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THE LEGAL EDUCATION WILDERNESS

By WILL SHAFROTH*

Most of us will readily admit that the machinery which is designed for the administration of justice functions badly in many particulars. Perfectly inexcusable delays exist in our court machinery, many of our judges are chosen for political rather than legal ability, and unethical practices abound in the bar. Many of these things can at least be improved by an enlightened and organized profession. Probably the most important single step which can be taken is to improve the personnel of the bar, and for this purpose we must look at the situation which exists with regard to legal training and professional licensing.

Here we find a veritable wilderness, and if we look around it, what do we see? A host of degree-conferring law schools, less than forty per cent of them wearing the ribbon of merit which membership in the Association of American Law Schools confers, and only eight more, or a total of 85 out of 194, being on the American Bar Association's roll of honor. Last year the attendance in these approved schools was 47 per cent of the total law school attendance. In other words, we are obliged to admit that more than half of our law students are getting the kind of training which the leaders in the teaching profession and which the great mass of the bar itself regards as inadequate, if we can take the vote of the national organization of lawyers and of the state associations where the standards have been approved, as representative of the sentiments of the lawyers of the country.

Isn't that statement in itself astounding? We rail about the character of the bar, at the difficulties in securing law reform, at ambulance chasing and lack of ethics, at professional incompetence and yet we expect improvement while we are fostering, in the great majority of the states of the Union, schools which

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exploit their students for their own financial gain, and send them to the bar inadequately prepared, giving to the bar examiners the impossible task of turning back time after time those who are not qualified.

It may be that our judgment of what is and what is not proper preparation for the bar is at fault. Arbitrary standards are never perfect in their discriminative functions. But what can we say of those schools which ignore all the rules of experience, which admit students who have had only a high school education or what they claim for an equivalent, and which have a course of three years or less of evening sessions, or less than three years of full time work. There are 38 of these schools which confer degrees scattered over the country, and some fifteen others which do not. Practically every one of them is a commercial school, designed first to make a profit, and, only secondarily, and in such ways as will not interfere with that profit, to teach law. I have never seen a school in that category, that is, failing in both entrance requirements and length of course, as viewed from the American Bar standards, which I regarded as giving an adequate legal education.

I consider that the bar has a direct responsibility in the entire field of legal education, and that it can not rest while schools of that type exist, and continue to delude their students into thinking they are giving them proper training. Some of the institutions in California which Prof. Claude Horack of Duke University and I visited last spring, in making a survey of legal education in that state were nothing short of amazing. Take for example the Balboa Law School in San Diego. It consisted at that time of one class given three times a week for a period of two hours, to all comers. One subject at a time was taken up and disposed of in those halls of learning, the object of the proprietor of course being to guess as accurately as possible, after finishing one subject, the particular course which the greatest number of students then in school had not yet had. Since no printed catalogue was gotten out, the student could not tell what courses he would get during the year, but this was not of great importance as he only enrolled for one quarter at a time. The year was divided into terms of four and a half weeks and to those teachers who are accustomed to spend three hours a week for a year on torts, it may be surprising to know that it can be covered in the short space of four and a half weeks by the Balboa method, and that the only materials which the stu-

dent requires for such study is a 103-page mimeographed syllabus prepared by the dean himself consisting almost entirely of excerpts from decisions. Fifty cases were presented in those 103 pages, and the cost of these syllabi to the student was the trifling sum of \$60.00 per year, if paid in advance. The tuition when the school was conducted as a part of the San Diego public school system was only \$6.00 per year which was very cheap, considering everything except value received, and may have accounted for the statement in the school circular that "No other California school has grown so rapidly in the past six years". Encouraged by the report of the survey committee, the school this year announces that it is going to start in conferring degrees.

Another most interesting institution in the northern part of the same state, was the Lincoln University College of Law in San Francisco. That school, organized some years ago, at one time had an enrollment of over 500 students. At the time we visited it, its glory had faded. It was just emerging from the shadows of the bankruptcy court, and the classes visited had less than a dozen students. Nevertheless its catalogue proclaimed that its curriculum was the same as that of the Harvard Law School, and the president, a former correspondence school salesman, and Doctor of Laws by vote of his own faculty, usually referred to it as "the Harvard course".

We found some instances in the golden state, where deans who were engaged received a percentage of the tuition of students they were able to bring with them from another school. Other institutions had regular solicitors who were paid not only to bring students to the school, but also to keep them there. In some cases a cut was given to students, for such of their comrades as they could get to enroll.

Fortunately this situation does not exist all over the country in this same degree, but there are a great many low grade schools which are giving an absolutely inadequate training. The fact that some outstanding lawyers may come through such training, survive and grow to greatness does not in any way characterize the school. It is the average product or even the lowest ranking students who finally secure admission to the bar that we are most interested in. In our effort to improve the bar, we must do it by eliminating the unfit and every school must stand ready to be judged by the very poorest part of the output on which it places its stamp of approval.

The fact that these law schools continue to exist and turn out their yearly grist is nothing short of a tragedy. It has an important bearing on the service of the lawyer to the public. Most lawyers deplore this situation, I am sure, but their inclination is to say, "This is really no business of mine. What can I do as an individual which will affect this condition?" This is the attitude which the practicing lawyer has had toward law reform and is the main reason why we make such slow headway in that direction. Results must be obtained by collective effort. The whole matter in its essentials is one of bringing the matter home to the agencies which control the rules for admission to the bar. They first must be informed as to the facts, and afterwards as to the consequences which these facts bring about. Then, there must be energetic work to change the existing status. The remedy can only be achieved by hard and constant effort.

The bar has been contributing its strength and resources for years in an endeavor to raise the standards of admission to the profession. In certain respects we have made remarkable progress since the adoption of the Root report in 1921. Out of sixteen states which required no general education seven years ago, only eight now remain in that category. Twenty states now require two years of general college training or its equivalent of substantially all their students, as contrasted with six having that requirement at the beginning of 1927.

While the medical profession cut the number of medical schools in half during the last thirty years, degree-conferring law schools have increased from 102 to 194 in the same period. Only this year, Mr. Reed of the Carnegie Foundation informs me that at least ten new schools granting degrees will be added to his list, most or all of which are commercial in character and a number of which have only one or two year courses. Besides these, there are eight additional new schools listed in the current number of the *American Law School Review*, of the same kind, but which presumably do not confer degrees. Listen to this description of the Woodrow Wilson College of Law of Atlanta, Georgia, just opened this fall:

"A regular three-year course in law has been arranged in a unique way so that an ambitious student may complete it in one year. The LL.B. degree is conferred upon completion of the course. * * * The course is so arranged that a student may enter at practically any time during the school year.

"The president of the college is Hon. Clifford Walker, former governor of the State of Georgia. The dean is Joseph B. Kilbride, who for a number of years has conducted a private law school, the graduates of which have been very successful in passing the bar examinations".*

It will not do to say, "Let the bar examiners take care of them". The examiners themselves are the first to demand higher qualifications for candidates, in order to qualify them for the examinations, and to admit that they are an auxiliary mechanism and not a barrier which by and of itself can be efficient. The figures of Mr. Philip J. Wickser, Secretary of the New York Board of Examiners, show that, despite the scientific character of the examination and the procedure of that board, over 92 per cent of the applicants taking their first examination in the years 1925 to 1928 have already passed. In Ohio their recent survey showed that about 98 per cent of their first timers eventually got in. Illinois shows over 86 per cent admissions and Pennsylvania 87 per cent. Only in California of the large states have they begun to deal successfully with the repeater problem. And when you reach that degree of efficiency, what happens? In the August examination in that state only 32 per cent of the applicants passed. Of 303 repeaters, only 7 per cent passed. The wail that went up was heard in the far-off chambers of the state supreme court and, before even consulting with the examining board, an order was issued to the bar examiners to show cause why they should not re-examine the papers of all the candidates who had failed. After the hearing at which numerous of the unsuccessful applicants testified, the court took the matter under advisement. Whoever expects the bar examiners, alone and unaided by sufficient qualifying restrictions, to keep out unfit applicants, is like Milton's gallant man who thought he could keep the crows out by shutting the gate.

And not only are we getting products of distinctly low grade schools in large numbers, we are also getting far too many lawyers. The bar is decidedly overcrowded. In 1930 we had 160,000 lawyers and now we have 175,000. Law school enrollment which dropped steadily for five years, this year shows an increase. Admission to the bar this year will approximate 9,400 neophytes, practically the same as last year, and only 1,200 under the maximum figure attained in 1928. We lose somewhat

* The Law Student, Oct., 1933.

less than three per cent a year from the profession, and we gain over five per cent. It is not so much the present situation as the trend which is alarming. What are we going to do with 200,000 lawyers in 1940?

The wilderness, I think, is plain enough. Where, then, is the promised land?

The vision which I see is a country with a much smaller number of law schools than we now have, all of them coming up to some national standard of excellence. I see state licensing requirements which universally require graduation from such schools, and which have completely done away with such anomalies in our present system as office study and correspondence school courses. I see a uniform prelegal standard of two or perhaps more years of college education. Some night schools of unquestioned standards and high ideals go to make up the picture. The bar examiners are still there as a check on the schools, but the cold sweat does not break out on the brows of the students of that realm at the thought of facing them, for most of the students pass readily. Their test comes rather in gaining admission to the law schools, for that is not easy. The capacity of the schools is strictly limited to the numbers which can be adequately cared for. The students who succeed in entering the law schools have demonstrated their caliber. The others must seek other pursuits or try again. A thorough inspection of the schools insures that standards are being maintained but does not attempt to control general educational policies or strait jacket law training. The schools will take some responsibility for the moral character of their graduates, and their recommendations to boards of examiners will be the most important of all factors as to character. Character committees will function fearlessly and wisely, supreme courts will stand like a rock for high qualifications and will back up their examining boards without question, and disbarment committees will wield their flaming sword with relentless precision, in that happy land.

Whether or not we shall ever reach that goal, I do not assume to predict. But we are making progress. As an example, in January of this year, the New Mexico Supreme Court promulgated rules requiring graduation from a school approved by the American Bar Association as a qualification for taking the bar examinations.

Furthermore, the present plan of the American Bar Association for a coordination of effort along certain definite lines and

on certain subjects of which this is one, in a National Bar Program, is hopeful and will make our endeavors more effective. Fourteen hundred bar associations, marching in step, will have a thunderous tread. If we can but bring home to them the facts in the case and the logical implications which flow from them, the step will be quickened, the ranks will close up and we will yet see the column marching out of the wilderness and over the hill.

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