15 By Evan Gutman CPA, JD (2002)

The following sections criticize numerous articles that appeared in the National Conference of Bar Examiners' (NCBE) magazine called the "The Bar Examiner," which started publication in 1931.

THE BAR EXAMINER

IDEALS and PROBLEMS for a NATIONAL CONFERENCE OF BAR EXAMINERS
By Philip Wickser, Secretary of the New York Board of Law Examiners and Chairman of the First Meeting of the NCBE - Bar Examiner, November, 1931,(4-17)

The first article in the first issue proves the point as good as any. It was designed to outline the "Present Aims and Objectives of Conference of Bar Examiners." Pennsylvania's system later abandoned by that State, was at this time characterized as "advanced as any other state." The Pennsylvania Character Committees were commended because they "put a great deal of time and attention on finding out about the young men who come before them." This article's discussion of "ethics" borders on the incredible. Essentially, it asserts that ethics consists of that which destroys individuality, in favor of a group thought mentality that allows the legal profession to thrive economically. The following is an excerpt :

> "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. . . . 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. . . . 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 alive 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."**

Keep in mind this is not just any article in one of the magazine's issues. It is the opening article of the first issue designed to delineate "Aims and Objectives" of the organization. An organization that still thrives today and is the cornerstone of the admissions process. The key predicates are "group thought" and an economic franchise secured from the public by making the public believe the functioning ideals were worth the price. This "group thought" concept is precisely the reason litigants can't get effective representation from attorneys they hire. The attorney's first obligation is to his "group," even at the expense of the client. The article closes with the following:

> "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 means envisioned to foster the economic interests of attorneys were rooted in Supply-Demand economics based on the NCBE's assertion that the number of lawyers had to be reduced. The concept was that if the number of lawyers is reduced, then those who succeed in becoming attorneys will enjoy a large market (Demand) and a small population of attorneys to fill that market (Supply). The result of high Demand and low Supply obviously being inordinately high legal fees.

Politically, the Bar could not assert the legal profession should be difficult to enter so that lawyers may charge high fees. Such an argument would fail miserably. What they needed to do was conceal their true intent with a politically appealing statement, that would ostensibly justify reducing the number of lawyers. What they came up with, was to justify denial of Bar admission on the disingenuous ground that the general public needed protection from individuals providing incompetent legal services. In this manner, the profession would give the appearance of looking out for the public interest and simultaneously reap the economic rewards. Their scheme is conceded by this author to be brilliant, albeit entirely diabolical. In furtherance of such goals, Wickser states :

> "We know, for instance, that the Bar, today, is overcrowded, and is becoming more so. Each year there is more jostling and less room. . . .
> . . .
> 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 product it judges, second, that it is serving the public but indifferently well by saddling upon it much of the very material from which was designed to afford protection. . . .
> . . .
> The problem of volume appears to be here to stay, for some years at least."

The NCBE was formed to curb the ability of a lawyer to function as an individual and to foster a community of attorneys who would function as a group, even at the expense of quality representation. That is why citizens today feel their attorney is not fighting for them, but instead providing improper "courtesies" to opposing counsel. That is why people have the feeling lawyers are part of a "Club," or "Good ol' boy" network. They are. It becomes a situation where the litigant properly perceives they are being opposed by the other party, opposing counsel, and then most inappropriately, their own attorney. Wickser addresses what he perceives as the "problem" of attorneys not functioning in accordance with group thought and stressing the need for such, when he states :

> "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."[19]

THE FUNCTION of BAR EXAMINERS,

By Stanley T. Wallbank, Member of Executive Committee of NCBE
Bar Examiner, December 1931, (27-42)

The unbridled power of the State Bar Examiner was characterized by the NCBE in the December, 1931 issue of the Bar Examiner as follows, which in itself may be considered an organizational goals statement. Wallbank writes :

> "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 wield powers even more far-reaching, for he may to some extent determine the destiny of the nation. . . . 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."**

Wallbank was concerned with trimming the number of attorneys available to serve the public. He begins by asking the question :

> "What are the proper legal training and satisfactory moral qualifications?"

His next paragraph lays the groundwork for drawing a nexus between utilizing "proper legal training and satisfactory moral qualifications" to trim the supply of lawyers. He asserts the Bar is overcrowded stating :

> "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%."

He then supplies statistics to demonstrate the number of attorneys has increased substantially. His goals are twofold. He wants to strategically utilize the admissions process to reduce the number of attorneys (Supply) which results in increasing profits for the remaining attorneys. In addition, he wants to utilize the process to help determine the "destiny of the nation." Successful accomplishment of his goals would ensure a small number of attorneys controlling the nation and profiting from it. The Bar admissions process would serve the purpose of gleaning out attorneys who will not succumb to the "group thought." The asserted need to glean out such attorneys was predicated on the obvious fact that they represent an economic threat to the profession. The sales pitch to win the general public's support is to "protect" them from unscrupulous attorneys. Wallbank then cleverly stresses the importance of proper standards for admission to the legal profession to further the public interest. He correctly recognizes the critical importance of the admissions process in allowing the legal profession to gain an advantage over others when he states:

> **"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 . . . .**
>
> If New York . . . 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. . . . 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. . . .A professional consciousness must be developed. **Wise publicity will help**."

Wallbank then takes the Bar's domination scheme further. His goal was for the admissions process to work in conjunction with the legal education process. The concept was not new, but was definitely gaining steam at this time. The basic theory rests on the premise that if you control the law schools, you ultimately control the students who will be applying for admission. He states :

> "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 considerations."

Wallbank approves wholeheartedly of the discriminatory Pennsylvania plan that became the model for the NCBE at this time, stating:

> "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 . . . ."[20]

THE PENNSYLVANIA CHARACTER and FITNESS REVIEW

When I applied to the Pennsylvania Bar in 1995, I had absolutely no idea that I was applying to the State Bar which was probably the most significant contributor to the NCBE's political rise. The application I was required to file asked fewer character review questions than virtually any other Bar in the nation. This I know because I requested applications from every single State Bar. The leniency of the Pennsylvania character application was the specific reason I selected Pennsylvania. I had to provide basic name and address information. They asked for my principal addresses during the last ten years. They asked whether I was addicted to narcotics, liquors or other substances. They asked whether I was ever confronted by an employer regarding truthfulness, inability to work with others, the manner in which I handled money, competence, or my moral standards. That question annoyed me because it was so vague, overbroad and ambiguous. It essentially went right to back to the notion from the 1930s of determining whether an individual is "unworthy." It was one of the few inquiries on the application that was wholly subjective in nature and interpretation.

They asked whether I was ever expelled or suspended from school and whether I ever altered or falsified any official document referring to professional qualifications. They asked whether I was currently the subject of any investigation of any law enforcement agency, and whether I was ever arrested, or prosecuted for any crime. Inquiry was made as to whether I ever filed a petition for bankruptcy and information pertaining to debts that were in arrears. They also asked whether I ever applied for a permit or license which required proof of good character, was ever charged with commingling or misusing funds, and they required a list of my employers for the prior seven years. The questions included inquiries pertaining to whether charges of professional misconduct were ever filed against me, whether I had ever resigned as a member of a Bar, or been disbarred.

The foregoing probably sounds extremely comprehensive to most readers. The fact is however, Pennsylvania had the most lenient inquiry of any Bar. They didn't require me to provide numerous written references or specify that such references had to be from attorneys. They didn't inquire into whether I had ever received traffic tickets, or request information about civil litigation, and they limited inquiry regarding prior employers to the last seven years instead of since I was 21 which is the standard other Bars use. Shortly after being admitted, I applied to the District of Columbia Bar. The DC Bar required me to complete an NCBE character questionnaire which was much more comprehensive in scope than the Pennsylvania application. The process of completing the DC application made me resent the application process. I felt they were too nosy, asking many highly personal, improper and unconstitutional questions. The fact that I now confirm I resent having had to fill out the NCBE questionnaire, notwithstanding that my application was approved, I believe supports the sincerity of my viewpoints. The NCBE application I filed in 1996 that resulted in my admission to the DC Bar, in addition to a wide host of cumbersome immaterial information, required me to provide written references from fourteen individuals. Three references had to be provided from each locality that I had lived in during the last 15 years, three references had to be from licensed attorneys, and two references had to be from a client, law professor or attorney.

I had to provide addresses for residences during the last ten years and information pertaining to debts, civil litigation and comprehensive questionnaires on employment. If I had been 51 years of age when filing the DC application I would have had to provide employment information for the last 30 years, if I had been 61 I would have needed the information for the last 40 years. If I had lived in 10 different localities, then I would have had to provide 30 references, since three were required for each. The term "locality" was not even defined. Did they mean a city, state, or region of the country? Pennsylvania did not in 1995 use the NCBE character questionnaire. The application I filed with Pennsylvania also did not faintly resemble the one they used in the early 1930s The Pennsylvania application from the 1930s is however characteristic of that used by other Bars today.

The Pennsylvania Plan in the 1930s encompassed four questionnaires. One was the Applicant's questionnaire to register as a law student, one was a Citizen's Questionnaire to be completed by three "reputable citizens," one was a sponsor's questionnaire to be completed by the Bar member sponsoring the Applicant, and one was a questionnaire to be completed by the examining board that interviewed the Applicant. I have decided to present some of the questions used by Pennsylvania in the 1930s, which I obtained from an early Bar Examiner issue. You will no doubt find them to be incredible. These questions were applauded as the model for all states to follow in the early years of the NCBE's inception. I believe they conclusively demonstrate what the NCBE is all about and confirm the animosity of the legal profession against immigrants and minorities.

QUESTIONS FROM PENNSYLVANIA QUESTIONNAIRE FOR REGISTRATION OF LAW STUDENTS (Numbered to correspond with the 1932 questionnaire)

2. State **names and residences of parents, and their occupations** during the past five years. **Are your parents native or foreign born?**

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.

10. Do you wish to adopt the legal profession for a life work?

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.[21]

QUESTIONS FROM PENNSYLVANIA CITIZEN'S QUESTIONNAIRE TO BE ANSWERED BY THREE REPUTABLE CITIZENS (Numbered to correspond with the 1932 questionnaire)

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?

7. What are the **reputations of his intimate associates?**

9. Do you believe he has a deep-seated sense of the difference between right and wrong?

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?[22]

QUESTIONS FROM PENNSYLVANIA SPONSOR'S OR PRECEPTOR'S QUESTIONNAIRE (Numbered to correspond with the 1932 questionnaire)

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?

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

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

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?

16. **Are the applicant's parents native or foreign born?**

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.

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

27. **What is the reputation of his intimate associates?** [23]

QUESTIONS FROM PENNSYLVANIA LOCAL EXAMINING BOARD'S QUESTIONNAIRE (Numbered to correspond with the 1932 questionnaire)

This questionnaire included questions similar to those listed on the previous pages. In addition, it contained the following two questions which I thought were most interesting. The questions are directed towards the attorney members of the Local Examining Board who review the application for admission.

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? [24]

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. Bar Examiner, January, 1932 (P.63-82)

The NCBE conducted a round table discussion on character review which was written up in the January, 1932 issue of The Bar Examiner. Mr. Morris Duane, Bar Examiner for the Pennsylvania Board of Law Examiners expressed the Bar's position as follows regarding the character review :

> **"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.** . . . 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 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. . . . If a lawyer knows that that young man is not worthy it is a great opportunity to tell him so in some tactful way".

Later Duane states :

> "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. . . . **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."**

Paul Shipman Andrews, Dean of the University of Syracuse Law School stated :

> "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."**

His reference to "conditions in the larger cities" exemplified the Bar's prejudicial mindset. They wanted to curb the ability of foreign born immigrants to gain admission to the Bar. The Pennsylvania Plan praised by other Bars at this time was predicated on controlling the admissions process by imposing character standards at the law school level. Duane summarized it as follows:

"Now to look at the plan as set forth . . . 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 . . . 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. . . .

(3) A six months' clerkship . . . ."

The Pennsylvania Plan ultimately collapsed years later. Even today however, it is irrationally emulated by other State Bars. Law Student Registration promoted initially by Pennsylvania has been bouncing in and out of State Bars for decades. As stated previously, when I was a third year law student in 1994, the University of Oregon Law School indicated that for classes subsequent to my own, registration would be required. Whether they actually implemented the program or not, I do not know. The two key prongs of the Pennsylvania Plan were dual character investigations, and the Preceptorship. Character would be investigated when you entered law school, and also when you applied to the Bar. The Preceptor would keep an eye on you during law school. The Plan facilitated "group thought" goals and allowed the profession to exert control over the individual by leveraging their ability to obtain a law license. It accomplished such a detestable goal, by controlling the prospective attorney from the first day they entered law school. Duane outlines the manner in which the Pennsylvania Plan operates further. He states:

'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. . . .
. . .
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. . . .**

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. . . .
. . .
In addition to these questionnaires the county board has an elaborate system of personal interviews. . . .Interesting questions are asked.
. . .
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 percent of the cases." [25]

George H. Smith of Utah, and former Chairman of the ABA Section of Legal Education and Admissions to the Bar makes a prejudicial contribution to the discussion as follows:

> **"Sometimes you have wonderful character evidence displayed even though the applicant is not well-educated or his parents were born in Russia."**

Smith's statement personifies quite well what the ABA Section on Admissions to the Bar is all about.

THE REAL DISTINCTION BETWEEN PART-TIME and FULL-TIME LAW SCHOOLS

By Alred Z. Reed, Of the Carnegie Foundation for the Advancement of Teaching
Bar Examiner, March 1932, (P.123-132)

Eliminate the ability of economically disadvantaged individuals to attend law school and you ensure a profession predicated on the furtherance of NCBE economic goals. A privileged profession. Eliminate the law schools typically attended by economically disadvantaged individuals and you eliminate their ability to attend law school. How do you eliminate those law schools though? The answer is simple. Deny their graduates the ability to obtain a law license. Obviously, the NCBE could not simply assert that law schools which cater to economically disadvantaged individuals should be eliminated for the purpose of excluding their graduates from the legal profession. That would look bad to the public. It would not fall into the category of "wise publicity." The NCBE needed a statement of purpose that sounded appealing to the public, and simultaneously furthered their anticompetitive goals.

Typically, economically disadvantaged individuals attend law school on a part-time basis. This is because they don't have enough money to stop working and go to law school full-time. The ABA, NCBE and the legal profession as a whole, therefore wanted to eliminate the part-time law schools that allowed attendance of law classes at night. Reed's article comments on an opinion of the New York Court of Appeals. In the case, *"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,"* 257 N.Y. 211 (1931), the Court denied a Bar Petition to amend the rules. Specifically, the amended rule if adopted would have required more classroom hours for students attending part-time law schools (1024 hours over four years), compared to those attending full-time (960 hours over three years). The Court's decision was for the most part logically sound. They properly recognized the discriminatory nature of the proposed amendment and rejected it. The opinion however, included a disturbing statement that ultimately contributed to adoption of the discriminatory plan years later. The New York Court of Appeals left the door open when it stated:

> "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."**

The foregoing statement was made notwithstanding that the Court expressly stated in its opinion :

> "A definition based upon a discrimination between evening courses and day courses is unjust to evening students. . . ." [26]

Years later, the ABA's Section on Legal Education and Bar Admissions succeeded in distinguishing between part-time and full-time law schools. They succeeded in furthering the legal profession's goal to promote discriminatory treatment. The rule still exists today.

THE BAR EXAMINER, April, 1932

The April issue included an article titled *"A National Board of Law Examiners"* by Will Shafroth.[27] At this time, although the NCBE's star was on the rise, State Bar admissions were regulated without uniformity amongst the States. This article explored the possibility of a National Board. Shafroth discussed the National Board of Medical Examiners (NBME) and presented it as a model to be emulated by the legal profession. The NBME was organized in 1915 and by 1932 its' certificate was recognized by 41 states as entitling the holder to admission to practice in those states. Shafroth provided information regarding the admissions process in several states in 1932. In Arizona, Arkansas, Florida, Georgia, Indiana, Nevada and Virginia there was no requirement to attend law school. Nor was there a requirement in those states of attending college, or even high school, according to Shafroth's article. In Colorado, Illinois, Kansas, Michigan, Minnesota, New York, Ohio and West Virginia two years of college education were required before entering law school.

The April issue in its section, *"News from the Boards"* disclosed that the Texas Board of Bar Examiners had submitted a rule to its State Supreme Court requiring a high school education, and providing for registration of law students.[28] That would result in the Applicant being subjected to two character assessments. One upon entering law school and the second, upon applying to the Bar.

In the section titled, *"A Layman's Comment on the Rules for Admission in California"* the Bar Examiner disclosed that the California legislature had given power to the State Bar to require a high school education for admission.[29] Chester Rowell, a newspaper writer, cited in the article, wrote as follows :

> "From now on, in California, the law may gradually become a learned profession. . . .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."**

Contrary to what most Americans believe, becoming a member of the legal profession has only required inordinate requirements within the last several decades. Even in the early 1930s, it was common to become a lawyer without any college education prior to attending law school. Today, the route is typically high school, four years of college, and then three years of law school. Yet, citizens today are no happier with the quality, zealousness or competence of attorneys, then in the 1930s. This is notwithstanding the plethora of restrictions placed in front of the potential attorney as a blockade. More education required than ever. Irrational and immoral character standards designed to exclude everyone except those willing to accede to and support State Bar economic interests. And yet, the attorneys overall, are as crappy as ever. The legal profession today is in lower public repute than ever, although admittedly it has historically never been particularly well regarded or respected. Yet, State Supreme Courts continue to write opinions referring to it as an "honored profession." The Bars lack of regard for historical facts is accompanied by their lack of regard for the public's intellect. When they refer to the legal profession as "learned" or "honored" they insult the intelligence of the public, since no one believes them. The Judiciary "lacks candor" when it makes such statements. It misleads and fails to disclose material facts in a truthful manner.

The April, 1932 issue also contained a section titled, *"French Law Students Protest Against Attempt to Make Admission to Bar Easier."* The NCBE in many issues of the Bar Examiner during the 1930s would provide commentary on admission standards in other countries, when such fulfilled their "wise publicity" objective. Essentially, their purpose was to present examples of restrictive admissions in other countries, or protests against liberalization of admissions, to support their goal of exclusionary admission in the United States. The section on French law students read as follows:

"Ten thousand law students of the Sorbonne and fifteen French provincial universities went on strike . . . as a protest against a recent bill passed . . . making the baccalaureate degree no longer a qualification for taking the examinations for admission to the bar in France. . . . their spokesman stated that if future lawyers are exempted from the baccaulaureate, the profession would be congested with ignoramuses who might elbow out more worthy members. . . .
. . .
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. . . ." [30]

THE BAR EXAMINER, JUNE 1932

An editorial in this issue presented a particularly unique viewpoint. It was a plea to law firms to provide jobs to graduating law students. When I read the beginning of this article, I thought it sounded great. Then the real goal became apparent. The anonymous writer described the reason law firms should help graduating students as follows :

"Moreover, their attitude toward the profession . . . will be shaped largely by their 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 . . . the practicing lawyers must give these neophytes a helping hand. . . .

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 . . . ."[31]

The proposed concept was as follows. Law student graduates would become protective of the profession and support a restrictive admissions process, if the profession would help them out in the beginning. The new attorneys are referred to as "their young." One big, happy, State Bar family. In a Section titled, "The New York Conference on Legal Education," there appears an interesting point of view from Dean Young B. Smith of the Columbia Law School. The section states :

"Dean Young B. Smith of the Columbia Law School appealed for some plan for the limitation of admission to the law schools of New York State. He made the point that no real progress could be made in keeping out of the bar **those who were inherently unfit** unless some plan of limitation of admission to the law schools was worked out. . . ." [32]

What did he mean by the phrase, "inherently unfit?" The phrase suggests that an individual may be "unfit" no matter what they do in life, since the condition is "inherent." Such being the case, it would seem that Smith was referring to the "inherent" and immutable characteristics of the individual. Their economic position in life. Their race, creed, color, religion, etc.. Another example of the prejudicial notions that infest the Bar and the NCBE. These wrongful notions function as determinative factors in character committee assessments of Bar Applicants. The character standards then become "dangerous instruments," used by the State Bars in an arbitrary and discriminative manner.

BAR EXAMINATIONS and the INTEGRATED BAR,

By Leon Green, Dean of Northwestern University Law School
Bar Examiner, June, 1932 (p.213-222)

Green's article begins as follows:

> " 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. . . ."**

The question he then poses is whether an integrated bar could offer help. His focus is on inordinately increasing the power, scope and influence of the bar organization generally, and the admissions board specifically. He states:

> "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. . . .
>
> Thus, the bar examination board . . . should be recognized as an administrative agency of government drawing its power and support from court, legislative and profession at large."

Green then irrationally suggests the Bar admissions board should function independently of the three branches of government stating:

> "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. . . .
>
> 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 . . . ."

Green's concept of a junior bar was designed to foster control over the attorney, and promote "group thought" notions. It would work as follows. Law school registration would control the prospective attorney from the day he enters law school. The Preceptor component of the Pennsylvania Plan would allow a close watch to be kept on the individual to ensure conformity with the Bar's irrational conception of "moral character." The Junior Bar concept would then keep the leverage in place even after admission was obtained. This has always been the legal profession's goal. Require the individual to constantly be striving for full and complete acceptance at each level. Accomplishing each goal mandates acceptance of conformity and the subjugation of any individualistic ideas that the attorney may have, to the Bar's economic interests and "group thought" goals. Like most of the NCBE's supporters, Green uses the prejudicial notion of "worthy" individuals to forward his anticompetitive goals. He states:

> "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."

He then proposes the elimination of part-time law schools. Those schools were typically institutions catering to economically disadvantaged people. He writes:

> "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. . . . **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." [33]

IS ADMISSION TO THE BAR A JUDICIAL OR A LEGISLATIVE FUNCTION ?

Bar Examiner, June, 1932 (p.222-226)

For the last several decades, Courts have falsely asserted in a variety of opinions that the power to admit attorneys to practice rests with the Judiciary irrefutably. They are not "candid." This anonymous, unauthored article included in the Bar Examiner begins as follows:

> "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 . . . ." [34]

The documented historical fact is that it really wasn't until the 1930s, that the Judicial power to admit attorneys became firmly and perhaps conclusively entrenched in the Judiciary, rather than the Legislature. In fact, it was the propensity of Legislatures to enact statutes in earlier years that claimed the licensing power which was the chief catalyst for formation of the ABA in the 1870s. Between the 1870s and the 1920s, there was extensive litigation on the issue. The Judiciary ultimately prevailed. This is not surprising, since the Judiciary itself was rendering the decisions in those cases. This article quotes the Boston Bar Association's publication, "The Bar Bulletin" as follows :

> "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. 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 . . . 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 legislative function in Massachusetts seems to be left open**, and, it is believed, has never been raised since 1915 . . . .
>
> 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." [35]

It is clear from the foregoing, the issue of whether admitting attorneys to practice is a legislative or judicial function was "left open" in Massachusetts as late as 1932. Courts today that assert the power has always rested with the Judiciary engage in a false presentation of historical facts. Their bold, self-serving and easily disproven assertions do not reconcile with history. The article further states:

> **"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."**

As late as 1906, the issue was squarely decided against the Judiciary, and two major states New York and California decided the issue against the Judiciary in 1860 and 1864 respectively. Deciding the issue in favor of the Judiciary were Illinois in 1899, New Jersey in 1904, Wisconsin in 1875, Pennsylvania in 1911 and South Dakota in 1909. The Pennsylvania case, *Hoopers v. Bradshaw*, 231 Pa. 485 (1911) is quoted in part, in this Bar Examiner article as follows:

> "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. . . ." [36]

Was the Court in *Hoopers* being entirely candid? In view of the extensive litigation on the issue, I think it's fair to say that the phrase "This has never been doubted or questioned since" was misleading. The Court presumably was referring only to the fact that the issue had not been doubted in Pennsylvania, since that state's last litigation on the issue was "a century ago." Arizona addressed the issue in the case, *in re Bailey*, 30 Ari. 407 (1929). The Court stated:

> "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. . . ."** [37]

The theory adopted by Arizona in 1929 was previously adopted by Pennsylvania in 1928, and Wisconsin in 1932. It is the standard applied in most states today. The concept relies on the theory that the power to admit rests with the Judiciary, but Legislatures may enact minimum standards, so long as they do not conflict with standards set by the Judiciary. The practical result is that Legislative standards are nullified since they are below the Judicial standards for admission. The Legislative admission standards currently serve absolutely no function, since if they conflict with a Judicial standard, the Judicial rather than the Legislative standard applies. The Bar Examiner quotes the 1932 Wisconsin case, *State v. Cannon*, 240 N.W. 441 as follows:

> "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."** [38]

The Court also stated:

> "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 law. They are exceedingly numerous. . . . **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. . . ." [39]

This article confirms that the issue of whether the power to admit attorneys rests with the Judiciary or the Legislature was an extremely heated and litigated issue during the late 1800s and early 1900s. In many cases, it was established to be a Legislative function although the victories were short-lived, once the ABA mobilized. The main point is that any State Supreme Court today that asserts the power has been historically unchallenged, simply doesn't know what they're talking about, or alternatively is intentionally trying to deceive the public.

RESTRICTIONS ON REEXAMINATIONS,

By Bessie L. Adams, Of the Carnegie Foundation for the Advancement of Technology
Bar Examiner, August, 1932 (p.267-272)

This Bar Examiner article explores the concept of diminishing the number of attorneys available to serve the public (the Supply side of the economic Supply-Demand relationship that drives pricing), by restricting the number of times an individual who has failed the Bar exam may sit for it again. I am of the belief that a basic American ideal is "if at first you don't succeed, try, try again." Historically, I believe in this nation we love the concept of an individual who never quits, and we applaud them once success is achieved. The State Bars apparently don't subscribe to this theory. Their notion is apparently, "if after the very first few tries you don't succeed, then we don't want you to be an attorney because you are not worthy." The article states as follows:

> "In 20 states . . . there is no restriction upon the privilege of reexamination. . . .
> . . .
> 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."** [40]

The idea being conveyed is that giving partial credit is an atrocious policy. In fact however, it is the State Bar's failure to give partial credit that is atrocious. Allowing partial credit for passing sections of the exam is an excellent concept. Partial credit is given on the Uniform CPA Examination and there is no doubt that attorneys could learn a lot from Certified Public Accountants. Although, I personally passed all four parts of the CPA exam in one sitting, most examinees do not. Typically, most states give partial credit on the CPA exam for parts passed. The Bar exam itself should also be tougher, and totally objective in order to avoid grading based on subjective opinions of the grader. Providing partial credit would allow Applicants to study specific sections intensively, without fear they were giving up studying in other areas. Those who are exceptional would pass all sections in one sitting. Typically however, passage would require two or more examinations. There obviously should be no limit on the number of times an examinee may sit.

Restrictions on reexamination existed in 15 states in 1932. The restrictions generally consisted of a waiting period to be spent in further study. North Dakota limited reexaminations to four times. Pennsylvania limited the number of times an individual could sit for the exam to three. The concept of a waiting period embodies State Bar irrationality. The longer the Applicant waits, the higher is the likelihood they will forget information learned in law school. The August, 1932 issue in a short section titled, "Kansas Goes on Three-Year Pre-Legal Basis" stated:

> "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 . . . ."** [41]

Today, most Bars require a four year college education. Yet in 1932, Kansas was the only State in the entire nation with a rule requiring three years, and that rule would not be effective until 1936.

BAR EXAMINER, SEPTEMBER, 1932

The September, 1932 issue in a small section titled "With a Hey Nonny Nonny and a Hot Cha Cha!" read as follows:

> "We learn from the public prints that Rudy Valle has enrolled as a student at the Suffolk Law School in Boston, with the intention of being admitted to the bar. . . .This notice is published to give all practicing members of the profession ample time to **get a firm grip on their feminine clients."** [42]

The phrase "give all practicing members . . . time to get a firm grip on their feminine clients" is interesting to say the least.

BAR EXAMINER, OCTOBER, 1932

The October, 1932 issue revealed significant information about how the NCBE was being funded during its initial years. In a section titled, "Report of the Executive Committee of the National Conference of Bar Examiners to the Second Annual Meeting" the following was disclosed:

> "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 years, $ 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."

The Carnegie grant was the main funding source of the NCBE during its' early years. The ABA Section on Legal Education and Admissions contributed $ 2500 on top of the Carnegie grant. By the end of its first fiscal year however, only 9 States had contributed to the NCBE. California led the way with a $ 500 contribution, and Oklahoma second with a $ 150.01 contribution. Connecticut contributed $ 100.00. The remaining six contributing states contributed $ 50.00 or less. The NCBE clearly had a financial problem. When the Carnegie grant ran out, how would they continue funding the organization? The Report included the following on this issue:

> "The diminishing grant given to 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. . . . 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."[43]

The operative phrase is the one that reads, "if our organization was of real value to the profession." Note the term "value" is construed in terms of the profession, not the public. The NCBE was a self-serving organization from day one. The total Receipts on the NCBE's Report for the first year were $ 8,571.89. The highest expenditure was for publishing the "Bar Examiner" at a cost of $ 1947.30. The next highest expenses were Salaries of NCBE members of $ 1426.63, Transportation costs of $ 1400.25, and Meeting expenses for the Executive Committee of $ 796.44. All remaining expense categories were less than $ 300.00 each. The Bar Examiner Section titled, "Progress in Adoption of Bar Standards," in the same issue, read as follows:

> "On September 1, 1921, the lawyers of the United States, acting through the American Bar Association . . . received and adopted the report of a distinguished committee of which Elihu Root . . . was Chairman, advocating certain standards of admission to the bar. . . . 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.
>
> . . . At the present time there are nineteen commonwealths . . . where either presently or prospectively two years of college education or their equivalent are required. . . . 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."[44]

A sad letter demonstrating the insensitivity of the NCBE is included in a Section titled, "An Interesting Correspondence." A prospective Bar Applicant's uncle wrote a letter to the funding agency of the NCBE, the Carnegie Foundation, and received a disturbing reply. The correspondence is as follows:

"Mr. Alfred Z. Reed
Staff Member of the Carnegie Foundation
. . .

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 comes from Maryland and thinks he can take this one or two years of 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 NewYork. 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 will, therefore, appreciate it very much if you will give me some information and advice about it."

Very truly yours," [45]

Alfred Reed wrote back providing the following irrational advice:

"Dear _____

> "Replying to your enquiry . . . 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 :
> . . .
> "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. . . ."
>
> "If, none the less, he prefers to try to beat the system, by the method 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**. . . . 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."
>
> "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 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 powe**r in time to make short shift of your nephew's ambitions."
> . . .
>
> Very sincerely yours,
>
> Alfred A. Reed" [46]

Reed's letter is incredible in my view. It was published with approval by the NCBE. You have in this situation a 24 year old man trying his best to move forward in life. He is willing to work five years in accordance with published State Bar rules to gain admission. Even though his plan is in accordance with published rules, Reed characterizes his plans as "so devious a route" and an attempt to "beat the system." Reed, apparently with the blessing of the NCBE goes so far as to threaten this potential Applicant, who at the time had no legal training whatsoever. Reed asserts that "bar examiners are quite capable of changing the rules of the game on short notice." He classifies potential admission of this individual as a "backdoor" admission, even though it would be in accordance with existing rules. The most atrocious sentence in his letter is the one that reads:

> "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 whom, for any reason, they disapprove."

Consider the last sentence. Is it sensible or fair to allow the State Bars to have "considerable opportunity to postpone the admission" of an Applicant "for any reason?" Particularly, if the Bar is "technically bound to admit?" In my view if they are technically bound to admit, they lack good moral character by postponing admission "for any reason, they disapprove."

LIGHTS AND SHADOWS IN QUALIFICATIONS FOR THE BAR,

By Dean Albert J. Harno, Address delivered at second annual meeting of the NCBE, October 10, 1932; President of the Association of American Law Schools

Effective utilization of the argument that the legal profession was overcrowded, in order to facilitate the exclusion of qualified individuals from the profession was exemplified in this article. Harno begins as follows:

> "When I was asked to speak before this Conference I readily consented. . . .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."

Harno then addresses "overcrowding":

> "Is the bar over-crowded ? . . . If it should be found that it is, what is the significance of the situation ? With this established, would it follow that steps should be taken to the end that the yearly admissions be decreased ? . . . 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?"

The foregoing is a significant passage. Harno is searching to find grounds to "justify taking steps to decrease its members." He recognizes that decreasing the Supply of attorneys, for the purpose of increasing legal fees is not a saleable concept to the public. It would not be "wise publicity." His true goal is clear. But, it is the justification to be sold to the public that he is looking for. He wants to stem the tide of attorneys at the source, which is the law schools. He states:

> "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.
> . . .
> 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."

Barriers. "The barriers must be located at a more strategic place." Harno's message, printed with the approval of the NCBE is clear. He wants to block admissions at their source. Later, his irrational notions are further revealed by his usage of the phrase "anti-social members." The NCBE's "group thought" mentality is the cornerstone strategy He writes:

> "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 its ranks unprofessional and **anti-social members** --- the tricksters and the shysters.
> . . .

> 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."** [47]

The second paragraph above is frighteningly incredible. As a preliminary matter, Harno has played the role of a "trickster" himself. He refers to the courts and legislatures as "those agencies." By doing so, he diminishes their stature. Courts and legislatures are not agencies. They are branches of government. What Harno has done is slyly place the branches of government on an even keel with the Bar, which itself is nothing more than a mere agency. He then raises the Bar's prominence above the branches of government by stating, "we are seeking to improve other agencies in order to improve the bar." The "other agencies" he refers to are the Courts and the Legislatures. Their purpose in his irrational view was to "improve the bar." He envisions that the branches of government function for the purpose of improving the Bar. The end result is then that the branches of government play a role of subservience to the State Bar which is elevated to a heightened status.

THE OPPORTUNITIES OF A BOARD OF BAR EXAMINERS,

By Alfred Z. Reed, Of the Carnegie Foundation for the Advancement of Technology
Bar Examiner, December, 1932 - (p.31-49)

It should be recalled that Alfred Reed, the author of this article is the individual who provided the irrational response to the letter from the man attempting to assist his nephew. (See pgs. 68,69) Reed was a prominent member of the Carnegie Foundation which funded the NCBE. This article presents another example of the prejudicial notions manifested in the NCBE. It also provides historical information about the development of the legal profession and how the NCBE was striving to accomplish what other professions had in regards to centralization of power. He writes:

> "Before the Civil War, the only professions in this country that were not open to everybody were law, medicine . . . and, in a few large cities, pharmacists . . . . 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 physicians . . . . There has never been 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 expressed either in the statutes or in rules of court adopted--whether or not pursuant to--certainly subsequent to antecedent legislation. . . .
>
> . . . **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.
> **. . .**
> The seventies mark the real birth of the modern licensing movement, which, since then, has spread to a multitude of occupations. . . . we find that between 1868 and 1878 the first State Board of Bar Examiners was established (in New Hampshire). . . ."

Reed then addresses the "backwardness" of organizing on a national basis by stating:

> "In view of the fact that the concept of restricting admission to practice is older in the law than in any other profession . . . 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 . . . .
> **. . .**
> The easiest explanation of the delay is to acribe it to the **ultra-conservatism of lawyers; and if we remove from this explanation any connotation of abuse, there is some truth in it**. . . . It is no insult to members of the legal profession to recognize that they usually prefer to move slowly. . . .
>
> 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.
> **. . .**
> The first reason why the members of State Board 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 substantive rules of law and, to a still greater extent, its procedure vary quite differently from state to state.

. . .

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.**

. . .

. . . We have today states which continue to place their sole reliance upon bar examination. We have others in which the examination is open only to those who have studied law during a definite period of years. . . ."

Reed then addresses the issues faced by the NCBE and Bar Boards of Examiners in dealing with Courts and Legislatures. He writes in an incredible passage:

"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?. . .

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 operative 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."**

What does he mean when he says?:

"the local bar association and the local law schools must be reckoned with?"

He uses the phrase, "reckoned with," to suggest they must be subjugated to the NCBE's irrational ideology. In his irrational view, there are two alternatives. Either "their cooperation secured" or alternatively, "their hostility discounted." He treats the local bar associations and law schools as if they are citizens of a captured foreign country. They are to submit to the new authority or will be "reckoned with." Why does he refer to reforming the admissions process as beginning to, "prosecute this long and painful process?" Who will it be "painful" to? Are their criminals involved? Presumably not, yet why the term, "prosecute?"

If the NCBE notions were rational, then why as Reed suggests should the Bar Examiners and NCBE have a need to consider themselves as "propagandists?" The mere usage of such a term conveys the impression that the purported justifications for change are not genuine. Rather instead, he wants them veiled in propaganda that looks appealing to the public. The NCBE's lust for power and control is manifested in his suggestion that the supporters should consider themselves:

"as ministers, if you like, of the true professional gospel."

It is an unbelievable statement. In his mind, the admissions process becomes a religious cause. They are not merely professionals, but ministers. They are he suggests, prophets of the "true professional gospel." He addresses law schools as follows:

> "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. . . .
>
> **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. . . ."

Reed truly believes the State Board of admission has:

> "legal power to make any law school go through the forms of teaching anything that you want."

He was wrong. His position was unsupported by State statutes and rules in existence at the time. He was not candid, and he failed to disclose material facts. He suggests the admissions authority is an organization having large powers of "moral influence." The NCBE however, from a perspective of ethics was itself morally reprehensible. Reed addresses the Bar exam as follows :

> "What do you say to our drawing up an examination in two parts, of which the first . . . 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 . . . shall test his familiarity with our local, concrete, and **often arbitrary but none the less authoritative rules** of law and procedure?"

This is an important passage because of the phrase:

> "often arbitrary but none the less authoritative rules."

As a matter of constitutional law, the fact is that if they are "arbitrary" rules, they are probably not authoritative, but rather instead are constitutionally infirm. The phrase may fairly be viewed as an admission of guilt. Reed correlates the authority of the admissions Board to the needs of the general public as follows:

> "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."

It's an extremely cagey passage. He chose his words carefully. He conveys a message that the admission authorities are looking out for the public's interests, but then at the same time carves out qualifying conditions. He does <u>not</u> say that the admission authorities are obliged to take action in furtherance of the public interest. Rather instead, he says they are obliged to do so, "sometimes" in a

manner that does not "in itself, benefit the profession." He asserts that they may, "on occasion," even "consider" policy that is in "some degree" detrimental to the "immediate interests" of the profession. These are important distinctions. He has slyly written that the profession's interests are paramount. He accomplishes this not by allowing for action detrimental to the profession, but rather instead only allowing for action detrimental to the "immediate interests" of the profession. The concept is that by giving a little in furtherance of the public interest at strategically chosen times, the long-term interests of the profession will be fostered, even if the "immediate interest" is sacrificed to a minimal extent. He addresses the purported issue of an overcrowded Bar (Supply-Demand issue), by strategically exploring whether a minimum limit of attorneys (rather than the standard NCBE argument of setting maximum limits) should be established. Once again, his focus is on the profession, rather than the public:

> "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.
>
> **. . .**
>
> . . . 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."

Reed's article closes with a section titled, "Social and Racial Discrimination." His viewpoints are despicable, overt and in view of the fact they were rubber-stamped by the NCBE, particularly sad. He writes at the end:

> "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.**
>
> . . . 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 the 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." [48]

CHARACTER INVESTIGATION,

By John B. Gest, Of the County Board of Law Examiners of Philadelphia County
A Discussion of the Pennsylvania System
Bar Examiner, December, 1932 - (p.51-58)

At first I thought that Gest was jesting in this article, but sadly I was mistaken. He addresses law student registration and character review requirements as follows:

> "We regard the application of registrants as the most important and at the same time the most difficult of all. . . . 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. . . .
>
> 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.** . . ."

Read the second paragraph above again. Do you believe it is in accordance with American values? Should Bar admission be predicated on whether your "family traditions are in accord?" Should it matter whether the Applicant has "impressed himself upon citizens of unquestioned reputation" or should the focus be on only the conduct of the Applicant? Should character even be subjected to such detailed review, if the character of licensed attorneys and Judges is not? Here's another interesting passage:

> ". . . We do not believe the sins of the father should be visited upon the son . . . **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 has been associated, for example, keeping his father's accounts, we have no hesitation in disqualifying him. **One applicant whose father had become a 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. . . .
>
> 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."

The Pennsylvania Plan utilized Preceptors. The duties of the Preceptor were outlined by Gest 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 ; . . . and of certifying, at the end, what he knows of his character and fitness to become a creditable member of the Bar."

Gest closes his article with the following prejudicial statements:

"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.
. . .
. . .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.** . . ." [49]

The operative phrases are "unsuitability" and "certain undesirable applicants."

A DISCUSSION OF THE OVERCROWDING OF THE BAR

BAR EXAMINER, December, 1932 (p.58)

A small section titled as above, contains the following quote from James Grafton Rogers, Assistant Secretary of State:

". . . 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."** [50]

Roger's statement is important for the fact that it exemplifies how the admissions process does not conform with democratic ideals of our nation. His diminishment of this importance by falsely characterizing it as the "only argument" is morally reprehensible.

RECENT BAR EXAMINATION HISTORY IN MASSACHUSETTS,

By William Harold Hitchcock, Chairman Massachusetts State Board of Bar Examiners
Address delivered at second annual meeting of NCBE October 10, 1932

Hitchcock writes about the admissions process in Massachusetts. It had led to immense political friction between the Judiciary and the Legislature. He writes:

> "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. . . .
>
> 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 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. . . .**
>
> So for many years we went along, not really knowing were we stood as to the definite limits of the jurisdiction of the legislature and the courts . . . .
>
> So our bar examinations for many years have been opened widely to persons with a varying degree of education. . . ."

It is clear from the above passage that the power to admit attorneys was by no means irrefutably a Judicial power, but rather instead there was substantial uncertainty on the issue. Most notably is the phrase:

> ". . . 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."

Hitchcock then addresses the character review process:

> ". . . 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."**

Hitchcock's use of the term "personality" is disturbing. Similarly disturbing is his use of the phrase, "in the broad sense." Such phrases foster character assessment predicated on wrongful subjective notions. They lead to assessment decisions predicated on the ideas, beliefs and family background of the Applicant. If you don't agree with my analysis, consider his later statement on character assessment:

> "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."**

Hitchcock becomes indignant writing about when the admissions policy in Massachusetts was challenged. He states:

> "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. . . . **Another bill was that no two members of our Board of five members should be graduates of the same law school."**

Should the Bar Examiners of a particular State be allowed to have a large concentration of members from one law school? Here's a great passage on the issue:

> "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. . . . 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."** [51]

If there was no concern about the discrimination prohibition because it was "harmless," then why was it omitted from the bill?

GERMAN BAR ASSOCIATION FAVORS THREE-YEAR MORATORIUM ON ADMISSIONS TO THE BAR

Bar Examiner, 1933 (p.83)

The Bar Examiner quotes the following:

> "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.**
>
> . . . There is strenuous opposition to the measure outside of the legal profession.
> . . .
> Dr. Rudolf Dix, president of the German Bar Association, frankly admits the proposed measure was dictated by depression. He defends it as a stern necessity if the legal profession is to be saved from utter pauperization. . . ." [52]

Remember, when this passage was published in the Bar Examiner, World War II had not yet began. It is remarkably disturbing that the German restriction on Bar admission was presented with approval by the NCBE.

LAW SCHOOLS, BAR EXAMINERS AND BAR ASSOCIATIONS : COOPERATION vs. INSULATION

By Philip J. Wickser, Secretary New York State Board of Law Examiners
Address delivered at the annual meeting of the Association of American Law Schools, Chicago, December, 1932, Bar Examiner, April 1933 ; 151 - 163

Wickser in promotion of the NCBE and Bar Examiner's "group thought" mentality irrationally chastises the diametrically opposed characteristic of individuality as follows:

> "The examining agency also suffers because it is insulated. . . . With the need for a genuine transfusion definitely indicated, **it clings to an individualism more anemic than potent**."

Treatment of the public derived from the "group thought" mentality, he addresses as follows:

> "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 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 need to justify the legal monopoly he addresses as follows:

> "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**. . . . 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."**

Note the concept that he presents. Lawyers are characterized as:

> "superior and honorable beings."

What do you think? His conclusion stands on its' own:

> **". . . A storm rages in Germany over a proposal to deny any admission at all to its bar for three years.** The opposition claims 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 ? . . . **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."** [53]

WHY NOT ADMIT HIM ON MOTION?

Bar Examiner, April 1933, (p.170)

Page 170 of the Bar Examiner in 1933, titled as above, is short and designed to be humorous. I have taken particular care to verify the spelling as printed in the Bar Examiner. Prejudice often manifests itself in humor. This is a good example of tasteless humor at the expense of an uneducated individual. It reads as follows:

"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 megragor on Criminal Law and have helped to try a number of case 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" [54]

BAR EXAMINER, MAY, 1933

In an article titled, *"Should the Standards for Bar Preparation Be More Exacting,"* John Wigmore, Dean of the Northwestern University Law School writes:

> "The law student of today will be the law reviser of tomorrow." [55]

He is right. Another article in the same issue titled, "Rule Recognizing Law Study Only in Approved Schools is Sustained by Connecticut Court" addresses a Connecticut opinion that stands for the false proposition that the admission of attorneys is undoubtedly the function of the judiciary. The case, *Jacob Rosenthal vs. State Bar Examining Committee*, (1933) contains much language to this extent. One particular passage of the opinion suggesting otherwise however, caught my eye. The Court wrote:

> ". . . 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 nature** and may properly be vested in the Bar Examining Committee. . . ." [56]

The Court was attempting to justify its failure to carry out the admissions process directly, and instead delegating it to the Bar. The dilemma this creates is obvious. If in fact, as the Court states:

> "the procedure . . . to accomplish that end are not judicial in nature,"

then the inescapable conclusion is that they do not have to be performed by a judicial agency. They could just as easily be performed by a legislative agency. The Court embarks on an irrational path of logic. On the one hand, they want to establish that the admissions process is undoubtedly a province of the Judiciary, rather than the Legislature. On the other hand however, they don't want to actually perform the duties. To justify nonperformance, they take the position that the procedure is "not judicial in nature."

NEW JERSEY ASKS NEW YORK

Bar Examiner, June 1933 (p.216-220)

In this Section, the Bar Examiner printed a letter of inquiry from Harvey Carr of the New Jersey Bar to John Kirkland Clark. Carr's letter inquires as follows:

> "My dear Mr. Clark :
> . . .
> The Committee is also dealing with a resolution proposing to establish by rules of court a quota system, limiting the number of candidates to be admitted to the bar in any one year . . . .
>
> Some of us feel that the real but not the avowed purpose of the examination is intended to be restrictive of the number. . . .
>
> If you care to express any views on this subject, I should be very glad indeed to have them . . . ."

Clark wrote back as follows:

> "My dear Mr. Carr:
> . . .
> Not infrequently it happens that a candidate has a good grounding in substantive law, but has had no practical experience. . . . Likewise, not infrequently a boy who has been working in a law office proves to be well fitted in the practical branch. . ., but obviously needs further training in substantive law. . . .
>
> . . . 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. . . .
>
> 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. . . ." [57]

It was at this time, that the German moratorium on Bar admissions was receiving a great deal of media attention. A strong movement was growing in the United States to adopt a similar policy.

PENNSYLVANIA CONSIDERS ADOPTION OF A QUOTA SYSTEM

Bar Examiner, July, 1933 (p.223-228)

At a meeting of the Pennsylvania Bar Association in June, the question was posed whether the Association should recommend adoption of a limitation in annual admissions. The recommendation was ultimately not adopted, but the following was included in the report:

> "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:
> . . .
> WHEREAS, under modern conditions, the regulation and control of the members of the Bar . . . is a matter of great practical difficulty, **especially in the larger centers of population** ; . . . .
> . . .
> 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 . . . ."

Note the phrase:

"especially in the larger centers of population."

This is where the Bars were focusing their attention, because at this stage in our nation's history, the cities were where most immigrants and minorities were living. The Resolution suggested probationary or partial admission to the Bar. That concept has been bouncing up and down in the State Bars for the last 60 years. The Bar's goal is to exercise control over the lawyer's practice, since the individual is not yet a full and complete member of the Club. If they can leverage the attorney controlling the litigation (by probationary admission), then the Bar can basically control litigation outcomes. Would you want someone representing you who is on probation, when the opposing party has a "full-fledged" attorney? The article contains the following passages:

> "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."**
>
> "Reciprocally it is believed that the rejection of the unqualified **would be a kindness to them**."

The article concludes:

> "It is therefore the recommendation . . . 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." [58]

Note that the public is relegated to a secondary position after the Bar.

REPORT OF THE OREGON COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

Bar Examiner, September 1933, (p.286-291)

Roy Shield states as follows in defense of the Board of Bar Examiners in Oregon:

> "I think I can truthfully say that it is the most inconspicuous, hardest worked and the **most cussed committee of the bar association.**
>
> **. . .**
>
> 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. . . 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.
>
> This situation has been partially amended . . . . **This situation no longer has an appeal to the Scotch instinct of getting as much as possible for the same fee.**
>
> . . .
>
> . . . 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.
>
> . . .
>
> 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**. . . ." [59]

JOTTINGS OF A BAR EXAMINER,

By Charles P. Megan, Chairman of The National Conference of Bar Examiners
Bar Examiner, October 1933 - (p.295-306)

This article was written by none other than the Chairman of the NCBE himself. It is an amazing article replete with prejudicial statements, but also contains some passages promoting objectivity, rather than subjectivity. I am forced to concede that I am unclear as to its overall message. At times Megan seems to contradict himself. The passages are nevertheless amazing and I quote the article at length.

> "The bar examiners of the country now have an association. . . . 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. . . .
>
> 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. . . .
> . . .
> 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. . . . 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 . . . .
> . . .
> 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 . . . .**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 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.
> . . .
> **Something over three hundred years ago this general question of social background was discussed in the Star Chambe**r. . . .**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."**

Megan then gets even more historical:

> ". . . 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."
> . . .
> Aristotle, a firm believer in the aristocratic form of government--but he understood by this, government by the people who really are "best", . . .
>
> **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, --. . .
> **. . .**
> 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 . . . **a Jew or a Gentile, the son of our friend the judge, or a stranger**. . . . 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 outburst of outraged pride, but I suppose that no board which has once used the number plan would ever go back to the old system. . . .
> . . .
> . . .**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. . . . **I have noticed anyway that when rules are bent by public officials, the rules tend to yield to the strong, not to the deserving** . . . .
> **. . .**
> In the matter of examinations I am a stern Calvinist. My text to the bar examiners is, Repent before it is too late. . . . 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 bureaucracy. . . .
>
> . . . 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. . . .
> . . .
> The world moves, but some bar examiners do not move with it. . . ." [60]

THE PENNSYLVANIA SYSTEM,

By George F. Baer Appel, Secretary of the Pennsylvania State Board of Law Examiners
Address delivered at third annual meeting of NCBE reprinted in Bar Examiner 1933 (p.10-22)

The Pennsylvania Plan applauded by the NCBE as a model to follow was praised again in this article. George Appel in furtherance of promoting an irrational, unfair, subjective admissions process writes as follows:

> "I see that I am listed on the program to make "remarks." This always a dangerous thing to ask any lawyer to do, let alone a secretary of a state board of law examiners. . . . remarks are unlimited, require no conclusions, and offer infinite possibilities for random and possibly illogical thoughts.
>
> . . .
>
> 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 . . . 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. . . .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. . . .
>
> . . .
>
> . . . The problems of an examiner fall naturally into two divisions--those relating to registration and those relating to admission. . . .
>
> . . . 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 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 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.
>
> . . .
>
> I will also merely suggest to you my problems in accepting degrees from approved colleges. . . . what colleges should be approved ? . . . what sort of degree should be accepted. . .? **what of the "tramp" student who ends up with a degree at an approved college after three years in various other institutions ? . . .**
>
> . . .
>
> . . . I am satisfied that it is extremely unlikely that an examination can be devised which will unerringly **separate the sheep from the goats**. . . .
>
> 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. . . . **Frankly, I do not believe that even in this democratic country, everyone has an inherent right to take the bar examinations until he passes. . . .**
>
> . . .

. . . The marking is likewise the work of experts, tempered by the Board, who bring the point of view of the bar itself. . . . **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.

. . .

. . . **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.

. . .

. . . 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. . . .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.

. . .

. . . 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, . . . may well be the cause of their eagerness to accept what I believe to be a hastily conceived scheme. . . .

. . . Steadily the stream of men, **and now women too**, flows through the portals. . . ." [61]

Following this article, the Bar Examiner magazine contained a Section titled, "Greece to Limit Lawyers." It read as follows:

"The following news item from Athens. . . 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. . . . **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. . . .

> . . . the number of lawyers in the whole country will be limited. . . . retirement from practice will be obligatory after an age is reached that the government, with some difficulty, is now attempting to fix. . . ." [62]

It was clear that the NCBE was very interested in the concept of a quota system to limit lawyers, thereby restricting competition, and was fostering significant discussion on the issue. The Bar Examiner then published interesting information pertaining to admission standards of several states in the November, 1933 and December, 1933 issues. Virginia in 1933 had no formal educational requirements of any nature. Nebraska on September 18, 1933 promulgated rules requiring a high school education, and Registration of law students.

The Supreme Court of Missouri on October 16, 1933 asserted the power of the Judiciary over the Legislature to regulate admissions in the case, *Proceedings against Paul Richards for disbarment*, 63 S.W. 2d 672 (1933). The Court stated:

". . . 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." [63]

The December, 1933 Bar Examiner issue on page 48 contained a Section titled, "Stem Winder Department" which was a reprint from the Mississippi Law Journal, XV, No. 1, p.6. It read as follows:

"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 had wrought the Southern girl." [64]

THE PROBLEM OF CHARACTER EXAMINATION,

Excerpts from a Round Table Discussion Held in Grand Rapids on August 29, 1933 in Connection with Annual Meeting of NCBE
Bar Examiner, January 1934, (p.59-71)

Chairman Bierer, Jr. of Oklahoma begins as follows:

> "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 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.
>
> . . .
>
> 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 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.
>
> . . . 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 . . .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 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 . . . 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, . . . is the State of Pennsylvania. . . .

. . .

Judge James Ailshie, of Idaho:

> "You proceed on the same theory that we do, that a man has a right to reform.

George Appel of Pennsylvania:

> "It is too bad we don't have a qualified admission. . . .

. . .

D.L. Morse of Minnesota:

> **"We don't try to follow any set rule. We consider each case on its own merits."**

. . .
George Appel of Pennsylvania:

> "Ask the applicant facts and then get your opinions from other people."

. . .
George Appel of Pennsylvania:

> "I know of one case where a girl was applying for admission and she had testified in some case as a notary public . . . 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 of Idaho:

> **"Do you think they should have done so after the jury acquitted him and took her word ?**

George Appel of Pennsylvania:

> **"I think so. I think very often the judge is in better position to know**. . . .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."

. . .
George Appel of Pennsylvania:

> "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."

. . .
Dean Dickey of California:

> ". . . we have very detailed forms of application for admission, in which questions more searching even than in Pennsylvania are asked. . . ." [65]

Following the Round Table discussion on Character Examination, the January, 1934 issue contained a small section titled, "New Rules Adopted in the Philippines" pertaining to "repeaters" (those who keep taking the Bar exam after they fail) which read as follows:

> "An unusual provision, in reference to repeaters, is as follows: "Duly qualified applicants will not be admitted to more than four examinations; Provided, That any applicant who fails four times will not permitted to take any subsequent examination until he has completed another regular four-year course in an approved law school. . . ." [66]

REPORT OF PENNSYLVANIA COMMITTEE ON ADMISSIONS TO THE BAR

BAR EXAMINER, February 1934 (p.84-86)

More information on the Pennsylvania Plan was presented. It read:

> "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.
>
> . . .
>
> 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 admissions 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. . . .
>
> 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 . . . provides that the . . . County 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" . . . .** [67]

The last paragraph is particularly important. It demonstrates the mindset of the Board. They wanted to change the rule requiring them to:

"set forth in some detail the reasons."

The change they wanted was to merely require they set forth:

"that the applicant does not possess the attributes."

The difference is monumental. The rule in existence required the Board to give reasons for denying admission, while the proposed amendment would allow them to reach a conclusion without providing reasons. It is easy to discern that the Board's recommendation would totally purge objectivity from the admissions process. Acceptance of the amendment would allow admission to be denied, even though unsupported by any facts, evidence or reasons.

JUNIOR OR INTERLOCUTORY ADMISSION TO THE BAR,

By Lloyd N. Scott, Secretary of the New York Joint Conference on Legal Education
Bar Examiner, March 1934

The concept of probationary admission was gaining steam. This article described the concept as follows:

> "The object would be to determine whether the assembled qualities of education, **culture**, professional responsibility and moral understanding of the candidate make a man of such a standard as can be entrusted with the administration of justice . . . .
>
> One of the best ways of accomplishing this would be to **require the junior to keep a diary** of his professional activities, so that at the end of the two to five year period, he could refer to it, and on examination, describe the legal work which he had done . . . . Under the Junior Bar plan he would, for a period of two to five years, be drilled in practicing according to the Code of Ethics of the American Bar Association. **This would, no doubt, ever afterwards influence his professional attitude . . . .**
>
> **. . .**
>
> The Federal Courts in New Jersey have now introduced the Probationary Bar in the United States District Court there. . . .
>
> We understand that in New Mexico the Supreme Court authorized certain changes in its rules, one of which institutes the conditional bar there for new attorneys. Indiana, Kansas and North Dakota have also been interested. In New York State the idea is a live one . . . ." [68]

THE PRIVILEGE OF REEXAMINATION IN PROFESSIONAL LICENSURE,

By Bernard C. Gavit, Dean of Indiana University School of Law
Bar Examiner, April 1934 (p.123-128)

If at first you don't succeed, try, try, again ! Definitely not the credo of the NCBE. Reexamination was irrationally considered by the NCBE to be a privilege, not a right. This article presents the NCBE's irrational viewpoints, utilizing extensive comparison between the legal profession and the medical profession. Although the article is ostensibly designed to address Reexaminations, its' scope extends well beyond that subject. The viewpoints are incredible. Note particularly, use of the phrase:

"the vicious American dogma of equality . . ."

That language and other passages come quite close to suggesting establishment of a master race of attorneys to rule the American government. The article states:

> "Last fall The National Conference of Bar Examiners. . . at its annual meeting considered the problem of reexaminations for admission to the bar. . . .
>
> The inquiry was **limited to the more populous states where the problem in legal circles is particularly acute**. . . But I found that apparently the medical examiners had, even there, no problem as compared with the law examiners. . . .
>
> **. . .**
>
> It is thus apparent that the medical profession is years ahead of the legal profession on the subject of licensure. The reasons are not hard to find. The medical profession has succeeded in eliminating to all practical purposes, the commercial medical school. . . .
>
> **. . .**
>
> The medical profession has something more than a vocal belief in its place in society and the professional character of its members. . . . On the other hand the bitter truth is that the legal profession is still given to talk. It is confused by the difficulty of actually choosing between its vocal standard which makes of the lawyer an aristocrat of learning and character, and **the vicious American dogma of equality** which makes every moron a potential lawyer. Standards for admission to the bar lose their vitality in the sentimental glamour of an unreal philosophy as to social existence and human nature. **The only gain which is worth while now is an actual acceptance by the legal profession of its theory as to the superiority of lawyers, and a will to impose the necessary standards for admission to the bar.** In a pioneer society the governmental and social structure could stand the strain of the "self-made" man. . . . It should be apparent to all that **the superiority of lawyers** is a relic of the past unless the **modern race of lawyers** is both **theoretically and actually superior** and that indeed social progress cannot longer be asked to put up with mediocre lawyers.
>
> **I have spoken of the "superiority of lawyers." It is not for the purpose of being facetious.** The truth is that since Chief Justice Marshall wrote into the federal constitution the doctrine of the supremacy of the courts, which doctrine gives the courts the final judgment on all individual and governmental activities, **we have a constitutional acceptance of the superiority of lawyers**. **The doctrine of the supremacy of the courts is based on the lawyer's belief in his**

own superiority ; he alone is qualified to finally direct our experiment in democracy. . . .

. . .

The easiest task in the world is to fashion the ideals of a "rugged individualism" : the next easiest task is to attain those ideals in every day life.

. . .

With good grace we can certainly draw the line against the applicant who fails three times. My opinion is that the privilege of reexamination should, in the usual case, be limited to two repeater examinations.

. . .

. . . Certainly in the legal field it is a necessary expedient, for until the legal system turns to the elimination of the poorer grades of lawyer material through the standard schools some elimination must be effected through the state bar examinations. . . ." [69]

THE HUMAN SIDE OF IT

Bar Examiner, March 1934 (p.117)

An emotionally touching letter written by a Bar Applicant is included in the March 1934 issue. He failed the exam a few times, and then ultimately passed. I present the portions of the letter that convey the strong emotions that he felt upon passing the exam. The reason however for presentation of these passages extends further. A responsive commentary to the letter was published in the April, 1934 issue. After reading the letter and then the response, there is little doubt in my mind that the reader will disapprove of the NCBE. First, the Applicant's letter which was written to the chairman of a board of bar examiners, states in part:

> "Dear Friend :
>
> . . . Since my first failure, last November's Bar, I became a recluse ; saw no one, talked to no one, socially isolated and spiritually degraded. My hope, my life's dream, was dramatically shattered in June, when again I failed.
>
> The first failure entrapped me in a few weeks of ceaseless crying. . . . The second failure just wrapped me in a state of numbness. . . .
>
> You see, dear Sir, if I were to tell you . . . of my young life, you would and could understand the whys and hows. . . .
>
> . . . Life : I was born in Ostrow, Poland. For five years life was good to me. We weren't wealthy, but we did earn a nice livelihood . . . and we were happy. Out of the unknown, 1914 reached out and the plague of war was on. I was then five years old. One brother was fighting on the Russian Front, another on the American and a third, about 16 or 17 years old, playing the game of hide and seek from the Germans. We were forced to wander from the village. It was burned and pillaged. Wandering then, as Gypsies, we . . . lost our mother, brother, and a sister. They died an unwanting death. To tell you of our hunger, starvation and torture in the world war is useless. . . . The aftermath of the war was a million times worse than the war. Famine, pogroms, carnage, cold-blooded murders and robbery. Our American brother got in touch with us, spent every penny he possessed and brought us to America. We reached Ellis Island, May, 1920.
>
> . . . I began my schooling in the 1st grade, at the age of eleven. Time passed. The family was struggling to earn a living, so at the age of 14, in the sixth grade I left school. . . . After working a year I made a comeback in school and graduated from Junior High School . . . with high honors.
>
> Completing City College I desired so much to go to a University but had no funds. I went to New York, got a job as a dishwasher in a summer resort and earned enough for my 1st year's tuition. I entered the University of Baltimore. . . . The family was proud of me ! I was the 1st one in our Family to reach such heights.
>
> But my two Bar Exam failures placed me back where I started from. I was lost. . . a flop! I cried my eyes out. . . .
> . . .

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

". . . You passed the Bar Exam!"

I collapsed.
. . .

Now, dear Sir, you understand why I am writing this letter, why I am so thankful. . . ." [70]

It is a strong letter that I believe touches the heart. A letter filled with tragedy and triumph. Now here is the response to the letter. This commentary was written by George Nutter of the Committee on Legal Education of the Bar Association of Boston, to Will Shafroth, of the NCBE. It is published on page 144 of the April, 1934 issue of the Bar Examiner:

"Dear Mr. Shafroth :

I have read with much interest the letter in the March issue of THE BAR EXAMINER from the candidate for the bar. . . . But let us look at it from the standpoint of the public. In the first place, the letter shows in its own wording that the great reason for the applicant desiring to become a member of the bar was social prestige. He says "The family was proud of me. I was the first one in our family to reach such heights." But, while this is an honorable ambition, it is not necessarily for the interests of the public that it should under some circumstances be gratified.
. . .
. . . If he were really a good student at the City College and the University, it is somewhat queer that he could not have got into the bar before his third attempt.

Lastly, he made two attempts at which he was unsuccessful, and I think it is a reasonable inference that he did not probably more than get by on his third attempt. . . . **As he . . . has no contacts and no connections with law firms, it is a question whether in an already overcrowded profession he really has done anything more than embark upon a career which satisfies at the outset his ambition but in which he is probably destined to failure. . . . At the same time it seems to me . . . that in a profession, overcrowded as I have said, the public really has no particular need for his services. He probably would do much better if he pursued a business or commercial career.**
. . .

Very truly yours,

George R. Nutter
Chairman, Committee on Legal Education of the
Bar Association of the City of Boston" [71]

As a general rule, I do not use much profanity, although I do use it on occasion. This is a good occasion. George Nutter was a real Prick!

The May, 1934 issue in a small section titled, "Only Small Decrease in Admissions" states as follows:

> ". . . the depression has had only a very slight effect in reducing the number of successful candidates. There has been a very noticeable tendency to make the examinations harder and better, but the number admitted still remains well above nine thousand. . . . **Some comfort can be taken from the fact that the decline in the number of students has been mostly in the poorer schools. . . ."** [72]

The above passage demonstrates that the NCBE's purpose in promoting stricter admission standards was to reduce the number of attorneys, rather than ensure the competency of those licensed. Notice the correlation between making examinations harder, to the number of attorneys admitted, rather than to the competency of those admitted. Also notice the expressed satisfaction attributable to the fact that the decline in students occurred in the poorer schools.

AN ABLER AND A FINER BAR,

By John Kirkland Clark, Chairman of the New York State Board of Law Examiners and Chairman of the Section of Legal Education and Admissions to the Bar of the ABA
Bar Examiner, May, 1934, (p.147-155)

This article was written by a very powerful individual. Clark was Chairman of the ABA Section on Legal Education and Bar Admissions, as well as Chairman of the powerful New York State Board of Law Examiners. The following passage is indicative of his viewpoint:

> ". . . it is certainly worth careful reconsideration as to whether it is not practicable for the other states to assign each law student to an older member of the bar of high standards who is charged with the responsibility of making himself thoroughly familiar with the **personality of the law student, his mental equipment, his social point of view and his ethical concepts**." [73]

Why is Clark concerned with the "personality" of the law student? Why should that even be part of the admissions process? Why does he care about the student's "social point of view?" The introduction of such factors into the licensure process is morally reprehensible.

SUPREME COURT OF LOUISIANA DECLARES ITS POWER OVER ADMISSIONS,

Bar Examiner, May 1934, (p.166-167)

This article is a commentary on the case, *Ex Parte Lester Richard Steckler and Hilary Joseph Gaudin*, (citation not provided by Bar Examiner). The petitioners had claimed a right to admission based on a legislative act of 1855 that conferred upon individuals with a Bachelor of Laws degree from the University of Louisiana the right to practice law. The Court denies that right in an opinion stating:

> **"The power to prescribe ultimately the qualifications for admission to the bar belongs to the judicial department of the government of the state. And each of the three departments of the state government is forbidden to exercise any power properly belonging to either of the others. That is one of the fundamental rules in our form of government**, and is safeguarded in the Constitution of the United States, and in the constitution of every state, and has been vouchsafed in every constitution this state has had, except that of 1868." [74]

The Court misleads the reader of the opinion. There is no fundamental rule in the U.S. Constitution providing the Judiciary with the power to admit attorneys. It is a fundamental rule that no branch may exercise power belonging to the others, but the disputed issue in this case was who the power really belonged to. The Court falsely suggests that the power indisputably belongs to the Judiciary, when in fact numerous opinions in other States had held otherwise throughout the 1800s and the early part of the 1900s. Stated simply, at a minimum it was extremely unclear who the power belonged to. Many State Courts used similarly misleading language in their opinions to seize the power for the Judiciary in the early 1900s. Their concept was that by claiming a power rested with them irrefutably; wresting possession of that power became justified. The Judicial power to admit attorneys was at best one that belonged to the Judiciary by a thin margin. It could properly be exercised by the Legislature without violating constitutional principles. The ultimate determination in most states as a matter of substance, if not form, was predicated simply on which branch was in the best political position to secure the power. The Judiciary being the decision-maker in those cases, possessed the "political position" attribute that allowed them to seize the power.

THE CITIZENSHIP PRIVILEGE

BAR EXAMINER, June 1934 (P.192)

Definitely one of the more unique ways to get into a State Bar. A bit of preliminary information is necessary. The Marquis de Lafayette, a French General in his early 20s, provided invaluable assistance during the American Revolution, serving directly under General George Washington. He became an American hero and was close friends with both Washington and Jefferson. The following was printed in the June, 1934 issue of the Bar Examiner:

> "After a two-year fight . . . Rene A. de Chambrun, great-great-grandson of the Marquis de Lafayette, was admitted to the New York State Bar. . . . Chambrun, Paris-born was banned from practicing his profession because he had never been naturalized as a U.S. citizen. To prove U.S. citizenship de Chambrun cited before the Court of Appeals a law passed by Maryland's General Assembly in 1784 : "The Marquis de Lafayette and his heirs male forever shall be . . . taken to be . . . citizens of this state." [75]

A STUDY OF CHARACTER EXAMINATION METHODS IN FORTY-NINE COMMONWEALTHS,

By Will Shafroth, Secretary, NCBE
Bar Examiner, July-August 1934, (p.195-231)

Shafroth's article presents a character survey of 49 states. He prefaces it with the following statements:

> ". . . These men are well aware that the machine they are using is not a scientific ability-detector. **They also know that it does separate the sheep from the thorobred goats, unless the latter happen to be of a very persistent strain. . . .**
> **. . .**
> It is a sad fact, and one which is comparatively unknown, that there are at least eight or ten states where the only character investigation made is a perfunctory examination of the formal papers which are required to be filed. . . . In perhaps half a dozen other states no definite procedure is followed. . . .
> **. . .**
> Attention is called to the procedure in Pennsylvania, which is more thorough than that of any other state in the Union. . . .
>
> The various states have many different methods of character examination. . . .There are, however, a few things which can be hazarded as essentials of a proper character examination :
> **. . .**
> 3. In all cases **where the candidate is not known personally to one or more members** of the character committee, inquiries should be directed to all his references and past business connections. . . .
>
> 4. Every candidate should be required to appear personally. . . .
>
> 6. Registration at the beginning of law study should be required. . . and the character examination should be conducted at the time of registration, as well as just before the bar examination. . . .
>
> 7. Publication should be made . . . of the names of candidates for admission.
> **. . .**
> . . . The following states seem to give a thorough and conscientious examination to all candidates : Colorado, Connecticut, Delaware, Illinois, Indiana, New Jersey, Pennsylvania, Oregon, Rhode Island and Vermont. . . ."

Shafroth then presents information on individual states. The following provisions of character assessment, I found to be particularly interesting:

ARKANSAS:

> "The applicant taking the bar examination furnishes the secretary a letter with respect to his honor and integrity . . . **his business qualifications**, his moral habits and **his energy** ; and an opinion as to his general qualifications . . . from . . . a judge of a court of record . . . a member of the bar . . . **a practicing physician . . . a banker residing in the state, a businessman . . . and a school teacher. . . .**"

DISTRICT OF COLUMBIA:

> "After the examination the names of the successful candidates are published in the "Evening Star," with **a notice to the public that any information tending to affect the eligibility of any of said applicants on moral grounds be furnished to the Committee of Bar Examiners**. . . ."

FLORIDA:

> ". . . In all instances the applicant must appear in person for an interview, **at which time he is required to answer under oath any and all questions** as to his character and qualifications. . . ."

ILLINOIS:

> ". . . **A file of newspaper reports about students is kept.**"

MARYLAND:

> ". . . **Law students are under continuous supervision** until the date of their admission.
>
> "**A certificate as to habits and character** from two reputable citizens and a personal questionnaire are required from each applicant. . . ."

MINNESOTA:

> ". . . **makes inquiry in the applicant's own community,** and **has the names of the applicants published in a newspaper** of the local county with a request for information as to their character and qualifications."

NEW HAMPSHIRE:

> ". . . If there is any doubt as to an applicant's character, **an investigation is made by the Attorney-General."**

NEW MEXICO:

> ". . . All applicants, including those failing the bar examination, are interviewed personally. . . .
>
> "Candidates for the bar examination must include with their applications a certificate by a reputable person as to moral character."

NEW YORK:

> ". . . may require any additional information as to the character of applicants or **adopt any procedure. . . ."**

OREGON:

> ". . . The applicant, **reliable persons in his community** and his instructors are interviewed. . . ."
>
> "The names of all applicants are published in the Oregon Advance Sheets . . .once a week for five weeks . . . ."

RHODE ISLAND:

> ". . . The questionnaires sent to the citizens include space for reporting the **names of intimate associates of the applicant. . . ."**

TENNESSEE:

". . . the Board makes all possible inquiries by letter and personal investigation, both at the law school of the applicant **and in his community**. . . ." [76]

PUTTING YOUNG LAWYERS ON PROBATION, THE COMMENT OF A LAY SKEPTIC

Bar Examiner, July-August, 1934 (p.240)

The above titled section in the Bar Examiner read as follows:

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

. . .

The following report by the probationary committee is entirely possible:

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

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

Charles Jones - We asked the young man . . . questions:

. . .

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

The young man . . . answered . . . thusly : "Yes, but for $ 60,000 I would overlook everything."

Edward Brown - This man opened an office exactly two years ago on probation. We visited him this week and found him so emaciated he weighed less than 100 pounds. We think this prima facie evidence of superior honesty as a practicing attorney, and favor full membership and a plate of hot soup." [77]

THE ANNUAL MEETING,

Bar Examiner, October 1934 (p.267)

The Carnegie Foundation grant was running out and the NCBE needed to become financially self-sustaining. The plan was brought forth to perform centralized character review investigation for each of the State Bars when a licensed attorney from one state wanted to become an attorney in another. The above titled article states:

> ". . . The treasurer pointed out that the new plan of the investigation of the character of foreign attorneys by the Conference provided a way out of this difficulty, in addition to performing a valuable public service. He said that if states having an aggregate total of fifty foreign-attorney applicants before next September would turn over to the National Conference the task of ascertaining the past records of those individuals, for the stated consideration of $ 25 an applicant, the organization could continue to function as at present without curtailment of activities, and he urged every examiner who felt the Conference to be a valuable agency in the bar admission field to assist in the effort to secure the adoption of this service in his state." [78]

CHECK-UP ON MIGRANT LAWYERS,

Bar Examiner, October, 1934 (p.274)

The NCBE's plan to seize control of the character review process is described again in this article, which states:

> " ***"Sentence suspended on condition that defendant leaves town before tomorrow morning."***
>
> These police court judgments rendered frequently keep potential misdemeanants on the move. . . . Much the same thing has been going on in respect to lawyers who are caught in scrapes. California has been a chief sufferer. . . .
>
> So it was ruled in California that an applicant for admission who had practiced elsewhere should post a fee of $ 100 to pay the cost of investigating his past. Then, last January, the Bar Examiner . . . proposed that the Conference should serve the examining boards in all states by assuming the labor investigating in such cases. The June number of the Journal reports that California is the first state to accept the offer. The expectation is expressed that other states will do likewise, and, by paying a reasonable fee for the service (exacted from the applicant) afford the Conference a steady source of income.
>
> . . . The Conference will need only to call on its constituent member boards of examiners; authoritative opinions as to the past conduct of migrants will be obtainable, and another hole will be plugged. The work will be financed by fees to be paid by applicants for admission. . . . In New Mexico, several years ago, the State Bar provided for a limited license for one year, during which investigation could be had, and found the rule resulted in discouraging a number of applicants, who moved on to states with lax requirements." [79]

WHAT IS A PER CURIAM DECISION?

Bar Examiner, October, 1934 (p.274)

A small section in the Bar Examiner reads as follows:

> **"California furnishes us with some further information in the way of the following answer to the question, "What is a per curiam decision?": "A per curiam decision is one written by the Clerk of the Court in a case where the judges, for political reasons, do want their names to appear."** [80]

THE STANDARDS OF MEDICAL EDUCATION AND QUALIFICATIONS FOR LICENSURE,

By Walter L. Bierring, President American Medical Association
Presented before ABA Section of Legal Education and Admissions to the Bar, August 30, 1934
Bar Examiner, October 1934 (p.275-284)

The influence of the medical licensure process on the Bar admissions process is evident in the above titled article in the Bar Examiner which reads in part as follows:

> "This program as arranged signifies the co-relationship of legal and medical education and further implies that the problems of the practice of law and of medicine are collateral.
> . . .
> It will always be to the eternal credit of the medical profession that it exhibited the courage and vision to recognize the real state of affairs and determined to set its own house in order. . . . By the elimination of certain schools and the combination of others the number was gradually reduced, and at present there are only seventy-seven Class A or approved medical colleges in the United States and ten in Canada, practically all of them being an integral part of a recognized University. In contrast to thirty years ago, all medical schools now require at least two years of preparation in an acceptable college or university for admission . . . .
> . . .
> As a historical background to the Council's activities it is interesting to recall that when the American Medical Association was formed in 1847 it was specifically stated that one of the chief objectives of the Association was to be the improvement of medical education. . . .
>
> In 1907 the first classification of medical colleges, based on the Council's investigations, was presented and included in its it annual report to the American Medical Association. That classification was not published, but each college was notified of the rating given to it. . . . The second classification prepared in 1910 was published simultaneously with the appearance of the report on medical education in the United States and Canada made by the Carnegie Foundation for the Advancement of Teaching.
>
> **The Carnegie report was written in such a way that it** became news in every part of the land, and **aroused in the public mind a more urgent demand for a higher standard of medical education. . . .**
>
> . . . In the period from 1906 to 1920 the number of medical schools was reduced from 162 to 74. . . .

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

From the days of the American Colonies to the present, state medical societies or state examining board have maintained the traditional prerogative that each Commonwealth shall determine the requirements for medical practice within its borders.
. . .
With the advent of medical societies, a new mode of regulating medical practice came into being. While medical societies began to appear as early as 1735, they were mostly local and transitory. About the time that the first medical school was founded in Philadelphia, in 1765, the organization of more permanent medical societies began, which had, among other objects, the regulation of medical practice through legislation. The Medical Society of New Jersey was the first to be organized in 1766, and in 1772 legislation was secured requiring examination, and licensure by two judges of the supreme court, with such assistance as they might call. . . .
. . .
A hundred years ago the majority of practicing physicians held medical society licenses, frequently called a diploma, and only a minority were medical college graduates. . . .
. . .
A new movement to advance the standards of licensure, particularly, the type of qualifying examinations, was inaugurated in the formation of the National Board of Medical Examiners in 1915. . . .
. . .
The endorsement of the National Board certificate by forty-two states and three territories is a further indication of an increasing tendency to accept educational requirements for licensure on a national basis." [81]

DEVELOPMENT OF AN ADEQUATE BAR ADMISSION AGENCY,

By Leon Green, Dean Northwestern University Law School
Bar Examiner, November 1934 (p.291-297)

Green discusses his concept of an all powerful Bar admission agency which under his scheme would itself become its' own "Supreme Court." He writes as follows:

> "My criticism of the bar examinations is that they are of little value. They do not strike at the heart of the admission problem.
>
> . . .
>
> I give you one example from Illinois, and let me say here that the Illinois Board of Bar Examiners is one of the best organized in the entire country, and its personnel made up of the highest quality of lawyers. . . .
>
> . . .
>
> Briefly, **the proposal is to broaden the powers of bar examiners so that they are in fact board of bar admission, with full power over the whole process**, subject only to the final supervision of the Supreme Court, and under the general observation of the state bar organization. . . . The board should further have the power of visitation and supervision of law schools. This is the key to the whole problem. **If the law schools are brought under proper control**, the question of intellectual attainments of a candidate for most part takes care of itself automatically. What would you want to know about the schools? . . . to know how they recruit their students. You would require them to supply the records which you should need for your office, without cost to you. **You would want a complete record from the day a student applied for admission to the law school until he left the school.** The medical people already have provided for this sort of thing. The result would be that when the board discovered the methods used in recruiting the student bodies of many of the proprietary schools especially, and when the board discovered the laxity of admission as well as the laxity of requirements of attendance and study, they would set up such minimum requirements that scores of students who now sail through these schools and are admitted to the bar without much difficulty would never be permitted to study law.
>
> . . . All admissions would be upon an *individual* basis. . . . The first license would be a provisional one. . . .
>
> Assuming that a provisional license is granted to a student, the matter of permanent admission should rest upon his performance as a young lawyer over a period of several years. The burden would be upon the young lawyer to build up a record in the secretary's office which would make it possible for his admission to be considered intelligently. **For example, he would be required to make a yearly report on all of his activities as a lawyer. He might give full reports on certain cases that he had handled; reports from his employer, of judges, or opposing lawyers might well be asked.** It would soon become known to clients in general that their **complaints against young lawyers** would be fully considered if they were filed with the secretary of the board of admissions. . . .
>
> . . . **A board so constituted would soon come to have in the matter of admission something of the status of the Supreme Court itself**. There need be no fear of unfairness or partiality on the part of its members any more than would be true of any other judicial body. Such a process of admission would automatically be a cleansing process of the entire bar. In other words, inside of twenty or thirty years you would have a bar which would have been put through the

strainer. . . .

. . . And one of the most attractive phases of the suggestion is that it requires no legislation, no formidable organization. All that is necessary is the approval of the Supreme Court, the general support of the profession, and a willingness on the part of the various board of examiners. . . ." [82]

Note particularly the following phrases that he uses:

"If the law schools are brought under proper control"

and

"For example, he would be required to make a yearly report on all of his activities as a lawyer. He might give **full reports on certain cases that he had handled** . . . or opposing lawyers might well be asked. It would soon become known to clients in general that their **complaints against young lawyers** would be fully considered"

Why the qualification on full consideration of ethical complaints only to "young" lawyers? The reason is that they are the ones who represent the greatest economic threat to the profession's status quo, unless brought under control early in their career.

THE WORK OF A CHARACTER COMMITTEE,

Bar Examiner, November 1934 (p. 299-300)

This article states as follows:

> "A petition was filed with the Supreme Court of Illinois last spring, asking the Court to define the scope of the inquiry which the committees on character and fitness for admission to the bar were charged with making in the state of Illinois. A portion of the brief filed by the Chicago Bar Association in this matter is quoted as being of interest on the general subject of the purpose and methods of character examination."
>
> "Necessity for a Committee on Character and Fitness"
>
> ". . . it is, therefore, all the more important in the public interest that a committee should be in existence and in a position thoroughly **to investigate the personal history of all applicants**. . . .
>
> . . . The number of lawyers . . . has become so great and . . . a large number of them **not particularly well fitted** for the practice of the profession. . . . We do not imply that any arbitrary limitation . . . should be imposed but the experience of the grievance committee . . . **indicates that when the Bar is overcrowded, a strain is placed on the integrity of the members of the profession, particularly those not well fitted** to meet the economic pressure of the times, that would not otherwise exist. . . ." [83]

In considering the above passages, note particularly use of the phrase:

"not particularly well fitted."

Note its subsequent correlation with:

"those not well fitted to meet the economic pressure"

and also its correlation with integrity. The message being conveyed is that economically disadvantaged individuals are of lower honesty and integrity than individuals who are "well fitted" from an economic perspective. It's an extremely prejudicial passage designed to subjugate minorities and immigrants.

A FIRST YEAR BAR EXAMINATION,

By M.R. Kirkwood, Dean Stanford University School of Law
Bar Examiner, December 1934 - (p.315)

This article presents another example of the endless schemes and gimmicks used by the Bars to fortify their economic borders. As you may recall, the Pennsylvania Plan called for subjecting Applicants to two character review processes. One at the law school level, and the second when applying for admission. This article takes the idea into a different direction. It suggests a Bar examination at the law school level and at the admissions level. It reads as follows:

> "If rules now pending before the Supreme Court of California are approved, an interesting experiment in requirements for admission to practice will be initiated. These rules propose that a preliminary bar examination be given at the end of the applicant's first year of law study.
>
> Certain conditions more or less peculiar to the State of California have been the cause of this proposal. It has proved to be very difficult to raise the statutory educational requirements for admission to practice. Thus it has not seemed feasible to require study in an approved law school. . . . the fact is that this state has more law schools than any other state in the Union. . . .
>
> ". . . It has night schools and proprietary schools. . . .
>
> . . . there are schools whose ambition does not rise above getting their students to pass the bar examination. . . ." [84]

The December, 1934 issue reported on "progress" in several states. Washington, Nevada and Delaware had adopted the NCBE's character investigation plan. The January, 1935 issue indicated that Oklahoma and Texas approved the plan. Six states were now using the NCBE for centralized character investigations. The issue also reported that the rule requiring two years of college had been adopted by twenty-five states. The NCBE was securing its goals with incredible success. It was solidifying the economic borders of the profession which was becoming more and more exclusionary. While the profession had always been prejudicial in nature, it now had an effective mechanism to foster and promote such wrongful notions.

A DRAMA OF PROGRESS IN MASSACHUSETTS,

By George Nutter, Chairman Committee on Legal Education, Boston Bar Association
Bar Examiner, January 1935 (p.331-334)

The author of this article is the individual that I described in somewhat less than complimentary terms with respect to the commentary he wrote about an immigrant Applicant who wrote a heart-warming letter about passing the Bar exam. Nutter in this article irrationally describes the dissension over the admissions process in Massachusetts. He enlightens the reader about the Bar's thirst for power when he writes:

> "This drama begins with a prologue which took place in 1915, about a generation ago. At that time the Legislature was supposed to be arbiter of requirements for admission to the Bar. The Board of Bar Examiners . . . went before the Legislature. . . . **A violent controversy arose**, which was **finally terminated by the complete rout of the Board of Bar Examiners**. In place of any part of their plan, there was enacted a statute which prescribed that anyone who had "fulfilled for two years the requirements of a day or evening high school. . . should not be required to take any examination as to his general education." Thus **the dragon of ignorance** was placed in full charge over the field of legal education. The dragon is still there, as the law still stands . . . . But now, after a generation its teeth are gone.
>
> Two years in an evening high school was an absurd requirement : if it had not been serious, it would certainly have been laughable; yet there it stood, apparently a stone wall which no one could climb or get around. . . .Then came a happy conjunction of circumstances and efforts. Some years ago, the Board of Bar Examiners prescribed an oral examination, as well as a written one. . . .
>
> It speedily became apparent that the Board of Bar Examiners could not conduct both a written examination and an oral examination, if they were obliged to read the answers to all the papers.
>
> . . . Opposition developed . . . and a bill was introduced in the Legislature of 1932, to forbid the Board of Bar Examiners to employ readers, and to compel them to do the reading themselves. As this would cripple the oral examination, this bill was opposed . . . . However, . . . the bill was advanced through the various stages until it had passed its third reading. At that time, the Committee on Legal Education made an effort to have this whole question passed upon by the Supreme Judicial Court, and suggested than an advisory opinion might well be asked. . . . As a result, the Court handed down an advisory opinion . . . in which the Court said that any such bill was unconstitutional, on the ground that it was the province of the Court to determine the qualifications of its officers, although the Legislature could fix minimum requirements. This advisory opinion settled the bill, . . . and the opinion itself became widely known throughout the country and met with unanimous approval, except of course in those quarters where opposition to progress is expected.
>
> The way was now open for some advance and a report by the Committee on Legal Education was made . . . which contained recommendations. . . . These may be summarized as follows :
>
> . . .
>
> 5. . . . fix by rule the maximum number of times the candidate might take the examination. . . .
>
> 6. The whole matter of a junior bar. . . .

7. . . . larger appropriation from the Legislature

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

. . .

The report of the Committee was adopted by the Council. The President of the Association took the matter up with the Chief Justice. . . . The Board of Bar Examiners called a conference of the representatives of all the law schools. . . .The whole matter was considered by the Board of Bar Examiners; they drafted certain recommendations upon which a public hearing was held. . . attended by the same representatives as before, and these recommendations were submitted . . . and are now embodied in rules six and seven of the Supreme Judicial Court. These rules may be summarized as follows :

. . . applicant who begins the study of law subsequent to September 1, 1938, must have completed one-half the work accepted for a bachelor's degree in a college approved by the Board. In legal education every applicant must have completed a course of study in a law school having a three years' course . . . called a "full time" law school, or in a law school having a law course of not less than four years equivalent, in which students devote only part of their working time to their studies. . . ." [85]

FOR THE JUDGES,

Bar Examiner, January, 1935 - (p.334)

A small section titled as above read as follows:

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

Skeptical candidate**: "Judicial notice means that there are certain facts well known to every thinking person, that even a judge is presumed to know."** [86]

BAR EXAMINER, February 1935

The February issue published that Minnesota adopted the NCBE character plan and was charging Applicants $ 100 for the investigation. The NCBE was charging the Minnesota Bar only $ 25. The net effect was a mark-up of 400%. An interesting controversy was taking place in Indiana, as indicated by the following:

> "The right of the Supreme Court . . . to require candidates for admission to the bar in Indiana to pass a bar examination, was sustained by the Supreme Court. . . . **The court held that the provision of the Constitution of 1851,--that any person twenty-one years of age and of good moral character was entitled to admission to the bar**,--had been repealed at the general election of 1932 when a majority of those who voted on the amendment had favored repeal. This number was less than half of the voters who cast ballots for political candidates. . . which gave rise to the contention that the constitutional provision had not been repealed. The court's refusal to sanction this contention opens the way for a further advance in standards of admission. . . ."

CALIFORNIA DECISION DECLARES POWER OF COURT TO PRESCRIBE REQUIREMENTS,

Bar Examiner, April 1935, (p.382-383)

In this article, discussion is presented about the Judiciary's quest to negate power of the Executive and Legislative branches of government with respect to pardons. California had enacted a "pardon statute" which provided that where a full pardon was granted, it restored a convicted person to all rights, privileges and franchises of which he had been deprived. A proper reading of this article confirms that the Court circumvented the pardon law. It states:

> "The case entitled "In the Matter of the Application of Morris Levine for Reinstatement to the State Bar of California," S.F. No. 15188, was one in which the State Bar opposed the petitioner's application for reinstatement, made on the grounds that the Governor had granted him a full pardon after he had been convicted. . . .
>
> Under the "pardon statute" it is provided that where a full pardon has been granted, it shall operate to restore a convicted person all rights, privileges and franchises of which he has been thereby deprived. **The court held that such a pardon standing alone and unsupported by evidence of moral rehabilitation is not enough and that insofar as the "pardon statute" made such reinstatement mandatory, it was unconstitutional and void as a legislative encroachment upon the inherent power of the court to admit attorneys to the practice of law. . . ."**
>
> Part of the opinion . . . reads as follows:
>
> > ". . . In short, such legislative regulations are, at best, but minimum standards unless the courts themselves are satisfied. . . . **The requirements of the legislature . . . are restrictions on the individual and not limitations on the courts.** They cannot compel the courts to admit to practice a person who is not properly qualified or whose moral character is bad. In other words, the courts in the exercise of their inherent power may demand more than the legislature has required." [87]

A BITTER ENDER,

Bar Examiner, April 1935 (p.392)

The above titled section in the April issue states:

> "Question in an oral examination on Ethics : Assume that you are the District Attorney and are prosecuting a man for murder. The circumstantial evidence is strong. . . and you have every right to expect a conviction. However, . . . evidence unexpectedly comes to your office showing the defendant incontrovertibly innocent. The defense attorneys know nothing about this evidence. Would you advise the court and the defense attorneys of the situation?
>
> The candidate being questioned: " I certainly would not."
>
> The examiner : "And why?"
>
> The candidate : "The dignity of the state is so great that when it once puts a man on trial it should go through with the prosecution regardless of consequences, less the confidence of the people be shaken." [88]

The June, 1935 issue reported that Missouri adopted the NCBE Character Plan. Missouri charged $ 100 to Applicants. The NCBE was still charging only $ 25 to the State Bar, so Missouri was marking up the fee 400%. Eight states now had adopted the NCBE plan and financial solvency of the NCBE seemed assured. The September, 1935 issue reported that 28 states had adopted the two year college requirement. The October issue reported that Florida adopted the NCBE Character Plan.

IMPRESSIONS OF TEN YEARS,

By Charles H. English, Chairman, Pennsylvania State Board of Law Examiners,
Bar Examiner, October 1935 (p.467-473)

Charles English's article manifests wrongful prejudicial notions inherent in the legal profession generally and the NCBE particularly. His article reflects on what he irrationally characterizes as the "progress" of the NCBE. He writes:

> ". . . Then there is the type of student appearing at every examination who quarrels with the question, contending that it is not plainly stated and using up mental energy in this way which might well be devoted to careful searching for a correct answer.
> **. . .**
> Again, the member of the board sometimes wonders about the law schools. In Pennsylvania for a number of years we have followed the practice of having statistics prepared after each examination. These statistics show the number of applicants from each law school, with the percentage of those who failed and those who passed. We go beyond that and even show the treatment of each particular question by every law school graduate. . . . We learn from experience, therefore, that all law school degrees do not have quite the same authority. . . .
>
> Then again there comes to the mind of the board member the conviction that the public right to competent and honest legal services is paramount ; that there is **no such thing in the individual as the right to practice law**. . . . He will . . . further recall the severe language of one of our great Supreme Court Justices, Justice Sharswood, to the effect that " a horde of pettifogging barristers, custom-seeking and money-making lawyers is one of the greatest curses with which any state or community can be visited."
> **. . .**
> In considering border-line cases, we, therefore, look at a student's record in law school. **If we find that . . . he has a good cultural background, it is easy for us to conceive that his failure quite to reach the passing mark may have been due to one of the factors of which I have just spoken. In such cases, we do not hesitate to give the student the benefit of the doubt."**

Read that last paragraph again. It's an important one stating:

> "If we find . . . that he has a good cultural background."

You can tell exactly where English is coming from. Later he writes more extensively on the issue:

> ". . . Very often members of local boards felt that an applicant was not fit to practice law because of **various intangible, but none the less real, reasons difficult to assign.** It is not often that a boy of eighteen or nineteen commits a wrongful act upon which the local board could put its finger to prove that he did not have a good character. Nevertheless experienced lawyers on local boards were **frequently convinced from the appearance, from the manner, by the environment**, of an applicant that he would be anything but a good lawyer. . . .
> **. . .**
> . . . It would be possible . . . for a board to decide readily that where there is present such obvious **deficiencies as want of directness, shiftiness, evasiveness, bad background and the one hundred and one other things which would satisfy a fair mind** that the applicant is not going to make a proper lawyer, to reject him. . . . This authority would have to be carefully administered. The American people are not likely to countenance a system governing so

important a matter as admission to the bar in which through the expedient of fitness tests the bar might seem to become or so attempt to become a select and privileged class shot through with nepotism and kindred evils." [89]

PAGE PRESIDENT ROOSEVELT,

Bar Examiner, October 1935 (p.480)

A small section read as follows:

> "In an examination on Constitutional Law one question required a discussion of the system of "checks and balances." One up-to-date candidate in the course of his answer said that the trouble with that system was there were too many checks and no balances." [90]

GREAT SCOTT!

Bar Examiner, October 1935 (p.480)

The above titled Section read as follows:

> "Bar examination question : Name a leading case decided by the United States Supreme Court and state what principle the case established.
>
> One applicant: "The Great Scott case --established the doctrine that the negro was entitled to the same hotel and train accommodations as the white." [91]

For the reader's information, the Applicant was apparently trying to reference the infamous Dred Scott case which gave judicial approval to slavery, and ultimately contributed to leading this nation into the Civil War. It was a case that became a badge of shame for the United State Supreme Court.

PROBABLY NOT IN CHICAGO EITHER,

Bar Examiner, October 1935 (p.480)

A small section read as follows:

> "Bar examination question: Give the reasons for the rule permitting dying declarations to be received in evidence.
>
> **Candid candidate: "One will not lie in the face of his Maker especially when he is about to meet him. However I do not believe New York follows this rule."** [92]

PHILADELPHIA LAWYERS VOTE FOR LIMITATION,

Bar Examiner, November 1935 (p.20

A small section read as follows:

> "A questionnaire sent to 1760 attorneys of the Philadelphia Bar Association included this query : "Do you approve the principle of limitation of the number of applicants who may be admitted . . . ? . . . A total of 1031 were reported in favor of limitation, compared with 729 against it. . . . **At the meeting of the Association the plan was attacked as un-American and undemocratic and as an admission on the part of lawyers that they could not stand competition. . . ."** [93]

THE CONFERENCE JOINS THE CENTURY CLUB,

The Hundredth Character Investigation is Completed
Bar Examiner, December 1935 - (p.19-28)

This article explained how the NCBE's centralized character process functioned. It states:

> "As soon as the application is received in the office of the Conference, letters are written to all references listed by the applicant and an independent investigation is also initiated. The past employment of each applicant is carefully checked and letters are written his previous associates in the practice of law. In many cases Martindale-Hubbell is asked to give any information it has about him, and inquiries are made of credit associations, bonding companies, character committees, members of bar examining boards, bar association officials, judges of the courts before which he has practiced, the dean, professors or classmates if he has attended a college or law school recently and any other sources from which the Conference believes reliable data may be obtained. If it develops that the applicant has been involved in civil or criminal proceedings, the records are checked. . . .
>
> **. . .**
>
> . . .The cost of conducting the character investigations varies greatly, in rare cases exceeding fifty dollars. . . . **Moreover, the privilege** awarded to a foreign attorney applicant, **of being admitted to practice** on the basis of his previous license, **is one for which he should be able to pay. If he cannot, it is true, . . . he is not a very desirable addition to the bar** . . . ."

The article then provides a sample "CONFIDENTIAL CHARACTER REPORT" which contains the following information given by fictitious references about the Applicant:

> "We have not personally met Mr. Doe, but know that he was a candidate several years ago for Associate Justice of the Supreme Court of State A, but failed to receive the necessary votes to elect."
>
> "**The brother of this party**, . . . has been well known to me for many years. . . ."
> "**He employed women to circulate his petition to get on the ballot**. . . . I also have an indefinite recollection that he was in some financial difficulty. . . ." [94]

COOPERATION WITH LAW SCHOOLS AND THE SUPREME COURT,

By Alfred L. Bartlett
BAR EXAMINER, January 1936 - (p.37-41)

This article contains the following irrational passages promoting the NCBE's unconstitutional notions of the admissions process:

> "In the days when the "older generation" of attorneys sought admission to practice law in this state, a short oral examination conducted in person by the justices of the Supreme Court . . . was deemed a sufficient opportunity for the court to determine the qualifications of those seeking admission . . . . Even the **personal appearance and other phases of the personality** of the applicant were known to have turned the scale in favor of one who was within a narrow margin of failure or success. Such an examination no doubt had its defects, but it afforded one opportunity to which we are willing to subscribe as an essential feature in examining applicants . . . a personal contact between the applicant and the examining authority, with the resulting opportunity of supplementing the examination . . . with regard to the ordinary activities of life. . . ."

Bartlett then considers the applicability of such notions to the contemporary admissions process ("contemporary" being defined as the time the article was written in the 1930s):

> **". . . It would seem to me that in regard to those border-line cases it would be necessary to give the Committee of Bar Examiners an arbitrary discretion, that the Committee of Bar Examiners should not be required to give any reasons or make any statements as to the basis upon which their decision in regard to those few cases was made. Nor do I believe it could be successfully worked out if the Supreme Court granted any reviews of the proceedings of the Committee of Bar Examiners in such cases."** [95]

THE ORAL EXAMINATION,

Bar Examiner, January 1936 - (p.41)

The following passage addresses the maintenance of secrecy of Applicant names during the examination process:

> "The maintenance of secrecy as to the names of those whose papers are being examined eliminates favoritism as well as those activities described by Charles H. English in his paper read at the recent Conference and published last October in this journal, as "mainly political to attempt to exert influence upon board members on behalf of some particular applicant for admission to the bar."[96]

LAWYERS IN THE 74TH CONGRESS: THEIR LEGAL EDUCATION AND EXPERIENCE,

Bar Examiner, January 1936 - (p.42-48)

The nation's legal profession was infatuated with wresting control of the admissions process from the Legislatures which had established a strong foundation in the late 1800s. The profession however did not want to stop there. It also wanted to control the Legislatures themselves by infiltrating them with lawyers. The result would be obvious. Since the Judiciary controlled the lawyers, a successful infiltration of lawyers into the Legislatures, would have the coordinate result of the Judiciary controlling the Legislatures by virtue of the fact they controlled its lawyer-members. Diabolically brilliant, I am forced to concede.

The above titled Section presented statistics on the number of lawyers in the 74th Congress. 70% of the U.S. Senate was comprised of lawyers, including 80% of the Democrat Senators and 47% of the Republican Senators. 65% of the House of Representatives was comprised of lawyers including 68% of the Democrat Representatives and 56% of the Republicans. Think about this. The Judiciary controlled 100% of the Judiciary branch and was able to exercise significant influence by virtue of their licensing power over 70% of the membership in the U.S. Senate and 65% in the House. Total control over one branch, and substantial influence over another. [97]

MARYLAND BAR APPEALS TO COURT FOR HIGHER ADMISSION STANDARDS,

Bar Examiner, February, 1936 (p.51-63)

The issue presented to the Maryland Court was whether standards for legal education should be decided by the Legislature or the Judiciary. It is easy to see that the frequent nature of such disputes confirms that the issue was not so irrefutable as State Supreme Courts falsely led the public to believe. Basic logic mandates that their assertions to the contrary must be viewed as misleading, evasive and embodied by a failure to disclose material information which reflects adversely on their moral character. The article states:

> " This is largely a matter of constitutional law arising out of our very wise separation of the judicial and legislative authority. . . . We do contend with all the earnestness we possess that the Legislature has no constitutional power to control the Courts, and determine who shall be accepted as proper officers of such Courts. The Courts alone have the ultimate right to determine the standards of education, intelligence, ability and character they will insist upon. No legislative enactment can compel the Courts to accept any candidate as a member of the Bar, nor can it prevent the Courts from suspending, disciplining or disbarring any lawyer already admitted. . . .
>
> **. . .**
>
> Suppose, as was done in one of the mid-western States, the Legislature should . . . substitute for it a law that any citizen twenty-one years of age of good moral character should be admitted to the Bar by the Court of Appeals.
>
> Or suppose a law should be passed that no applicant should be refused admission for character disqualifications, unless he should have been convicted of a crime and have served a term of at least ten years in the penitentiary. To say that our Court of Appeals would be bound by such laws is ludicrous, yet in principle there is no difference. . . .
>
> **. . .**
>
> It seems to this Committee that there can be no possible doubt that this Court has the inherent right to prescribe the educational training, both academic and legal, which candidates for admission to the Bar must undergo. . . .
>
> . . . the Committee urges that its power be made operative by appropriate rules of procedure.
>
> **. . .**
>
> The practice of law is a profession, it is said to be a learned profession, and is so recognized in most of the countries of the world.
>
> **. . .**
>
> **. . .There are seventeen States requiring only a high school education. Maryland is in this group. Only four States omit preliminary education. In the four States alone, could the modern and hypothetical Abraham Lincoln be admitted to practice."** [98]

ADMISSION TO THE LEGAL PROFESSION IN ENGLAND,

By Paul H. Sanders, Member of the Texas Bar and Assistant to the Director of the National Bar Program

Bar Examiner, March 1936 (p.75-79)

This article portrays the English legal profession as a model for America to follow. The basic appeal of it to the NCBE was the low lawyer to population ratio (Low Supply and High Demand). Such a low ratio carries with it the corollary result of high legal fees. The article states:

> ". . . There are approximately as many lawyers in Greater New York as constitute the active English legal profession. High standards coupled with heavy expenses, have served to keep the membership of both groups in that country comparatively stationary.
>
> . . .
>
> The four Inns of Court in London . . . constitute the only gateways through which one may proceed to practice at the English bar. . . . A period of "reading in chambers" as a pupil to a junior barrister for a year or more (at a standard cost of $500 per year) is usual before beginning practice. . . . The formal requirements alone, however, take up a minimum of three years' time and cost in the neighborhood of $ 1600 for fees, deposits and government stamps . . . .
>
> . . .
>
> An essential part of the solicitor's training is the period when he is "bound under articles of clerkship" to a practicing solicitor for a period of three to five years. . . .
>
> . . .
>
> Having gained entrance to one of the branches of the legal profession in England the beginner will find a hard path before him. But he would not find it easy to convince his American brother that it is more difficult than in this country when it is observed that in England there are only about forty-seven lawyers to each 100,000 of the population, which means that the legal population is less dense than in any state in the United States. . . . Alabama comes nearest to the English ratio. . . . The District of Columbia has fifteen times as many lawyers proportionately; New York has more than four times as many." [99]

INDIANA AND OREGON RAISE STANDARDS and ADOPT THE CHARACTER PLAN

Bar Examiner, April 1936 (p.95-96)

The Bar Examiner reported in April, 1936 that Indiana and Oregon raised admission standards to require two years of college education and were also going to use the NCBE character investigation program. Thirteen states were using the NCBE character program. This short article includes an unbelievable provision regarding Indiana:

> "The establishment of these standards in Indiana marks a victory of great importance . . . . Until 1931 the requirements for admission to the various courts . . . differed in the respective localities and in many cases the bar examination was only a formality. The first step was to obtain the appointment of a central board of law examiners, which was done in 1931 by the court after the passage of a legislative act giving it the power to regulate admissions to the bar, on the interesting theory that **a person who sought admission to the bar without having enough knowledge to pass a bar examination was not of the good moral character** required by the constitution." [100]

Read the last sentence again. It states:

> **"on the interesting theory that a person who sought admission to the bar without having enough knowledge to pass a bar examination was not of the good moral character required by the constitution."**

It is a perfect example of how the moral character requirement can be perverted to become a "dangerous instrument." Moral character can mean whatever anyone wants it to, in furtherance of their self-serving goals. How can "moral character" be rationally equated with providing correct answers to examination questions? It lacks logic.

LIMITATION ON NEW YORK BAR ADMISSIONS RECOMMENDED,

Comprehensive Survey Reveals Overcrowded Condition of the New York Bar
Bar Examiner, June 1936 (p.115-120)

The strategic attempt to reduce attorneys on the ground that the Bar was overcrowded was designed to increase legal fees. However, the stated purpose to the public was that a reduction of attorneys was necessary to protect them. In this article, the authors carelessly failed to cover up their true intent. Also note that the report is from the Committee on Professional Economics, with the operative term being "Economics." It reads as follows:

> "A finding that the bar of New York County is definitely overcrowded and a recommendation that measures be taken at once for further restricting admissions to the bar of the State constitute two important features of the interesting and valuable report of the Committee on Professional Economics of the New York County Lawyers' Association which has just been filed.
> . . .

The most startling feature of the report is its analysis of the earnings of New York lawyers, which shows that in the year 1933 more than half of the members . . . were earning less than $3,000 each. . . .

. . .

On the subject of overcrowding, the report has the following to say:

"The local bar as a whole is now so overcrowded as to constitute a serious problem to the public as well as to the profession. . . . Therefore we recommend that admission to the bar should be further restricted.

. . .

(b) . . . For example, the local Bar as a whole is overwhelmingly male and white. Yet special considerations may apply to the relative number of women members of the Bar. Similarly special considerations may apply to the relative number of Negro lawyers.

These small classes are in one sense more or less well-defined, with possible special class sympathy or client-drawing power from equally well-defined sections of the community at large.

On general principles we should say as to women that they seem to be under-represented in the local profession, and that many impediments, which seem to discourage them as a class in our profession, are unjustified and can be overcome in proper cases; but many of the obstacles in their way, such as the habits of mind of many lawyers and business clients, present special problems beyond our present scope. . . .

(i) The economic distress of some members of the bar concerns not only those sufferers themselves, but also the bar as a whole and the public. It has a tendency to drive many of the sufferers to unethical acts. . . .

. . .

. . . The excessive competition, induced by overcrowding, forces the handling of work, in wide areas, on a basis less than compensatory. Nor does this spotty existence of low prices redound unreservedly to the public benefit ; since at low prices the client may sometimes receive, as the saying goes, only what he pays for, . . . a disorganized, and unstandardized "market" opens the door to catch-as-catch can tactics, which are not in the public interest. . . .

(n) Further restriction of admissions to the Bar is not inconsistent with democracy. The following observations meet some commonly voiced objections:

> I. . . . The practice of law is a privilege and not a right.
>
> . . .
>
> V. The public is already protected, against extortionate legal charges based upon alleged monopoly, by the standards of well-known court decisions . . . .

. . .

As one method of dealing with overcrowding, the committee recommends in general terms the raising of admission standards and the adoption of a quota system. . . ." [101]

The foregoing reveals in no uncertain terms that the purpose for raising admission standards is to reduce overcrowding in the profession, which causes low legal fees.

IS "RADICAL ACTIVITY" GROUND FOR REFUSING BAR ADMISSION ?

Bar Examiner, April 1936 (p.126)

This small section in the April, 1936 issue, read as follows:

> ". . . On charges of college radicalism, an effort is being made to prevent Aubrey W. Grossman, University of California graduate from taking the oath requisite for the practice of law, it was revealed here yesterday.
>
> Should the Committee on Bar Examiners and the State Supreme Court uphold the contention, the action will be unique in the history of American jurisprudence.
>
> . . .
>
> The American Civil Liberties Union, through its Northern California director, Ernest Besig, announced yesterday they will fight the Legion in its attempt "to make membership in the State Bar depend on political considerations."
>
> They will defend Grossman on three grounds: First, no specific instances of his asserted radical activity have been named. Second, assumption that he will not take the oath in good faith is assuming he will commit crime. Third, even if he were a member of the Communist party, which is not admitted, that is a legal party and therefore membership in it could not be used as a basis for denying him the right to practice law." [102]

BAR EXAMINER, July-August 1936 (p.140-143)

Some interesting items in this issue included the fact that Kansas which in 1921 became the first state to adopt the two-year college requirement, now became the first state to require a full college degree. It would take seven years after high school to become a lawyer in Kansas. Four years of college plus three years of law school, or three years of college and four years of law school.

The same issue reported that Texas and New Hampshire adopted the two-year college requirement. Thirty one states had adopted the two year college requirement. Nebraska issued a decision claiming the Court had the inherent power to determine Bar admissions, rather than the Legislature. A particularly interesting story was on page 143 titled, "Three Jailed in Philadelphia for Conspiracy to Sell Bar Exam Questions." One of the three defendants accused was an individual who had been rejected on character grounds by the Board of Law Examiners because of BOOTLEGGING ACTIVITIES.

QUAKER STATE ADOPTS CHARACTER PLAN,

Bar Examiner, October 1936 - (p.162)

The Bar Examiner reported that Pennsylvania passed a resolution to adopt the NCBE centralized character investigation plan. The following was included:

> 'This action is of particular significance in view of the fact that **it is generally conceded that Pennsylvania leads in the thoroughness with which it investigates and passes on the character of all candidates for admission to the bar**. . . . There are now fifteen states which regularly use the services of the Conference for character investigation . . . ." [103]

PSYCHOLOGY POINTS WAY TO NEW CHARACTER TESTS,

By Oscar G. Haugland, Secretary Minnesota State Board of Law Examiners,
Bar Examiner, October 1936 - (p.165-173)

This article explains the subjective nature of power wielded by Bar Examiners to reject an Applicant on character grounds. It describes the injection of psychological factors into the process. It states:

> "Much has been written in our own Bar Examiner, in the American Bar Association Journal, in other publications devoted to our professional problems . . . concerning moral character and the desirability of determining the presence or absence of that vague trait or combination of traits. . . .
>
> **. . .**
>
> . . . We all know of the procedure in Pennsylvania where comprehensive questionnaires are required of the applicant, his preceptor, and three citizen sponsors at the time of registration for law study, the personal appearance and interview made before the county board at that time, the supervision of or contact with the student by the preceptor during his law study, and the duplication of the initial investigation at the time of application for the bar examination. . . . It seems doubtful, however, that the Pennsylvania method . . . or any of the systems now in operation, provide for as thorough and accurate an investigation as the problem warrants . . . .
>
> **. . . it does seem that applicants may have been disqualified upon evidence which would not be admissible in any legal proceedings.** Thus, one applicant was rejected partially because he was "accused of embezzlement by his employer." Another . . . stated that **"one citizen sponsor was under impression father and possibly son are connected with bootleggers." Another, "Father suspected by creditors in recent bankruptcy proceedings of concealing assets." . . .**
>
> **. . . Thus, Dean Clark, in an address delivered at our 1933 meeting, pointed out that opinions as to the applicant's character, based upon the type of questions asked in even some of our better questionnaires, may constitute judgments resting on nothing more substantial than prejudiced assertions.** He properly concluded that some of these questions were at their best meaningless and valueless and inviting of unsubstantial and unsubstantiated guesses. Our chief difficulty in framing questionnaires arises from the fact that we do not know what we are searching for and if we did we would not know how to go about it.
>
> . . . Dr. Moss, Professor of Psychology at Georgetown University, comments rather pointedly on the reliability of the personal interview in the selection of personnel:
>
> > "In the first place, an interviewer tends to generalize on too few experiences. **If the interviewer has had an unfortunate experience with a red-headed person, he tends to regard all red-headed people with suspicion; if he has been swindled by some one with a hooked nose, he feels that no persons with hooked noses should be trusted ; and if a man of the Jewish race has double-crossed him in the past, he tends to place less confidence in other members of that race."**
> >
> > "Another cause for unreliability of the interview is the widespread assumption that habits are general rather than specific. It is assumed that neatness in one situation will carry over into other situations. Clean hands may be taken to indicate clean morals, and dirty hand, dirty conduct. . . . The fallacy of such assumptions have been demonstrated time

and again. . . . Nervousness on the part of the applicant is sometimes a third cause of unreliability. . . .”

Mr. Shafroth’s report shows that nineteen of the states either publish or post the names of the applicants, or send lists of the names to members of the bar. . . .

. . .

In that part of our field which we are now discussing, however, we are still stumbling along in our own inefficient manner using archaic methods, attempting to cope with a problem for which we possess neither the training, the information nor the experience to handle. . . **Members of examining boards and character committees, however, with no foundations for their opinions other than the fact that they may have struggled with the problem for some years . . . decide the destinies of the applicants who come before them . . . on the validity of their own inexpert conclusions. . . .**

. . .

. . . A psychiatrist tells me that persons possessing improper moral character, in other words, those persons whom we are trying to exclude, are classified in the field of psychiatry as constitutional psychopathic inferiors, grouping in this class pathological liars, pathological drunkards, forgers, thieves, murderers, perjurers, sex perverts, and inadequate personalities. . . . Another psychiatrist, however, says that rarely, if ever, will any members of this class reach us for the reason that by that age they are either in jail or in an institution. . . .

. . .

. . . a man may have a high abstract intelligence, he may do well in school, but he may be lacking entirely in the ability to get along with people which is, of course, often much more important than abstract intelligence. . . .

. . .

The very factors which repel confidence in tests for the measurement of character are those which most strongly impel us to seek aid of this nature. The elusiveness of the qualities which are to be measured, the absence of generally accepted criteria and methods, the lack of opportunity to verify conclusions by subsequent observation . . . demand that our dillettant efforts be at least supplemented by the knowledge and methods, if not by the direct participation, of those persons whose painstaking accumulation and observation of data . . . eliminate to such an extent as the subject matter now permits, the errors which we must concede that we commit.” [104]

THE ORAL EXAMINATION IN MASSACHUSETTS,

By William Harold Hitchcock, Chairman Massachusetts Board of Bar Examiners,
Bar Examiner, November 1936 - (p.3-8)

This article describes interesting aspects of the Massachusetts admissions process. It states:

> "Let me say right here (perhaps the detail is not of very great importance) that the only way we get information in the first instance, at any rate, with reference to character, is by a questionnaire and by letters of recommendation from other members of the Bar. The questionnaire has to be filled out by every applicant ; **it goes into the family and personal history and education**, with various questions as to whether the applicant has been involved in any civil or criminal legal proceedings, the latter **from parking overtime up to murder in the first degree**. . . .
> **. . .**
> . . . Our rules as adopted by the Court requires that notice must be published three times, as a legal notice in one of the Boston papers, thirty days before applicants are sworn in. Then the Boston papers always carry the full list of successful applicants as a news item. . . ." [105]

EDITORIAL, CONDITIONS IN THE PROFESSION,

Bar Examiner, December 1936 - 25-28

This editorial in the December issue demonstrates that the restrictions on Bar admissions were designed to increase profits of existing lawyers, rather than promote the public interest, by curing the so-called problem of "overcrowding." It is more blatant on the issue than other articles. In fact, it can fairly be construed as a "voluntary confession" by the legal profession when it states:

> "The question of what constitutes too many lawyers is one of individual opinion which is not capable of scientific demonstration. . . .
>
> **The real essence of the overcrowding problem lies in the income of members of the bar**, for the reason that whenever lawyers are unable to make a living practicing in an ethical way, there is a strong temptation to resort to ambulance chasing, solicitation of business and commercialization of practice, the evils of which are too evident to require dissertation. **A proper regard for the public interest must cause the members of our profession grave concern where it is apparent that many lawyers are not making a decent living.**
> **. . .**
> . . . With the addition since last fall of New Hampshire, Indiana and Texas . . . there are now thirty-two states which require, either presently or prospectively, two years of college education, or its equivalent . . . .
>
> Four years ago some figures were obtained which showed the impracticability of depending on the bar examinations to screen out unworthy applicants. . . ." [106]

A RECOMMENDATION FROM MISSOURI,

Bar Examiner, December 1936 - (p.28)

The NCBE had succeeded for the most part in coercing states to increase the educational requirements to a mandatory two years college education prior to law study. Now, they wanted more. They wanted to increase it again, this time to four years of college education. A small Section titled as above, read as follows:

> "Your committee recommends to the bar of Missouri that it urge upon the Supreme Court of the State of Missouri the desirability of increasing within the near future its general education requirement from two to four years of college work as a prerequisite to legal education and admission to the bar. . . ." [107]

CHIEF JUSTICE WASTE AND CHAIRMAN RIORDAN ADDRESS NEW LAWYERS,

Bar Examiner, December 1936 - (p.29-30)

This Section contained enlightening information from an address to candidates who passed the bar examination. It states:

> "Mr. Riordan : **Bar examiners are the guardians at the gate of the legal profession.** They are not enrobed in white or crowned with a halo like that great Saint who stands at the celestial portals. On the contrary, **they are more often picture in the minds of those approaching the bar examinations**, and naturally in the minds of those who fail therein, **as garbed in red and crowned with horns**. **Indeed, the bar examiners themselves are seldom allowed to forget that if they are not constantly walking through the regions of the damned, every examination at least heaps fresh coals on their unhaloed heads**. . . .
>
> **The law is a noble profession.** It has furnished most of the great political and social leaders, as well as statesmen, of this country. . . . In no other profession or calling will you find so many who are devoted to the high and patriotic ideals of this government and its founders. In no other field will you find as many who appreciate the heritage of our forefathers. **In no other group-- not even the ministry -- will you find as many who practice the great virtue of tolerance."** [108]

BAR SURVEY SHOWS MUCH UNSATISFIED NEED FOR LEGAL SERVICES,

Bar Examiner, December 1936 - (p.31)

How do you reconcile the Bar's false assertions that the legal profession is overcrowded and the alleged need to increase restrictions on admission need to be increased, with the following excerpt? It states:

> "A published report of the Committee on Cooperation with the Bench and the Bar . . . presents some interesting facts revealed. . . . One of the most striking results of the survey was shown by interviews with laymen in business and private life. Over half the persons visited had problems where the services of lawyers were indicated as necessary or at least desirable, and in the case of business men this was true of ninety per cent of those interviewed. **Two-thirds of the persons in the residential district and sixty per cent of the businesses canvassed were without legal advice."** [109]

A COUNTRY LAWYER'S COMMENT,

Bar Examiner, March 1937 (p.62)

An example of a response to a character inquiry submitted by an attorney, pertaining to a Bar Applicant, was published in the March, 1937 issue. It read as follows:

> "Dear Sir:
>
> Your letter of February 12th . . . relative to the moral character and fitness for the practice of law of John Doe. . . asking as to the extent of my acquaintance and for an opinion.
>
> I know Mr. Doe just as you know a young fellow who has come up in the county, but with whom you have had no occasion to intimate. . . . the family is regarded as an excellent family. His father is one of the respected farmers in the county. The only error that he can be accused of is that he did not wed his boys to the farm where they could have led independent lives. One is our tax collector-- and now this one has "busted loose." I should say his moral character at this time should give no one any concern. After he has been practicing at a congested bar for a few years it might be a different question, the pangs of hunger and the shame of nakedness having a way of working such revolutions in human character. . . . I think it is a rare human being who is fit to practice law who has not had at least five years preparation in a high-grade law school. This young man, I do not think has had anything like that. . . . But what are you going to do? He is a nice kid and if they turn the rest of them loose that way, why not him? . . .
>
> Please do not understand this letter to be any criticism of Mr. Doe for he is all right at the present time. Maybe he will get a government job or be lucky as a real estate operator.
>
> Very truly yours,
>
> 34 years a Pilgrim, who landed on a bare rock" [110]

MINIMUM SENTENCES,

Bar Examiner, March 1937 (p.61)

This small Section contained tidbits designed to be humorous. Three read as follows:

> **"There are only two kinds of women clients; those who pay liberally and those who complain to the Bar Association."**
>
> "Doctors, ministers and lawyers are true to the ideals of their profession only when they try to eliminate themselves."
>
> **"The worst men make the best clients."**[111]

OHIO COURT PROVIDES FOR MORE EFFECTIVE CHARACTER INQUIRIES,

Bar Examiner, May 1937 (p.96)

The May issue reported that a general committee of the Ohio State Bar Association presented suggestions including the promulgation of a rule providing for character investigation of applicants when they start to study law and immediately before they take the bar exam. The Section read in part as follows:

> "In the report . . . the following six advantages were set forth demonstrating the advisability of using the service of the National in reference to immigrant attorneys:
> . . .
> (4) It offers no embarrassment to the applicant who is worthy of admission **but operates as a deterrent to undesirables** who will hesitate to file an application in this state if they are aware of the thorough investigation about to be made." [112]

BAR EXAMINER, July-August 1937

Several small Sections in this issue reported on interesting developments. In a Section titled, *"Empire State Adopts Character Plan"* it was published that New York State became the twentieth state to require an NCBE character investigation for "migrant attorneys." In a Section titled, *"The Need for Broader Legal Education,"* Senior U.S. Circuit Judge Martin T. Manton was quoted as follows:

> "One of the evils with which society has been haunted for sometime is the narrowness of legal education. We have been instructed in the abstractions of law without even considering the social and economic phenomena which give life and substance to that law. **Only of late have our schools come to realize . . . that a study of economics and social conditions is indispensable to a healthy growth of our legal structure."** [113]

Note the increasing emphasis by the NCBE on "social conditions." The admissions process was becoming a mechanism to direct societal behavior extending well beyond the context of litigation. In a Section titled, *"The Obligation of the Law Schools,"* Judge Irving Lehman of the Court of Appeals states:

> "Judge Lehman urged the schools to make more careful selection among applicants. He also suggested that they develop their curricula to stress proper conduct in the profession.
>
> Social philosophy, social relations and social problems should be studied by the prospective lawyer. Judge Lehman declared, because a knowledge of these subjects should be part of his equipment to practice." [114]

In a Section titled, *"Ohio Schools Will Furnish Student's Ranking to the Board"* it was reported that each law school in Ohio would provide a list of its graduates and their ranking, for comparison by the Bar Examiners with their ranking on the Bar examination.

THE FUTURE OF THE PROFESSION,

By Justice L. B. Day of the Supreme Court of Nebraska
Bar Examiner, September 1937 (p.134-142)

This article reads in part as follows:

"Much has been said, especially at bar association meetings, relative to the public opinion of lawyers. One very influential man in an organized state once said : "First, let us kill all the lawyers." **One of our great jurists tells us that even one of our own states, at an early date in our history, passed a single ordinance against lawyers and rum. He reports that some time after they relaxed as to rum but not as to lawyers.**

. . .

More recently, the New York County Lawyers Association attempted to make a comprehensive survey of the condition of the profession in that county, which revealed the most distressing conditions. It was in some measure based upon the average income of lawyers. It definitely indicated that New York County could struggle along with a few less lawyers.

. . .

If any one thinks the assumption that there are too many lawyers is erroneous, he must be in the minority of public opinion. . . .

. . .

Sometimes it is refreshing as well as informative to read back over pages of history. During the French Revolution the lawyers had been suppressed. When Napoleon produced his famous codes the lawyer was reestablished but greatly limited as to number. It is not easily determined whether he advised what legal opinions should be given. **But it is recorded that while the judges were not coerced, they unconsciously knew what opinions were proper**. . . .

Such a scheme is contrary to the spirit of our social life in America. And this is why : There is no sound basis of choice between applicants for admission to the bar. There is no caste here. There are not supposed to be any favorites in America. While the practice of law is a privilege and not a right, it is open to all who conform to our standards.

. . .

. . . **Abraham Lincoln and other successful lawyers have been used as examples that a general education and a legal education were unnecessary in the practice of law**. . . .

. . .

. . . It does not require an experienced educator to know that the graduates of our law schools are lacking in the essential qualifications so necessary to the lawyer. The average graduate would not know how to handle a client if he had one. . . .

. . .

The public suffers most because the overcrowding of the profession in a particular locality leads to unscrupulous practice. . . .

Then again, **too many lawyers in a community cause an era of fee cutting** with the result of careless and inefficient work. Again the public suffers. . . .

. . .

No one realizes better than a member of a state court of last resort that it is the guardian of the entrance to the profession. But the court cannot do more than the . . . profession wish done. . . . **The people of Indiana years ago in their Constitution provided that anyone of good moral character could be admitted to practice law. . . . Recently, however the Indiana Court held**

> **that anyone who attempted to practice law without certain educational requirements was not of good moral character.**
> **. . .**
> No discussion of this subject would be complete without a mention of The National Conference of Bar Examiners. **This organization, nurtured by the Section of Legal Education and Admission to the Bar of the American Bar Association, has in a few years exerted a tremendous influence upon admissions to the bar. . . .”** [115]

BAR EXAMINER, October 1937

In a small Section titled, “The National Conference of Bar Examiner -- Its Accomplishments and Service” written by John H. Riordan Chairman of the NCBE, an interesting passage is contained about the NCBE’s centralized character investigation service. Riordan writes:

> “While State Boards can and do efficiently check the character of local applicants, it is practically impossible for them to conduct an adequate character examination with respect to applicants who come from distant localities in other states. **Herein the “carpet bagger” or migrant attorney ofttimes finds a loophole through which he may enter, notwithstanding the vigilance of the local Board.”** [116]

TURN THE RASCALS UP!

Bar Examiner, November 1937 (p.162)

A small Section titled as above read as follows:

> "Information was received recently by the Secretary of the Conference from an eastern law school that in case a certain young man applied for admission to the bar, important facts concerning him could be furnished by that law school. **This information was relayed to the secretaries of all boards of bar examiners."** [117]

The November, 1937 issue included the "Report of the Treasurer" for the NCBE's fiscal year ended September 16, 1937. Total revenues amounted to $ 5573.52 of which 100% was derived from its character investigation service. The largest expenditures was for Salaries of NCBE staff in the amount of $ 1559.65; Character Investigations in the amount of $ 1,370.84 ; the Bar Examiner magazine in the amount of $ 1149.30 ; and printing and postage in the amount of $ 505.51. No other category exceeded $ 220.00. The same issue also reported that in Colorado and Missouri, Bar Examiners had been elected as State Bar Presidents. Illinois passed a rule distinguishing between law study before 4:00 in the afternoon; and classes taken after 4:00 in the afternoon. That excerpt stated:

> "The rule now makes a distinction between law study before and after four o'clock in the afternoon. If a major portion of the classroom hours in any week are before four o'clock in the afternoon, a student receives credit for no more than 540 classroom hours in any period of one scholastic year ; but if the major portion is after four o'clock in the afternoon . . . no more than 351 classroom hours during the period of one year."

The December 1937 issue reported that a Missouri Bar Committee recommended to the State Supreme Court that it adopt a rule requiring graduation from an ABA accredited law school to sit for the Bar exam. This technique would force the schools to conform to ABA ideological standards. Most particularly, the ABA's "group thought," and anticompetitive directives.

BAR EXAMINER, January 1938 (p.3-6)

In an article titled, "It May Be Epoch-Making," the Bar Examiner reported on developments to implement a uniform National Bar exam occurring in California. That would further enhance the power of the NCBE. Up until this point in time, the NCBE's seven-year existence resulted in most states adopting a two-year college education requirement for admission. In addition, the centralized character investigation service allowed the NCBE to become financially self-sustaining. Two goals had been achieved and the ABA's lust for power was increasing. Numerous proposals for additional reform had been made and a few states adopted law student registration with character investigation, probationary admissions, a junior bar, quota systems, graduation from an ABA approved law school and a four year college education requirement. However, there was no general acceptance of these anticompetitive measures. Adoption of these ideas was haphazard in the 1930s and still is today. The concepts resurface during periods of political conservatism and subside during periods of liberalism.

The January, 1938 issue introduced the foundation for what would years later become the MBE (Multistate Bar Exam). A uniform written Bar examination on various subject areas of law. California was first to promote the concept. California had also been the first state to adopt the NCBE's character investigation program.

CONNECTICUT STATUTE INCREASES POWER OF CHARACTER COMMITTEE,

Bar Examiner, March, 1938 - (p.36)

The Bar Examiner reported on a statute that inordinately and unconstitutionally increased the power of the Connecticut Character Committee. The statute read somewhat incredibly as follows:

> "Sec. 832d. Investigations of qualifications of applicants for admission to the bar. (a) For the **purpose of investigating the moral qualification or general fitness . . . each chairman of any standing committee on recommendations for admission to the bar, in any county shall have power to compel the attendance and testimony before it, . . . of any person who such chairman reasonably believes may have information useful to his committee in such investigation. . . . (b) No such person shall be excused from testifying** . . . on the ground that such testimony . . . will tend to incriminate him, but such evidence shall not be used in any criminal proceedings against him. **(c) If any person shall disobey any such subpoena . . . or, having appeared . . . shall refuse to answer any pertinent question . . . such committee . . . may complain to the state's attorney . . . who, . . . shall forthwith apply to the superior court . . . and said court or such judge . . . shall commit such person to jail until he shall testify. . . ."** [118]

What the Connecticut rule did was unbelievable. Nonattorney citizens who were not even applying to the Bar could be forced to testify before the Bar Committee with respect to an Applicant. The Bar Examiner interview had essentially been transformed into a judicial proceeding affecting everyday citizens. The rule provided that **Nonattorney citizens could be imprisoned** if they refused to cooperate with furthering the Bar's anticompetitive interests.

CHARACTER AND FITNESS,

By William M. James, Chairman of the Committee of the NCBE
Bar Examiner, March 1938 (p.37-41)

This article provides another example of the NCBE's prejudicial notions focusing on assessment of an Applicant's character by evaluating the neighborhood they live in. It irrationally emphasizes the value to the Bar of fabricating allegations of poor character, rather than relying on objective and fair assessment of conduct. The focus of the article on the potential lawyer's grammar school is a bit frightening, particularly in light of the Fascism which had taken hold in Germany by this time. Similarly, the focus on "metropolitan" districts where immigrants concentrated is reprehensible. The article states:

> "The writer is serving his fifth year as a member of the character and fitness committee of the First Appellate Court District of Illinois and his second year as chairman thereof. During this period of servitude he has personally interviewed hundreds of applicants for admission to the bar in Illinois. From this experience he has arrived at certain definite conclusions some of which are hereinafter set forth. . . .
>
> When a man is admitted to the bar, he has run the gauntlet of what is intended to be a selective process. To accomplish the best results each cog in the process must function at its maximum efficiency. **The first step in the applicant's preparation is in the grammar school where, for all anyone knows, every student therein is a potential lawyer. Many eliminate themselves at this early stage in their education.** The next step is in the high school where others disqualify themselves either by voluntarily or involuntarily not completing their high school education. . . . The principal difference between the law schools lies in the degree in which they are guilty. If any moral is to be gleaned from this observation, it is that all law schools should continue with increased vigor their efforts to separate the sheep from the goats and to see that only the sheep graduate. . . .
>
> The final step in the process of selecting candidates for admission to the bar is the inquiry into the applicant's character and fitness. . . .
> . . .
>
> . . . we find the type of applicant who, at least as far as the committee knows, has not committed any positive wrong such as larceny, embezzlement or the like. . . . Furthermore, he is often found to have taken the bar examination four, five or six times before he ultimately succeeds in passing it. It is not uncommon for an applicant in this group to exhibit a lack of candor in dealing with the committee who is investigating his character or in dealing with his fellow men in the course of every day events of his life. Some applicants in this group have had no scholastic difficulties and to all intents and purposes appear to be very intelligent individuals. **However, an investigation among the applicant's friends or in the neighborhood in which he lives may disclose that his habits are bad**. . . . In other words, it cannot be established that he has done something definitely wrong, as for example, committed a crime. Applicants who fall into this group present one of the most difficult problems which confronts a character and fitness committee. . . .
> . . .
> One suggestion which has received considerable support is that the applicant should be required to register with a character and fitness committee before commencing the study of law and

should at that stage of his career be subjected to a preliminary character and fitness examination; that while he is studying law he should be required to keep in contact with the committee with which he has registered. . . . Another suggestion is that character and fitness committees, **particularly in the metropolitan districts**, should have available sufficient funds with which to make a thorough investigation of each applicant. A third suggestion is that character and fitness committees should be given the power to subpoena witnesses and cause them to be sworn." [119]

MICHIGAN STUDIES CHARACTER PROBLEM,

Bar Examiner, March 1938 (p.42-43)

This article focuses on prejudicial notions as indicated by the following:

> "Informal reports concerning the work of the Character Examination Committee of the Detroit Bar Association indicated that the work of the Detroit Committee had apparently resulted in an improved quality of applicants. . . . **This is due not so much to exclusion of applicants found to be unworthy, as from the deterrent effect which the activities of this Committee had exercised upon persons of undesirable character or conduct in the Detroit area**. . . ." [120]

Note the terms "unworthy" and "undesirable."

APPLICANTS FOR ADMISSION TO THE BAR,

By Karl A. McCormick, Proctor of the Bar, Eighth Judicial District of New York
Bar Examiner, March 1938 - (p.44-47)

The following passages are worth consideration:

> "In Ohio **an alliance** has recently been formed between the law schools and the Bar for the **purpose of attempting to cut down the numbers** and improve the quality of those who come to the Bar."

> "A layman, an editor of a middle west newspaper, recently wrote a satirical editorial on the condition of the Bar throughout the country. . . . he suggested the way to solve the problem was to "plow under a third of the crop each year." **This satirical thrust may some day symbolize the attitude of the public who have a way of drastic action when sufficiently aroused. They then might not be satisfied to eliminate one third. They might demand the destruction of the whole crop."** [121]

DIFFICULTIES FACING CHARACTER COMMITTEES,

Bar Examiner, March 1938 (p.48)

Consider the following passage:

> **"Applicants may appear whose appearance . . . give an unfavorable impression, resulting in the conviction that they are not worthy of admission to the bar. . . ."** [122]

BACK DOOR APPLICANTS,

Bar Examiner, April 1938 - (p.52-53)

A letter was received by the NCBE, concerning an Applicant for admission to the Missouri Bar who applied on the basis of previous practice in Arkansas. The names are changed. Consider whether the matters delineated were appropriate for consideration by the Bar. The letter states:

> ". . . On two or three occasions I heard of him soliciting business and it was not long until the rest of the lawyers started staying away from him. He would go for days and never come to his office but would stay around the pool halls and bet on horse races. Mr. Determined at one time borrowed some money from Mr. Lender of this city, and gave him a mortgage on his household furniture. When the note came due, he did not have the money to pay and the mortgage was foreclosed. . . .
>
> I am a young lawyer myself and I know that a young man has a hard time but in my opinion, and the opinion of others here, a man who is getting $ 175 a month from his uncle should surely leave off playing poker and betting on horses if it took all of his money, and his family has to suffer. I have been practicing law seven years and have seen four or five lawyers come into Norton just like Determined, on account of the fact that the bar examination might be a little less hard to pass than some other state. . . . I write this letter with the full knowledge that I am hurting Determined's chance of admittance to the bar in Missouri but I feel that the only way that any local bar can be cleansed of lawyers who don't conduct themselves right as a lawyer or a man is for the other lawyers, . . . to get behind some conference such as yours. . . ."[123]

ANNUAL MEETING OF NATIONAL CONFERENCE,

Bar Examiner, September 1938 (p.115-118)

The NCBE was at it's height. Fascism which had a firm grasp in Germany, also had a hold in America. The NCBE seized the opportunity to capitalize on the public's weakness during the Depression. Nonattorneys, virtually penniless were ripe for the taking by the ABA gang, who sought to economically strangle them for the benefit of attorneys. The NCBE's bubble would burst however, when World War II started. They would experience something they were unaccustomed to. They would not be taken seriously. It would take many years after World War II before they would again reign Supreme and equal their power from 1938-1940. This article written during their first zenith of power, states as follows (Note particularly Standard #5 below):

> "A new chapter in the history of the National Conference of Bar Examiners was written at the annual meeting . . . . Chief attention at this meeting and at the subsequent joint meeting held the next day with the Section of Legal Education and Admissions to the Bar was devoted to the character problem. . . .
>
> A committee . . . presented a report which was adopted first by the Conference, then by the joint meeting and finally by the House of Delegates of the American Bar Association. . . .
>
> . . .
>
> The standards of character examination adopted were as follows :
>
> 1. The applicant should be required to register at the beginning of law study and at that time submit to an examination of his character and fitness.
>
> 2. That further study be made of the desirability of each applicant upon commencing the study of law assigned to a sponsor in the locality in which the applicant lives. . . .
>
> . . .
>
> 4. Character and fitness committees should have the power to cause oaths to be administered and witnesses to be subpoenaed.
>
> 5. Each applicant, **particularly in the metropolitan districts,** should be interviewed personally.
>
> . . .
>
> 8. Just before taking the bar examination the applicant should be required to submit to a final examination into his character and fitness.
>
> . . .
>
> 10. In each jurisdiction the court, legislature or other group which has control of admission to the bar should be encouraged to continue a study of the problem with the view of obtaining better cooperation in setting up the necessary machinery, and . . . getting the proper cooperation between the group which determines the requirements for admission to the bar and those appointed to inquire into the character and fitness of applicants.
>
> . . .
>
> . . .Dean Andrews referred to the difficult problems which the bar is facing today and in assessing its ability to cope successfully with the present difficulties he cast up a balance sheet of assets and liabilities. As assets he listed the ideals of the profession, the large number of lawyers who will not compromise these ideals, the great fund of enthusiasm and idealism possessed by the law school graduates going into the bar, the higher standards of legal education and the

requirements for admission which are now found in the great majority of the states, the incalculable amount of work done by bar examiners, character committees and bar associations, and the large amount of leadership lawyers are giving in government, politics and business. . . .But there are also liabilities, including an unfavorable press, a small minority of unethical practitioners who breed cynicism in the ranks of the neophytes, a frequent failure to exclude the unfit or to discipline the unethical. . . .

. . .

. . . He referred to the question of how we are to have worthy lawyers as one of supreme concern to the profession. . . .**In the ranks of the English and Scottish bar there is a very fine esprit de corps and the man who offends against the professional ideals soon finds himself mistrusted and shunned by his brethren of the bar and by the benchers of his Inn.**

Lord Macmillan referred to the diverse chapter of our admission requirements and examinations in America and stated that in his opinion the gateway to the bar should be nation-wide rather than state-wide, and the **spirit of the profession. . . must also be nation-wide**. This spirit he said was the most potent means of promoting the traditions of the profession. This spirit is promoted in England by the requirement that the aspirant for a call to the bar of England has been required to eat a certain number of dinners in the Inns of Court as a part of his training. This has a social as well as an intellectual value." [124]

CHARACTER AND THE APPLICANT FOR BAR ADMISSION,

By William M. James, Chairman Committee on Character and Fitness of the NCBE
Bar Examiner, September 1938 (p.121-126)

The article states as follows:

"In looking through the advance program published by the American Bar Association, I observed that I was described as "Chairman of the Committee on Character and Fitness. . . ." . . . These dignified references to my official position rather embarrass me because in Cook County I am known to the applicants for admission to the bar as **"Chairman of the Morals Gang."**

In Cook County, Illinois, we have a comparatively elaborate system for inquiring into the character and fitness of applicants for admission to the bar. . . .

. . .

In order to be admitted to the bar in Illinois, there are certain essential qualifications in addition to the educational requirements. The applicant must be a citizen of the United States, **he must speak the English language readily** and intelligently and he must satisfy the committee on character and fitness. . . .

. . . In this application he must state, among other things, his age and residence, the schools he attended, what degrees he received, whether or not he ever had any scholastic difficulties in school, whether he has ever been a party, either plaintiff or defendant . . ., **the names of his parents, their occupation and residence, if living, and so on."** [125]

CHARACTER AND FITNESS,

By Karl A. McCormick, Proctor of the Bar, Eighth Judicial District of New York
Bar Examiner, October-November 1938 (p.135-144)

This article addresses key issues pertaining to character review. It also makes a correct statement pertaining to probationary admission at the very end. The article reads in part as follows:

"Character fitness of applicants for admission to the bar seems to me to transcend any and all other necessary qualifications. . . .

. . . **Early in the history of our country, admission to the bar was open to almost everyone.** Very little education of any kind was required and the examinations, if any, consisted of a few oral questions propounded by the court. **In at least one state, by constitutional provision, anyone was entitled to practice law without meeting any test. And so, a belief became widespread that the "right" to be a lawyer was an American "right" and any limitation thereof was undemocratic and not in keeping with the traditions of our form of government.**

All of the advances that have been made, and I believe they have been many, especially in the past twenty years, have been in the face of **the old feeling that to preserve American ideals of democracy, the profession of law should be open to anyone who desires to enter.**

This feeling on the part of large numbers of the people has not been shared with other professions. Notably, the field of medicine has for many years been looked upon as properly restricted. . . .

But in our profession, we have many who relish the opportunity to argue loud and long that any system of limitation, even higher educational qualifications, may possibly deny society the benefit of the legal skill of a Lincoln or a Choate.

Doting fathers and mothers, . . . turn to law as the place where their children can perpetuate the family name, at a minimum expenditure of time and money.

. . .

After he has spend his time and money in his formal education and passed his bar examinations, the student is, for the first time, advised that there is a committee on character and fitness which he will have to appear before. . . .

This seems to some students like an unnecessary delay in their otherwise swift progress of admission to the bar. **Occasionally, some student or his parent or some close friend requests that this "formality" be waived** and the candidate be immediately admitted by the Appellate Division . . . . **One can hardly criticize such a request,** when we consider how perfunctory the method of character tests must appear to the students.

There, undoubtedly, was a time when a character committee made up of lawyers of long practice had an acquaintance with most of the applicants for admission. In those days, the numbers applying were comparatively few **and, in most cases, at least one member of the committee knew every candidate. . . .**

. . .

The State of Pennsylvania has been attempting to provide some kind of effective character tests since 1928. . . .

. . .

There are undoubtedly weaknesses in the Pennsylvania system and criticism has been heard of it. But after ten years of trial must it not be judged as infinitely better, . . . than any system now in vogue?

I think we can look to Pennsylvania for much assistance in bettering the system now in vogue in most other locations.

. . .

Plausible arguments can be made of cases of unfairness. Absolute impartiality is a rare quality in any human being, if in fact it can ever be found. . . .

. . .

I believe we should aim to bring about a closer contact between the admitting courts, the law schools, and the bar.

. . .

In connection with this subject, I desire to bring up the suggestion that has been made in recent years for a probationary period of admission. . . .

I do not see any merit in such a proposal. I do see great unfairness and unnecessary handicap.

. . . But suppose they were all serving a probationary period. How could they expect to obtain a clientele? What citizens would want to employ a young lawyer who was not fully admitted and might never be?" [126]

WOLFGAN KOHLER: Age, 26

Bar Examiner, December 1938 (p.146)

The following obituary was published in the December 1938 issue:

> "On the list of successful applicants on the September, 1937, bar examination in the record room of the State Bar there still remains one name opposite which no date of admission to practice is recorded. There the notation, "Died November 19, 1938," will be made and the list, complete at last, will be filed away.
>
> What of the story that lies behind those brief and prosaic entries? It begins a number of years ago in far-off Germany, where a school boy, as he toils at his studies, dreams of the day when he will take his place in the profession of the law in his native country. **Thoughts of the career of his father, a judge in Berlin, and of his grandfather, who had been one of Germany's greatest jurists, stood out like beacon lights . . . .**
>
> **While the boy was still in law school calamity struck. The door leading to the profession of the law was slammed shut in the faces of all Jews.** While there was a faint streak of Jewish blood in his family, the boy was not a Jew according to common understanding. It made no difference, under the regulations the door was barred to him and there was nothing that could be done about it. . . . The boy, undaunted, decided to emigrate to this country that free of the hatred and prejudices so rampant in his native land.
>
> . . . He passed the examination in the fall of 1937, but the fulfillment of his life-long hopes was not yet at hand. Citizenship was required to be admitted to practice as an attorney, . . . the requisite five-year period had not elapsed. . . . And then, just a few short days before that time arrived, "Wolfgang Kohler . . . died early yesterday morning. . . ." [127]

BAR EXAMINER, January 1939 (p.2)

The January issue of the new year reported that Wisconsin was increasing the amount of college education required from two to three years for admission and was **eliminating credit for courses "without intellectual content."** Facetiously, I would note that to comply with the rule the Bar would seemingly have to eliminate credit for courses related to law.

THE IMPORTANCE OF THE CHARACTER PROBLEM,

By Hon. Owen J. Roberts, Justice of the Supreme Court of the United States
Bar Examiner, January 1939 (p.3-5)

The most disturbing aspect of this article is that it was written by a Justice of the U.S. Supreme Court who really should have known better. The fact that he would present such views indicates how far up the problem extended and how expansive the NCBE's power was. Justice Roberts writes:

> "Now, the law schools have made a laudable effort to teach professional ethics and to instruct law students in the way a lawyer and a gentleman ought to behave. But that is the sort of thing that cannot be taught didactically. **That is the sort of thing a child absorbs in his family; that is the sort of thing a professional man absorbs in his professional family.**
> . . .
> The condition is particularly acute in the great cities. . . .
>
> They fall into bad ways. They have got to live. Heaven knows what you or I would have done if subjected to some of the stresses and temptations that these young people are subjected to in the great city bars today. . . .
>
> Now, in a bar of from three to twenty thousand people . . . how do you expect to have a condition such as in the English bar where the barristers are few in number, **known intimately to the judges,** to each other, where, if a man attempts to do what isn't done by most gentlemen, the community knows it in no time.
>
> **We have the same conditions in our country bars. You don't find in the country bars a man carrying on bad practices long. His judge knows, his county judge, his brethren know, the citizens in the community know. The thumb is turned down on him. He has got to get out of the communit**y. . . . Every bar in this country ought to put up character standards and enforce them strictly, look into a young man's past, a young woman's past, before he or she is permitted to become a student of law.
>
> Put your character standards as high as you can. My own state has done it, as you may know, and I think you do know it . . . . We have preceptorships in my state. . . .
>
> . . . You **cannot permit the metropolitan bars** to be crowded with thousands of lawyers beyond the needs of the community and then expect to discipline those lawyers for falling into bad ways. . . .
> . . .
> You have carried the flag forward on the intellectual side. The great problem of this Association, in my judgment, is to determine how the bar is to prevent overcrowding, the bringing to the bar of hundreds every year, of people who are doomed to disappointment and certain not to be needed . . . . the problem is how to put professional pride in one's achievement, in one's character, into our large, scattered, diverse bars **in the great centers of population** and to give the same kind of sturdy character . . . as we had a hundred years ago in the small community. . . ." [128]

BAR EXAMINER, MARCH 1939 (P.35-44)

In a series of articles, the March 1939 issue reexamines the Pennsylvania character investigation system. It should be recalled the Pennsylvania system applauded by the NCBE as a model to follow, formed the cornerstone for the NCBE's consolidation of power. The first article in this issue titled, "PENNSYLVANIA AN EXAMPLE OF SOUND CHARACTER INVESTIGATION TECHNIQUE" states as follows:

> "Pennsylvania has had an effective system of character examination for many years. Accounts of this system have been published from time to time in the Bar Examiner but, nevertheless, little is known outside of that state as to the actual workings of their system. Therefore the two articles on the subject which appear in this issue are of current value. One sets forth the actual machinery which is used throughout the state and the other gives information as to how it works in Philadelphia County." [129]

The most comprehensive analysis of the Pennsylvania system is in the article titled, "PRACTICAL OPERATION OF THE PENNSYLVANIA PLAN IN PHILADELPHIA COUNTY," by Albert L. Moise, Secretary of the County Board of Law Examiners of Philadelphia County. Moise writes as follows:

> "When the Supreme Court of Pennsylvania made sweeping changes in its rules affecting the registration of law students and admission to the bar examinations and to the Supreme Court, which changes became effective on January 1, 1928, naturally drastic changes were made in the work of the County Boards of Law Examiners. . . .
>
> . . .
>
> **In the case of an applicant who is the son or other close relative of a reputable member of the Philadelphia Bar and whose sponsors are known to the examining committee, not a great deal of examination is required. . . .**
>
> **The case of an applicant whose preceptor is not known to the examining committee and whose sponsors are also unknown, presents a more difficult problem. . . . Sometimes . . . adroit questioning gives a clue to . . . some incident revealing a lack of moral character. . . .**
>
> . . .
>
> **The Board is not now limited to rejections where it has something definite "pinned on" the applicant**. Since December 16, 1935, if a committee decides that an applicant does not possess the necessary fitness or general qualifications, other than scholastic, for registration as a law student, or for admission . . . the applicant may be rejected on that ground. . . .
>
> The State Board of Law Examiners has, in every instance, where unfitness and lack of general qualifications have been the grounds of rejection, upheld the County Board.
>
> . . .
>
> The number of rejections has become fewer, so also has the number of applications. Perhaps one reason for the fewer rejections is the fact that the work of the Board has become known and has had a deterring effect upon applicants who feel that their past conduct will not bear the close scrutiny of the Board.
>
> . . .
>
> In another case, while the application was before the examining committee, **an anonymous letter was received . . . stating that two of said applicant's brothers** had been in business

trading under their own first names; they decided to defraud their creditors and moved to another location; no creditors were paid and the new business operated under the name of the applicant for registration, under an arrangement whereby the creditors could not reach the assets of the new business because the two brothers appeared to be employed by the nominal owner, the applicant. . . . The information contained in the anonymous letter was checked and augmented by the efforts of a professional investigator and the examining committee . . . indicated that he was utterly reckless in the manner in which he permitted the use of his name and then ignored the fortunes of the business conducted under his name, and that this course of conduct disclosed a weakness of character and a general unfitness for the profession of law. . . .

Another case was that of an applicant . . . who first filed an application for registration as a law student in 1932. He was examined by two members of the Board and reluctantly approved. The application was not acted upon, however, at that time because the State Board informed the County Board that he had not completed payment of the registration fee. . . . **The committee questioned the applicant about his father's bankruptcy which occurred in 1932, and which, in the opinion of this committee, was highly questionable**. Neither of the examiners asked the applicant whether he had ever been arrested and he did not state that fact. **The professional investigator of the Board was asked to make an investigation with respect to the bankruptcy of the father of the applicant** to ascertain whether the applicant was implicated in it in any manner, and in the course . . . it developed that the applicant had been arrested. . . . The applicant's arrest was the result of a family fight, and the case against him was subsequently nolle prossed. The point in this case was that the applicant failed to state the matter . . . until . . . directly questioned about it. The examining committee was strongly of the opinion that the applicant had purposely suppressed the occurrence and that he was not frank with them. . . . The consensus of opinion of all of them was that the applicant was not frank, that he recollected facts in their most favorable light and that **his general background and personal impression were unfavorable.** It was impossible to pin the applicant down to any connected statement. . . . It was a particularly pathetic case because the applicant had an inordinate urge to become a lawyer . . . . he was rejected.

. . .

The other two rejections were applications for registration on College Entrance Board examinations. **One applicant was "obtuse" and his educational background and general qualifications were poor. . . . The other applicant . . . failed, by reason of his lack of intelligence, to convince the committee that the had the fitness and general qualifications other than scholastic to justify the Board in registering him.**

In addition to applicants actually rejected, the examining committee, in a number of instances, where it felt that the applicant, while apparently there was no reason to reject him, would never succeed as a lawyer but was better adapted for some other work, has discussed the matter with the applicant and persuaded him to withdraw his application. . . . The examining committee has also persuaded others whom it had decided to reject for sufficient reason, to withdraw their applications rather than to be formally rejected. In such cases, however, the committee usually files its report, so that should the applicant change his mind later, the committee's impressions and finding will be available to the Board. . . .

. . . The **examining committee in a great many instances has tactfully suggested to the applicant** that he obtain another preceptor where there is some definite reason to believe that the lawyer named as preceptor is not the type to successfully steer a law student into the way in which he should go.

. . .
After the State Board . . . has acted . . . the applicant then has the right to file a petition . . . for an oral hearing. If the State Board . . . affirms . . . the applicant may then appeal to the Supreme Court of Pennsylvania. Four such appeals were taken to the Supreme Court . . . between 1928 and 1935 and all four appeals were denied by said Court." [130]

BAR EXAMINER, APRIL 1939 (p. 57)

The April issue in a small section titled "Maryland is the Forty-First State" disclosed that Maryland had adopted the two-year college education requirement for admission to the bar, and that only a small group of jurisdictions now lacked such a requirement. Those states were pressured by the NCBE to adopt such a requirement in the portion of the article that read:

"Seven other states are still pictured in black on the legal education map." [131]

BAR EXAMINER, MAY 1939 (p.72)

The May issue reported that the Oklahoma legislature had repealed its' integrated bar act and provided for admission by those possessing a diploma as graduates of certain law schools. The legislature's decision which liberalized the ability to gain admission was characterized by the NCBE as follows:

"Such a situation clearly illustrates the vice of permitting admission standards to be fixed by legislative act. It is believed that the Supreme Court will use its inherent power to integrate the bar and to fix proper admission standards."

In another small section, titled "Higher Standards Recommended by Louisiana Bar Committee" the lack of stringent educational standards in Louisiana was characterized as follows (p.72):

"It should be a matter of concern, therefore, to all members of the legal profession in this state that Louisiana continues to be numbered among **the eight states classified in the most backward group** in the matter of general educational requirements." [132]

What the NCBE was apparently trying to do, was ostracize states that did not accede to their demand for restricting the legal profession. Their modus operandi had shifted from the early 1930s. Back then, attainment of their goals was predicated on convincing states to change. Now, they were trying to alienate states that did not submit to their will. Another small section titled, "A Comment on an Overcrowded Bar" (p.89-90) read as follows:

"The Bar is troubled with too many members and organizations of laymen are competing for the services to be rendered. Shall we reduce the number entering the profession? A quota system has its adherents but is not favored. It may be expected to discriminate unfairly. There are . . . more **subtle proposals** : (1) more efficient committees on character and fitness; (2) increase the duration of legal education; and **(3) make law schools the method of entrance to the Bar and then eliminate many of them by setting standards they could not meet. . . ."** [133]

The foregoing is an incredible statement that exposes the mindset of the ABA and NCBE power structure. Note most particularly that the reason for developing a restrictive admissions process is to solve the problem of:

"too many members . . . competing for the services"

and not for the ostensible, published justification of improving the quality of lawyers. Character review was designed to decrease the population of lawyers competing for business. Ultimately the author of this article rejected stringent character review conceding that:

> **"Furthermore, if character impressions become the effective test of admissions, they will not be applied with rigorous honesty."**

The author of this article supported proposal number (3) above which was predicated on eliminating certain law schools by setting standards they can not meet, under the belief that would result in:

> **"less lawyers in the large metropolitan centers** and a greater percentage of them in the smaller communities"

Each of the proposed options was designed to decrease the supply of lawyers for the purpose of increasing legal fees and was characterized, as a:

"subtle proposal."

Usage of the term "subtle" has an inherent diabolical aspect. It conveys an impression that "we'll say we're doing something for one reason, but we all know the real goal we are seeking to achieve."

THE BAR ASSOCIATION STANDARDS and PART-TIME LEGAL EDUCATION,

By Charles E. Dunbar, Jr. Chairman of the American Bar Association Section of Legal Education and Admissions to the Bar; Bar Examiner, January, 1940 (p.3-13)

The early 1940s reflected a growing severity in use of prejudicial language by the Bar Examiner. The magazine was supportive of Fascism, and accepted Nazi values. They also were trying to make the Bar paternalistic to the public, for the purpose of controlling the entire government. As will be demonstrated shortly, many of the articles are frightening, with an importance extending well beyond the admissions process. Chairman Dunbar of the ABA writes as follows in reference to the NCBE:

> "Our Section on Legal Education is justly proud of the fact that your organization, in a sense, is its child . . . . We have watched your progress and achievements **with paternal pride and gratification . . . .**
>
> . . . we are now carrying on **our struggle** in states and areas of our country where our program and objectives have been consistently opposed and are being bitterly fought. . . . To perform the task that remains ahead we therefore must have the active interest and support of the profession as a whole. . . .
>
> **. . .**
>
> The argument is also frequently made to us that it is highly desirable that the bar be recruited from the wage-earning class, as well as from the well-to-do and more privileged classes . . . . This argument must be considered by us and given proper weight, although we all know and recognize that there are great numbers of **so-called "poor boys"- of which class Mr. Justice W.O. Douglas of the Supreme Court may be cited as a shining example** -- who each year work their way through our full-time schools.
>
> **. . .**
>
> **We have been repeatedly warned . . . that any attempt on the part of the American Bar Association to excommunicate and eliminate part-time legal education would be an unfair attempt to eliminate about half of the students in our law schools at the present time**. . . . In fact, we have reason to believe and fear that if we should attempt to eliminate the part-time school, our action would result in arousing so much antagonism that our entire program and objectives would be seriously jeopardized and the work of your association . . . would be weakened and possibly destroyed.
>
> We must also bear in mind . . . that we have not yet sold our present minimum standards to the bar and the country as a whole. . . **. The Sheppard Bill, which has been adopted by the Senate . . . under the guise of preventing discrimination** against the graduates of unapproved schools in the securing of appointments to legal positions in the Government, in substance actually forbids consideration by the Government in connection with the making of Federal appointments of the kind . . . of legal training which an applicant has had . . . . If this bill is adopted -- and there is grave danger that it will be -- it will, in effect, be an announcement by the Congress of the United States that educational qualifications and requirements should not and will not be considered in connection with the selection . . . of lawyers in the various departments of the United States Government. The adoption of the bill will amount to the repudiation by the Federal Government of the policy and laws of forty-one states of the Union. . . . Such a **declaration of policy by the United States Government will also amount to a repudiation of the activities and achievements of the American Bar Association** . . . .
>
> **. . .**

> . . . **No one has a right to admission to the bar, whether he is poor or rich.** The only right which exists is the right of the public to be protected against incompetent lawyers.
>
> Primarily . . . in fixing minimum standards of legal education and admission to the bar, we must consider not whether some deserving boy has found it difficult . . . but rather whether the public will be better served. . . .
> **. . .**
> **. . . We are doing just what the American Medical Association has done before us.** There are only six unapproved medical schools in the United States. . . .
> **. . .**
> . . . **We must not forget that in many parts of the country there still prevails the fallacious and discredited idea that everyone in democratic America has a right to become a lawyer, and that any restrictions or limitations on this right are un-American and undemocratic."**[134]

Read the last paragraph again. It's worth repeating:

> "We must not forget that in many parts of the country there still prevails the fallacious and discredited idea that everyone in democratic America has a right to become a lawyer, and that any restrictions or limitations on this right are un-American and undemocratic."

THE FIRST THOUSAND!

By Marjorie Merritt, Assistant Secretary of The National Conference of Bar Examiners
Bar Examiner, January 1940 (p.14-24)

The results of the first thousand centralized character investigations by the NCBE are examined in this article. A table broken down by State details the number of investigations made. A small footnote with respect to California states:

> "The tabulation shows that California, the pioneer subscriber to the service, furnished one-fourth of the total number of applications. She has employed this method since it first became available **as an aid to "rid the temples of justice of termites".** . . ."

The article goes on to state:

> "It is to be noted that **some of the states are troubled with "back-door" applicants**, as those are called who leave a state because they cannot meet its requirements . . . , go elsewhere and gain admission, and then after a few years return to the original state in an effort to be admitted on the basis of a period of previous practice. Missouri, for example, receives for possible acceptance some of its raw material which for a time is side-tracked in Arkansas. . . . Connecticut has an interesting provision . . . her back door is of solid oak, with a Yale lock!
> **. . .**
> . . . Some boards and committees are stricter than others or consider more seriously certain defects in character. **For example, one board may wish all possible details as to domestic difficulties, while another feels them of no importance . . . . A differentiation is sometimes made between personal character and professional character ; in other instances all attributes are considered entirely as a whole. . . .**
>
> The statistics sow that 104, or 10.4 percent of the 1000 applicants were not admitted to the bar either because they were denied a license or because they withdrew. . . . **This means that approximately one out of every twelve is a black sheep, or at least a spotted one. . . .**
> **. . .**
> In this type of work the investigator sometimes wonders, and asks, "what to look for." The Conference looks for almost anything -- expects, and gets it. The facts cover a wide range of situations and the goods are of many patterns. **Among the applicants have been . . . drunkards, gigolos, painters, paranoiacs, preachers, rapists, realtors, tree-choppers and wife-deserters -- all considering themselves "good lawyers.**
> **. . .**
> . . . Mr. M, a lawyer of ten years' standing and a former prosecuting attorney, who proved to be an exhibitionist; Mr. R, **who tried to have his marriage annuled . . . , Mr. N, with a good record for twenty-three years, who absconded with a fellow attorney's wife** . . . .
> **. . .**
> The preceding examples show clearly the great variety of circumstances bearing on character and fitness **which make impractical any general "rules of procedure**." . . . ." [135]

BAR EXAMINATION RESULTS TO BE CONSIDERED IN APPROVING LAW SCHOOLS,

Bar Examiner, April 1940 (p.27-28)

In a small section titled as above, it was disclosed that the ABA Council on Legal Education would take into consideration the percentage of applicants who passed the Bar exam from a particular law school in deciding whether to accredit the school. To facilitate the resolution, state boards of law examiners were requested to furnish the ABA with Bar examination results of all applicants. [136]

SOME PROBLEMS OF ADMISSION TO THE BAR THAT AFFECT THE LAW SCHOOLS,

By Marion Kirkwood, Dean Stanford University Law School
Bar Examiner, April 1940 (p.28-33)

Three interesting quotes appear in this article which addresses using the State Bar gimmick of using quotas to limit attorneys. They are as follows:

> "The only justification for a quota, so defined, is to prevent overcrowding in the Bar and the evils in the administration of justice that are assumed to result therefrom."
>
> "**Character study is very fruitful in dealing with older applicants** who have had worldly experience. . . . But with the much larger mass of young people fresh from college and law school we do not get very significant results from such a test."
>
> **"Under such a situation the quota will not help solve the problem of overcrowding. Its chief effect will be to enable those who are admitted to exploit those who are not.** Also the presence of many applicants may readily aggravate the unlawful practice problem. Is it not likely that many of these young people will seek positions in banks, real estate offices, etc., and employ their legal training in a manner that will grieve the Bar." [137]

HOW TO BE A SUCCESSFUL LAWYER,

Bar Examiner, October 1940 (p.89)

A small section titled as above examines a California State Bar questionnaire sent to attorneys. One question read as follows:

"What methods and activities have you employed to secure and build up legal practice ?"

One submitted answer read as follows:

> "To become a successful practitioner of the law in a rural community, especially where he is a stranger, a young lawyer should, like Jacob, wear a coat of many colors, be a social lion, a political zebra, a smooth talker, a fast worker, a personality boy. He should at least be a director in one bank, preferably the president of the other one; a member of the chamber of commerce, a director in the junior chamber of commerce, an active member of the Kiwanis Club, Elks Club, Masonic Lodge, Redmen, Eagles, 20-30 Club, Lions Club, and any others. In all of these he must be known as a Jolly Good Fellow . . . . He must be able to shake hands until his elbow smokes. He must be a pillar of the biggest and richest church in town, and must be a favorite speaker for the Women's Home Improvement Club . . . and he must be able to drink all the other Eagles or Elks under the table. . . ." [138]

AGE GROUPS OF MIGRANT ATTORNEYS,

Bar Examiner, January 1941 (p.12)

The Bar Examiner revealed in the above titled section, statistics related to the age groups of "migrant attorneys" (attorneys licensed in one state seeking licensure in another). Approximately 50% were between the ages of 30 and 40. The issue from the Bar's viewpoint was that the ability of an attorney licensed in one state to gain licensure in another, had the effect of diminishing the ability of the Bar in the original state of licensure from exercising control over that attorney. If attorneys could pick up and move to other states easily, they would be more inclined to challenge State Bar ideology. Conversely, if the ability to obtain multi-state licensure was diminished, the originating state of licensure maintained leverage over an attorney, since they were the sole controlling source over that attorney's ability to earn a living. [139]

BAR EXAMINER, January and April 1941

By 1941, over 40 states had adopted the two-year college requirement for licensure. The NCBE naturally therefore now wanted a four-year requirement. They enjoyed some initial success in their quest, but when World War II began it would eliminate their initial success. The War placed in jeopardy everything they accomplished during the 1930s. 1940 would be the last year of their pinnacle of power, until well after the War. During the War, there was an immense liberalization of admission requirements. This angered the ABA, State Bars and NCBE immensely. State Bar rhetoric was at it's height of doing violence to intellectual rationality and extended well beyond racial prejudice. Substantial language in NCBE articles suggests the controlling forces of the American legal profession did not support the U.S. fighting against Germany, at least to the extent such sacrificed economic interests of the legal profession. The January 1941 issue disclosed that Harvard University was requiring a seven-year program for graduation from law school, comprised of four years of undergraduate and three years of law school study. The NCBE was ecstatic, but the rug would be pulled out from under them quickly.

The April, 1941 issue, disclosed a policy pertaining to the national draft that affected the legal profession. Lewis Hershey, Deputy Director of the Selective Service System issued Memorandum I-12. It allowed local draft boards to grant deferments to individuals who had completed law school, but not yet taken their examination for admission to the Bar.

THE LAW SCHOOLS AND THE SELECTIVE SERVICE ACT,

Bar Examiner, July, 1941 (p.51-64)

The ABA and NCBE viewed World War II predominantly from the perspective of how it impacted the legal profession and their quest to seize power, rather than how it affected our nation as a whole. This article contains significant language challenging whether Bar Applicants should be subject to draft requirements like other citizens. It exemplifies an overall negative attitude by the NCBE towards draft boards. Note in the first section how the NCBE places in quotation marks the phrase, "to meet the emergency" as if to sarcastically and falsely suggest there was no national emergency. The article states:

> "It is too soon, of course, to reach any conclusions as to what effect the national defense program, and the Selective Service Act in particular, will have on the future of the legal profession. Much concern, however, has been evidenced on the part of law schools and those interested in maintaining high educational standards for admission to the bar, less the profession suffer permanently as a result of a decrease in law school enrollment, interruptions in the law school course, **and ill-advised concessions "to meet the emergency**."
>
> **. . . there is usually a "back door" for the individual who does not meet the exact requirements, left open for the occasional case, the so-called "Abraham Lincoln." . . . .**
>
> It seems not unlikely, therefore, that the Selective Service Act will have the effect of interrupting the flow of well prepared men who apply for admission, while the supply of men with less adequate training will be greatly augmented. . . .

. . . If the conditions of present day life are more complicated and difficult than those of a previous generation, then the bar and the public will suffer grievously by the interruption of the supply of the better trained men and the increase in the number of those who can only get the minimum . . . . **The bar examiners must set up their own defense program** if they believe that adequate law training is in the interest of the profession and in the public interest.

. . .

Unless readjustments are made in its operation, the Selective Service Act will doubtless make serious inroads on law school attendances beginning next year. Law students are just ripe for picking under the Act. . . .

The memoranda from the National Headquarters of the Selective Service System do not preclude the deferment of law students to enable them to complete the law course and take the bar examination, but their wording does not lend encouragement to such deferments. I believe that the law schools should give their students every assistance in securing the II-A Classification. . . . The operation of the draft must be viewed in perspective, not with only one year in mind. Law and its administration are the indispensables of government. . . .

. . .

. . . First and second year students are asking for a II-A Classification. . . .

. . . I cherish the hope that, if a student is well along in a semester's work when he is on the list to be called, he will be able to secure a postponement until he can complete his semester's work. The draft board could exercise such a discretion.

. . .

There is no likelihood of voluntary enlistments affecting enrollment. An arbitrary attitude on the part of local boards and the noticeable impoliteness of their employees have engendered a general hostility which encourages avoidance of the obligations imposed by the Act. . . .

. . .

. . . The lawyer bears a similar relation to the experts in the various social disciplines. Properly conceived, law is an applied social discipline. It is the lawyer's responsibility, through the creative forces of law, to shape and give vitality to the social pattern. It is the responsibility of the schools to educate social engineers." [140]

THE LAW SCHOOLS AND THE EMERGENCY,

By Albert J. Harno,
Bar Examiner, October 1941 (p.75-83)

At the time this article was published, Pearl Harbor and the entry of the United States into World War II was approximately two months away. In guaging the extent to which the legal profession had an interest in dominating government, consider the following passages:

> " What is more, it is needful, yes, imperative, in the interests of human welfare, that we contemplate a program which looks beyond the perils of war and to the perils of peace. Competent leaders are essential in time of war; they will be equally essential when we face the problems of peace. We should consider whether we are gearing our national economy on the basis of an emergency for defense and perhaps war without adequate consideration for the emergencies of peace that lie ahead. . . .
>
> . . . **The profession's pre-eminence in supplying leaders** for the principal offices of government is well known. But this is only part of the story. Public opinion and policies are not shaped alone in the halls of Congress and in the offices of our executives. They take form and find expression in the hundreds of communities. . . . And here, as democracy in all of its intricacies goes into action, **the lawyer, often unnoticed and unsung, does some of his most effective work. I do not, of course, claim that his voice always prevails, but I do say that, throughout the length and breadth of the land, it is the dominant one.**
>
> It is the significance of the relation of the lawyer to the wholesome operations of democracy that discerning leaders of the bar have noted, and it is this, among other things, that has inspired them to labor unceasingly for improved standards of legal education and a better bar. If the lawyer, trained as he has been, was so vital a cog in the vast machinery of democracy, then potentially he has a mission for even greater usefulness. . . . **The lawyer, as I have said, by virtue of the place he occupies in the social matrix and through the materials with which he works, the law, is the country's social engineer**. . . . **The public has never been fully informed on the import of the place the lawyer occupies in the affairs of democracy. Lawyers themselves have been so immersed with the routine duties of their profession that, except for a far-sighted few, they have not been fully conscious of their strategic position**. . . . **The time has come, as one of my fellow-workers has well expressed it, when "in order to save ourselves, we shall have to reveal ourselves."**
>
> **. . . The immediate difficulties for legal education are precipitated by a national policy enacted** into a law **through a Selective Service Act which fails** in its terms and in the interpretation of its terms to recognize that legal training is essential to the advancement of the public welfare in the national emergency. . . . **It seems fitting, however, at this time, indeed it is our obligation, to inquire into the wisdom of that policy**. . . . We rest our case on the premise that this course . . . if continued, will tend to destroy a fertile source from which the country, in the past, has drawn its leaders both for military service and form many services, great and small, arising from and demanded by the affairs of ongoing democracy. . . ." [141]

Note the two phrases above most particularly:

> "The **public has never been fully informed** on the import of the place the lawyer occupies in the affairs of democracy."
>
> and
>
> **"in order to save ourselves, we shall have to reveal ourselves."**

STATISTICALLY SPEAKING,

By James E. Brenner and Leon E. Warmke, California Committee of Bar Examiners,
Bar Examiner, January 1942 (p.8-13)

In this article, the authors reveal that the California Committee of Bar Examiners since 1932 was secretly maintaining history cards for each Applicant, showing in detail all pertinent facts relevant to their admission. It then conducted a study correlating disciplinary proceedings to the record of the Applicant prior to admission. The article analyzes the results as follows:

> "This disproportion between the subjects of discipline among those without and among those with at least two years of college training becomes even more striking in light of the fact that, considering all applicants since the beginning of 1932 . . . the number of those who had at least two years of pre-legal college training is almost eight times as great as the number of those without . . . .
> . . .
> It is further of interest to note that of the total number of men disciplined as above noted, five were "repeaters" on the bar examination, having failed one or more previous examinations prior to their ultimate success . . . .
>
> **This unusual correlation of the subjects of discipline with the type of pre-legal and legal education of the attorneys involved would seem to indicate either or both of two things :**
>
> > **(a) That, speaking generally, a man who has not engaged in an ABA approved method of pre-legal and legal education is less likely to have acquired as high a standard of ethics as one who has . . . .**
> >
> > **(b) That, again speaking generally, those attorneys who are admitted without having engaged in an ABA approved method of pre-legal and legal education may not possess sufficient legal equipment with which to compete in active practice . . . ."** [142]

The article **fails to disclose** a possibility not incorporated into (a) or (b) above that could explain the strong correlation between imposition of disciplinary action and lack of a two-year college education. That possibility and reasons supporting its existence are stated by this author as follows:

> **"The California Bar has <u>motive</u> to further its' policy of requiring a two year college education, since that policy results in decreasing the number of attorneys in the state. It**

has opportunity to further that policy through strategic imposition of discipline to promote their own self-interest. The disciplinary committee can subject licensed attorneys who lack a two-year college education to a more stringent disciplinary process, than those who possess the two-year college education. In doing so, the value of the two-year college education requirement as a means of avoiding Bar discipline can be emphasized. **The disproportionate correlation in such an instance must be viewed as one intentionally created by the Bar to further its own self-interest, rather than any type of connotation pertaining to the ethics of the individuals disciplined**. If such is the case, then the correlation must further inescapably be viewed as reflecting negatively upon the character and ethics of the California Bar's disciplinary committee."

WATCH THE BACK DOOR!

Bar Examiner, January 1942 (p.14-15)

Since the early 1930s the NCBE was concerned with what they called the "Back Door" Applicant. The Applicant who somehow always seemed to gain admission by carefully reading the rules and finding the loopholes therein. The Applicant who applied to states with less stringent admission requirements, and therefore represented an economic threat to states with more restrictive requirements. In this small section titled as above, the Bar Examiner publishes portions of the New York case, *In Re Lefkowits*, 285 N.Y.S. 249 (1936) which deals with the "Back Door" Applicant issue. The opinion is interesting because of its' publication of facts that were not even appropriate for consideration by the Court. They deal with personal matters not relevant to admission, and falsely determined by the Court to be relevant. It states as follows in reference to the applicant:

". . . **His early education was obtained in the public schools**, and for about three years in three different high schools in the city of New York, and several months in a private preparatory school. . . . In June, 1929, after one law school year, applicant was admitted to the bar of Indiana after examination by a local committee. . . . He actually practiced for five years in Indiana, which would bring him to June 26, 1934. He returned to this state on July 15, 1934. **He lived in Brooklyn with a stranger, although his parents lived in Manhattan. The reason given is that his parents did not have room for him. . . . the record fully justifies the inference that the applicant undertook by a circuitous and indirect route to do that which he was not qualified or unwilling to do directly. . . . Application denied."** [143]

EMERGENCY ORDERS AND CHANGES IN RULES GOVERNING ADMISSION TO THE BAR,

By John Kirkland Clark, Chairman, The National Conference of Bar Examiners (April, 1942)

This article is incredible. Written by John Kirkland Clark, Chairman of the NCBE it reveals a great deal about the organization. There is no doubt in my mind that Clark was a Nazi. His comments in various articles herein have already been discussed and reveal the despicable nature of the NCBE. This article is no exception. He irrefutably does not approve of the leadership of the allied countries and his comments convey substantial sentiment in favor of Nazi Germany. Before addressing his comments, I ask the reader to consider his comments in another article. In fact, this quote is perhaps the most important one in this book and conclusively resolves any debate regarding what the NCBE is about. The reader is encouraged to verify the legitimacy of this quote by referencing the actual Bar Examiner issue. He writes as follows in an article addressing overcrowding in the Bar, published in the Bar Examiner, October 1943:

> **"Our European brothers went further. Der Fuehrer, in 1935, issued a decree that, for a period of years, no more lawyers should be admitted to practice."** [144]
>
> **ADDRESS by the CHAIRMAN,** John Kirkland Clark
> Bar Examiner, October 1943 (p.61-63)

As far as I am concerned, that is the whole ball game. The NCBE chairman in 1943 referred to "Der Fuehrer," as "Our European brothers."

In this article dealing with emergency orders pertaining to Bar admission, and published in April, 1942 Clark's comments are as follows:

> "All too few of our citizens . . . have any comprehension or realization of the importance of preserving **our cultural educational system** and the continuous training of future lawyers **who . . . will be called upon to handle and solve the outstanding problems of the re-adjustment of the world**. Few appreciate the frightful results, especially in England and in France, not to mention Germany, of the slaughter of those who should have become the leaders of public opinion in those countries in the last decade. No one can say, today, whether, if a core of educated and trained youth had been kept out of the front-line service in the years between 1914 and 1918, there might not have been leaders with enough keenness of perception and force in the direction of the governments of England and France to have coped with the situation which the elderly statesmen of the day failed to handle properly." [145]

Note his use of the adjective "cultural" to preface "educational system." Note his phrase "re-adjustment" of the world. Following Clark's address in a section titled, "Summary of Emergency Rules and Orders Regulating Admission to the Bar" a compendium of each state's provisions for admission during the war is included. The NCBE was losing power during this period. Admission rules were being liberalized. Some of the more interesting provisions included the following:

ILLINOIS - The final semester of law school study may be waived for applicants about to enter the armed forces. Applicants who fail to pass the bar examination and who enter the armed forces may be re-examined only in subjects which they failed.

IOWA - Any applicant in the armed forces who is prevented from taking the June 1942 bar examination will be admitted without examination upon showing degree from an approved law school.

KANSAS - Any student who could complete the regular law course by September 1, 1942, but prior to that date is called into the armed forces may petition the court for admission and it may grant him admission.

MASSACHUSETTS - Students in the last year of law classes will be eligible to take the bar examination

NEBRASKA - Any applicant prevented from taking regular June, 1942 bar examination by reason of being in the armed forces shall be admitted without examination provided he has received a degree from an approved law school

NEW YORK - A law school may, in its discretion, waive attendance upon lectures and recitations during the remainder of a semester or session and grant full credit therefor, without examination

PENNSYLVANIA - A registered law student who has failed bar examination and is prevented from appearing for further examination by reason of induction into armed forces will receive certificate of the Board recommending his admission

TWO NEW RESOLUTIONS ON STANDARDS,

Bar Examiner, July 1942 (p.55-56)

In this article, the NCBE published that due to the war, the ABA had relaxed standards pertaining to the number of credit hours required in law school during a semester. The provision itself is not particularly noteworthy. However, the use of <u>one term</u> in the Resolution is of monumental importance. The pertinent language of the resolution of the Association of American Law Schools states as follows:

> "NOW THEREFORE BE IT RESOLVED that effective with the summer session of 1942 and during the continuance of the present war any student . . . **who enters the armed forces of the United States or of any co-belligerent . . . ."**

The term used is:

"co-belligerent."

I always think of the United States, France and England as being the Allied forces. Most Americans do. The ABA apparently viewed them as the "co-belligerents." The term "belligerent" is defined in Webster's II New Riverside Dictionary as follows:

Belligerent - Inclined to be aggressive or hostile

By using the phrase, "co-belligerent" the supporters of the ABA Resolution were communicating that they viewed the Allied Forces as the aggressive or hostile side in World War II, rather than Nazi Germany. An accompanying Resolution of the ABA Section of Legal Education then states as follows:

> "RESOLVED that during the continuance of the present war any student . . . called for service under the Selective Service Act or who enters the armed forces of **the United States or of any co-belligerent**. . . ." [146]

NEW YORK JOINT CONFERENCE ON LEGAL EDUCATION URGES MAINTENANCE OF STANDARDS

Bar Examiner, July 1942

This article examines the utility of emergency orders issued during World War II to liberalize Bar admissions. It adopts the irrational position that notwithstanding the War, admission requirements should remain restrictive. A portion of this short article that defies rationality states:

> ". . . For young men still in law school when called into service, there is a natural desire on the part of the schools and the bar admission authorities to make easier their graduation and their admission to the bar, even at the cost of relaxation of standards achieved **after a long struggle.**
>
> **Whether such concessions shall be made to these men must, however, be determined in the light** of the public interest and **of the benefit to the men themselves in the long run**. These considerations, we believe, call for substantial adherence to the standards . . . found advisable in peacetime." [147]

The operative phrase reads, "the benefit to the men themselves." It was irrational for the New York Conference to assert that an individual fighting for his country in a war, would not benefit from less restrictive admission requirements. Use of the conjunction with the accompanying phrase "in the light of the public interest" must be viewed as disingenuous. The NCBE was obviously panicking at their loss of power and influence.

BAR EXAMINATIONS MILITAIRE,

Emergency Systems of California and Illinois,
Bar Examiner, July 1942

This article disclosed war time provisions adopted by the California Committee of Bar Examiners. The provisions provided that Applicants in the armed forces could take the bar examination where they were stationed under the direction of their commanding officer subject to the following requisites, which are interesting:

> ". . . the examination in six sealed unit packages . . . appropriately marked and labeled, shall be sent to the commanding officer of the applicant, and shall be opened only at the times specified thereon."
>
> "The examination shall be administered by the commanding officer, or, under the direction of such officer, ..."
>
> **"If the applicant is called upon by the commanding officer to perform emergency duties arising from the war situation, as soon after the termination of the emergency duties as the commanding officer deems proper, the applicant shall résumé the taking of the examination, and the time during which he was so occupied with such emergency duties . . . shall be added to the time remaining. . . ."** [148]

NEBRASKA SUPREME COURT UPHOLDS INHERENT POWER TO PRESCRIBE BAR ADMISSIONS REQUIREMENTS,

Bar Examiner, July 1942 (p.69-71)

The power of the Judiciary rather than the Legislature to prescribe admission requirements, so often falsely touted as resting irrefutably in the Judiciary, was again refuted in the Nebraska case, *State ex rel. Ralston v. Turner*, 4. N.W.2d 302 (1942). The facts were as follows. The 1941 Nebraska legislature passed an act providing that graduates of resident law schools who passed the Bar exam shall be admitted to the practice of law. A student who passed the exam was denied admission and brought an action for a writ of mandamus to compel acceptance of his application. The Court in furtherance of its own self-interest, unsurprisingly, denied the Petition. The Court's Syllabus published by the Bar Examiner states as follows:

"1. The character of police regulation, whether reasonable, impartial and consistent with the Constitution and the state policy, is a question for the court.

2. When the legislature passes an act which plainly transcends the police power of the state, it is the duty of the judiciary to pronounce its invalidity.

. . .

5. The term "inherent power of the judiciary" means that power which is essential to the existence, dignity and functions of the court from the very fact that it is a court.

6. The supreme court is vested with the sole power to admit persons to the practice of law . . . and to fix the qualifications for admission to the bar.

. . .

14. Where a legislative bill constitutes an endeavor on the part of the legislature to go beyond the concept of minimum requirements of an applicant to take examination for admission to the bar and denies the judicial department the power to place higher qualifications than those specified in the act, and, in fact, usurps the power of the judiciary in such respect; held, such legislative act is unconstitutional.

15. Even if the subject of the legislation was a proper exercise of legislative power, the legislative bill in the instant case is unconstitutional and void in that it definitely freezes the class." [149]

THE ANNUAL MEETING,

Bar Examiner, October 1943 (p.50)

The October issue opens with a summary of the thirteenth annual meeting of the NCBE held on August 24 in Chicago and states as follows:

> ". . . In the address by the Chairman, which is published in this issue, Mr. John Kirkland Clark of New York stressed **the urgent need** for the continued training of liberally educated **lawyers who will serve as leaders in preserving the peace for which our country is now fighting**. . . .
>
> General discussion indicated clearly **grave concern** over the future of the law schools and the very future of the legal profession itself. In his address at the afternoon session, Dean Albert J. Harno, Chairman of the Section of Legal Education, **expressed the sentiment forcefully** when he said : "These are dark days for the schools -- days in which the values we prized in normal times may easily lose their significance. . . . I have wondered sometimes whether through the years some of those criteria have not become stereotyped and barren. . . . Their substance was real before the war, and it is no less real now. It would follow, then, if it was indefensible to send a poorly qualified lawyer into society before the war, it likewise is indefensible now. This is the issue on which we must stand firm." [150]

STANDARDS OF ADMISSION TO THE BAR : CAN THEY BE MAINTAINED ?

By Herbert W. Clark, Former Chairman, California Committee of Bar Examiners
Bar Examiner, October 1943 (p.51-61)

By 1940 the NCBE's centralized character review program had made the organization self-sustaining at the expense of Applicants. The two-year college education requirement was adopted by over 40 states. Some states had enacted a system of law student registration with accompanying character review and others were moving towards it. Those states that were not moving towards adoption of NCBE quasi-mandates found themselves ostracized by the ABA and NCBE. There was substantial discussion about implementing quota systems to limit the number of lawyers. The ABA and NCBE were moving aggressively towards adoption of a four year college requirement to further restrict admissions.

The legal profession seemed to be in total control of its destiny, without regard to the detriment inflicted upon the public. The public interest was nevertheless consistently emphasized for propaganda purposes as the justification for admission restrictions. There was extensive discussion about the importance of lawyers, not simply regarding their role in litigation, but also regarding their role as government leaders. The ABA and NCBE was poised to move from regulating the profession, to assuming control of the government.

And then everything changed. World War II began. State after state relaxed admission requirements by implementing emergency orders with respect to education, examination requirements, and even waiver of the exam in certain instances. The Selective Service System (the Draft) was demolishing the NCBE's program. Increased conflict between the NCBE and the Selective Service System gave the impression that the NCBE did not support our nation's role in World War II. The allies were referred to by the NCBE using the phrase, "co-belligerent." The NCBE Chairman, John Kirkland Clark made numerous statements suggesting he was a Nazi. If 1940 was the height of the NCBE's power, 1943 a short three years later was its bottom. A year of complete desperation and with such came the consequent irrational emotion of bitterness. The articles in the 1943 issues exhibit such, often using imprudent language destined to come back and haunt the NCBE's legitimacy. They were too blatant. They violated the most basic predicate which had furthered their rise to power. They failed to use wise publicity.

The NCBE decreased its' ostensible emphasis on the public interest. Instead, it openly promoted self-serving interests of the profession in what appeared to be a mad, desperate attempt to save the power they had seized during the 1930s. They appeared willing to go to virtually any lengths to do so.

This article written by Herbert Clark addresses the impact of the war on the legal profession. It is not quite as vitriolic as the next article by John Kirkland Clark, Chairman of the NCBE, but does make disturbing statements. He writes:

> "Notwithstanding **several signs of repentance that have become visible since December, 1941**, it is fair to ask the question, "Can the Standards of Admission to the Bar Be Maintained ? Upon the record, in view of what has happened, and after some reflection, my regretful answer is, Probably not. And now, assuming myself to be under cross-examination, I shall proceed to explain and qualify my answer.
>
> . . . In 1892 the American Bar Association adopted a resolution recommending that the power of admission to the bar in each state should be lodged in the highest courts of the state. . . .
> **. . .**
> In 1897 the American Bar Association declared in favor of a three-year law course and at least a high school education. . . . In 1916 the Standard Rules for Admission to the Bar were adopted,

and in 1918 the American Bar Association approved the minimum requirement of two years of college.

In 1921 a most vital step was taken. Under the chairmanship of Elihu Root comprehensive standards of admission to the bar were presented and approved by the Section and by the American Bar Association.

. . .

. . . it may be safely said that prior to December 7, 1941, the whole trend of education for the law was in the direction of . . . longer legal education.

. . .

The trend toward better and higher standards of admission was so clearly discernible that on August 25, 1936, the Chairman of the Section on Legal Education, thinking that perhaps that he had heard "the murmur of the world" was prompted to state --

". . . This year and last, state after state has tumbled into column."

. . .

Six years ago at Kansas City, the same Chairman of the same Section . . . told his hearers that, :

> ". . . I have no fear of the outcome. **The day has come when the states . . . which do not conform will be almost forced to conform** . . . . **The consequence is that that particular battle is to a large degree from my point of view, won, although the flags are not yet hoisted."**

. . .

What did happen . . .? The story is interesting . . . because it shows what is likely to happen even to the most sincere men when, taken by surprise, they are subjected to material pressure, appeals to patriotism . . . .

Well, the Association of American Law Schools held a meeting at Chicago on December 29-30, 1941, twenty-two days after Pearl Harbor. . . . The proceedings of that meeting . . . make most interesting, if somewhat irritating, reading. The substance of the question under discussion was whether or not and to what extent departure during the emergency created by the war should be permitted from the standards of the American Law School Association. . . .

. . .

At Detroit on August 25, 1942, the same Chairman of the Section of legal Education in his opening remarks to the joint conference of the National Conference of Bar Examiners and the Section of Legal Education and Admissions to the Bar had this to say about what happened at the meeting of the American Law School Association in December, 1941 :

> "The Association . . . voted what we considered to be a very drastic relaxation of standards. . . ."

He did not attempt to soften the blow by telling that at the meeting in December, 1941, there were a few who stood openly and avowedly for the maintenance of standards. . . .

. . .

. . . what was the effect of that almost miraculously quick December somersault coupled with the emotionalism of the moment. Well, almost immediately in at least one Pacific Coast State the Bar Examiners were subjected to pressure by some schools to follow the lead. . . .

. . .

The dean of another school whose merit is nationally recognized, had this to say:

> ". . . we are interested not only in winning the war but winning the peace. That is where the bar comes in. **The bar is, as has been said, going to have greater responsibilities than it has had since revolutionary times in guiding the destiny of the country. . . ."**

And then taking up specifically the question of the effect upon standards of streamlining the law course, the same dean said:

> **". . . This thing of getting standards of admission to the bar has taken years of often vicious fighting.** If you cut them down now it might take years and years to restore what has taken years of effort to build up. . . ."

. . .

But what was happening elsewhere was too strong to resist and the next step was that most of the California schools announced their intention to streamline the traditional three-year course. . . . the Legislature gave way and amended the statute. . . .

The California experience is not unique. . . . The law schools weren't satisfied to make some concessions. . . . They went the whole distance. . . .

. . .

Having for a period of years and through a **long and bitter struggle** adhered to the now traditional three-year-twenty-seven-month law course, with an appreciable tendency toward a four-year-thirty-six-month course, are the law schools of the country now going to tell the public that the schools were on a branch track all the time until the war compelled them to get on the main track by streamlining the accepted traditional law course. . . . And what about the fourth year we formerly heard so much about ? To the innocent bystander it would seem that either the law schools were wrong prior to December, 1941 or that they have certainly been wrong since that date. . . .

. . .

Unless the law teachers can demonstrate that they were wrong prior to December 7, 1941, it seems to follow fairly clearly that they are wrong now. If they are wrong now, it can hardly be expected that the errors committed will continue during the war only. . . .

. . .

. . . Some law teachers have already become a trifle moody about the position legal education is in and they are inclined to be just a bit irritable when discussing the situation. . . ." [151]

ADDRESS BY THE CHAIRMAN,

John Kirkland Clark, Chairman NCBE, Bar Examiner October, 1943

This is the most irrational article I have read in the Bar Examiner. Several pages back I referred to it. Clark envisions a post-war world order controlled by lawyers. I now quote his writing at length:

". . . what good is it to win the war if we should again lose the peace and chance for the creation of a world of law and order and the abolition of future wars ? . . . **Lawyers, because of their training and their liberal education, are the natural leaders in a post-war world.**

As Patrick Henry sagely remarked, " I know no way of judging the future but by the past," and when we consider the past of event years ago, we realize how fully liberated educated men are needed in this present crisis. . . .

Ten years ago, we began, here, to be disturbed over the alleged "overcrowding of the bar." . . . Yet, during the discussions of that period, the Dean of the Law School which is our host today suggested the desirability of an ordered economy in the limiting of law school students.

Our European brothers went further. Der Fuehrer, in 1935, issued a decree that, for a period of years, no more lawyers should be admitted to practice. We scoffed at it, thinking that such arbitrary action was ridiculous, absurd, that no man had the right or the power to make such an order. We never dreamed what an extra territorial effect Herr Hitler's power gave him. Yet now, less than ten years after his decree, Adolph Hitler has decimated the number of our law students and has practically suspended the process of liberal education among our young men!

. . .

Yet we must--and we shall--face these problems and solve them. **Otherwise the world will "go to smash." No greater crisis has ever confronted the world. No greater need has ever demanded the service of our ablest minds. To solve these problems, we must intensify our study of history, philosophy, government, international relations, human relations in general, economics, taxation,--to mention the major fields.**

What, you may ask, has all this to do with legal education and bar examinations? Much more than is noticed on the surface. **Throughout our history lawyers, as liberally educated men, have led our nation,-- from the colonial days, the Declaration of Independence and the adoption of our Constitution**. **In making the new world which will arise, Phoenix-like, after this global conflagaration, there must be law and order, and it will be administered in large part by the liberally educated and well-trained graduates of our schools. Those schools will be guided, in the future, as they have been in the past, by this Association through the Section of Legal Education and by its offspring, the Conference of Bar Examiners.**

. . .

Our lawyers of the future must have . . . a more intensive and wider study of governmental principles now operating and which will become more important in the years to come.

Despite the crisis which confronts our law schools today, they have a future, quite immediate I believe, which will challenge the ablest leadership in the post-war period. The preparation time is all too short. **The opportunity is thrilling. . . . The interest of the public must be protected."** [152]

APPRENTICESHIP AND PROBATIONARY PLANS FOR ADMISSION TO THE BAR,

By William Alfred Rose
BAR EXAMINER, January 1944

As the war came to an end, the NCBE shifted from its' fit of desperate hysteria back into steadily trying to accomplish its goals. Promotion of prejudicial motives once again was couched in more obtuse terms. The innovative phrase used by Rose in this article refers to those:

> "who are not temperamentally or emotionally suited to the practice of law."

Rose favors a probationary admission system. He fails to disclose that the true purpose of such a system is to obtain control over the newly admitted attorney, thereby allowing the Bar to control litigation outcomes.

> "Attorneys have on many occasions voiced the opinion that the legal profession needs a plan **whereby it can effectively supervise the training and keep a watch on the conduct of applicants for admission to the bar during some reasonable period after they have completed their formal legal education and before they are permitted to become full fledged members of the profession**. It is thought that such a plan would help eliminate early in their careers some of those who have passed the bar examinations **but who are not temperamentally or emotionally suited to the practice of law**, and also might help to discover **those who do not have the moral stamina** to withstand the temptations which confront the practitioner.
>
> **. . .**
>
> It seems to be conceded generally by those who have studied the question that an effective probationary and apprenticeship plan, properly conducted, would be desirable and would prove beneficial to the profession**, particularly in the more populous communities**. . . . Possibly some of the objections might be removed if the term "probation" and its derivatives should not be used, because a young lawyer feels he is under a handicap if he is on "probation". Instead of using that term, the end can be accomplished by issuing a temporary license during the trial period. . . ." [153]

ON THE LEGAL EDUCATION FRONT,

Report of the Section of Legal Education and Admissions to the Bar
Sent on February 1, 1944 to the members of the House of Delegates of the American Bar Association
Bar Examiner, April-July 1944 (p.19-21)

The issue discussed in this Report is how admission standards should function after the war. The Report recognizes that there will be substantial pressure to relax standards once thousands of prospective attorneys return home. It then adopts the irrational position that notwithstanding how our soldiers fought for our country, standards should not be relaxed. It states:

> "Another phase of this problem relates to the maintenance of bar admission requirements in the various states. The Council anticipates that there will be heavy pressures to relax these standards when the men come back from the war. Indeed these pressures are already being encountered. It is a natural and very human impulse to want to make every possible concession for them. **Our gratitude to these men is very sincere and our desire to help them is genuine. It is the judgment of the Council, however, that relaxations in bar admission requirements for them cannot be justified."**

In conjunction, the following resolution was approved by the House of Delegates of the American Bar Association on September 13, 1944. It demonstrates how the profession valued its own economic interests, over those who risked their lives for our nation:

> "The American Bar Association has learned of relaxations in some states of the established standards of admission to the bar for men in the Armed Forces, and it anticipates movements aimed at further relaxations for returning veterans.
>
> **The American Bar Association is deeply conscious of the fact that the members of the legal profession, along with all members of the American public, owe a great debt of gratitude to the men and women in the Armed Forces. . . .**
>
> **The American Bar Association is firmly of the opinion, however, that it is a disservice to returning veterans to provide them with shortcuts for admission to the bar,** since such shortcuts would tend to make it possible and encourage admission to the bar without proper preparation. . . .
>
> **BE IT THEREFORE RESOLVED, That the American Bar Association is opposed to movements that would relax or tend to relax standards for admission to the bar and that it reaffirms its endorsement of the established standards of the Association. . . ."** [154]

POST-WAR REQUIREMENTS FOR ADMISSION TO THE BAR FOR SERVICEMEN,

By Silas H. Strawn, Former President of the American Bar Association and former Chairman of the Section on Legal Education and Admissions to the Bar
Bar Examiner, October 1944 (p.37-41)

In this article, the NCBE is up to its old tricks again. The author opposes relaxation of admission standards, and writes as follows:

> **"A stock argument against the necessity of a college education are the examples of John Marshall and Abraham Lincoln, neither of whom graduated from a college or a law school**. Both of these men were geniuses of uncommon, natural intellectual power and application. . . . There are few Marshalls and few Lincolns, and I submit that if these leaders were alive today and engaged in the practice of law they doubtless would have availed themselves of the abundant opportunities of this age for any young man, however poor he may be, to acquire a thorough education, if not, indeed, a college and law school training.
> . . .
> For some two years it was my privilege to be a member of the Illinois Committee on Character and Fitness. During that time there came before us for examination more than four hundred candidates. **The disparity between the applicants who had a college education and those who were less fortunate was not so manifest in the lack of technical knowledge requisite to passing the examination, but it was very evident in the application of the ethics of the profession and the moral obligation which rests upon a member of the bar."** [155]

The author's irrational and unsound premise is clear. He asserts that citizens with a college education are of higher moral character and quality, than those unable to attend college. Such an absurd perspective is irrational and statistically unsupported. Note the last sentence again. It reads:

> "**The disparity between the applicants who had a college education and those who were less fortunate was** not so manifest in the lack of technical knowledge requisite to passing the examination, but it **was very evident in the application of the ethics of the profession** and the moral obligation. . . ."

I submit that when viewed from the perspective that lawyers are generally well educated and also highly unethical in the view of most citizens, it is quite probable the exact converse of the author's position may be true.

DEVELOPMENTS IN THE IMPROVEMENTS OF STANDARDS OF BAR ADMISSION BETWEEN THE TWO WORLD WARS,

By Will Shafroth, Former Adviser to the Legal Education Section and Former Secretary of the National Conference of Bar Examiners,
Bar Examiner, October 1944 (p.43-48)

This article presents insight into the very early years of the admission standards movement. It states:

> "The American Bar Association ever since its inception has worked on the problem of proper standards of legal education, but made no real headway until 1921, when under the leadership of Elihu Root the Association adopted the standards which we have now. . . .
>
> **Elihu Root again was the chief instigator of that movement,** and he was the man at that conference who really carried the day. . . . If you ever want any arguments in your own particular states for upholding the standards, you need only to go back to the 1922 proceedings of the American Bar Association, where you will find the speeches made at that time by Mr. Root, Mr. Strawn, Mr. Taft and others. . . .
>
> . . . for the next three or four years the Council of Legal Education tried to promote this work. The members of the Council did their best by correspondence and in other ways, but they couldn't make much headway until Mr. Strawn became President of the American Bar Association in 1927 and applied business principles to our situation. Mr. Strawn . . . convinced the Executive Committee, that **we must have a full-time adviser who would go up and down the land and preach this gospel. . . .**
> **. . .**
> Our campaign for the standards was fairly expensive. . . . Therefore in the next few years one of our chief tasks was the effort of making the Conference of Bar Examiners self-supporting. In that Mr. Reed again was most helpful, and **it was he who suggested that we follow the procedure of the National Association of Certified Public Accountants**, whereby before a public accountant was recognized in a state other than the one in which he had been practicing, he had to be reported on and certified to the central organization, for which he paid a small fee. . . .
> **. . .**
> **. . . we simply have to remember that, although we owe every obligation to the men and women in the armed forces and want to do everything we can for them, we are not doing any kindness to the veteran when we admit him to the bar if he is not properly prepared. The paramount consideration, which has been pointed out time and time again, it was the keynote of Elihu Root's address back in 1922,-- the primary consideration is the public interest. . . . If we use that as our text, we shall reject anything that lowers the standards for admission to the bar. . . ."** [156]

MAINTAINING PROGRESS ON THE LEGAL EDUCATION FRONT,

By George Maurice Morris, Former President of the American Bar Association
Bar Examiner, October 1944 (p.49)

This article written by a former President of the ABA, is noteworthy for the manner in which it presents how the ABA's interests were embodied by religious elements to them. Morris writes:

> **"Inviting a lawyer to speak to the Section of Legal Education on the subject "Maintaining Progress on the Legal Education Front" is somewhat similar to inviting a preacher of the gospel to speak to a ministerial convention on the topic "Keeping Up the Fight Against Sin.". . .**
>
> Your program committee knows all this just as well as you and I do. Why then this invitation ? The answer must be that there are **those among you who have looked upon "Sin" with a smiling eye and need to hear again the word of the righteous.**
>
> You will recall that it was in 1921 at Cincinnati that after a tumultuous meeting of the Section and a not altogether subdued meeting of the Assembly, that the American Bar Association expressed its opinion. . . .
>
> **The Section's meeting, in particular, was an orator's field day. Because one of the specified standards was "at least two years of study in a college," the proponents of the standards were referred to, in informal conversation among the opposition, as "The Snobs." The opponents, who were impressed with the fact that Abraham Lincoln never went to either law school or college, were classified as "The Coon-Skin Cap Boys.**
>
> After the ceremonies at Cincinnati were concluded it was decided that what the movement next needed was a full dress parade. As a result a special meeting of the Conference . . . was called in Washington, D.C., for February 23 and 24, 1922. . . ." [157]

THREE NEW YORK RESOLUTIONS,

Bar Examiner, January 1945 (p.5-9)

In a small section titled as above, three resolutions adopted by the Committee on Legal Education of the Association of the Bar of the City of New York were published. One was incredible. The New York Bar irrationally attempted to justify excluding war veterans from admission on the ground that when they were educated by non-approved law schools (law schools that refused to succumb to unreasonably restrictive ABA standards), the veterans were exploited. It was a total perversion of logic. The Bar was seeking to promote its' own self-interest by relying on an irrational premise that those being excluded from membership were the ones the Bar was helping. The resolution stated:

> "WHEREAS, the G.I. Bill of Rights will make it possible for most of the veterans of the present war to pursue courses of education and training at the Government's expense in any approved institution . . . and **WHEREAS, the protection of veterans against exploitation by low standard law schools** . . . requires that the list of law schools which a veteran may attend at the Government's expense be restricted to law schools which maintain adequate educational facilities and standards; and WHEREAS, the American Bar Association, after careful consideration, has determined the minimum standards. . .
>
> RESOLVED: That it is the opinion of this Committee that **only those law schools which are approved by the American Bar Association should be included in the lists of approved institutions which a veteran may attend at the Government's expense. . . ."** [158]

TRADE BARRIERS TO BAR ADMISSIONS,

By H. Claude Horack, Dean of the School of Law of Duke University
Bar Examiner, January 1945 (p.10-16)

This article examines the credible allegations that the true purpose of restrictive admission standards was to protect the economic interests of the lawyers, rather than to further the public interest. Note the first sentence of the second paragraph below which reads, "These restrictions do not state this as their purpose." The author, H. Claude Horack writes as follows:

> "In recent years much attention has been directed to trade barriers which have been erected to protect local business activities from outside competition. **The profit motive has generally been the underlying cause of such restrictions in order to give advantage to local business**. Lawyers and physicians have always insisted that theirs was a profession and not a trade or business and should be conducted on a different basis. Yet, an examination of requirements for admission to the bar shows a distinct leaning toward the protection of the local student and the local lawyer with much the same effect as is created by ordinary trade barriers.
>
> **These restrictions do not state this as their purpose** and it is probably true that in many and perhaps most cases objectives of a much higher nature were originally responsible for the restrictions which are found in a majority of the states. **However, they should be viewed as to their actual present-day effect rather than the motive which first suggested their adoption. Is their tendency to improve the profession, or to secure special privileges to a local group ?** It should be borne in mind that "the licensed monopolies which professions enjoy constitute, in themselves, severe restraints upon competition. . . .
>
> **. . .**
>
> A provision for the registration of law students has been adopted in a number of states. . . . It takes a well organized and efficient board of bar examiners, with a permanent office force and considerable funds at its disposal, (as in New York and Pennsylvania) to operate such a plan so as to make it even fairly effective in the elimination of unworthy candidates.
>
> **. . .**
>
> **But there is another way in which the bar can more adequately protect itself. . . . the bar can be much more adequately protected by asking the National Conference of Bar Examiners to make an investigation of the student not only at his school but at his home. . . .**
>
> **. . .**
>
> . . .The barriers such as residence and registration have grown up gradually and though perhaps at the beginning had no deliberate intention to place a bar to competency or freedom of choice of location, now, because of changes in viewpoints and conditions, are being used in some states with the deliberate intention of preventing entrance into the profession with the resultant protection of the lower portion of the bar that has not kept up with the changes and advancements. . . ." [159]

Note particularly the paragraph that reads:

> "But there is another way in which the bar can more adequately protect itself. . . . **the bar can be much more adequately protected by asking the National Conference of Bar Examiners to make an investigation of the student not only at his school but at his home. . . ."**

The foregoing sentence exemplifies how the character review process is used to further anticompetitive interests, rather than the public interest. A small footnote at the bottom of this article (which I concededly don't fully understand) states:

> "Upon being asked to judge a woman lawyer solely as a fellow attorney and to discard "the chivalry of the Deep South," a Mississippi lawyer wrote The National Conference of Bar Examiners:
>
> > "Neither do I think "the chivalry of the Deep South" affects the situation. This could go along very well with "Lavender and Old Lace" but it is very hard to keep up when the women are all putting on the pants or slacks with the seat dragging the ground and with a riveting machine under one arm and a pair of pliers and hammer in the hip pocket."

THE RESOLUTIONS,

Bar Examiner, July 1946

The Bar Examiner published that the NCBE adopted resolutions supporting the twisted thinking of the New York Bar in dealing with veterans. The resolutions stated:

> **"Whereas, it is in the interest of the Veterans . . . that Veterans should not be handicapped by inadequate preparation for the practice of law. . . .**
> **. . .**
> **Resolved, that the Executive Committee of the National Conference of Bar Examiners strongly urges that no action be taken which shortens the period or standard of training for such Veterans for admission to practice law. . . ."** [160]

Pure paternalism. If one accepts the above irrational premise adopted by the NCBE, then one would have to similarly accept the premise that making it easier for a Veteran to be admitted to the practice of law, has the effect of "harming" that individual. The NCBE makes no sense. Worse yet, they "lack candor", and "mislead" the reader by hiding their true reasons for maintaining unreasonably restrictive standards.

BAR EXAMINER, September 1947

The NCBE was under incredible political pressure regarding admission standards with respect to Veterans who had risked their lives for our country. While they attempted to remain steadfast in furtherance of their self-serving interests using the ridiculous argument that doing so was in the best interests of the Veterans, no one was buying into their ridiculous sales pitch. The rules were relaxed substantially for the Veterans. The September 1947 issue is devoted almost entirely to admission standards for Veterans.

In an article titled, "Should Veterans be Admitted on Motion?" the author, Lewis Ryan President of the New York State Bar Association addressed the issue. In doing so, however, he foolishly revealed that the legal profession's real goal, was to increase earnings of lawyers by reducing competition. Ryan writes:

> "Since I entered law school in New York State, the number of lawyers in New York State has trebled. **I think that the lawyer-veteran has a right to expect that he will have a fair opportunity to make a decent and an honorable living.** He certainly will not be able to do so if we now permit the law schools to double their enrollments, and permit inadequately trained men to be admitted wholesale without examination. If we do these things, I think we are doing the veterans a rank disservice and that we are doing the profession and the public a rank injustice." [161]