

“ . . . The graduate . . . who has no association with an experienced lawyer and who hangs out his shingle, starts practicing alone or with a fellow embryo, is like a rudderless ship.

“My own observation leads me pretty definitely to the conclusion that more poor advice is given and more law suits are poorly prepared and poorly tried by reason of the lack of knowledge of the art of *practicing* law than by lack of *knowledge* of law itself.”

Consequently Pennsylvania requires that one desiring to qualify himself for admission to the bar must at the time he commences the study of law appoint a preceptor, approved by proper authority, to act not only as a sponsor but as a mentor and guide throughout the period of his study, including a six months' le-

gal clerkship prior to his admission. Such a procedure appears to have many advantages. It gives the preceptor an opportunity to check the character and aptitude of the student, and if deficient in either respect, to discourage him at the threshold from embarking upon an unsuccessful professional career. If the applicant possesses these natural qualifications, his contact with his preceptor will serve to stimulate his interest and inspire achievement as a successful practitioner at the bar. And last but not least, this system will tend to minimize the sad problem of unemployment which confronts so many of our young law graduates, in that having anticipated this problem throughout the years of his preceptorship, he will have obtained either with or through his preceptor a place and opportunity to go forth and conquer.

The Bar Examiner and the Law Schools

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THE two agencies responsible for the character and quality of persons entering the legal profession are the law schools and the bar examiners. There is no substantial difference in the objectives of these two groups. They are quite in accord as to the type of person and the quality of training necessary to provide the profession with the proper type of lawyers. Yet, in general, they proceed in entirely different directions to reach the desired goal. If the law school training does not prepare the student for the bar examination test, or if the bar examination does not test him along the line of his preparation, then the Bar will very rightly tell us to get together or hold us both to blame. I would like to present to you two suggestions looking toward a

more satisfactory performance of our obligation to the profession. One is, that we work for fuller cooperation between these two groups, and the other is that we should look forward to the establishment of a National Board of Bar Examiners.

What the profession is emphasizing is that the student must be trained in legal analysis and legal reasoning. For the past half-century, and more, the bar has berated the case lawyer. We are all familiar with the old story of the lawyer who sent his young assistant to the library to get a few citations to decorate his case which involved the conversion of a horse, bridle, and saddle. Having heard nothing from the young man for several days, he called him in to see what

was the trouble. Though he had worked with the books industriously for long hours, he reported that he could find nothing in point. He said he had found plenty of cases of the conversion of a horse, some of the conversion of a horse and bridle, some of the conversion of a horse and saddle, and he had even found cases of the conversion of a bridle and saddle, but he had found no authorities which covered the case of the conversion of a horse, and a bridle, and a saddle!

This is not the way in which the profession expects us to train the student. He must learn to analyze problems and situations, and, after such analysis, determine what rules or principles of law should be applied to reach a logical and legal solution. Unless these faculties are developed, the student has gained but little to distinguish him from the layman, other than the memorizing of a few rules or definitions. Memory is no doubt of great value to the lawyer, as it is to men in every other walk in life, but the lawyer's job is, to a great extent, that of a professional thinker, one who holds himself out to think for others and solve their problems by bringing them within the rules and principles which have been established, or should be established, in such cases. As it should be the function of the law schools to develop in the student these capacities, so it should be the function of the bar examiners to determine whether the law schools have performed this duty. If, then, they are both functioning properly, the student should be able to go from a good law school to the bar examinations with but little time spent in special review, other than to make, perhaps, a comprehensive survey of the information he has acquired in his three years in the classroom. But is the student able to do this? In general, the answer is, No! Many a student returning from the bar examination says he might as well never have gone to law school for all the help it gave him. If his statement is at all accurate, it must mean, either that the law schools are not teaching the things they should teach, or that the bar examiners are not asking the questions they should ask of the student. What can we do about this and how can

we get together to see that these two agencies operate properly, with fairness both to the applicant and to the profession?

Though all schools are not in agreement with all bar examiners as to the type of examination given, yet quite universally the law schools do feel that a bar examination is both necessary and desirable. The effect of the diploma privilege in securing admission to the bar is apt to result either in legal education remaining static or in its going off on an undesirable tangent. Some schools are apt to maintain indefinitely old courses and old methods, and any old training will do, while others, without the restraint of a bar examination test for its students, may give themselves over almost entirely to freak courses, freak methods, and to the presentation of theories of government, instead of the teaching of the law. In either case, though the lack of the bar examination check may lead to inefficient or ineffective training for the practice of the law, yet students will flock to such schools regardless of the education they may receive since their admission to the profession is practically assured as the much dreaded hurdle of the bar examinations has been eliminated.

Though most legal educators agree that it is desirable that the bar itself should have a check upon the preparation of those who seek admission, the law teachers often object that in many places the bar examination has unwittingly promoted, not legal education, but the cram course. In some of the states having the most elaborate machinery for the bar examination tests, it is considered necessary for students, even from the best schools of the land, to take a special course before facing the bar examinations.

It is difficult to answer the boy who asks, "Why is it necessary, after three years of hard study in a good law school, that I spend from six weeks to three months, and a considerable sum of money, in preparing for the bar examinations?" When an examiner states with pride, "No Harvard graduate has ever been able to pass our examination on his

first trial!", it must be apparent that something is wrong either with the Harvard Law School or with that bar examination or with both. When an applicant says, "Practically nothing was asked in the bar examination which was covered in my three years at school," it is quite apparent that his law school and his bar examiners need to get together. When the training given and the tests applied are so very different, if the bar nevertheless gets good material, it would seem that one group has left a sufficient impress regardless of the other, rather than that both have contributed materially to the desired result.

Only those who have tried to prepare adequate examination questions appreciate the difficulties involved. It is much harder for the examiner to frame a good question than it is for the good student to answer it. The time required is enormous. Where it has been tried carefully and understandingly, it has been found that the full time of a competent person is not adequate to prepare a complete set of properly selected questions year after year. He must secure an accurate knowledge of each subject; he must know the content of the whole law school curriculum and the proper emphasis to be given to each part of it; he must see that his questions are framed to test the student's powers of analysis and reasoning, as well as his knowledge of the law. His questions should not be such that only the Supreme Court could decide them. It not infrequently happens that the examiner, in seeking to outguess the cram school proprietor, asks too many novel questions, problems which have arisen in his practice during the year and which even the Supreme Court would not be prepared to answer without the fullest study and consideration.

With the right sort of an examination, the commercialized cram course would not long remain a profitable institution. A few years ago it was stated that the proprietor of one of these courses guaranteed to present to his students taking the examination in that state, at least seventy per cent of the exact questions to be asked in the examination, not only as to content, but, essentially, as to form.

And this guarantee, I am told, was made good year after year. This clever person, by a careful analysis of past questions, was able to foretell how often each examiner would repeat himself, and from what source he would draw his questions for the examination, whether from recent cases decided in the Supreme Court, cases in which the examiner had himself participated, quiz books, statutes, and other possible sources. He knew what the examiners were going to ask before they did.

There are, of course, but few states that can afford to employ even one competent person on full time to prepare bar examination questions, and perhaps the employment of several such persons is beyond the financial resources of even the states which have many hundreds of applicants each year.

Then, after the examination, there comes the difficult and burdensome task of fairly and accurately evaluating the answers submitted. The student has so much at stake that no amount of time or labor should be spared in order to judge him fairly in a matter which may affect the whole course of his life. Here again, long experience in the grading of questions, together with a careful analysis of what is involved, and trained judgment of what the student has to offer, is necessary if the applicant is to be fairly dealt with. Though a number of boards employ professional readers to grade the answers, the great majority of boards are not in financial position to give the student the benefit of such careful service. There are, perhaps, few, if any, states in position to spend the money required to secure competent forces to prepare sets of questions which will meet the test year after year and a sufficient number of competent readers to grade and carefully weigh the answers of each applicant. For many boards, no help whatever is available, even for the handling of the necessary clerical work involved. It is quite apparent that it is out of the range of possibility that we should have forty-eight boards adequately financed to do this.

But is it necessary or desirable that we make tests for forty-eight different va-

rieties of lawyers? The leaders of the profession in America seem to feel that it is possible to state what is the common law of the United States. Certainly, the lawyer, in preparing his case, in so far as he uses treatises to any extent, and in so far as he believes that there are such things as principles or rules of law, is using materials which are prepared for the lawyers not of one state only but of all of the states. It is true that there may be local variations or local rulings at variance with those of some of the other states, but in general the fundamentals, if you concede that there are such things, are the same. Is it necessary, in order to test whether a young man is prepared to undertake the practice of law, to determine whether he knows a particular decision of the court of last resort of his state—a decision in which perhaps the best legal minds of the state have been engaged for many weeks or months, and over which the Supreme Court has labored long and seriously in finally arriving at a conclusion? Of course this type of question can be framed without much labor or difficulty. I know that many lawyers will say, "But the student should know this decision in order to adequately protect the interests of his future clients." The answer is that we do not and cannot expect the young lawyer, even though he be an exceptional individual and has been trained by the most competent instructors, to know all the decided cases, but we should expect him to know how to analyze his problem and how to look up the law involved, to find the cases decided concerning it, and to make some fair evaluation of the decision rendered by the court upon a particular point.

We should not expect more than this of the applicants for admission. We cannot expect them to have the information concerning peculiar local decisions or statutory provisions which you have gained through ten, twenty-five, or forty years of practice. It is more vital for a young man to know how and where to find the answers to matters dealing with local rules and procedure than that he should memorize the content of particular decisions or statutes. Only with the

years can his mind become a storehouse of such useful information.

I do not mean to say that it may not be proper to ask a certain number of questions which involve matters of local law if they are of the type which properly may be called "emergency law,"—knowledge which he must have available without opportunity to consult the books. The lawyer's situation is not like that of the physician who is constantly called upon to give emergency treatment. Seldom is it necessary or desirable for the lawyer to be prepared to give a "curbstone," or as we call it in the South, a "horseback" opinion. In fact, though there are some, there are not many matters, either general or local, which involve the necessity of a student knowing what might thus be spoken of as "emergency law," and hence there are but few such matters upon which he should be tested as a mere matter of memory.

The number of questions which deal only with local decisions or statutes, should be much in the minority since the mere fact of memory of a given decision or statute is not normally very important in determining whether or not the candidate is a fit person to begin the practice of law and has the qualifications to become a lawyer. But questions of this sort dealing with matters of local nature which are really vital should be prepared only by those who are very familiar with local law and procedure.

If it is not possible to have forty-eight separate boards adequately functioning, if it is necessary to train forty-eight different varieties of lawyers, if it would be unfortunate for us to develop forty-eight different common laws,—then is our present scheme of bar examinations sound? Would not a National Board of Bar Examiners look toward a solution of our difficulties? A reasonable fee paid by each applicant the country over would provide adequate funds for the establishment of an experienced group for the preparation of questions and grading of answers. These are tasks which involve great responsibility and require an amount of time which few, if any, local boards are now able to give. I do not say that it would automatically eliminate

the cram course, but I believe it would seriously diminish its effectiveness and eliminate its necessity for the student who has had adequate legal training. I believe it would tend toward the bringing about in an effective way of that uniformity in the law which we all think is desirable. That it would tend to establish sound legal education in many places and in many schools where it does not now exist, I have no doubt. It is not a new or radical idea, for we have the experience of another great profession with reference to a National Board of Examiners in their calling.

This suggestion of a National Board of Bar Examiners does not involve the elimination of the various state boards as they now exist. Their retention is very necessary. That there are a number of matters which are local upon which the student should be examined is conceded. Just what proportion of questions of this character should be presented in a fair test of the applicant's preparation to be a lawyer, I cannot say. It might be ten per cent, or fifteen per cent, or some other per cent. But whatever proportion is determined upon, the examination on such matters should be left to a local board. But perhaps of even greater importance, there should be left to local lawyers the investigation of the moral qualifications of the applicant,—a matter now largely neglected because of the other pressing burdens.

State boards of bar examiners will always have an important function to perform in the admission of attorneys to practice but this matter of a National Board will, I believe, come eventually for the lawyer as it has for the physician, and it is time to give the matter serious thought.

The whole matter of the relation of the law schools and the bar examination is one which deserves the most careful study. Both groups are aiming at the same result. Are we doing what we can to attain our common objective? Each side probably thinks it knows what the other is doing, and both are probably wrong. Is it not desirable that we should get together to make a common

study of the jobs with which we are both concerned?

For the past two years, particularly during the past year, a committee of the Association of American Law Schools has been engaged, from its side, in such a study. The bar examiners have been most generous in giving information. We must, however, each question ourselves as well as question the other fellow if we sincerely desire to make progress. If you, as bar examiners, have been wearied by questionnaires sent out by law school teachers, why not enjoy life also and send out to the law school teachers inquiries based upon your ideas of what you think is vital in the solution of our problem? I suggest that you prepare a questionnaire outquestioning the questioners.

In what I have said about law schools and bar examinations, or in any suggestion I have offered, I do not mean to be understood as representing in any way the committee of the Law School Association of which I happen to be a member. But in two matters I feel that I can speak for the law teacher. I believe I am safe in saying that the Association of American Law Schools, whenever it has expressed itself on this matter, has gone on record as being most definitely and heartily in favor of an independently conducted bar examination and against the admission to the bar upon the mere securing of a law school diploma. We believe it is good for the law schools and for the profession that an outside body appointed for that purpose should determine whether or not the applicants are properly trained and are proper persons to enter the ranks of the legal profession. We know that the more thorough and understanding the examination, the better will be the law schools which prepare the young men who come before the examiners to stand their test.

On one other thing do I feel that I can definitely speak for the law teacher, and that is that he is anxious to cooperate with you and have you cooperate with him, in our joint task of giving to the profession and to the public a better qualified product which will uphold the

best traditions of the bar, and merit the esteem and confidence of the people generally.

The more we work together and the better we understand each other, the greater esteem will each group have for

the work of the other, and even more important, the more effectively will we be able to attain that common objective which we all have so thoroughly in mind that I have not even thought it necessary to attempt to state or define it.

Psychology Points Way to New Character Tests

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MUCH has been written in our own Bar Examiner, in the American Bar Association Journal, in other publications devoted to our professional problems, and elsewhere, concerning moral character and the desirability of determining the presence or absence of that vague trait or combination of traits. Much more has been spoken on this subject at our meetings and similar meetings. That the subject is important goes without saying. That not much is being done about it, effectively, is generally conceded.

The futility of investigations into the moral character of our applicants is illustrated by the report made by Mr. Horack and Mr. Shafroth on the survey of legal education and admissions to the bar in California. The methods used in that state were described in that report in this manner:

"The applicant files a questionnaire which is examined by one of the employes of the state bar office. Character witnesses whom the candidate lists in his application are written to concerning him. If their replies are satisfactory, it is assumed that the candidate has good moral character. If on the face of the questionnaire it appears that a man is of doubtful character, which happens only in the rarest of instances, a further investigation is made."

Their comments upon this are not only obvious but may well be applied to the investigations made in practically all of the states, when they continue:

"This procedure is no safeguard whatsoever to the public. It is not even a real and genuine attempt to find out what the man's character is. It is common knowledge that anyone, no matter how dishonest or unscrupulous he may be, can supply as reference the names of three persons who will vouch for him."

The report which Mr. Shafroth made in the July-August, 1934, Bar Examiner upon "A Study of Character Examination Methods in Forty-Nine Commonwealths" indicates that even the states which have adopted "more advanced" or detailed methods of gaining information on this subject have progressed barely a step, if at all, in efficiency. We all know of the procedure in Pennsylvania where comprehensive questionnaires are required of the applicant, his preceptor, and three citizen sponsors at the time of registration for law study, the personal appearance and interview made before the county board at that time, the supervision of or contact with the student by the preceptor during his law study, and the duplication of the initial investigation at the time of application for the bar examination. That this method, which is approximated in some of the