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Legal Education and Bar Examination

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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Legal Education and Bar Examination

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The only thing which I can hope to contribute to this subject in the brief time available is some opinion evidence, based upon five and one-half years of experience as a bar examiner.

I am very much convinced that much of the adverse criticism of bar examinations and bar examiners is well taken. Speaking in "glittering generalities" the effective preparation of bar examination questions and the grading of answers presupposes qualifications which many bar examiners do not have and which they make no real effort to acquire. Questions all too frequently involve problems upon which good students have had no preparation. Answers are all too frequently graded dogmatically despite pretenses to the effect that any intelligent answer is given fair credit. Students who are good enough to see difficulties which do not occur to the examiners all too frequently fail. The system emphasizes the acquisition of information and accepted usage as to legal terminology and discredits a deeper learning and skepticism.

No one should deny that the minimum which should be required for admission to the bar is a reasonable amount of information as to so-called "established" rules, and a reasonable facility in the use of legal language. But when we *emphasize* those matters we necessarily neglect the broader and deeper phases of legal education. It is quite likely to be true that significant experiments in legal education are deterred or rendered impossible; that a student properly trained to deal with law as a social scientist is thereby trained to fail the bar examinations.

My own opinion is that the bar examinations as they are at present administered constitute a serious and unjustifiable handicap on any significant progress in legal education. I take it that a substantial group of law school men are likewise convinced as to that proposition. The problem confronting this group is as to what would appear to be an adequate remedy. I have just one general suggestion on that score.

To start with I do not think that the solution lies in the abolition of the bar examinations. Properly administered they *can* constitute an effective comprehensive examination and thus make a significant contribution to legal education. The advantages to the student of a fair comprehensive examination are apparent. The advantages to the law school of a competent outside

* Address delivered at the annual meeting of the Association of American Law Schools.

check on its work is likewise apparent. Such an examination adds two or three months to the law school training period to the advantage of all, for certainly were the bar examinations discontinued good schools would adopt comprehensive examinations of their own, thus cutting short the present curriculum. Even when we reach the time when graduation from a law school accredited by this association will be a universal pre-requisite for admission to the bar I think we should not look forward to the abolition of the bar examinations. Those latter should after all be an integral part of our system of legal education.

I think it clear that the present lack of cooperation between bar examiners and law schools is certain to produce an indecent result. But the best of cooperation would not accomplish much more than talk. The only thing which will accomplish a decent result is an integration of the two systems into one. This means obviously that law school men must be given a fair representation on examining boards.

I think our experience in Indiana has been very wholesome. It is a constant education to me. It would be a healthy experience for any law school man. We have much to learn from the active practitioner. In the matter of legal education they have something to learn from us. I would not hold up our examinations as models, because they are necessarily tempered to meet the local situation, where until this summer there were no educational pre-requisites for admission to the bar examinations. This much, however, is true, the other members of the board have never hesitated to eliminate questions which I have suggested were outside of the standard curriculum. We have worked at the problem of grading and our grading technics produce fairly uniform results. A very small percentage of graduates of approved schools have failed.

But I am not so concerned with the decency of the past results as I am with the possibilities for the future. It is very certain, I am sure, if the present arrangement continues, that when we get ready in Indiana to take another step forward in legal education, the Board of Law Examiners will have no difficulty in adjusting its program to meet the new situation, and that indeed it will help to lead the way.

Why should we all not look forward to the time when the boards of bar examiners will constitute not a stumbling block but an aid to a better legal education? I should feel a rather complete confidence that were this Association to forget about cooperation and talk about and insist upon a practical integration of the bar examinations into a one system of legal education the proposition would receive a ready acceptance on the part of the American Bar Association, and the bar examining boards of the country.