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Bar Examinations

Jerome Hall

Indiana University School of Law

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EDITORIAL NOTES

THE LAW REVIEW

The first volume of the Dakota Law Review consisting of four issues was published in 1927. The second volume of the Review consisted of eight issues and was published during the years of 1928 and 1929.

Because of the size of the Review we have decided to continue the policy of publishing four issues a year with each volume covering a period of two years. The price will be the same, two dollars a year or four dollars for each volume.

BAR EXAMINATIONS

The recent resolution of the American Bar Association regarding standards for admission to the bar is one of many steps taken during the past few months to bring about an intelligent and helpful cooperation between the various agencies that determine legal excellence in any community. Admittedly it requires both school and practical experience to fit any person for competent exercise of his
duties as a lawyer. The question, accordingly is "what part of the task can best be performed by the school?" Every lawyer knows that there are a thousand and one details of practice which any clerk can "pick up" in three or four months. On the other hand theoretical matters are clearly the special province of the school. Between these two extremes, gradations can be made of the relative importance of various types of information which should be acquired. In the working out of details, opinion, no doubt, will vary. But if it is borne constantly and definitely in mind that the law graduate is not through with his training when he leaves the school, the first steps in the determination of adequate tests and scientific standards can be taken.

Perhaps no better statement of the factors to be tested by bar examiners has been made than that of Mr. John K. Clark, Examiner for New York, where over three thousand new applicants appear each year for admission to the bar. Mr. Clark in an address to the American Bar Association in October of last year stated that, after considerable investigation and experimentation, they selected the following factors to be tested by their bar examination:

"... First, knowledge of fundamental principles of law; second, ability to analyze a statement of facts in order to determine what were the material and relevant facts which should be taken into consideration in order to determine the rights of the parties; third, that power, which you may call selectivity, which enables a man when he is analyzing his facts to select from the rules of law with which he is familiar the appropriate rules of law to apply to that statement of facts; and then, fourth, that highly important and necessary faculty of logically and rationalistically applying the principle of law which he knows and has selected to the facts as he has analyzed them; and finally what is substantially an adjective form of merit, but a highly essential one if a man is to operate as a lawyer effectively—the power of clear, straightforward, concise statement."...

It would seem to be a more or less obvious inference that a knowledge of every subject listed in Corpus Juris need not be required, and that to quiz the student on obscure and detailed questions is not only unfair but does not even approximate a scientific test of his knowledge of the fundamental principles of law. On the contrary a more thorough examination of fewer but fundamental subjects provides a far better basis for judgment.

Under existing requirements the student is studying a greater number of subjects at the University Law School than he would at almost any other school in the country. The compelling factor, of course, is the need to pass the bar examination. The disadvantage
of this sort of thing is that the work must be scattered and diffused.
Fewer courses would provide the opportunity for doing more intensive and thorough work and develop the habit of doing that kind of research.

Another advantage of studying fewer courses is that more time would be available for cultural subjects such as legal history, the sociology and philosophy of law and international law. The law school must, of course, remain primarily and fundamentally a professional school with high standards and with the great purpose of turning out competent lawyers. But the law graduate is facing a lifetime of legal research. This is part of every lawyer’s job and it will be part of his. If the graduate shows a firm and clear grasp of the fundamental legal principles and the other qualities indicated by Mr. Clark, then he has the necessary intellectual requirements for practicing law. Why not, having secured this in an intelligent manner, look to the acquisition of other qualities which only the school can develop? These men will be looking up law the rest of their lives, but after their graduation they may never read a line on the history and the development of the law, or of its philosophy or significance from a social point of view. Very little association with any standard law school is required to appreciate the immense task of covering the entire field of the law in twenty-seven months. The case method alone, which, with some variation, has universal approval, makes it impossible to cover all of the subjects adequately. It being necessary to eliminate some subjects from study, it is, of course, entirely impossible to devote any time to cultural courses.

The question is one to which the bar in general, the examining board and their committees should take up carefully in cooperation with the law school. There are several fields of law which are not fundamental (but are based upon other essential subjects) which are of such detailed nature that every lawyer in practice must perforce consult the authorities whenever he has a case involving such points. There are numerous questions of practice and procedure which a law school cannot begin to cover profitably. Careful analysis of the problem, with the proper scope of the school borne in mind is necessary. Perhaps it will be found desirable to require an apprenticeship in a law office before final admission is granted. Perhaps not. Cooperation would undoubtedly provide the opportunity for determining an adequate test for admission and at the same time leave the school free to give some additional instruction in those fields which are peculiarly its forte.
Naturally both school and students are dependent upon the requirements for admission in the direction and planning of the school work. These bar requirements are the signposts which must be observed in the professional school. They wield such a great influence in determining the course of study that they merit most careful attention. Whether the curriculum can be modified so as to enable it to turn out graduates who will not only have a thorough grasp of fundamental legal principles and outstanding ability for research and analysis but also an appreciation of the cultural and historical aspects of law and a consequent understanding of their responsibilities as lawyers, is a question which must depend for its solution upon the consideration and cooperation of the various interested agencies.

JEROME HALL.

MEETING OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS

The twenty-seventh annual meeting of the Association was held at New Orleans between December 27 and 30. President Horack's opening address on "Law Schools Today and Tomorrow" was a general survey of some of the problems of legal education. A rather unique suggestion, which he made, was that motion pictures be taken advantage of in practice courses so that instead of witnesses being given a statement of the facts they are to testify to, they be shown the motion picture and testify to what they saw without consultation with each other. This eliminates not only what, in practice, would be unethical, namely, the coaching of the witnesses, but also gives the student experience in handling witnesses who tell conflicting stories, and makes the entire process more realistic.

The most interesting addresses of the day were given by Professors Frankfurter of Harvard and Llewellyn of Columbia who spoke on "The Conditions for, and the Aims and Methods of Legal Research." Professor Llewellyn's paper was particularly stimulating because it indicated the movement on foot to develop a science of law and emphasized the importance of legal history and the social sciences in general, in explaining and illuminating the entire judicial process. That evening a round table on Jurisprudence and Legal History was held and a most interesting paper was read by Professor Patterson of Columbia on the topic "Can Law Be Scientific?" The speaker, while admitting that legal science was handicapped by the impossibility of using mathematics and other methods employed in
physical science, suggested that by the use of statistics and other extra legal data a science of law might be achieved.

The next day there were conferences on Equity, Wrongs, Teaching and Examination Methods, Commercial Law and Legal Periodicals. The first and last of these topics were of particular interest. The session on Equity was held jointly with the American Association for Labor Legislation and Mr. Witte, the Chief of the Legislative Reference Library at Madison, Wisconsin, read a paper on "Social Consequences of Injunctions in Labor Disputes." The discussion on this paper was opened by Professor Sayre of Harvard who advanced the rather interesting proposition that the elimination of the injunction would by no means solve the difficulties which labor is facing because under recent decisions, suits for damages can be instituted against the labor union with just as much devastating effect as the injunction has had; and he suggested that inasmuch as the injunction is only a remedial agency, the real solution is to change the substantive law so that no legal remedy would be available in most of the conflicts arising between employer and employee.

Mr. Caldwell of Emory University discussed "The Use of Equity to Aid in Enforcement of the Criminal Law." This discussion and the one which took place after Mr. Witte's paper, raised the general question of the propriety of extending the injunction to a number of fields where originally it was not intended to apply. The general tenor of the discussion was that some definite limitations should be placed upon this drastic remedy.

The discussion on legal periodicals contained many suggestions for making these publications more effective. It was thought that the time was ripe for departure from the traditional form of law magazine originally issued by Harvard. Matters of personal interest to bench and bar might well be included. It was further thought that practicing attorneys, particularly the younger men who have just left the law school, should be invited to contribute articles so that the union between teacher and practitioner might be cemented with mutual advantage. It was thought, also, that such participation by practicing attorneys in the work of the law review would develop in the profession greater appreciation of theoretical problems with a resulting, general advance in legal scholarship.

That evening a dinner was tendered to the Association by the New Orleans Bar over which the Chief Justice of the Supreme Court of Louisiana presided. William Draper Lewis gave a short talk on "The Work of the American Law Institute"; Mr. H. P. Dart, of the New Orleans Bar, spoke on "The Place of the Civil Law in Louisi-
ana;" and Mr. Owen Roberts, who will be remembered as one of the attorneys appointed by President Coolidge in the Teapot Dome Case, gave a most interesting address on "The Relation Between the Teacher, practicing Lawyer and the Judge."

The final meeting was a joint session with the American Political Science Association which was devoted to a consideration of the problems of the Appellate Courts, wherein Professor Sunderland of Michigan advanced the suggestion that the burden of a very heavy calendar might be solved by having the upper court divided into a number of divisions with some provision for consultation. This view was not generally approved of, and it was pointed out that the two outstanding courts of the nation, namely, the United States Supreme Court and the New York Court of Appeals, considered the cases as a unit. The practicing attorneys maintained that this is what lawyers expect when they appeal a case, namely, that they will get the decision of the entire appellate court. Professor Frankfurter pointed out that the Saturday morning informal discussion of the Supreme Court was a device facilitating efficient handling of the docket and at the same time securing the opinions of all of the members of the bench.

It was generally felt by the two hundred odd delegates that the meeting was successful and that many suggestions had been made which the various law schools can use to advantage. Taking place in the very delightful city of New Orleans, in many ways one of the most unique and charming cities of the country, the meeting was enlivened by interesting excursions to various places. The session adjourned after an eloquent plea by Professor Beale to hold the next meeting in Boston and the matter was referred to the Executive Committee which has not yet made any declaration in this regard.

Jerome Hall.

School of Law,
University of North Dakota.