28 or 48%

	Minnesota	*Missouri*	*Montana*
Total Taking Examination	34	218	6
Number Passing	11 or 32%	51 or 24%	1 or 17%
Number of First Timers	17	68	2
Number Passing	6 or 35%	22 or 32%	0
Number of Repeaters	17	150	4
Number Passing	5 or 29%	29 or 19%	1 or 25%

	New York	*Oklahoma*	*S. Carolina*
Total Taking Examination	2,412	64	13
Number Passing	1,055 or 44%	45 or 70%	8 or 62%
Number of First Timers	565	52	11
Number Passing	195 or 35%	40 or 77%	7 or 64%
Number of Repeaters	1,847	12	2
Number Passing	860 or 47%	5 or 42%	1 or 50%

News from the Boards

By legislative act approved March 1, 1933, the diploma privilege was abolished in the state of GEORGIA and a required five-year period of practice for foreign attorneys seeking admission on motion was established. The comity provision was retained, providing that the jurisdiction from which foreign attorneys come must also admit Georgia attorneys by comity in order for the foregoing rule to be effective.

An integrated bar bill passed by the NORTH CAROLINA legislature creates a board of law examiners which consists of the chief justice of the Supreme Court as chairman and six lawyers appointed by the Governing Council of the bar. This board of law examiners will have the power to fix qualifications and regulations for admission to the bar, subject to the approval of the Governing Council and provided, however, that a change in educational requirements shall not become effective until after two years from the date of their adoption.

Two other states, Arizona and Washington, also passed incorporated bar bills during their 1933 legislative sessions. The WASHINGTON act gives the Board of Governors the power to fix qualifications, requirements and procedure for admissions, subject to the approval of the Supreme Court. The ARIZONA act contains a similar provision.

Proposals for changing the rules relating to admission to the bar in OHIO were submitted to the Supreme Court on April 26 by representatives of the State Bar Association, local associations, state bar examiners and law schools. These recommendations were taken under advisement by the Court and include the following:

1. Limiting the number of examinations which a candidate can take to three, and requiring a year of approved study between repeated examinations.
2. Elimination of office study.
3. Requiring applicant failing his first examination to make three per cent higher than the passing grade on the second examination and five per cent higher on the third examination.
4. Eliminating certain subjects and adding certain others.
5. Requiring a separate examination on professional ethics, and that it be passed with a grade of seventy-five per cent.
6. Recommending adoption of a rule governing character investigation.

New Jersey Asks New York

"March 21, 1933.

"JOHN KIRKLAND CLARK, ESQ.,
Chairman, Section of Legal Education
and Admissions to the Bar,
American Bar Association,
72 Wall Street, New York City.

"My dear Mr. Clark:

"At a recent meeting of the New Jersey State Bar Association held at Newark, a special committee was appointed to consider certain resolutions and committee reports dealing with the question of admissions to the bar and as to the scope and method of conducting the bar examinations.

"A resolution was proposed that:

> " 'It is the sense of this Association, that any examination for admission to the bar, requiring the answers to thirty printed questions within a limit of five hours, is inadequate to properly test the knowledge and qualifications of the candidates, and that a more comprehensive examination be provided, and that such examination substantially conform to the examinations prescribed by the Court of Appeals of the State of New York, in that the examination be divided into two groups, viz.: Adjective Law and Substantive Law.'

with an examination under appropriate topic heads.

"It occurred to me that you have probably assembled considerable data dealing with the above subjects, showing the general scope of examinations in the various states.

"Rule 9 (b) of the New Jersey Supreme Court provides that:

> " 'No applicant for an attorney's license who has or shall have failed in four examinations shall be admitted to any examination thereafter.'

"There is a growing sentiment among the bar of this state that this rule, in connection with the form of examination prescribed, has worked with undue severity upon young men who are believed to be properly

equipped to practice law. As you no doubt know, about two-thirds of the applicants are unsuccessful in passing the bar examinations of this state, and even at that the number of lawyers practicing at the New Jersey bar has well nigh doubled in the last ten years.

"The Committee is also dealing with a resolution proposing to establish by rule of court a quota system, limiting the number of candidates to be admitted to the bar in any one year, based upon an estimated number which will cover replacements and additions of such numbers as will provide for reasonably increased requirements of the courts, and for reasonably adequate service to the public.

"Some of us feel that the real but not the avowed purpose of the examination is intended to be restrictive of the number. It not only fails to accomplish this purpose, but is tragic in its consequences to young men who have devoted a number of years to the study of law at large expense, and it may be better frankly to adopt the quota restricting the number of candidates, but delaying admission until the candidate reaches the quota.

"If you care to express any views on this subject, I should be very glad indeed to have them, or if you know of any similar action taken or proposed in any other state bar association, I should be glad to be advised.

"Thanking you for your courtesy, I am

Yours very truly,

HARVEY F. CARR,
Secretary, Special Committee on Legal Education and Admissions to the Bar, New Jersey State Bar Association."

"New York City, March 22, 1933.

"MR. HARVEY F. CARR,
Fourth and Market,
Camden, N. J.

"My dear Mr. Carr:

"I have your letter of March 21 telling of the appointment by the State Bar Association of New Jersey of a special committee to consider matters relating to admissions to the bar, and have read with interest the resolution and rules contained in it, and your statement of problems on which your committee is asked to express an opinion. It is with a degree of trepidation that I undertake to respond to your inquiries. We who

have been engaged in this work for the last twelve years in New York do not pretend to have done more than make a beginning in the study of the problem.

"We are satisfied, however, that we are unable to administer an examination whereby we can properly appraise the mental qualities of candidates for admission to the bar on the basis outlined in the proposed resolution which you quote. Our examinations in substantive law alone embrace over twenty subdivisions or subjects, listed on the circular announcement, of which I enclose two or three copies. It is almost invariably the case that the law student, in the course of his three years of training, has been unable to take courses covering from three or four to sometimes eight or ten subjects. If our examination were limited to thirty printed questions, and one-third of them happened to be directed to subjects on which the candidate had had no special law school training, obviously that candidate would obtain an incomplete appraisal at our hands.

"Involved in our situation, however, is the necessity of endeavoring to exercise fairness, consistency and uniformity of judgment in the handling of great quantities of papers. We have averaged, for the past five years, over 2,000 candidates for each of our three examinations. If we used the method of procedure referred to in your resolution, that would mean over 60,000 answers to questions to read. It is a physical impossibility for 60,000 answers to be read by one individual and marked on a basis which applies the same measuring stick to the first 100 that will be applied to the last 100. The human mind will not bear up under such a strain.

"When we became confronted by the volume problem, therefore, we were forced from the necessity of the situation to adopt some more practicable method of gaining a fair appraisal of the 'knowledge-content' on legal principles, possessed by the candidate, than by using a large number of 'long-form' or 'essay-type' questions. As a result of this largely mechanical problem, we have adopted a method whereby our questions in substantive law are contained in three books,—one calling for an essay, usually on some subject of constitutional law, and a problem or problems in professional ethics,—and the other two each containing four problems, two or three of the total of eight usually being somewhat complicated in fact content. This enables us to test, not only the knowledge of legal principles, but the candidate's power of selectivity, his skill in applying the principle selected, his logical ability, and his powers of clear and lucid statement. Only four of these problems being contained in a book read by one reader or group of readers, makes about 8,000 answers on the average for each reader or group to handle, and by a

process of cross-reading or duplicate reading we have worked out a method whereby the later read books are judged on approximately the same scale as the earlier ones. We find that the qualities above mentioned, which are of course essential elements in any legal mind appraisal test, we are unable to distinguish with a reasonable degree of accuracy.

"In order to measure the extent of the 'knowledge-content' of the applicant on legal principles, we have been, for the last five or six years, making use of questions containing brief inquiries on legal principles or inquiries as to the results produced by the application of legal principles to a specific statement of facts,—in both cases in as brief compass as possible,—such questions to be answered 'Yes' or 'No.' Proper draftmanship of such questions is a problem calling for long practice, infinite patience, and the development of a certain technique essential to enable the framer of the questions to reach a clarity of expression, succinctness of statement, and freedom from uncertainty. We use on our substantive law examination 150 of these questions. We find for the most part that the students who display ability in the handling of the 'long-form' questions usually stand high in the 'knowledge-content' test.

"To this branch of our examinations we give seven hours in two sessions, one of three and one of four hours on the first day of our examination,—the morning three-hour session being devoted to one of the four-question books, and the book containing the essay problem and the professional ethics problem or problems. The four-hour session in the afternoon is devoted to the other four-question book and the 150 'Yes-No,' or 'true-false' or 'short-form' questions.

"Problems in adjective law are handled in a separate session of five hours on the second day of our examination. This part of the examination embraces pleading, practice, and evidence. The test administered embodies in its scope one of the 'long-form' books with four or five problems, and another series of 150 'short-form' questions.

"As each of these several books is handled by a different group of markers, we have after the preliminary marking an opportunity for comparison of the various groups of marks, and after the correlation, if there seem to be inconsistencies, a re-reading of those books showing marked divergencies is then had, after which the preliminary appraisal of each set of papers is completed, and the question then is taken up as to what the proportion of the group seems to be fit, on the showing made, to be certified, and what proportion does not. In this process a careful appraisal is made of some 200 to 400 'borderline' cases. From time to time, in order to measure the validity of our testing, we have compared the results

of our examinations with the results of law school markings based upon three years of classroom and examination marks, and we have found for the most part that we have succeeded in reaching substantially similar results, so that we have been somewhat encouraged in the system which we have adopted.

"Personally, I think there are strong advantages in giving the examination in two sessions, and I am opposed to going back to the method which was in vogue when I took my examinations 30 years ago, when all of the questions were contained on a single paper.

"Not infrequently it happens that a candidate has a good grounding in substantive law, but has had no practical experience and is unable, therefore, to pass the adjective law examination, on which he needs further training. He gets the benefit of a passing mark in half of the examination, and thereafter can concentrate his efforts on the other half. Likewise, not infrequently a boy who has been working in a law office proves to be well fitted in the practical branch of the examination, but obviously needs further training in substantive law, on which, under our system, he can concentrate his efforts for the succeeding examination.

"We have given some consideration to the problem as to whether there should be an arbitrary limitation on the number of times that a candidate should be permitted to take the examination. We have never reached a sufficiently definite conclusion to justify us in our own minds in adopting such an arbitrary rule, and I have read with interest and a degree of sympathy the points made by one of your fellow members of the New Jersey Bar as to the injustice of your arbitrary rule. I do not feel capable, from the researches I have conducted, of expressing any definite opinion on the subject.

"As to the quota method, the involvements of the problem are so extensive that a determination ought not to be made until the matter has been thoroughly canvassed and debated at a series of meetings which make it possible to bring out all of the elements involved. Certainly if such a method is to be followed, the limitation ought to be imposed before a youth is permitted to take three or four years of law study in the hope of reaching the bar, only to find that a quota restriction is excluding him. There have been some developments along this line in Pennsylvania, but only, I believe, to a limited extent.

"I am faithfully yours,

JOHN KIRKLAND CLARK."

Pennsylvania Considers Adoption of a Quota System

At a meeting of the Pennsylvania Bar Association held in June, the question was considered whether the Association should recommend to the Common Pleas and Orphans' Courts in that state the adoption of a limitation in the number of annual admissions to the bar. It is significant that they reached a point where this plan should be seriously debated. The committee appointed to consider it, of which the distinguished ex-chief justice of the Pennsylvania Supreme Court, Robert von Moschzisker, was chairman, recommended the step.

This recommendation was not adopted but the other proposal of the committee,—that a continuous six-months' clerkship should be served by the applicant after passing the bar examination, instead of allowing the law student the possibility of using the summer vacations to make up his six-months' clerkship as is done at the present time,— received the approval of the Association.

The report of the committee is reprinted herewith as being of interest to bar examiners.

REPORT OF COMMITTEE APPOINTED TO CONSIDER AMENDMENTS TO THE RULES OF THE SUPREME COURT RELATING TO REQUIREMENTS FOR ADMISSION TO THE BAR

To the President and Members of the Pennsylvania Bar Association:

The Committee was appointed under Resolution presented by Mr. Hirsch of Allegheny County, reading as follows:

WHEREAS, under modern conditions, the regulation and control of the members of the Bar, and their observance of the ethical standards of the profession is a matter of great practical difficulty, especially in the larger centers of population; and,

WHEREAS, admission to the Bar is a privilege to be exercised primarily for the public good and not principally for the personal advantage of a member of the Bar; and,

WHEREAS, greater control of professional practice may be exercised by the recognition of this principle and by granting admission to the Bar only during good behavior and during limited periods of time;

NOW, THEREFORE, BE IT RESOLVED, That a committee of five members of this Association be appointed to consider the advisability of requesting the Supreme Court to amend its rules for admission to the Bar so as to provide for probationary or partial admission to the Bar, or for admission to practice for stated periods of time, with the right of extension for continued periods during good behavior.

After some communications among the members relating to the subject matter of the inquiry the Committee met at the call of the Chairman and considered several proposals which had been made touching the subject matter of the resolution. These proposals were as follows:

1. The adoption by the Supreme Court of a rule providing that the first admission shall be for a limited period and requiring all members of the Bar to present themselves at some given period after their admission to practice, *e. g.*, five years, for re-examination, at least as to elements of character and conduct. Should such re-examination disclose any reason why they should not be retained as members of the Bar, to be subject to having their admission revoked or declared at an end.

2. A rule requiring the lapse of a period of perhaps five years between the date of admission to the Bar and the date when an attorney may be permitted to try and perhaps argue cases in the Common Pleas and Orphans' Courts.

3. The lengthening of the clerkship to be served between the date of passing of final examination and the actual admission to the Bar and the requirement that the service of such clerkship shall be continuous and not broken up into varying periods as at present.

4. A recommendation to the Common Pleas and Orphans' Courts in the several counties that they actually prescribe the number of students who may be admitted to the Bar, such prescription to be in accordance with the requirements of the particular locality as determined by the Courts.

Taking these suggestions in the order given, the Committee came to the following conclusions:

1. Exhaustive discussion of the first suggestion convinced the Committee that at least for the present it would be unwise to recommend the promulgation of such a rule. This conclusion was arrived at in large measure for the reason that the system thus proposed seems to be in conflict with the general purposes and workings of what has come to be known as the "Pennsylvania Plan" in force since the putting into effect of the rules of the Supreme Court on January 1, 1928. The underlying purpose of the Pennsylvania Plan is to weed out the unfit and undesirable applicants at the very inception of their careers, *i. e.*, before they are admitted to registration as law students. It has always seemed to those supporting this system that this was not only the fairest program for the applicants but also the most feasible of accomplishment. It results in a minimum of lost motion for the law schools, tutors and preceptors. It decidedly diminishes the burden upon the rejecting bodies, whether it may be County or State Boards of Law Examiners, Courts or examiner of law school papers.

A plan which looks to the turning of a man back and out of the profession several years after he has been admitted to its ranks seems to the Committee to be subversive of the aims and purposes of the system which we have been pursuing for five years. Until that system has proven itself unproductive of the ends desired, the Committee feels that it should not have engrafted upon it a program so foreign to its genius.

2. Actuated by somewhat similar motives and by others as well, the Committee concluded to reject the second proposal. It was felt that whatever annoyance may be caused, to the Courts, to opposing counsel and possibly losses to clients by unexperienced and inept conduct of cases by counsel of one, two or three years' standing is overcome by the undesirability of clogging the activities of young lawyers by an arbitrary rule such as this. Many young men, particularly in the rural counties come to the Bar after an apprenticeship in an office as assistant to trial counsel. They are familiar with the practices of the Courts. They are often well known to the judges. It would indeed be a hardship upon men of these qualifications to restrict their practice to purely office work for an arbitrary period of five years or even less, merely because others of the same age but of less fortunate apprenticeship should be so restricted. The Committee concluded that this was the kind of a situation which had best be left to the workings of natural law, believing further that the other two suggestions which follow and which it does recommend may aid in its solution.

3. Considerable thought was given to the suggestion of the lengthening of the clerkship to a period of perhaps a year or eighteen months and even to the further thought of a secondary examination largely devoted to matters of practice and procedure and to character requirements to be given at the end of the clerkship. Possibly six months is a short time for the service of the clerkship. Here again, however, the Committee felt that the present plan might be strengthened without modification as to a time requirement.

At the present time the rule provides that "this clerkship may be served either continuously for six months or at different times aggregating six months." The great majority of students take advantage of this requirement and work out their clerkship during the summer holidays in periods of two months each during three successive summers. While this has the advantage of saving the student time prior to his entrance to the Bar, also of giving him the advantage of recurring acquaintance with the workings of the law office in which he is registered, it has many disadvantages. The summer months are normally inactive seasons in law offices. No jury trials are being held and in other respects the Courts are to all intents and purposes practically closed. Vacations are the rule particularly in the

cities and often the student's preceptor is away so much of the summer that the student fails to come into personal contact with him at all or for any appreciable part of the service. The active busy functioning of the office is largely suspended during the hot weather, certainly in the cities, and to some extent in the smaller centres. In addition to all this the Committee has learned that there is a varying degree of laxity in the service given and required. Preceptors either through lack of knowledge or through kindly compassion are willing to sign certificates of service which evidence a compliance with the rule, where such compliance has not been entirely within its spirit and sometimes not within its letter. Finally, the service during the first summer and perhaps the second is given without a sufficient knowledge of the underlying principles of the law to render it as truly beneficial as was contemplated when the rule was passed.

To remedy this condition the Committee believes and recommends that the six months' clerkship should hereafter be served during a continuous period beginning at a date after the passing by the student of his final examinations for admission to the Bar. This would mean that students who took the summer examinations would begin their service about September first, and those taking the December examinations about March first. As a greater number of students take the July examinations the clerkship of such would run through the busy season of the fall and winter. The student would be present at the opening of the Courts in the fall, would see the office begin to function at the beginning of the Court year and would work through the regular run of the practice as it comes along through the active months at the end and the beginning of the calendar year. While this is not quite so true of the students who pass the winter examinations, these are fewer in number as already stated and they would at least have the advantage of the four busy months from March first to June thirtieth. It is the firm belief of the Committee therefore that such an amendment to the rules would work a decided benefit to the student and would moreover give him the opportunity of acquainting himself with Court procedure as well as office work before he is permitted to actually take any part in litigation. To some extent therefore it should have the effect of solving the problem of a novitiate prior to practice in Court discussed in the last preceding portion of this report.

4. The suggestion that there be a limitation placed upon the number of students to be admitted to the Bar each year, also met with the favorable views of the Committee. Statistics published by the Section of Legal Education of the American Bar Association disclose the fact that, during the past two or three years, whereas vacancies in the American Bar caused by death, discontinuance of practice, etc., have amounted to about 4,500 per year, additions to the Bar have amounted to approximately 10,000. The

State of Pennsylvania about comports with the average in this respect throughout the country. It is therefore apparent that roughly speaking two men come to the Bar each year for every man who drops out. If law business in Pennsylvania were doubling normally this condition would be a proper one. Every lawyer knows, however, that it is not. If anything may be said upon this subject, it is that the practice of law is concentrating rather than expanding due partly to the merger and consolidation of financial, utility and industrial corporations, partly to the enactment of legislation such as the Workmen's Compensation Act and partly to the installation of legal departments by many large institutions. In any event it is clear that there are too many lawyers coming to the Pennsylvania Bar.

This fact has already been recognized by the Courts in some of the counties. It has come to the attention of the Committee that in Delaware, for example, the Common Pleas is now prescribing the number who may be admitted to the Bar each year. This action while undoubtedly a benefit to Delaware County, is already having the result of sending rejected applicants into adjoining counties, thus adding to the influx there. The Committee believes that such a method of procedure might well be adopted by Common Pleas and Orphans' Courts throughout the State. It is of course a matter for their judgment and for their judgment alone. If, however, the practice became a prevalent one, it is likely that it would be adopted by the Courts at least in most of the larger counties. If, for example, the Courts of Philadelphia County after being apprised of the average number of students admitted to the Bar during the past five years, were to state that some given percentage of this number, say 60 per cent or 75 per cent should be admitted during the year 1934, very definite advantages would in the opinion of the Committee result. Such a restriction in quantity would in all reasonable likelihood result in a rise in the quality index. The County Boards of law examiners would thus be enabled to fix a more or less definite standard of character, personality and native intelligence to which the students to be accepted must attain. Those falling below this standard could be rejected for no other reason than that they did fall below it. While the work of the County Boards would thus become more onerous and exacting, it would soon begin to show definite results. Reciprocally it is believed that the rejection of the unqualified would be a kindness to them. While mistakes would undoubtedly be made, no system is perfect and it is believed that the number of such mistakes would be small as contrasted with the benefits both to the mass of students themselves and to the public at large, accomplished by such a selection. It is therefore the recommendation of the Committee that Courts throughout the State be apprised of the conclusion of the Pennsylvania Bar Association, that such action on their part would be deemed a wise and beneficial one in the interest of the Pennsylvania Bar and of the public.

The Committee realizes that should the system be adopted of limiting the number of applicants who may be admitted each year to the several County Bars, it would require a new rule of the Supreme and Superior Courts probably to the effect that each applicant for a certificate from the State Board would be obliged to present a certificate to that body showing that he had been declared qualified for admission to the courts of the county where he intends to practice.

Recommendations

The Committee accordingly recommends:

1. That the period of the clerkship to be served by the law students remain at six months but that the same be served continuously from a date commencing after the successful passing by the student of the final examination for admission to the Bar. Such service to be as required by the present rules "daily service (vacations and ordinary interruptions excepted), in the preceptor's legal business and under his direction, on usual business days, during regular office hours, for at least six hours a day, during which hours the applicant shall not be occupied in any manner incompatible with the fair and bona fide service of his clerkship."

2. That the Pennsylvania Bar Association approve the principle of a limitation of the number of applicants who may be admitted to the Bar each year, such limitation to be prescribed by the Common Pleas and Orphans' Courts in the several counties in accordance with the requirements of the county as viewed by such courts, and that such legal courts throughout the State be apprised of the adoption of such a resolution.

Respectfully submitted,

ROBERT VON MOSCHZISKER, *Chairman,*
ROBERT S. GAWTHROP,
ALBERT C. HIRSCH,
WILLIAM S. DALZELL,
ROBERT T. MCCRACKEN.

Report of the Oregon Committee on Legal Education and Admission to the Bar*

MR. ROY SHIELDS: Mr. President, and members of the bar: The personnel of this committee on legal education and admission to the bar is the same as that of the board of bar examiners, of which Mr. Roscoe C. Nelson is chairman. On account of his inability to be here today, I am making the report of his work. I have served on this board for approximately nine years. I think I can truthfully say that it is the most inconspicuous, hardest worked and the most cussed committee of the bar association. * * * I noted about two years ago the bar association took enough interest in us to ask for an explanation of why our reports on the annual bar examinations were so long-delayed. * * * We have always appreciated the desirability of making these reports as early as possible. But, there has always been a number of impediments in the way of speedy action on the part of the board and some of these have been partially removed during the last two or three years.

I want to mention one or two of them. One of these was the practice of undergraduates in large numbers taking the examination as a matter of experience, — experience for them and for the board. One year, not long ago, I think a third of the total number of applicants were undergraduates. We found ourselves conducting a free law school for the education of those who had not yet reached the stage where they should have been able to take the examination. This matter was called to the attention of the supreme court, and after two or three years, they hastened to correct it by eliminating undergraduates by the enactment of a rule which prevented them from taking these examinations unless they had studied law for a period of at least two years.

Another impediment was the fact that "repeaters" in large numbers were taking the examination year after year on the assumption that we were conducting some sort of an endurance contest. No extra fee was charged for taking the examination the second, third or fourth time. We found a considerable number were taking it four or five or six times without having made any particular study in the interim. In fact we had one faithful old veteran who apparently had heard of Grant's famous siege of Vicksburg, and he took the bar examination 11 times. He seemed to have the notion that if he persisted long enough he might acquire title by prescription.

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*Delivered at the last Oregon State Bar Association Meeting. Reprinted from the Oregon Law Review.

This situation has been partially amended, first by an amendment of the statute under which a man taking an examination a second or third time is required to pay a fee every time the examination is taken. This situation no longer has an appeal to the Scotch instinct of getting as much as possible for the same fee.

Another amendment of the supreme court rules, in analogy to the baseball rule of three strikes and out, whereby a "repeater" may not take a third or subsequent examination without proof of study in the interim,—an applicant who wants to take the examination a second or third time must file a petition showing that in the meantime he has pursued the study of the law diligently. This reduced the number of applicants from 125 two or three years ago to 97 this year. I think this is a large crop, considering the present depression.

Another step that has been taken to expedite our work is the arrangement for the typing of all answers to examination questions given by applicants. Five sets of these typewritten answers are prepared under an arrangement made possible by legislative act passed in 1931 authorizing an expenditure of money for this purpose. The typing of applicants' examination answers is a cost which is taken from the applicants' fees and has had several beneficial results. It has facilitated the reading of the papers. Proverbially, a good lawyer is a poor penman. If the reverse is true, we may expect much of the coming generation of lawyers. The typing is a break for the applicant for, after deciphering the handwriting, the examiner is in no temperament to grade liberally. It also permits the simultaneous grading of a number of papers at the same time, and an ambitious examiner is not retarded by the procrastination of the others in grading the papers. This also enables us to avoid what we have heard referred to from time to time as "re-hearings." These are not re-hearings in fact, but rather completion of the examination of the paper by examiners who had not previously read it.

I want to explain a few features about these so-called "re-hearings" because in order to get our report in on time, we first make our recommendations on those who should pass. Second we make a thorough examination of all the papers of those who are in the doubtful list. We have found that sometimes applicants get in a hurry and become nervous during their examinations. They feel they have not been given the proper consideration and desire to have their papers examined by all of the board. I have in mind numerous cases,—at least one case that has had to be argued before the supreme court. These re-hearings are expensive and we receive no response except a post card through the mail. There are several serious objections to re-hearings. In the first place, the identity of the applicant is disclosed. This tends to give the impression that he might

be getting special consideration, and in the next place, the applicant proceeds to gather together reinforcements in the way of outside influence. The applicant wants us to know what an excellent type of man he is. I can give you an example where the applicant brought to us certificates as to his character and qualifications from a county judge who gave him a most laudatory statement, two county commissioners, a district attorney, an ex-governor of the state, and the head of a large fraternal organization. We do not find these things help very materially in grading the paper although we are glad to get information concerning the general character and ability of the applicant.

Practically all applicants who fail in the bar examination ask for re-hearings. In order to give these re-hearings and grade the papers, it takes a great deal of our time. Our work has been extended to and through Christmas. It takes up our summer vacations grading papers, and often extends through Thanksgiving. Very frequently our Christmas vacation is taken in order to get the work done. We feel that under our present system whereby all of these papers are typed and read simultaneously by all members of the board, we can safely abolish the re-hearings because the paper of each applicant is examined by every member of the board, but even with these things, it still requires a minimum of sixty days to complete the examination.

In this connection I want to point out a fact or two that might not have occurred to you. This year each examiner graded 73 papers. Each paper represents two days of writing. Each examiner, therefore, reads 146 days of writing. Assuming that an examiner can read and grade the paper seven times as fast as applicants can write, he puts in 21 days or three weeks' work. Since our services are gratuitous, and we must make a living while grading papers, the grading must be done evenings, Sundays and holidays, and in our spare time.

The board, as it now stands, is composed of only five members. We have prepared a recommendation to the supreme court of this state to expedite our reports and to make more effective our work, namely, an enlargement of the board to nine members. In addition we propose six regular examiners who will grade the papers and the other three to constitute a sub-committee on the character of the applicants and standards of legal education. We feel that this sub-committee of three will be engaged profitably in investigating the general character and personality of the applicant. It will take a great deal of their time to sufficiently familiarize themselves with the personal record and legal education of these applicants. While our notions as to the functions of this sub-committee are still somewhat nebulous, we have it in mind as follows:

That the members of this sub-committee investigate the character and the record of the applicants, at least to the extent of finding out what their jail records are and have been, because we have had, in the last two or three years, instances where the records would have been available had there been any search made for them.

We have thought also that this committee might devise some method of obtaining the record of applicants in law schools for which some credit may be given to those suffering from stage fright. Often good students do not do justice to themselves because of unfamiliar surroundings and circumstances.

We also suggest that this sub-committee give some study to the question of evolving a method whereby those wholly unfit to become lawyers may be discouraged from studying law. All too often they go ahead and devote a great deal of time and energy to the preparation for the practice of law when they are wholly unfit and should be discouraged at the outset.

We suggest also that the sub-committee assist in the investigation of those who apply for admission on certificates from other states. From 1910 to 1931, there were 2,297 admitted to the bar of Oregon, of whom 1,504 were admitted by examination, and 793, or more than one-third, were admitted by certificate. Most of those coming from other states are good men, against whom nothing could be said. We must admit, however, that there might be exceptions and some investigation is important and would be fruitful in many cases, and we believe that this sub-committee should supplement the records brought to us by such applicants. At least, they should do something to supplement our present meagre information.

We have not performed our duties, either to the bar or to the public, in a perfunctory manner. We have felt responsibility both to the bar and to the public. The results of our efforts in the past show courage if not discretion. On an average, from a third to 40 percent of those taking the examination fail. About 15 percent of those who get by are passed with apologies. This year no undergraduate was permitted to take the examination, yet in answering questions, 10 percent thought a private individual could invoke the power of eminent domain to condemn a strip of land belonging to his neighbor. Fifteen percent of the applicants taking the examination explained how a curtesy interest of a surviving husband having a life estate would descend after death of the husband to his children and even how a second wife would acquire dower in this curtesy. Fifteen percent, or a like number, of them thought that if a promissory note is not negotiable, it is void and cannot be collected. There were some

30 percent who thought that one induced by fraud to execute a contract, after waiting two years with knowledge of the fraud, and after having affirmed the contract by suing upon it, could then rescind the contract. In last year's examination, 25 percent thought that a defendant sued on a grocery bill could appear by affidavit exhibiting a receipted bill and obtain dismissal of the action without trial.

* * * *

Because of the persistent charge that examinations are unduly difficult, we have checked results of our examinations against the work of the law schools. We do not know from what law school the applicants come and their identity. We obtained recently some interesting statistics from the clerk of the supreme court covering the period of 1920 to 1931, inclusive. From the University of Oregon School of Law we had 175 applicants and 157 of them passed. This is 90 percent. The work is improving and last year 100 percent of the applicants who took the examination passed. I cannot help but say in that connection that the work of the University of Oregon School of Law has been gradually improving.

From Willamette University, we had 159 applicants and about 115 passed, or 72 percent. I should say, in explanation, that this school has been going through a series of re-organizations and has taken every precaution to bring the standard of the school up to the highest possible point.

The Northwestern Law School sent us 386 applicants, of whom 235 or 61 percent passed. I believe all of them undergraduates. We have included those who were undergraduates and who had taken the examination under the old rule, and it is no criterion of what the graduate should be able to do.

It is interesting to note the result with respect to the other states. The University of Washington furnished us six applicants for examination and admission to the bar, and 100 percent of those who took the examination passed it. The University of California sent us three applicants, and 100 percent passed and were admitted. Stanford University sent us 24 applicants, all of whom passed the examination. We are hoping for that millennium suggested by Tennyson when there may be "no moaning at the bar" when our reports come in.

We have been impressed, in looking over the papers of those who have failed, with the large number who have failed in other occupations or professions and who have been attracted to the study of law because of the low standards for admission to the bar. We realize that we have no jurisdiction over these failures, but we have kept in mind that the lawyer,

who offers for sale the intangible item of advice, should be qualified to practice his profession, and we have expected that a person who makes his living by selling his knowledge should at least know a little more about the subject than the vendee of that advice. It must be remembered such purchaser does not have the protection of the laws against false labeling or misbranding.

That is all we have to report at this time, Mr. Chairman, but we expect to supplement this report in 10 days by a separate report to the supreme court which will be more carefully studied.

Respectfully submitted,

(Signed) ROSCOE C. NELSON, *Chairman*
B. A. GREEN,
ROY F. SHIELDS,
EDGAR FREED,
JOHN H. CARSON.

President of American Bar Comments on the National Bar Program

President Earle W. Evans, recently elected to head the American Bar Association, has written a letter, which is here reprinted, discussing the plan adopted at the Bar Association meeting at Grand Rapids for securing concentrated work by local, state and national bar associations during the present year on four topics which have been selected as being of most vital interest and importance to the profession at this time. All active bar associations are being asked to signify their willingness to cooperate in this work and to appoint committees, where none now exist, to study the subjects selected. A clearing house is being set up in the Chicago office of the Bar Association under the direction of Will Shafroth, secretary of the bar examiners' organization and adviser to the Section of Legal Education, and through it information will be furnished to individual bar association committees on what has been done in the past and what is being done at the present time by the profession to solve the difficult problems which these particular four questions present.

President Evans' letter is as follows:

Jottings of a Bar Examiner

By Charles P. Megan*

Chairman of The National Conference of Bar Examiners

My humble task today is, not to suggest any radical alteration in our scheme of bar examinations, but to discuss two or three practical suggestions that have had considerable currency in the past year or two.

The bar examiners of the country now have an association; this is the first necessary step towards improving examinations, by bringing to bear upon the problem the ability, good sense, and experience of all. We have also had the good fortune to discover, or develop, at an early stage, our own philosopher. Mr. Wickser is to us what John Locke was to the Whigs in England. There are some disadvantages to him. He is now affected with a public interest, and is in no position to object if we treat any of his suggestions with that joyous freedom which comes from having no ideas of one's own.

Mr. Wickser's analysis of current presuppositions is deadly, and there is no gainsaying the correctness of his comments on some erroneous ideas that are held by a great many people who have to do with bar examinations. Among other things he points out the immense difficulties in the way of an absolute mark in an examination, and he suggests that we get the "feel" of a class, "size up" its quality, determine thus its relative standing, and fix the passing mark accordingly,—a mark which will vary from examination to examination, and from year to year. It is, of course, very true, as Mr. Wickser points out, that a July class, mostly fresh from law school, with only one-fifth repeaters, is better than a March class with four-fifths repeaters; but Mr. Wickser, it seems to me, gives the death-blow to his own theory when he goes on to say that there is not much difference between two consecutive June classes. The great musical critic listens to a concerto of Mozart, and professes to detect a slight improvement or retrogression of the pianist in his art since the last performance, ten years before. Two connoisseurs in wine were asked to judge a cask which the owner thought perfect. One thought he detected a slight iron taste; the other noticed a faint trace of leather. The owner, in despair, poured out the wine, and at the bottom of the cask there was found a leather-headed carpet-tack. All of us would wish to think we could do something like this, on occasion, and perhaps we could, when we are at our very best, but in general we must rely on more

*Address delivered at the third meeting of The National Conference of Bar Examiners, August 29, 1933.

pedestrian service. Public school systems give us a hint; there are inspired teachers in the schools, but a course of study has been found necessary, to tide over the many days when the spark of inspiration does not come.

All that appears to be left is that we are influenced in the severity or leniency of our marking by the thought that there ought not to be too wide a variance between the general standard prescribed by the supreme court and the results of the examination; in other words, that we mustn't "flunk" *everybody*. Taking all schools together, in a large examination, say from 600 candidates up (to let Illinois in,) there cannot be much variance between the class of 1932 and the class of 1933. I have no objection to a gradual, or even a sudden and great, raising of the standard; but to pass 60% in July, 1931, and 50% in July, 1932, and 65% in July, 1933, would seem to call for an explanation. I have invented these figures, for purposes of illustration, and this is a fair objection to them; but I should like to see the examiner that will cast the first stone. I am ready to admit that there ought to be a difference between the law school product of 1923 and of 1933, with better preparation of students, better courses of study, better books, better teachers, better everything. In any event, I believe that all or a very large number of papers would have to be read twice, for I should have no confidence in a generalization based on a relatively small quantity of material.

It seems to me that every bar examiner who takes his work at all seriously ought to read a book on examinations written something over fifty years ago by Henry Latham. He discusses many of the things that trouble bar examiners today, or their analogies. Here is such an analogy: a suggestion that all answers be marked as usual, and then a mark given for the general impression of the candidate upon the examiner, perhaps a total of three-fourths for the answers and one-fourth for the impression. On this, Latham says:

> "It would be well, only it takes time, and time is, in heavy Examinations, very costly, for the Examiner [would have] first to *mark* all the papers sent up, and then read them over a second time and assign the marks due to impression. *By this means he will know how to pitch his expectations before he begins to give the marks for impression.*"

I recognize that Latham is talking about the impression an examiner has of an individual, and Mr. Wickser about his impression of a whole class; which however is the sum total of a number of individuals, and (in this case) nothing more.

The idea of an examiner's "hunch",—poaching on Judge Hutcheson's preserves in the domain of judicial action,—only amounts to this: it assumes that all candidates, say from 1 to 600, are arranged, by the action of the examination, in the correct order of merit; and it then fixes the passing mark by intuition. (If we in Illinois could only be sure that we had the six hundred candidates arranged accurately in order of merit we should not worry greatly about where the passing-mark happened to come.) The proposal I am discussing has an element of mysticism which seems out of place.

At least we may take this hint from Latham. He observes that "an invalid who pins his faith on a new [remedy] will sometimes give up taking ordinary precautions." I shall now go on to speak of one of the "ordinary precautions" which we cannot afford to give up. This is the anonymous or impersonal character of a good bar examination. No one attacks this feature directly, but there is danger sometimes that the position will be outflanked.

One of our problems is the "border-line" case. Some think we ought to examine the social and cultural "background" of those candidates that fail on the written examination by only a few points. This can only mean, in practice,—let us look at it squarely,—that to him who hath, it shall be given; a young fellow whose father lives on the North Shore and who has gone to Harvard will pass, on a lower mark; for I have never heard anyone propose that all candidates ten points below the passing mark be called in and re-examined, this time orally: I mean for "background"; re-examination, generally, of cases you are not sure about, is a different thing. All papers that are anywhere near the border-line, above or below, should be re-examined. But this is a counsel of perfection; for as to the candidates who just pass (and who, as I learn from the committee on character and fitness that takes up their cases later, furnish in general the poorer material that our Illinois bar gets,) the well-known English and American doctrine of the sporting chance would forbid taking away from a contestant the prize he has won in a fair fight. For myself, I favor the re-examination of these candidates, but it's no use, at present; a considerable artillery barrage will have to be laid down, before the position can be carried.

For those just below the line, we have really launched two questions. Both are familiar; they shade into each other. An English prime minister who had the appointment of certain judges, stated his policy: when there was a vacant judgeship he filled the place by naming some one who was a gentleman; and if he knew a little law, so much the better. I think it was Lord Palmerston who was asked what he would do if there were two candidates for an office, one being the son of an old friend,—would he

appoint *him*, other things being equal? "Certainly," said Palmerston, "but 'other things being equal' be damned."

Let us first glance at the doctrine that the professions should be reserved for "gentlemen" (in the technical sense); that is, "back-ground" as an element in admission to the professions.

At a primary for Municipal Court judges in Chicago, in 1931, an independent candidate succeeded in getting within the first twelve places on the Republican ticket, and so was nominated. His name as it appeared on the ballot was "Joseph F. Haas". Nobody at the Chicago Bar Association could find any such name on the roll of attorneys, and this man did not come before our committee or respond to our letter of inquiry. Later we found out that he was always known as "Joheph F. Mall", originally "Malinowski". It appears, however, that about two years before this time his wife, while driving a car, ran over and seriously injured some one, and the Malls decided to change their name, and they took the proper court proceedings to do so. Mall had been a candidate before for a judgeship in the Municipal Court, under that name, but had received only a small vote. The new name he selected was just the thing. "Joseph F. Haas" was the name of a very popular recorder of deeds, who died four or five years ago and who always polled a large vote. There is also a popular judge now on the bench, John F. Haas. So "Haas" was an excellent name for a candidate, and the intelligent electorate voted for this man almost *en masse*, half thinking he was their old friend the recorder of deeds, running for office again, and half seizing eagerly the chance of voting for the re-election of the Judge Haas whom they all knew as an ornament to the bench. In private life Mr. Haas had continued to use the name "Mall", practised law under that name, appeared in telephone and legal directories under that name, and registered (and I believe voted) under the name "Joseph F. Mall" at this very primary. (Though he was nominated at this primary, he was defeated in the ensuing election.)

Mr. Mall, before his admission to the bar, followed the calling of a barber in a loop office-building. But I do not mention this as a criticism,—a chief justice of England (Lord Tenterden) was the son of a hair-dresser, and so was a chancellor (Edward Sugden, Lord St. Leonards), and it is said that the father of one of these gentlemen tried to teach his own business to the son, but the son was unequal to it, and had to give it up and turn to something that was more suited to what his father regretfully admitted was a none too high order of intelligence.

Something over three hundred years ago this general question of social background was discussed in the Star Chamber. One Pie was a barrister of the Inner Temple, and he had a friend named Merrike,

another barrister. Pie borrowed £3 from Merrike, and when the time came to repay the money he tendered 56s., the other 4s. being for a wager he claimed to have won. It sounds just like an old-fashioned bar examination: "Pie averred that when an infant enters upon the twenty-first year he is of full age, Merrike on the contrary (said) that not before he had accomplished the twenty-one years fully, days and hours." (There are many unfounded stories about bar examinations in Illinois, but this one has come down with full authentication: The question was asked, "When does a minor come of age?" One candidate, indignant at being thus trifled with (as he thought) on a solemn occasion, wrote, "A man who would ask such an absurd question is not fit to be a member of the State Board of Law Examiners.")

But to return to our subject: an altercation ensued, and Pie had Merrike indicted, thus placing him in jeopardy of his life, but was nimself later prosecuted in the Court of Star Chamber. This was in 1602, almost at the end of Elizabeth's reign. Hawarde tells the remainder of the story thus:

"Merrike was commended by the Attorney [that is, the Attorney General, Coke] as a good student and of as good conversation as any in the Temple. . . .

"Pie's offence was condemned by the whole Court to be horrible and odious, and the offence of robbery, murder and perjury against God. . . .

"Pie [who had already been disbarred by his Inn] was sentenced to a fine of 1,000 marks, pillory at Westminster and there to lose one ear, papers, from (Westminster) Hall to ride with his face to the horse's tail to 'Temple gate,' and there to be pilloried and to lose the other ear, and perpetual imprisonment. As for Merrike, he was acquitted with great favour and grace, and delivered from all imputation of 'intemperancye' or 'heate.' And since they were both professors of the law (not the same thing as law professors,) (the Court) exhorted them that they have authority to admit to the bar, to have care to name those that were literate, honest and religious, and in the admittance of such to the House (Inn), [anticipating the Pennsylvania plan,] for if they had had (such care), they would never have admitted Pie to the House, but he would have pursued his father's trade, who was a butcher [so was Cardinal Wolsey's father;] and (they should) not have calls [to the bar] by the dozens or scores, as now is the use: for the good and literate professors of the law are as good members of the commonwealth as any others, but the ignorant and bad professors of the law are as 'daungerouse vermin' to the Commonwealth as 'Caterpillers', etc." (This expression occurs else-

where; solicitors in chancery were once described in law-French as "caterpillers del Commonweale.")

Here is the other side. Last year one of the successful candidates in our bar examination was a young elevator-man in the building whose top floor houses The Chicago Bar Association. (No, he didn't turn out to be an English baronet, like the Waterloo, Iowa, elevator-man whose death last month attracted some newspaper notice.) Our young man has since become a member of the Bar Association, and every day at the noon-hour he takes his fellow-members up to our dining room in his car. If you ever worked on a farm, and knew the parts and method of operation of an old-fashioned threshing-machine, you may have a little interest in a dictionary quotation from a book on farming, published in 1862: "A larger set of elevators is usually employed to carry up the roughs to the feeding board." A more appropriate quotation, from Bulwer Lytton's novel *Rienzi*, gives the converse of our case: "See what liberty exists in Rome, when we, the patricians, thus elevate a plebeian."

Now this elevator-man is a gentleman, if, as was written by a talented essayist two hundred years ago, "the Appellation of Gentleman is never to be affixed to a Man's Circumstances, but to his Behaviour in them." A few lines come readily to mind:

> The rank is but the guinea's stamp;
> The gowd's the man, for a'that.

> An thus he bore, without abuse,
> The grand old name of gentleman;
> Defam'd by every charlatan,
> And soil'd by all ignoble use.

Aristotle, a firm believer in the aristocratic form of government—but he understood by this, government by the people who really are 'best',—pointed out that in a musical competition the prize is not given to the flute-player who is of the best family, "for he will play never the better for that," but the prize ought to be given to him who is the best artist.

I have not forgotten the problem of the bootlegger's son. A young fellow choosing to live in a den of thieves should not be on the roll of lawyers. The point is, that he has sunk into his surroundings. But if he has risen above them, there would be a different answer.

Aristotle said frankly that there are advantages in having a fine personal appearance and coming from a rich family, but these superiorities should be effective, he insists, only with reference to the business in hand;

they have no relevance in what *we* are talking about,—music, in Aristotle; the practice of law, here. The great Greek philosopher, by the way, recognized twenty-three hundred years ago the special difficulties which confront port-cities like New York and Chicago. "With respect," he says, "to placing a city in the neighborhood of the sea, there are some who have many doubts whether it is serviceable or hurtful to a well-regulated state; for they say, that the resort of persons brought up under a different system of government is disserviceable to the state, as well by impeding the laws as by their numbers."

It is perhaps unnecessary for me to say that my view does not negative the value of the two years of university life, in association with professors and students of varied social and cultural position, which leaders of the bar had in mind when the present prelegal requirements were laid down,—a hope that has been fulfilled only in part. That to which a young man may attain by his own qualities, may well be demanded of him; but he should not be set back because his father sells fish, or because he himself has gone outside the traditional occupations by which the English barrister is permitted to supplement his income. The late depression placed thousands of university graduates in humble occupations, which do not degrade those who hold them, but which the holders rather make honorable. And why should a Harvard man pass at 445 points,—our passing mark is 455—when the young man who sleeps in a room without a window and goes to an evening law school, fails at 450? We might more justly ask the Harvard man to make 460. Much has been given him, much may fairly be required of him. (To avoid misunderstanding, and by way of modest compliment to our Illinois examinations, I may add that a Harvard man who fails to pass is a very rare phenomenon indeed with us.)

Yet our examination is strictly impersonal and anonymous. The doctrine of impersonality is based on "a decent respect to the opinions of mankind." Besides, it saves us from laziness,—we make better questions, and mark better, when we don't know who or what the candidate is,—whether from a world-famous law school or a night school, a first-examination man or a fifth-time repeater, a Jew or a Gentile, the son of our friend the judge, or a stranger. I pass over the suggestion still sometimes made, that if "bar examiners have so far forgotten their duty as to pass on applicants other than on their merits, the obvious remedy is to get new bar examiners." (By the way, this particular quotation was unobjectionable, in its context.) Every proposal to change from the name system to the number system (which conceals the identity of the candidates) has been received with a similar burst of outraged pride, but I suppose that no board which has once used the number plan would ever go back to the old system.—It would be a waste of time to argue this out.

Furthermore, as with judgments of courts,—the best of judges proclaiming that it is not enough for a decision to *be* right, but it must be seen by the parties to be right, and that it is of fundamental importance both that justice shall be done and that it shall be "manifestly and undoubtedly" seen to have been done,—we must be careful to retain the confidence of candidates, schools, and public, and avoid even the appearance of evil. It is, unfortunately, easy to persuade some people that, as the son of a prominent and fine citizen has the proper "background", we shall make no mistake in passing him; if all people are to be treated alike, we shall have to revise a number of our ideas. But it is of inestimable moral benefit to a State to have it admitted universally that here is one board that operates without fear or favor, and is no respecter of persons.—I have noticed anyway that when rules are bent by public officials, the rules tend to yield to the strong, not to the deserving (although consideration for the latter is always announced at the beginning as the basis of departure from a strict enforcement of the law). History should warn us of the jealous attention that all concerned bestow on the conduct of examinations, lest their integrity should be impaired, and patronage and "pull", which examinations were designed to prevent, should creep back.

When James Bryce was in China in 1913 he looked at the ruined examination-halls at Nanking. "We climbed," wrote Mrs. Bryce, "a rickety stair to the top of a great gateway, that led to the inner courts and from that we looked down on these rows and rows of little alleys alongside of which opened tiny cells (suggesting criminals rather than scholars) in which these unfortunates were confined for eight or ten days, shut up with their pens and papers and the necessary food. These halls were used until about thirteen years ago and could accommodate some twenty thousand students."

At Bologna, in the Middle Ages, besides the questions asked by the two regular examiners, "the other Doctors might ask supplementary questions of Law (which they were required to swear that they had not previously communicated to the candidate.)" The Statutes referred to this 'rigorous and tremendous examination,' and "required the Examiner to treat the examinee as his own son." "But" (observes Sir Arthur Quiller-Couch,—you remember him as the former novelist "Q", but he is now a famous Cambridge professor, from whose book of pure gold on *The Art of Reading* I borrow this medieval material: Lecture V, "On Reading for Examinations",)— "but", he says, "knowing what we do of parental discipline in the Middle Ages, we need not take this to enjoin a weak excess of leniency. At Heidelberg the Dean of the Faculty might order in drinks, the candidate not. At Leipsic the candidate is forbidden to treat the Examiners *before* the Examination: which," says Sir Arthur, "seems

sound." Elsewhere, "the Examiner swore not to take a bribe, the Candidate neither to give one, nor, if unsuccessful, to take his vengeance on the Examiner with a knife or other sharp instrument." (This delightful book comments on the prodigious amount of oath-taking in a medieval University required even of the humblest servants, and on the thirstiness, "always so remarkable in the medieval man, whether it make him strange to you or help to ingratiate him as a human brother".)

If then we find that a Coif man has failed on our examination, do I insist that nothing be done about it?—Absolutely.—Does this mean that I think we are infallible?—No indeed.—Then this may have been one of our mistakes?—Quite possibly.—And still we will do nothing?—Right.—In my six years' experience on our board, with eighteen examinations and 7,000 or 7,500 candidates, we have never departed from this rule even in one instance. This is one of the cases, for which Professor Commons has laid down the philosophical basis, wherein a single departure from the straight and narrow path is fatal. If we in Illinois had less than a one hundred percent record on this strict adherence to the doctrine of impersonality, I should no more be addressing you on the subject today than a man of military age, in war-time, in civilian clothes, ought to address an assembly of citizens, urging them to enlist. I may add that our supreme court, in all that time, has never overruled us on a single mark, or asked us to review a single paper.

In the matter of examinations I am a stern Calvinist. My text to the bar examiners is, Repent before it is too late. Let us correct our mistakes by re-examining close cases freely, but always *before* we match up names and numbers and marks, and the identity of candidates is finally known. After that, the book is shut irrevocably on the candidates, and on us. The unsuccessful candidate may try again, but *we* cannot endure many such incidents. We do not always remember that every bar examination puts us, as well as the candidates, on trial; and the jury is of the old-fashioned kind, with its own independent knowledge of the facts, and none too friendly to anything that looks like a bureaucracy. Particularly since, under our Illinois system, bar examination discipline must seem to a candidate like Nature's discipline, which has been described as, not a word and a blow, and the blow first, but the blow without the word; it is left to you to find out why your ears were boxed.

This is a gloomy thought, but whenever I reflect on admissions to the bar,—even when I listen to Mr. Wickser or read one of his addresses, and whether I turn to one side or to the other, to the side of over-severity or to the side of over-leniency,—I fall into a profound despair:

So careful of the type we seem,
So careless of the single life.

Bar examination statistics have replaced political economy as the Dismal Science.

Of course, when a Coif man fails it may not be our fault. No doubt it happens in some cases that a candidate does not do himself justice. Sometimes he is not at his best as a result of the nervous exhaustion of preparing for such an important event; in other cases there has been a diversion of his attention towards the end of his course,—social, sometimes matrimonial; but it would be idle for me to attempt to enumerate the possible reasons why a particular candidate has failed on a particular examination. It troubles me when a well-educated young man just fails by a narrow margin, although I reflect, as I have indicated above, that a candidate with unusual social and educational advantages should be able to meet a much higher requirement than the average student, and therefore should not be found just below or at the dividing line.

It is also true that in some modern law schools of towering reputation, with a hundred pupils in a class, and a high degree of specialization by teachers, the old close acquaintance with the students tends to become more or less mythical, and some students (as in the world at large) are over-rated, and some under-rated, as the future sometimes shows. I am more troubled, I believe, by what I have already mentioned,—our obscurer and irremediable errors, that creep to the surface slowly,—I mean the passing of inferior candidates. This of course is the chief of the deadly sins of examiners, for if we cannot keep out undesirable candidates, and admit only on merit, our reason for existence is gone. An English statute of 1402, "after reciting that sundry damages and mischiefs have ensued to divers persons 'by a great number of attornies, ignorant and not learned in the law, as they were wont to be before this time' [that sounds familiar,] proceeds to enact 'that all the attornies shall be examined by the justices, and by their discretions their names put in the roll . . . and they that be good and vertuous and of good fame, shall be received and sworn well and truly to serve in their offices, and especially that they make no suit in a foreign county'; i. e., a county other than that in which they are to practise [this ought to interest our Pennsylvania friends,] 'and the other attornies shall be put out by the discretion of the said justices.' That is the earliest statute to which . . . attention has been called which refers to a roll, the examination of attorneys, and putting out unsuitable persons. That was upwards of five centuries ago." Nearly two centuries later, in the year 1573, measures were recommended to be taken when the court inquired into the excessive and unprofitable number of attorneys.

Better questions and better marking will do a great deal. As Latham observes, if we are going to judge a cargo by sample, the samples must

be selected with great care. After all (with due respect to Mr. Wickser and Mr. Reed) we are *bar examiners*, and our chief duty, and the chief basis of our influence, is to do that piece of work well. But time will not permit me to develop this, and besides I should not like to appear to take a narrow view of our duties and responsibilities.

To recur to the point of *impersonality*: in the year 1594 the judges sent directions to the Inns of Court and Chancery "that none be called to the Bar by any letters, corruption, or reward, on pain of expulsion of the Reader who calleth, and of the person called." Nothing could be a worse introduction to the legal profession than for a young man to get in as a special case, by favor, or by suspicion of favor. It would be bad for him, and a cruel and never-to-be-forgotten injustice to other young men.

Here is the abundantly sufficient defense of the written examination. With all its faults, it remains the best instrument "when we want to judge of ability, knowledge, and diligence all at once." Especially when, as in admissions to the bar, it is not competitive, but simply qualifying, it works imperfectly, but fairly well. See, for this, an excellent small book (less than fifty pages) published about ten years ago, *From Patronage to Proficiency in the Public Service*, by W. A. Robson, pages 17 to 27.

I have suggested that the time to start worrying about your Coif man, and the good man from the school that hasn't the Order of the Coif, is when you are writing your questions. Will you allow me to mention a special problem we have in Illinois? Pleading and practice, especially in equity, have always been hard subjects for our candidates, and now we have an added difficulty,—Illinois has at last got into line with a fusion of law and equity, under a new Practice Act which goes into effect on January 1st of next year. How is this to be taught in law schools, and how are we to examine on it? (These are two ways of stating the same problem, for we can only examine candidates in those things in which the schools have instructed them. Sometimes a lordly examiner will ask, "Why doesn't the candidate treat this question as if it had been brought to his desk by a client?" But not one of these young people has ever had a client; they have been going to school all their lives. They are students, and we must deal with them as such.) "Matters of practice are not to be known from books," said Lord Mansfield. I can well imagine a heated colloquy in Illinois next year between a bar examiner and a law school professor; the examiner exclaiming, with Matthew Arnold in the opening line of his poem *To a Gypsy Child by the Sea-Shore*:

"Who taught this pleading to unpractis'd eyes?"

and the professor retorting hotly (with Leontes, King of Sicilia, in Shakespeare's *Winter's Tale,*) as he hands back a paper the examiner has shown him:

"Make that thy question, and go rot!"

I foresee trouble.

We shall have to rely here, as elsewhere, on Mr. Wickser's excellent suggestion of close cooperation between law schools, bar examiners, and bar associations. The world moves, but some bar examiners do not move with it. We are fortunate in the great law schools, that they are so liberal and forward-looking; and in the great bar associations, so sincerely dedicated to public service. If the selection of candidates for the bar does not improve, gentlemen, it is *our* fault, for we have untold resources of thought and service at our call.

New Hampshire Stops the Leaks

A Unique Method of Handling the Repeater Problem

The following quotations from correspondence received from Mr. Fred C. Demond, chairman of the New Hampshire Board of Bar Examiners, should be of great interest to examiners who are concerned with the repeater problem. The matter was discussed in great detail at a round table meeting at the national conference, excerpts from which will be printed in a future issue. Mr. Demond says:

"When I first became a member of our Examining Committee in 1913, we had semi-annual examinations, and it was the practice to let each rejected applicant take the next examination as a matter of course and continue doing so until he passed or his perseverance was exhausted, with the result that substantially 90 per cent of the applicants were ultimately admitted. But we put into gradual operation during the years 1919-1922, and have since employed, a very different and highly selective system of dealing with failed applicants, resulting in a sharp decrease in the ultimate success ratio. The first step was abolishing the December examination and requiring a year's additional study of every rejected applicant as a condition to reexamination. The next step was a more careful and discriminating marking system so that our examination ratings furnished so far as possible an approximate measure not only of competency but of the degree of incompetency; and the development of the selective system of special recommendations hereinafter explained with respect to the

The Pennsylvania System

By George F. Baer Appel*
Secretary of the Pennsylvania State Board of Law Examiners

I see that I am listed on the program to make "remarks". This is always a dangerous thing to ask any lawyer to do, let alone a secretary of a state board of law examiners. A paper would require cohesion and substance, but remarks are unlimited, require no conclusions, and offer infinite possibilities for random and possibly illogical thoughts.

I shall, however, "remark" only upon those matters with which I have to deal as secretary which might be of interest to you.

In the first place, I might explain that in Pennsylvania the rules and regulations with respect to admission to the bar are considered part of the judicial functions of the Commonwealth, not of the legislature. It is true that we have statutes on our books regulating admission to the bar, starting with an act in 1722. These acts are all set forth in a case decided in 1928, Olmsted's Case, 292 Pa. 96. There the court†, after mentioning the various acts, stated that "None of them can control the courts in performing the purely judicial act of deciding who shall enjoy the privilege of practicing before them, though so far as such statutes do not encroach on the prerogative of the judicial department of the government to regulate admissions to the bar, the courts have heretofore properly heeded them." This might seem to many of you, whose activities and standards are subject to legislative control, to render our problems less intense and less difficult. To the extent that our Board is subject only to the Supreme Court it is undoubtedly a highly desirable state of affairs. However, our situation is complicated from an entirely different angle. Admission to the bar of the Supreme Court of Pennsylvania does not of itself entitle one to admission in the lower courts of the sixty-seven different counties throughout the state. There is a county board of law examiners in almost every county, which performs a definite function in the admission to the Supreme Court, but these county boards are entitled to their own rules governing admission to their respective local courts. It so happens that the great majority of the counties, and by that I mean the county courts, have prescribed that no one shall be

* An address delivered at the third annual meeting of The National Conference of Bar Examiners, August 29, 1933.

† This opinion was written by the former Chief Justice Robert von Moschzisker, who was more responsible than any one person or group of persons for the improvement in the rules for admission to the bar in Pennsylvania, and who now as an active practitioner still continues to have great interest in them.

admitted to practice before them unless he is entitled to admission to the Supreme Court. But not all the counties have adopted this rule, and some have added requirements over and above our certificate entitling the holder to admission to the Supreme Court. Thus it is true that admission in Pennsylvania is exclusively in the control of the judiciary, more than that—of half a hundred judicial bodies. But I will merely mention this problem now, returning to it in more detail toward the conclusion of these remarks.

The State Board of Law Examiners in Pennsylvania is created by the rules of the Supreme Court of the state. It consists of five men, appointed by the Court for terms of five years, with the privilege of one reappointment. The member who has been longest on the Board is automatically chairman. It has been the happy custom of the court since the first rules were promulgated in 1902 to appoint men outstanding in the profession. This is made possible by the fact that the Board meets only four times a year and does not have constant onerous duties. The active work is carried on by a secretary, an assistant secretary, and two clerks, and in addition, the task of preparing questions and marking papers is performed by a staff of lawyers selected and appointed by the Board. The fact that the Board itself is composed of prominent lawyers who are both willing, and are professionally able to devote the time has, I believe, been largely responsible for the progress which we feel we have achieved. The members of the Board are not only personally conscious of the responsibility entailed in regulating admission to the bar, but are free from the limited vision which sometimes follows the mere attempt to prescribe and enforce rules.

The rules of the Supreme Court covering admission to the bar provide: first, for registration as a student of law and, after an interval, during which the applicant is devoting his time to the study of the law, admission. The problems of an examiner fall naturally into two divisions—those relating to registration and those relating to admission.

Educational Requirements for Registration

Our registration requirements are simply told, but their application gives rise to considerable difficulties. All those seeking registration must show evidence of having acquired either fifteen units of the College Entrance Examination Board, or a degree from an approved college. At once it must be apparent to you that we have two entirely different measurements for determining the applicant's general education. It is possible to register after having only completed high school, provided the necessary college entrance examinations have been successfully passed. On the other hand, if the applicant has entered college without College

Board units, he must continue his course and obtain a degree. The reason for this anomaly is historic, and hence, although I can give you an explanation, I can offer no excuse. Originally the State Board gave preliminary examinations in general subjects which every applicant for registration was required to pass before being permitted to study law. It became apparent after a time that those who had obtained a degree from a reliable college should not be compelled to subject themselves to examinations in subjects which they had studied over four years ago while spending the interval in obtaining a more thorough education. About 1910 these preliminary examinations were therefore waived for those holding a degree. Later, in 1927, the burden of giving two different sets of examinations, preliminary and final, to an ever increasing number of applicants proved too great and the Supreme Court provided that instead of the State Board giving preliminary examinations, arrangements should be made with the College Entrance Examination Board that applicants for registration in Pennsylvania without degrees should take the College Entrance Board examinations in certain subjects, totaling fifteen units. Meanwhile, the holders of degrees from reliable colleges were still permitted to register without examination. This is the historical reason for the discrepancy in our registration requirements. We should like to feel that we require the equivalent of a college degree—but in all fairness we must admit that it is possible to register on the equivalent of a high school course. I may say that this is in some respects our chief problem. We have spent a great deal of time and thought on this subject and are feeling our way slowly. I do not believe that we are as yet in a position to leap whole-heartedly on the side of requiring a college degree. We still feel, although with decreasing intensity, that it should be possible for a boy to register and prepare adequately for the bar without requiring him to attend a college or a law school. We do not necessarily have the feeling that we should keep the door partly open at least for another Lincoln, although perhaps emotionally some of us still think of an earnest ambitious boy struggling to obtain education and making his legal preparation by candlelight in a small log cabin. We still have prominent men at our bar who obtained their education and studied law in the slightly more modern equivalent of the log cabin method. A college and law school graduate myself, I am frank to say that a college degree as well as a law school degree may mean much or it may mean little. Ultimately there is no question but that the minimum registration requirement will be a college degree, the minimum law study requirement a law degree, but I am not prepared to say that in Pennsylvania we are ready for it, nor can I honestly say that colleges and law schools are ready for it. However, I do say that our present dual registration requirements should more nearly approach one another as a single standard for the right to begin the study of the law.

I will pass over the particular problems arising from a selection of the subjects which the non-college candidate must offer in making up the necessary fifteen units. I need only say that I regard our present list of subjects as being tentative, that is to say, I do not consider them as indication of our final opinion as to "what a young man should know" who contemplates becoming a lawyer. I have taken mental notes of Dean Clark's ideas on this subject.

I will also merely suggest to you my problems in accepting degrees from approved colleges. In the first place, what colleges should be approved? In the second place, what sort of degree should be accepted—Arts, Science, Business, Educational? In the third place, what of the "tramp" student who ends up with a degree at an approved college after three years in various other institutions? Again, what should our final attitude be toward combined courses?

Before leaving this question of the educational requirements for registration, you may be interested in hearing some statistics covering the results in the final examination in law as reflecting upon the two methods of registering—by examination or on a degree. These figures cover ten examinations held over the last five years. They are based on the first examination taken by each candidate and do not show the ultimate success of the applicants in later repeat examinations which, under our system, they are permitted to take. Perhaps these statistics will only be important after they have been broken down to show the ultimate success, but for our present purposes they shall have to suffice. I shall read the totals only, and affix to these remarks the figures for the separate examinations. During the past five years, a total of 2,285 took the bar examinations for the first time. Of these, 339, or slightly less than 15 percent, had registered on preliminary examinations, and the remaining 1,946, or 85 percent, had registered on degrees from approved colleges. Of the 339 registering on preliminary examination, 180, or 53 percent, passed the first time; of the 1,946 registering on degrees, 1,173, or 60 percent, passed. The interesting thing to me is that the difference in the passing percentages is so small, only 7 percent. Does the difference of 7 percent justify an inference that the degree men generally are more competent to pass the bar examinations than those registering on preliminary examination? I doubt it. When the figures are broken down to show how many of each class finally passed in repeat examinations and were admitted, the difference may become more marked, but it is doubtful whether the difference, even when revised, will be sufficient to justify any present conclusion that a degree should be a prerequisite to registration as a student at law. Of course, it may well be objected that passing the bar examination is not an absolute criterion for determining

this question. I do not have such confidence in any form of examination to believe that its results can prove or disprove any particular theory on this subject. Still statistics are interesting, even if they are made up of no more than straw figures.

Admission Requirements

So far as our admission requirements are concerned, speaking solely of legal education, we require either a degree from an approved law school, plus a compulsory six-months' clerkship in an active law office, or three years of clerkship in a law office. Although by far the greater majority of those who qualify for the bar examinations are holders of law degrees, nevertheless there are still those who study in a law office. (I may say that this fall the State Board expects to recommend to the Supreme Court that the period of law study in a law office be increased from three to four years.) Then, of course, there are those who combine law school work with office study. Our statistics with reference to those qualifying on law office study show that they, of all classes, are the least successful. Before law schools became established, as you all know, law office study was the most popular and apparently the most successful method of preparing for the bar. Since then, circumstances with which you are all familiar have made this method the least attractive and the least successful. Not only has the attitude of the student changed, but the active practitioner has ceased to look upon himself as the progenitor of future lawyers. If an active lawyer is willing to take on a student, his practice prevents his giving the student the attention he deserves. If his practice is such that he can give proper attention, in all likelihood the attention is not as valuable as it should be. In some respects, of course, law office experience is desirable. There is nothing more pathetic than when a law school graduate of high standing attempts to prepare the simplest form of pleading, or even more distressing when he attempts to file it. Recognizing that law school preparation for the bar had become the predominant method of law study, but realizing the importance of experience, the Supreme Court in Pennsylvania has prescribed that before admission every law school graduate must serve a clerkship of six months in the office of his preceptor, a practicing lawyer. At present, the rule is that the law student may serve this clerkship at any time during his years of attendance at law school during vacations. Where he is attending a part-time law school, he can serve his clerkship during the day, going to classes at night. The further provision that the periods of clerkship cannot be less than a month has had the effect of limiting this clerkship to the summer months. We are now considering requiring the clerkship to be served after law school is completed so that the student will have the advantage of being in a law office not only while

it is more active than during the summer months, but also after he has acquired his quota of legal theory. I will have more to say about the clerkship later on.

Limitation of the Number of Reexaminations

The bar examinations themselves are, of course, but one item in the life of a bar examiner, or at least in the life of the secretary of a state board. Most of the year is spent with the problems of registration and of computing law study. If the bar examinations were our sole duty, life would be much more pleasant. If we could sit back and tell candidates for admission that they had one job only, namely, to pass the bar examinations, we could perhaps concentrate all our attention upon producing fool-proof examinations. Of course, the examination is the highest and most vital hurdle, but perhaps the fatalities here are no greater than those from the other hurdles, and to my mind the other hurdles, general education, legal study, and character, are equally important. I am satisfied that it is extremely unlikely that an examination can be devised which will unerringly separate the sheep from the goats. Notwithstanding the fact that our examination questions are prepared by four very able lawyers, after much earnest effort, and are submitted to the Board, composed of five outstanding lawyers, for criticism and selection, I can not honestly say that because a candidate passes the examination he should be admitted, or because he fails he should be denied admission. It is the only test that we have satisfactorily devised to date, and until a better method is found, I suppose it must continue to be the sole test. We can and do, however, make sure that before the applicant subjects himself to the test, he has undergone a certain training. This reduces the number of those who pass it by good luck only. But it still is no better than a hit or miss test, and for that reason I do not always join in the opprobrium attached to the word "repeater". I think it is quite possible for a person who will be a good lawyer to fail the examination once. We ask forty questions, spread over four sessions of about four hours each, during the morning and afternoon of two days. To test a man's ability as a lawyer by forty questions seems a little beyond the capacity of even the most experienced bar examiner.

Up until October, 1928, we permitted an applicant to take the examinations as often as he pleased. If he failed to pass, it was only because of extreme dullness, or because he did not make even half an effort. We later cut down the number of examinations allowed to five. As a matter of interest, we prepared a sort of statistical chart over a period of four years, 1928-1931, inclusive, to see how many examinations it took to pass. We found that although 1,095 passed the first time, 349

the second time, and 61 the third time, only 26 succeeded in passing after the third attempt. Of these 26, one succeeded on eight tries, two on seven tries, three on six tries, six on five tries, and fourteen on four tries. The full statistics could bear further analysis, but no matter how many duplications there appear in the repeaters' column, an applicant appears in the passing column only once. Out of 1,531 candidates passing the examinations, only 26, or a little over 1½ percent, required more than three attempts before they could pass. During this period a five-time rule was in effect, although those who had taken the examination more than five times before the rule went into effect were permitted to take it once more. Even if we consider only those taking it five times, we find that only 20 passed after the third attempt as against 1,505 who passed on three tries. This seemed to us sufficient evidence to warrant cutting down the number of attempts to three, as it now remains. I know of at least one state where the limitation has been four, and where there has been such an outcry that the limitation has, for the present, been suspended. Frankly, I do not believe that even in this democratic country, everyone has an inherent right to take the bar examinations until he passes. One examination might not be a sufficient test, but it is difficult to see how an applicant who has failed ten times can undertake what we are pleased to consider the responsibilities of a lawyer. I believe that we are doing the people of Pennsylvania a service in keeping out of the bar the 1½ percent who can pass the examinations only after three or more unsuccessful tries. Opinions will, and of course, do differ as to where to draw the line. We have drawn it at the end of three tries—subject, of course, to proper exceptions, but only upon special approval of the Board. Certainly three examinations, covering one hundred and twenty questions on the law, come close to being a fairer test than forty questions, and likewise amount to more of a test than four hundred questions. Out of ten tries, almost any one should be able to make a passing grade in one group of forty questions.

Preparing and Marking Questions

Our method of preparing questions is, I suppose, very much like that used in other states. The four examiners appointed by the Board make up questions on points of law all the way from Blackstone to the most recent cases and statutes. The questions, with tentative answers, as well as substitute questions, are submitted to the Board, which passes upon them from the standpoint of active practitioners, not of bar examiners. This has a decided salutary effect, since the examiners occasionally present points which are abstract, technical, and of little general importance. The questions themselves are more nearly like law school questions than any other particular type, although we make it a point to include

essay questions which do not require analysis of facts, but do require clearness of expression.

Marking the papers resolves itself into a matter of attempting to eliminate as far as possible any unfairness which might arise from the human element. There are four examination sessions, and four examiners, so that each examiner reads one session, or ten questions on every paper. When this has been done, the marks are tabulated and the border-line cases are re-examined by the examiners, first to determine whether the marking of the paper for any particular session is out of line, and then to determine whether on a second reading by one or all of the examiners the total marks would vary. There are no names attached to the papers, only numbers, and when the examiners have completed their work, they report so many numbers as having passed, so many failed, and so many as having come close to passing—within three or four points. This report is then considered by the Board and the individual members of the Board go over the border-line papers not only to determine whether they should pass or fail, but also to test the method of marking used by the examiners. The Board then approves the report of the examiners with such changes as they have decided upon in connection with the border-line papers. Formerly, the candidate was told only that he passed or failed, as the case may be. It seemed to me that the candidate, in all fairness, was entitled to his mark, so that he now receives it.

This system of marking we have found to be of infinite advantage. We pay the examiners sufficient to be able to command enough of their time to prepare examinations adequately, and to mark the papers thoroughly. It is work that cannot be asked gratuitously of practicing lawyers. If we are to expect the best sort of examinations and the most efficient work in marking them, we must pay for it. Certainly, if we expected the State Board itself to do it, we could not find outstanding lawyers willing to accept the appointment. The supervision of the examiners' work by the Board gives it the practical broad vision which a close attention to detail sometimes lacks. The examination is thus the result of the combined efforts of expert examiners and active practitioners. The marking is likewise the work of experts, tempered by the Board, who bring the point of view of the bar itself. Admitting that any system has its faults, we firmly believe that we have eliminated enormous possibilities of mistakes arising from the narrowness of hired experts or the inefficient broadness of busy lawyers. I have seen too many examples of the benefits from this constant check of attitude not to be convinced that it is absolutely vital in such a responsible undertaking as is ours.

Character Investigation

So much for a brief recital of some of my problems in connection with educational requirements. The character requirements form the other portion of the rules for registration and admission. We are perhaps a little proud of the manner in which this particular part of registration, and of admission as well, is being developed in Pennsylvania. I indicated at the outset that there were functions which Boards of Law Examiners in each county performed under the rules of the Supreme Court. The first function is to certify to the State Board that they have approved the character of the applicants for registration who wish to be admitted to the Supreme Court. No applicant is registered by the State Board without the approval of the Board of Law Examiners of the county in which he expects to practice. The procedure is as follows: Each applicant for registration as a law student files an application in the form of a questionnaire. From this application we learn in what county he expects to practice, the names of at least three citizen sponsors, and the name of his proposed preceptor. We then forward 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, forward 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 return 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 we encourage original and independent inquiries. 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. If the applicant has completed his educational requirements, he is then registered. Where the county board rejects an applicant on the basis of whatever evidence they have obtained, they are required to file 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 our action, under the rules of Court, and our report, together with his appeal and brief, is filed with the Court, although no oral argument is heard. The State Board has seldom disagreed with the county board, largely because

we have felt that the local board is usually in a better position to gauge the applicant's character. We do insist, however, that the reasons for rejection be plainly set forth and further that they be based upon objections to his character only, and not upon such reasons as that there are too many lawyers already in the county, or that the applicant would not be likely to become an able lawyer, or that his personality is not attractive.

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.

The result is that every candidate for admission to the Supreme Court has had his character examined by those with whom he expects to practice. We are not content to rely upon the usual character letters which at one time or another we are all required to write for friends or sons of friends. We ask specific questions about the candidate, his family, and his friends. Of course, the answers are usually biased in the candidate's favor, but, to a certain extent, this bias can be indicated and discounted by requiring the person answering the questionnaire to state whether he is a relative, and just how well he knows the applicant.

The Preceptor

I have mentioned several times the word "preceptor". The six-months' clerkship is served in the office of the preceptor. The preceptor answers a questionnaire both at the time of the applicant's registration and at his admission. The county board must approve the preceptor. Under our system the preceptor holds the position of sponsor. One of the disadvantages of preparing for the bar at a law school is that it removes all opportunity for the candidate to learn some of the indefinable and intangible elements and characteristics of a lawyer. Not only does the student in the law office learn law, but he learns almost subconsciously what it means to be a lawyer. He can now obtain better training in the law at a law school, but he does not get the atmosphere of practicing law. It is not only the practical side of the law that he must get, but it is the training in ethics that no law school course can provide. Every candidate for the bar in Pennsylvania must select as his preceptor a lawyer who must be approved by the county board. It may seem strange that a lawyer must obtain the approval of his fellow members of the bar who happen to be also members of the county board, but I can assure you that particularly in the large counties, the local boards have been courageous enough to disapprove a lawyer as a preceptor when they felt that his influence is not the sort which they wished to continue. It is

one thing to submit charges to a board of censors; it is different when one is asked to approve a lawyer as a preceptor to a young law student. Not all local boards have had this courage, but we hope that in time they will all perceive that unless they wish the lower portion of the bar to be perpetuated, they must adopt this attitude. The preceptor is supposed to keep an eye on the law student throughout his legal course. If, as often happens, he does not know the student particularly well at the time of registration, after three years he is in a much better position to vouch for him, or not, as the case may be. The idea, you will agree, is excellent, but I can see that many of you would consider it difficult of application practically. We shared your apprehension after the system had been in effect for several years, and I wrote a letter to each preceptor asking him what he did, and whether he thought the system was capable of successful application. We were much amazed by the replies. Over half replied, and of those replying almost all were strongly in favor of the whole system. The letters I received were sometimes several pages long, and I felt they were all sincere, not only in the belief of the writers that the system was helpful, but in their attempts to undertake their responsibilities. The negative replies were mostly from a few large offices where the personal relationship was not and apparently could not be achieved.

Thus, not only does a board of local lawyers make an investigation into the character of each applicant, but there is a particular mentor for his personal guidance. There are still improvements which can be made in this system, and an annual state conference of delegates from the county boards, well attended, helps us to discover the weak spots and make the necessary adjustments.

The Quota System

Usually, when a candidate has been approved by his local county board for registration and for admission, and has satisfied our educational and legal requirements, has passed the bar examinations, and has received our certificate entitling him to admission to the bar of the Supreme Court, he is at once eligible for admission to his own local court—but this is only because, as I originally pointed out, the local courts have provided in their rules that such a certificate will entitle a person to admission to those particular courts. Recent discussion about the overcrowding of the bar has led several of our local county courts to impose additional requirements for admission. Not only must the candidate be approved as to character by the local board at the time of registration and admission to the Supreme Court, but he must make an affidavit to the effect that he expects to have his principal office in the particular county in which he

is then making application. And furthermore, three or four county courts have adopted rules to the effect that irrespective of any qualifications whatsoever, only a certain prescribed number of lawyers shall be admitted annually. In other words, these particular county courts have decided—of course, not only with the approval, but at the suggestion of the local bar association,—that there shall be a limitation of the numbers admitted, in addition to the requirements of education and character, and that the bar shall be open to local lawyers only. The requirement of residence has some logic to it. In the service of papers and the trial of cases, it is often most inconvenient that the opposing lawyers, or even both lawyers, should be out of the court's jurisdiction, even though the effect of the residence requirement would seem to create a tariff for the benefit of the local lawyers, since every out-of-town lawyer who has a case in the local court must take in with him a local lawyer. The fact that at least three moderately sized counties have officially adopted the plan, and the further fact that a committee of prominent lawyers recommended that the idea be officially sanctioned and encouraged by the Pennsylvania Bar Association, shows that the theory, at least, is given some credence in Pennsylvania. As opposed to these facts, however, the Philadelphia Bar Association tabled the suggestion of a quota this spring, and the Pennsylvania Bar Association rejected the suggestion of its committee.

Practically it means that the local court, after much inward thought and conjecture, determines that for the year 1933, for instance, no more than ten shall be admitted to the bar. This number may be the average number of admissions over a period of years, or it may be the average deaths for a period—whatever the basis, it is arbitrarily selected as the number to be admitted. Thereupon the local county board of law examiners determines, out of the number of applicants, which shall be the successful ten. It may be that this particular county board has already recommended fifteen as being worthy of admission to the bar of the Supreme Court. Nevertheless, only ten are permitted in that year to enter the county bar. The five who fail of selection are privileged to reapply for admission the following year. What will happen when, after a period of years, there are fifty applicants for admission, no one can tell. The experiment is still too young to worry about future years.

I do not consider the experiment, in any respect, noble. In the first place the bar is not overcrowded with good, first-class lawyers. There are not even enough second-class lawyers. There is an abundance of third and lowest class lawyers, but this is not the method which will restrict this class. I do not believe that every person is entitled to practice law. I do

believe that any person who complies with standards commensurate with the responsibility of a lawyer should be permitted to practice. The phrase—"There is plenty of room at the top"—is all too true of any bar, no matter what the state or locality may be. The probable effect of a quota will be to continue the proportion of few at the top and many at the bottom. When a board is requested to select ten out of fifteen without any restriction on the selection, the basis of the choice is all too likely to be whimsical, if not political. Furthermore, the whole idea of a quota carries with it the idea of a protective tariff for the local lawyers. When local lawyers need a protective tariff, it is probably because they are not able to stand on their own feet.

From my brief experience as Secretary of a State Board of Law Examiners, I am convinced that if those who are now urging a quota should spend even part of their efforts towards raising the standards for admission, either educationally or in character, the number of admissions would automatically decrease. Overcrowding will then take care of itself. A careful selection on the basis of education and character will result in a reduction in the number admitted. In addition, the bar would then become a semblance of that which we have been and are trying to create. The idea of a quota is still in its initial stages. It is interesting to note that the counties which have adopted the quota in Pennsylvania are those which border on the City of Philadelphia. A feeling of rural antagonism perhaps, as well as a refusal to recognize that they are becoming almost as urban as rural, may well be the cause of their eagerness to accept what I believe to be a hastily conceived scheme. Meanwhile we can but watch the practical application, and hope sincerely that it will accomplish even a part of what is intended.

The problems of a bar examiner are never ending. The daily batch of mail brings questions sometimes fundamental, sometimes routine, which must be answered. Often a secretary of a State Board must give a positive answer, when he knows that there is as yet no answer. Steadily the stream of men, and now women too, flows through the portals of a secretary's office. Stories of sacrifices by parents and by students, of long dreamed hopes of being a lawyer, of continual disappointments, become a matter of daily occurrence. They have their effect on those of us whose duty it is to encourage or discourage, to reward or to disappoint. We must as lawyers believe that the tradition of the bar should be upheld, and to accomplish this we must continue to believe ourselves better lawyers perhaps than we really are.

Pennsylvania Statistics

Results in Final Examinations July, 1928 to January, 1933 of First Examinees

	REGISTERED ON EXAMINATION			REGISTERED ON DEGREES		
Examination Held	Number Examined	Number Passed	Percent Passed	Number Examined	Number Passed	Percent Passed
July, 1928	68	41	60.29	285	194	68.07
December, 1928	14	5	35.71	41	17	41.46
July, 1929	45	23	51.11	320	201	62.81
December, 1929	19	8	42.10	37	21	56.75
July, 1930	36	15	41.66	334	221	66.16
December, 1930	32	18	56.25	72	27	37.50
July, 1931	47	28	59.57	364	220	60.43
December, 1931	17	10	58.82	79	32	40.50
July, 1932	50	31	62.00	347	224	64.55
January, 1933	11	1	9.10	67	16	23.88
Totals	339	180	53.09	1,946	1,173	60.27

Greece to Limit Lawyers

The following news item from Athens, appearing in The New York Times, will be interesting to bar examiners:

"Forcible reduction of the number of lawyers practicing in Greece is the object of legislation now being worked out by Minister of Justice Talliaudauros, for the Tsaldarist administration. Instead of the German method of choking off the stream of aspirants to the professional classes before they get into the universities, Greece will try to force its too abundant lawyers into special classes of practice, designated by the courts before which they are licensed to appear. Only a fixed number will be allowed to argue before each tribunal.

"Besides limitation of notarial work and the other more or less clerical bypractices of the law, the number of lawyers in the whole country will be limited. At present there are more than 7,000 lawyers in Greece, or about one to every 1,000 inhabitants, the highest percentage in the Balkans. Henceforward retirement from practice will be obligatory after an age is reached that the government, with some difficulty, is now attempting to fix. No limit is to be placed on the number of students of law, but young law graduates will have to wait for vacancies at the bar of their selected tribunal before they can begin to practice."

Missouri Court Asserts Its Power over Admissions and Disbarment

On October 16, 1933, the Supreme Court of Missouri, In the Matter of the Proceedings against Paul Richards for disbarment (63 S. W. 2d, 672), asserted the power of the judicial department over admission to practice and disbarment. The opinion which was delivered by Judge Frank E. Atwood is one of considerable importance. Only the following short excerpt from the opinion can be given here:

"It is not always easy to determine what objects are naturally within the range or orbit of a particular department of government, but it will scarcely be denied that a primary object essentially within the orbit of the judicial department is that courts properly function in the administration of justice, for which purpose they were created, and in the light of judicial history they cannot long continue to do this without power to admit and disbar attorneys who from time immemorial have in a peculiar sense been regarded as their officers. Since the object sought is not naturally within the orbit of the legislative department the power to accomplish it is in its exercise judicial and not legislative, although in the harmonious coordination of powers necessary to effectuate the aim and end of government it may be regulated by statutes to aid in the accomplishment of the object but not to frustrate or destroy it."

Nebraska Raises Standards

The Supreme Court of Nebraska has promulgated new rules, effective September 18, 1933, requiring candidates for admission to the bar to have a four-year high school education or its equivalent before beginning the study of law. Law office students are required to show forty weeks of study each year for three years, amounting to at least twenty hours of study per week. Registration is required at the beginning of law study and the Board is given authority to give intermediate examinations to all except students in approved schools.

Stem Winder Department

"Now, what of the ladies? When God made the Southern woman, He summoned his angel messengers and He commanded them to go through all the star-strewn vicissitudes of space and gather all there was of beauty, of brightness and sweetness, of enchantment and glamour, and when they returned and laid the golden harvest at His feet, He began in their wondering presence the work of fashioning the Southern girl. He wrought with the gold and gleam of the stars, with the changing colors of the rainbow's hues and the pallid silver of the moon. He wrought with the crimson that swooned in the rose's ruby heart, and the snow that gleams on the lily's petal, then glancing down deep into His own bosom He took of the love that gleamed there like pearls beneath the sun-kissed waves of a summer sea, and thrilling this love into the form He had fashioned, all heaven veiled its face, for, lo, He had wrought the Southern girl."—**Hon. R. M. Kelly of Vicksburg, before the Mississippi Bar Association, September 7, 1933.**

—*Mississippi Law Journal, XV, No. 1, p. 6.*

The Problem of Character Examination

Excerpts from a Round Table Held in Grand Rapids on August 29, 1933, in Connection With the Annual Meeting of The National Conference of Bar Examiners.

CHAIRMAN A. G. C. BIERER, JR., of Oklahoma:

The subject assigned this evening for the discussion of this group is Character Examination. While that is probably the most important thing that we have to determine about our applicants, it is, as we all know, the thing about which we know the least from a scientific standpoint. The very statement of that field rather assures us that we will not get any simple and final answer to the problem laid before us. We all know, from long experience in wrestling with the question, that unfortunately there seems to be no established way to diagnose the uttermost reaches of character of a particular applicant and know just what we may expect of him in the years to come.

The old historic method is, of course, familiar and is one which saves wear and tear on the board of examiners. The character committees get affidavits from one or two or three or some specified number of practitioners in his community and probably some outside lay affidavits as to his background, which cause us to believe that his career will be all sweetness and light and that we will never see him before the grievance committee.

By all odds, the thing that we would rather find out in our business of examining applicants for the bar is some way to know and measure, and accurately record just the particular responses of the individual to the economic pressure that he will have to meet in the years to come.

Some of our members who have given a world of thought to this matter tell us, perhaps a little too cynically, that character is directly a matter of response to the economic pressure that the individual has to undergo, that we may put the same individual in simple surroundings, where his needs are regularly filled, and that while he may never rise to fame or wealth or greatness, he will have a competency and his character will always be spotless; and we may put the same individual in a complex surrounding where the economic strife that he has to go through for a living presses particularly hard upon him, and his protective barriers will break down and we will have an undesirable character instead of a desirable character.

Some particular jurisdictions have, we think, gone farther than others in experimenting with this problem. They have given, somewhat at least, more scientific consideration to the problem of character examination than most of us have given. They have localized, in a large measure, the problem of examination of character of our applicants and sought to find out to the greatest possible degree what his own community knows about the particular applicant when he comes before their board. I suggest that any system finally developed to examine character must turn in large measure upon such close, intimate, home inspection of the individual. Even that kind of inspection so far has been rather undefined as to objectives, and the idea of good, moral character has been taken as a broad and sweeping term, indicating that on one side of the bright line we have the sheep and on the other side the goats.

We are just beginning, I think, to examine into those qualities which go to make up character in the prospective member of the bar. We are just beginning to look somewhat beyond the ordinary question of the probability as to whether he will lie or steal, and to see whether he has in his makeup those particular qualities of character which will probably in the years to come make him a good advocate and defender of his client's interest, instead of a bad one.

Among the states which have gone farthest I think, as generally recognized among bar examiners, in the matter of the development of a real examination localized and more thorough than the usual one, and which reaches closer to the scientific method than the old-style plan, is the State of Pennsylvania. (For a discussion of the Pennsylvania plan of character examination, see the following references: John B. Gest, "Character Investigation, A Discussion of the Pennsylvania System," The Bar Examiner, Vol. II, No. 2, p. 51; George F. Baer Appel, "The Pennsylvania System," The Bar Examiner, Vol. III, No. 1, p. 10.)

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MR. D. L. MORSE, of Minnesota: Sometimes we have a rather interesting consideration as to character. About a year ago we had a young fellow who had applied for admission. He gave this information in his questionnaire. When he was about seventeen years of age, his first year in college—it was a small college—one of the college buildings had burned. It was an old building and happened to be well insured, so the college didn't sustain any loss. This boy belonged to a fraternity that had a fraternity house, an old building which was insured. Some of the boys conceived the idea that if their fraternity house would burn down they could make something and build a nice new one. So some of the boys actually burned the thing and were convicted of arson. This particular

lad was sentenced to a reform school. After about six months he was pardoned.

When he applied for admission to the bar of Minnesota, he was about thirty-five years of age. He came from a very good family, a fine family, and we could find nothing derogatory to his character after that incident. Some of the members of the Board took the view that because of his youth it was really more of a thoughtless, boyish prank than any real defect in character. Some of the members of the Board thought it didn't look very well to admit a man to the bar who had been convicted of arson. We had quite a discussion on the matter. We finally recommended him for admission, and he was admitted.

JUDGE JAMES F. AILSHIE, of Idaho: You proceed on the same theory that we do, that a man has a right to reform.

MR. GEORGE F. BAER APPEL, of Pennsylvania: It is too bad we don't have a qualified admission. You wouldn't have to go through the laborious procedure of going through the Board of Censors, but you could withdraw the certificate if he showed any signs of burning buildings again.

JUDGE JULIAN SHARPNACK, of Indiana: I would like to have a general idea of what will disqualify a man under that system. How might those questions be answered? You said it would result in his being denied admission.

MR. MORSE: We don't try to follow any set rule. We consider each case on its own merits. As I say, unless the secretary has learned something that he thinks ought to come to the attention of the Board, the applicant's qualification as to character isn't considered by the Board as a whole at all. The case is considered from all its angles and we consider how it affects his qualifications as a lawyer, particularly character qualifications, and draw our conclusions and act on any particular case without trying to follow any particular rule.

MR. APPEL: It seems to me the question is: We want to know the character of the applicant. Where are you going to get the information? I don't put much reliance upon the answers of the applicant himself as determining what his character is, because he is certain to try not to give himself away, but you can get the candidate to give you certain information as to where you can go yourself and find out about him. But unless you make some effort to find out from other people, it seems to me useless to ask an applicant to answer any questions at all, because at every opportunity he will answer them the way he thinks they should be answered.

CHAIRMAN BIERER: It is quite obvious that the one who knows how to answer has a great advantage. If he is smart enough to know what

the answer ought to be, if his character is of that kind, undoubtedly he will give it.

MR. APPEL: Ask the applicant facts and then get your opinions from other people.

JUDGE SHARPNACK: Suppose you make your separate investigation and somebody tells you that he thinks this fellow is unfit, that he is dishonest. Maybe they say he has been convicted for something involving moral turpitude. What do you decide about that?

MR. APPEL: If he has been convicted of something that you feel is such that a lawyer should not be convicted of it, he should not be admitted. Stealing, for instance, would seem to be pretty obvious.

JUDGE SHARPNACK: Supposing the stealing was like the burning prank? For instance, we had one young fellow who stole some gasoline with another youngster.

JUDGE AILSHIE: It seems to me that if a man has been convicted of larceny, of course, that constitutes moral turpitude, and you wouldn't in that case want to admit him.

MR. APPEL: I know of one case where a girl was applying for admission and she had testified in some case as a notary public to the execution of a deed, as to whether the man was at the time competent and knew what he was doing. The decision of the jury I believe was that the man was competent, but we talked to the judge who heard the case and he told us that, in his opinion, this testimony of this woman was entirely unreliable, and on that basis the County Board refused to admit her.

JUDGE AILSHIE: Do you think they should have done so after the jury acquitted him and took her word?

MR. APPEL: I think so. I think very often the judge is in better position to know. Perhaps the jury might not have determined from that particular point. She may not have been the only witness. On the basis of the fact that he thought she was unreliable, the County Board turned her down.

Our rejections come mainly from cases of a bootlegger's son or a bankrupt's son who changes his father's books and goes out and testifies.

JUDGE AILSHIE: We have disbarred them after they are convicted for larceny or a similar offense, without any further ceremony. But as this gentleman back here says, you can find almost anyone has an enemy who may say he thinks he is a thief or a liar or a crook. But it has to be very concrete before we reject him.

MR. APPEL: There are, of course, investigators. When you are asking the sponsor for his opinion, at the same time you are appraising the sponsor and deciding how much his opinion is worth, just as you would any man whose opinion you asked on a subject.

On our citizen's questionnaire we have on the face: "This is sent by us directly to the citizen. It is not taken around by the candidate to his house."

JUDGE AILSHIE: Our Board is an organized bar and we have three commissioners who have the sole right to examine applicants for admission. We send around applications, practically as you read here, and also we have four references. But our applications are not made until after the man has studied law and equipped himself so he thinks he can take the examination. Then he makes application at least thirty days before the date of the meeting, or the examination.

MR. APPEL: It seems to me, no matter how poor a character a boy has, he ought to be told before he starts out to study law and spends money—not only his own but usually his parents'—to educate himself in law, that he should not go any further. I think it is a little unfair to let him come to the final point and then tell him, "You are not fit to be a member of the bar."

JUDGE AILSHIE: We have turned down but one case on that account in our experience, and that was some fellow who came from out of the state. As a general thing, in the rural and semi-rural districts I don't think young men go to law schools and spend their money and time and their parents' money unless they are of a pretty fair character.

MR. APPEL: That is not our experience and it is certainly not the experience in the urban districts.

JUDGE AILSHIE: Of course, you have your big cities.

MR. APPEL: Even in the middle-sized counties, it is not always so.

We have a statement on our application assuring the citizen that the information he gives will be kept confidential. If the applicant is rejected because of something the citizen says, he is merely told he has not come up to our standard. He is not told whether any particular man said anything against him or not.

JUDGE AILSHIE: Do you have difficulty in getting the questions answered by the references he gives?

MR. APPEL: No, we have no difficulty.

JUDGE AILSHIE: We have found people very good about answering questions. We seldom fail to get an answer.

MR. DEAN R. DICKEY, of California: Suppose you decide this man hasn't the necessary moral character, and the man thinks he has. Does he take it to the Supreme Court?

MR. APPEL: He can appeal to the Supreme Court, and he files his appeal and brief and sets forth anything he thinks of, puttng in every letter of recommendation he possibly can. Then we file a report, attaching a copy of the County Board's report, stating why in our judgment this man should not be admitted.

MR. DICKEY: Is there any tendency on the part of the Supreme Court to put the burden on you to show the lack of moral character, or does it put the burden on him to show his good moral character and overcome your opinion?

MR. APPEL: I think the tendency heretofore has been to require the Board to show some reason why the applicant did not have the character.

MR. DICKEY: I think we ought to distinguish between this type of governing board—and the New York Board is similar—and the type that is the creature of the legislature, as in California, where there is a decided tendency on the part of the Supreme Court to be severe with the examiners. There on moral character our bar examiners have constantly had until recently a difficult burden to overcome in proving lack of good moral character, and it was seldom that we were able to show it.

MR. APPEL: Don't you think, as a rule, that is a good idea?

MR. DICKEY: It is terribly difficult, and usually not called for. Our new rules regulating admission have corrected this to some extent.

MR. APPEL: It is hard, but you are preventing a boy from practicing law and interfering in a profession which he is usually keen to enter.

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CHAIRMAN BIERER: Now, gentlemen, this meeting is intended to be what it has been, a round table for free and open discussion of this matter.

I would suggest at this time a point that seems to be very definitely established in our examination of character, and that is that it is difficult to the point of impossibility to lay down any rule-of-thumb whereby we may say we have conducted an examination and definitely ascertained whether or not the applicant is of good moral character.

I make the humble suggestion that if there is a final answer to this question, we have found the clew at least to it in the point raised a while ago, that we examine our applicants at the wrong end of their preparation, that in fairness to the applicant he should have a preliminary assay at the time of beginning his law study.

In those states where registration is provided, as in Pennsylvania, it is possible to get a preliminary look at the individual before he goes into his law study. Obviously it is much easier then to give him some guide as to whether it is probable, on the showing he makes, that he can qualify for admission to the bar by going and getting the technical training necessary. Obviously a rejection at that time removes many very persuasive humanitarian objections to telling the applicant, "No, you cannot under any circumstances come up to the standard that we set for the lawyers we intend to admit."

That suggests far-reaching inquiries into the more scientific form of character analysis and also into the aptitude test, which to me is the most interesting of the comparatively new proposals in the field of bar examination.

Many of our established formal bar admission rules use the word "fitness" with the word "character". It is, of course, very difficult to find out just what we mean by fitness, but we all know we have seen applicants whom we felt clearly should not be encouraged to proceed with their law study and in all probability should not be admitted. We weren't quite ready to say, "That man should be rejected because he has bad moral character", because we didn't think we knew that, but we have been able to say that in our judgment he was plainly unfit.

It seems to me that character investigation must be tied up more with an investigation into fitness as we go along, and that we must, by experimenting with various plans and devices, conduct a rather searching inquiry into both character and fitness at the time of the registration of the law student.

It seems to me that on the experience which the states using the registration system have had and on the much larger potentialities of the system, we may say that the registration plan is a real aid to character investigation. That may be tied up with the preceptor system. It may be under any method which gives us a chance to observe the applicant for three years during his preparation, after finding what his background is, instead of for three days perhaps at the time of the bar examination. It seems to me that the states using these methods have proved that some separate character investigation is useful, and by separate I mean other than that which the boards of law examiners or bar examiners give.

MR. DICKEY: Our examiners do not become very much concerned about the moral character of student applicants. Unless an applicant has been convicted of felony or some serious crime, or the facts are clear-cut and serious, they do not pay very serious attention to the rumors and so forth in connection with the student applicants. Their theory is, he hasn't

developed a character yet, and it won't be known what his character is for some years to come. They are, however, very much interested in the applicant for admission from another state.

California has had about 200 applicants a year from other states, so we have quite a problem there. In the cases of such applicants we have very detailed forms of application for admission, in which questions more searching even than in Pennsylvania are asked. When anything adversely affecting the character of such an applicant is found out, it is the policy to require him to file a supplemental affidavit covering matters that may have come to our attention. In other words, the supplemental application can be made to bring out, through his own statement, any points that may have been brought to our attention. Should any of the answers be false that just about disposes of the applicant.

It seems to me we are overlooking something here in which we can help each other. There may not be any other state which has had a serious admission-on-motion problem. I know you haven't had it to the extent that California has.

When you in Philadelphia have an application from a San Francisco attorney who, through correspondence, you find is somewhat questionable, how do you go about building a case sufficient to reject him?

MR. APPEL: Fortunately, so far as admissions on motion are concerned, in the first place, the attorneys have to present certain credentials, and I have adopted the custom, when a member's application for admission on motion comes up, to write immediately to the state where he has been practicing for eight years, we will say, which is the length of time he has to practice before he is admitted, and to his state board of law examiners to give me whatever information they have.

MR. DICKEY: Yes, you write to me, and I reply to you, which is all I can do, to the effect that no complaints have been filed or no discipline has been administered against him.

MR. APPEL: Then he goes through the same procedure and has to be approved. He has to satisfy the board as to his moral character.

MR. DICKEY: How much trouble is it for him to get letters? To give you an illustration of what I have in mind, one man had a beautiful case. He had all the letters he needed. We finally just happened to write a letter to the district attorney in a county in Texas in which the man had sojourned. The reply was a telegraphic warrant for his arrest. They had been looking for him.

MR. A. W. RIGSBY, of Oklahoma: What you are getting at is this situation: when you inquire about an attorney from the secretary of the

state bar association, about all the reply you can expect is that he appears on the rolls as a member of good standing and there has been nothing against him. But that is just on the surface. You don't get any facts about it.

MR. DICKEY: No, you are not in position to give them, and I am not.

MR. APPEL: We always require that he obtain a certificate from one of the judges of the court of last resort in the state in which he last practiced.

MR. DICKEY: Unfortunately, such a certificate is not hard to obtain because, I presume, the judges are not in a position to know very much about the practitioner nor to deny his request for the certificate.

MR. APPEL: He must be a member in good and regular standing.

MR. RIGSBY: It is our experience that those certificates from judges are very obtainable so long as the judge likes you.

MR. APPEL: I shouldn't say that would be so in Southern Pennsylvania. I can easily see that in the case of the lower courts it might be exceedingly easy, but I don't feel the highest courts of the state are very free with the affidavits of character they give.

MR. RIGSBY: You must have an unusual Supreme Court.

MR. MILO N. FEIGHTNER, of Indiana: Is your Supreme Court elected or appointed?

MR. APPEL: They are elected for one, two and three years.

MR. DICKEY: How about Indiana, for example? I am in a position, as secretary, to pay a reasonable fee to a lawyer who will make an honest-to-goodness investigation in the county in Indiana, let us say, from which the applicant comes, as to his moral character, report of which can then be used as the basis for developing through the applicant's own supplemental questionnaire that he lacks good moral character, if he does. How could I go about it in Indiana to get that information or that kind of report, confidential or otherwise?

MR. FEIGHTNER: I should think you could correspond with the parties he named.

MR. DICKEY: They are pretty careful, you know, to name the right parties.

JUDGE SHARPNACK: If you will pardon me, I would suggest you write to the secretary of the board of examiners. He will in turn give

you the names of the members of the character committee in that county. You can go to the state board and those parties will make investigation.

MR. FEIGHTNER: You could write to Martindale directly, giving the place he comes from.

MR. DICKEY: It is easy to get a statement from a man, that in his opinion this or that occurred that should be looked into concerning the applicant, but he doesn't want to say more about it.

MR. RIGSBY: Might this not be a good suggestion, then, to take back to our respective states on this problem of admission on motion: There has been an endeavor to set up means for disseminating information to the various states on all the lawyers in our respective states who have become embroiled in disbarment proceedings. If we could impress upon the secretaries of the various state bars the necessity of providing our Conference with that information, we would have a source from which to obtain, in a very few days, the necessary information as to whether or not an attorney has ever been mixed up in anything undesirable in the state from which he comes.

MR. DICKEY: If anyone writes to me, I give them the information directly.

The matter I am concerned with is building a case that will stand in court. I can get opinions from individual members that probably his character isn't so good, but the man giving the information doesn't want anything said about it. I find out, in view of those letters, undoubtedly he shouldn't be admitted. I have to build a case against the man in the Supreme Court and am ready to pay a man to make an investigation back there. It takes a lawyer to do it. I suppose the secretary would cooperate. In San Francisco I could find a man to make that kind of investigation very easily. I suppose you could do the same in Oklahoma.

MR. ROBERT Z. HAWKINS, of Nevada: I might say we have had in Nevada a great deal of trouble with the attorneys coming in on motion from other states. We write to the secretary of the state bar association or the secretary of the board of bar examiners of the state from which the man comes, to the district attorney, to Mr. Shafroth, for anything he knows about the man, and then we pick five members of the American Bar Association in the city at random. If we don't get a reply from more than one man in a large city, we send out another set of letters and keep at it until we get some member of the American Bar Association who knows the man. If he knows something about him against his character, we go into it more fully.

MR. APPEL: Do you often get opinions against the man?

MR. HAWKINS: Yes, we often do. A great many people get into trouble and want to come to Nevada. I think the majority of the members of our board are also members of The State Bar of California. Yet as you just said, unless the man has been jacked up, we write you and you come back and we know nothing about the record. I wonder if it would be possible to get the various state boards to investigate, as fully as they do a new applicant, a man in their own state who has applied for admission to another state.

MR. DICKEY: There is nothing The National Conference can do, in my opinion, on the matter of admission of attorneys in other jurisdictions, more important than to set up machinery whereby California can get in touch with Indiana or Nevada or Pennsylvania or vice-versa and know where to go and how to get a real investigation of character made. We have a $100 applicant fee in these cases and the purpose of it is to make that kind of investigation. The time should soon come when an attorney will not be able to move to another jurisdiction as soon as his lack of good character becomes apparent.

JUDGE AILSHIE: What kind of requirement do you make in California with reference to the previous engaging in practice and as to residence?

MR. DICKEY: The requirements for admission on motion are these: A $100 fee and three months' residence. The applicant must file his registration, as we will call it, three months prior to the application, so we have the three-months period in which to investigate. He must have practiced four years out of the last six in the state from which he comes, and he has to take a written one-day examination, no matter who he is, called an attorneys' examination. It is an examination mainly on practice and procedure but also covering the principal features of California substantive law that are peculiar to California.

CHAIRMAN BIERER: Professor Tracy, how can the law schools enlighten us on the character investigation?

PROFESSOR JOHN E. TRACY, of Michigan: That has been discussed very much indeed. I would like to get the opinion of the bar examiners on this.

I want to say first, in regard to the Pennsylvania system, as far as we go it works very well. We have quite a large number of students from Pennsylvania who come to our law school. I have talked to them and they all understand the registration very well and have a preceptor and go home in the summer and keep in touch with him. They are mostly from the smaller places. We don't have many from Philadelphia.

I want to ask: Do the preceptors do their jobs in the big cities?

MR. APPEL: Not as well in the large cities as in the smaller ones, but they do it pretty well, surprisingly so considering they are very busy men.

PROF. TRACY: A year ago at a meeting of our faculty, we had the question come up as to what the bar expected of us when we gave a man a diploma—if they considered that a certificate of moral character.

We had a fellow from New York State about whom we heard a lot of rumors around the campus. He had gotten into debt with a lot of stores and had changed his residence several times. They couldn't locate him and came to the secretary of the law school to find him. He had borrowed a book from our library to send home to his father, and that was against the rules. He had to wire and get it back. There were half a dozen things of that kind, none of which was bad enough to hang a man on, but which made us fearful about turning him loose on clients. The question was: Was it our duty, after keeping him there three years—and he had done creditable work—on the last year, when he intended to graduate, to give him his diploma, or should we withhold his diploma entirely, in which case he could not take the New York bar examination, or should we simply report our suspicions to the board of examiners in New York?

We couldn't make up our minds what to do. We finally held up the diploma for six months. We hoped that would be a lesson to him. If anything else turns up, we will catch it before he is admitted. Personally, I felt we should have sent a letter stating just how we felt about the fellow to whom we were giving a diploma. I would like to know what your opinion is. What do you think the law school should do? As far as I can understand by examination, the schools as a rule do not feel that that is their responsibility.

CHAIRMAN BIERER: I think that feeling is true. Yet at the same time they could give more useful information to the examining authorities, the bodies in charge of the investigation, where the student applies for admission, than almost any other machinery we have. They watch him as he studies law and acquires his technical knowledge and have an opportunity at least to know something of his moral workings and processes that the ordinary observer, even in his home community, may not have. It seems to me the schools could be of great help to the examining authorities by simply giving them sufficient information of that character.

MR. APPEL: The first suggestion I would have would be to give a conditional degree. The second thought I had was that the things he did were not the sort to warrant your not giving him a degree. What you are really doing is passing the buck to the bar examiners, because if you gave him a degree and wrote to the bar examiners it would be up to them

Report of Pennsylvania Committee on Admissions to the Bar*

The special committee of the Pennsylvania Bar Association, appointed to consider amendments to the rules of the Supreme Court relating to admissions to the bar, has prepared a tentative report which was published in the Pennsylvania Bar Association Quarterly for January, "to invite criticisms and suggestions from the members of the Association before the committee makes up its final report for the annual meeting in June, 1934." The tentative report is as follows:

At the annual meeting of the Pennsylvania Bar Association in June, 1933, your Committee submitted a report containing two recommendations as follows:

> "1. That the period of the clerkship to be served by law students remain at six months but that the same be served continuously from a date commencing after the successful passing by the student of the final examination for admission to the Bar. Such service to be as required by the present rules 'daily service (vacations and ordinary interruptions excepted), in the preceptor's legal business and under his direction, on usual business days, during regular office hours, for at least six hours a day, during which hours the applicant shall not be occupied in any manner incompatible with the fair and *bona fide* service of his clerkship.'
>
> "2. That the Pennsylvania Bar Association approve the principle of a limitation of the number of applicants who may be admitted to the Bar each year, such limitation to be prescribed by the Common Pleas and Orphans' Courts in the several counties in accordance with the requirements of the county as viewed by such courts, and that such legal courts throughout the State be appraised of the adoption of such a resolution."

The first recommendation was adopted, with an amendment to the effect that the six months' clerkship, or service in the office of a practicing attorney, shall be served following the taking of the final examination, "so that even though the student does not pass that examination, he can begin his clerkship immediately upon having taken the examination."

* * *

The second recommendation, that the Association approve the principle of a limitation of the number of applicants who may be added to the Bar each year, was not adopted; but your Committee was continued with direction to make further recommendations. * * *

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*A considerable portion of the report is omitted because of lack of space.

During the course of the debate on the Committee's report, the view was pretty generally expressed that, whatever the remedy, it should be effective at the time of application for registration as a law student, so as to prevent those who do not possess the proper attributes from wasting three or four years in a fruitless effort to reach the Bar.

* * *

Though both of the above stated suggestions were intended as expedients to meet what it is to be hoped are temporary conditions, yet it appears that the prevailing sentiment of the Bar is against either placing a limitation upon the number who may be permitted to register as law students or who may be admitted to the Bar.

Nevertheless, both our Association and the Philadelphia Bar Association continued their respective Committees to make further recommendations on the subject; which indicates a prevalent conviction that something should be done to remedy present conditions. With an appreciation of this belief in mind, your Committee feels that the problem can be best met for the present by giving to the County Boards of Law Examiners greater scope in the exercise of their discretion in passing upon the character of those who seek to register as law students.

Rule 11 of the Supreme Court provides, *inter alia,* that the disapproval of an applicant by the County Board must be accompanied by a written statement setting forth "in some detail" the reasons for such disapproval. Rule 10 provides that no certificate of registration shall be issued by the State Board until it is satisfied that the applicant is of good moral character, and Rule 9 provides that an applicant whose character in the opinion of the State Board does not meet the standard required for registration may appeal from that decision to the Supreme Court. This last mentioned rule also provides for a written statement from the County Board to the State Board "setting forth in some detail the reasons for their disapproval," when the former refuses to approve a candidate for registration.

Reports to your Committee from the local Boards, particularly in the great centers of population, show that in many instances personal examination of applicants for registration as law students, and reports to the Boards from investigators, convince the examining members of the Boards that certain individuals, who desire registration, are not of proper character either for the study of the law or for admission to the ranks of our profession, yet in many such instances the examiners cannot put their finger on any particular act committed by the applicant himself which positively disqualifies him to such an extent that, if stated of record, the finding would sustain confirmation by a Board of Review (which neither sees nor examines the applicant) of the local Boards' disapproval.

The judges of the Courts of Common Pleas throughout the State very generally have placed on the local boards men of discrimination and high standing at the Bar; with this fact in view, it seems to your Committee that our Association should make the following recommendations to the Supreme Court: That so much of Rule 9 and of Rule 11 of the Supreme Court as provides that the return from the County Board to the State Board must set forth "in some detail the reasons for their disapproval" shall be changed to read "setting forth that the applicant does not possess the attributes of character required for registration as a law student." Further that, Rule 9 be amended by providing, at the end thereof, that "When such an 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."

Respectfully submitted,

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ROBERT T. MCCRACKEN,
ROBERT S. GAWTHROP,
WILLIAM S. DALZELL.

A Correction

On page 67 of the January issue of The Bar Examiner, in the round table discussion of "The Problem of Character Examination", there is an error in the statement reported to have been made by Mr. Appel of Pennsylvania as to the period for which members of the Supreme Court are elected. Mr. Appel stated that the term of office of the members of the Supreme Court was twenty-one years, and not one, two and three years, as reported by the stenographer taking the proceedings. We regret that this mistake in reporting was not discovered before publication.

Temple Law School Approved

At a meeting of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, held in Chicago on December 27, 1933, the Temple University School of Law in Philadelphia was approved except as to those students matriculating in the afternoon or evening school before January 1, 1934. This makes a total of 85 law schools on the Association's approved list.