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THE LAWYERS' DUTY TO THE PUBLIC

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The general opinion of the legal profession held by laymen is not flattering to the lawyers. Carl Sandburg has put it into poetry in the following words:

> "The work of a bricklayer goes to the blue.
> The knack of a mason outlasts a moon.
> The hands of a plasterer hold a room together.
> The land of a farmer wishes him back again.
> Singers of songs and dreamers of plays
> Build a house no wind blows over.
> The lawyers—tell me why a hearse horse snickers
> hauling a lawyer's bones."

Much of the reason for this lies in the inefficient manner in which our law machinery works. Partly the opinion is due to widely advertised knaves and Lilliputians in the profession. These two causes are not as far apart as they might seem, and there is much truth in the words of Chief Justice Hughes that "The chief defects of the administration of justice lie in men rather than in method."

The question of selecting the personnel of the bar is perhaps the most vital one which we must face today. Not only do the men whom we are currently admitting to our ranks become officers of the Court charged with the task of righting wrongs and guiding the ways of our people, they will soon be sitting in our courts of justice deciding the fates alike of ordinary citizens and of gigantic financial combinations. The

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course of justice in the future is being determined by the men who are receiving licenses to practice law at this time. The subject of legal education may seem to be remote from a discussion of the kind of men whom we want for lawyers. As a matter of fact it is closely allied. When Elihu Root proposed the present standards of the American Bar Association he had very distinctly in mind the necessity of securing men of high character. If proof is needed for this it can be found in his address before the Conference of Bar Association Delegates met to consider those standards in 1922. I can quote only a small fragment from that eloquent speech:

> "I do not want anybody to come to the Bar which I honor and revere, chartered by our government to aid in the administration of justice, who has not any conception of the moral qualities that underlie our free American institutions—and they are coming, today, by the hundreds.
>
> "I know of no way that has been suggested to assure to any considerable degree the achievement of such a view on the part of aspirants to the Bar except this suggestion that they should be required to go to an American college for two years and mingle with the young American boys and girls in those colleges, be a part of their life, and learn something of the community spirit of our land, at its best; learn something of the spirit of young America in its aspiration and its ambition, seeking to fit itself for greater things. That is what they will get in an American college."

The requirement of two years of college education before the study of law which those standards set forth is undoubtedly designed partly as a test of character. The experience of character committees throughout the land bears this out. The late Walter Douglas, Secretary of the Pennsylvania Board of Bar Examiners, stated that in that state while the number of college graduates who were taking the Pennsylvania bar examination outnumbered the non-college men about four to one, that the non-college men who were refused admission by local committees on character grounds outnumbered those with college training in almost the same proportion. A somewhat similar experience in New York was one of the reasons for the addition of the two-year college rule in that state. Unquestionably there is something about the American college which tends to develop a spirit of fair play and sportsmanship at odds with unethical conduct.

There are of course other essentials which it is important to test if we are to get the right type of men for lawyers. We must test, if we can, aptitude. If we could adequately measure

this and character we would almost have solved the problem, because if a man has the aptitude for understanding and interpreting the law, and the kind of character which would prevent him from deceiving his client as to how much he knew, it would seem fairly safe to trust him to acquire the essential understanding of the fundamental principles which every lawyer must have. Unfortunately, however, aptitude tests are in their infancy, and so little is known about the methods of exploring character that only when a man is guilty of some distinct overt act of an almost criminal nature do we feel justified in preventing him from passing through the portals of admission. But if he can pass through two years of a standard college course, or if he can pass an examination showing he has the equivalent of that education, and if he can then successfully complete three years of work in a good law school, he has after all shown some aptitude for law. This will not guarantee that he will be a successful practitioner, but it is at least some assurance, which is further fortified when he passes the bar examinations. It is unnecessary to dwell on the increasing complexity of our laws. Every member of the profession and every member of the public knows it. This increasingly intricate mechanism of justice requires increased intelligence and understanding. It is not too much to ask some college education and law school training for the man who undertakes to advise his client about the law.

Lawyers are notably conservative, and changes in their traditional thinking take time. The lawyers of our fathers' day were educated principally in offices, and the number of men who went to college in those times was but a fraction of what it is today. That the tradition of learning law by the apprenticeship method is a thing of the past is shown by the fact that not over five per cent of our applicants for the bar are now solely office trained. It has been a good deal more difficult to get over the idea that no college education is necessary and that any kind of a law school is sufficent properly to equip any kind of law student. But we are getting over it. The standards recommended by Elihu Root's committee were adopted in 1921. Kansas was then the only state requiring any college education. Today in nineteen jurisdictions where over half our lawyers and over half our population are to be found, substantially all candidates for admission must have either two years of college or an equivalent education, to be tested by examination. Leaders of our bar are almost unanimous in their belief in the wis-

dom of this qualification. It still remains an anachronism that in this day and time, with facilities for education so widespread, in the nine states of Arkansas, Georgia, Florida, Indiana, Nevada, North Carolina, Oregon, Utah and Virginia, a man who can pass the bar examination will be admitted to the practice of law even though he has never had even the beginnings of a high school education, much less a college training.

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

> "From now on, in California, the law may gradually become a learned profession. Governor Rolph has signed the bill requiring high school graduation or its equivalent for admission to the bar examination. Thus we shall have lawyers with the minimum of education demanded of motor bus drivers, and half as well educated as the average service station attendant. They will have had a fraction of the preparation required for physicians, engineers, school-teachers, dentists, drug clerks and librarians, and about that of the printer's devil. That is progress. We long ago recognized that there is no such thing as a 'right' to practice medicine or pharmacy. The only right is that of the public not to have poisons prescribed or compounded by unskilled persons. Some day we may discover that justice is quite as important as health, and that dealing professionally with either is not the common right of ordinary men. No matter how many ordinary people there are in the world there should be no place for ordinary lawyers. Unless a lawyer has qualifications to which most of us cannot attain we should be protected against him."

When laymen speak in this way of the rules laid down for the lawyer's craft, it is time that we of the bar were giving the most serious thought to the justice of these comments. There has been a tendency among lawyers to say, "It does not matter what qualifications are required of candidates. A bar examination is given to them and if they can pass this bar examination they know enough to practice law. If they can't pass it, then the public and the bar are protected." The flaw in this argument is that it assumes the infallibility of bar examinations.

It is true that bar examinations are continually getting more strict. In 1928, 54 per cent of the candidates in the United States passed, in 1929, 51 per cent, and in 1930, 47 per cent. During the last year we have such startling results as the fail-

ure of 80 per cent of the applicants in a California examination, of 81 per cent in Massachusetts, of 81 per cent in Missouri, 74 per cent in Utah, and 75 per cent in Rhode Island. With the organization of the National Conference of Bar Examiners and the exchange of mutual information between the boards, the caliber of examinations in many states is improving. But in spite of this fact, our experience thus far shows that only a comparatively small number are ultimately barred. A survey from five states demonstrates that of all the candidates who took the examinations in 1922, 1923 and 1924, the following percentages eventually passed and were admitted to the bar: New York, 95 per cent; Pennsylvania, 93 per cent; Colorado, 89 per cent; Illinois, 86 per cent; California, 83 per cent. In Nebraska and Ohio it was reported that 90 per cent of the examinees eventually get through. This is excellent proof of the fact that we can not depend on bar examinations alone to winnow the wheat from the chaff. Preliminary qualifications are essential. In the field of character something can be accomplished by a thorough investigation of applicants from this viewpoint. Pennsylvania leads the way in the thoroughness and efficiency of its methods in this particular, but even in that state less than five per cent are refused admission on character grounds. A suggestion which has met with much favorable comment is that of a conditional admission. The candidate after a certain period of practice is required to submit his record to a character committee, which on the basis of how he has conducted himself during those years of practice, decides whether or not he has shown himself fit to be a full-fledged member of the bar. If he is refused that privilege, he is not permitted to practice after his conditional license expires. Judge William Clark of the United States District Court for the District of New Jersey, has put this into effect in his Federal Court.

Indiana, which has no requirements either of preliminary education or of legal training, is in the lowest category of states with reference to requirements for admission to the bar. Of the law schools of the state, three—Indiana University School of Law, University of Notre Dame College of Law, and Valparaiso University School of Law—are approved by the American Bar Association, are members of the Association of American Law Schools, and require preliminary education of two years of college and a full time course of three years. One other full time school, the University of Indianapolis affiliated with Butler University and known as the Indiana Law School, has a full-time

course of three years' duration, but requires no college education for admission.

It is interesting to note that of the 97 applicants who failed at any of the first four examinations given by the state board of law examiners from July 1, 1931, to October 6, 1932, 45 had had no college work whatever, and 11 had had only one year, and four had had no high school work. Only five of the 97 failures were graduates of an approved law school, and of the total passing, the number of those who attended an approved law school was more than twice as great as the number of those who were trained elsewhere.[1]

Indiana at the present time has 118 lawyers to every 100,000 people, or slightly less than the average for the United States, as against 113 for every 100,000 persons in 1920, the number of lawyers having increased during the past decade from 3,307 in 1920 to 3,818 in 1930.

Whether or not the state is getting more lawyers than it can absorb is a matter which the members of the state bar are better able to decide than the author. Certainly, however, the need is indicated for careful selection, including adequate preliminary qualifications, followed by further checking by means of the bar examination and by a conscientious investigation of the character of applicants.

In the biography of Aaron Burr, it is told that every barber in Washington was a staunch Federalist, and denounced the Democrats as a menace to the nation. The reason for this, it appears, was that the Federalists wore their hair in long queues, carefully powdered, which often required the barber's attention, while the Democrats wore short hair, and no powder, and got along fairly well without any barber. The story is told that one of the barbers exclaimed, "Dear me, surely this country is doomed to disgrace and shame! What presidents we might have, sir. Just look at Daggett of Connecticut or Stockton of New Jersey—what queues they have got, sir. But that little Jim Madison, with a queue no bigger than a pipe stem, sir, it is enough to make a man foreswear his country!"

The tendency for a man's views to be dictated by his own interests has not been confined to any one age. But in this respect the lawyers have been singularly free from blame. They have never put their own interests above those of their com-

[1] Information furnished by Professor Bernard C. Gavit, Bloomington, Indiana, member of the Bar Examining Board.

munity or their country. The movement to restrict admissions to the bar to those who can prove themselves to be qualified is not in any way selfish. It is not done with a desire to preserve the legal business in the hands of those who already have it. It is not done with the desire to limit the numbers of the profession so that the existing scale of fees may be maintained. Its purpose is to protect the public, to insure them competent legal services, and to fortify their faith in the administration of justice. This has never been better expressed than by the Honorable Elihu Root at the same meeting above referred to when he said:

"One concluding thing: What is all this for? What is the vital consideration underlying all the efforts of the American Bar? We are commissioned by the state to render a service. What we have been talking about is the way of ascertaining or of producing competency to render that service. Upon what standard of judgment shall we consider and attempt to do that? Of our rights? Of the rights of the young men who come here crowding to the gates of our Bar? Is it a privilege to be passed around, a benefit to be conferred? Is there any doubt that that standard is inadmissible? Do we not all reject it?

"The standard of public service is the standard of the Bar, if the Bar is to live; the maintenance of justice, the rendering of justice to rich and poor alike; prompt, inexpensive, efficient justice."