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## The Bar Examination --- Its Proper Time and Length

By EDWIN C. GODDARD

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[A paper read before the Section on Legal Education of the American Bar Association, at Saratoga Springs, N. Y., September 3, 1917.]

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IN OUR day and country the bar examiner is the St. Peter of the legal heaven. He to whom the legal St. Peter openeth not must go below and live without the legal brotherhood. It was not always so. Not so long ago the admission gate (or bar) was kept by any member of the bench. This meant it was not kept at all, for no one was denied admission, and there is still at least one of the states of our Union where every vot-

er of the state of good moral character has the constitutional right to admission as a member of the bar. Until very recently it was in all our states assumed, practically, if not actually, that no preliminary legal training should be required. Every man had the right to advertise himself to his fellows as an attorney and counselor, leaving them to try him out and determine whether he should earn his living by lawyer's fees. The cost to

his clients of these experiments by which he learned his profession and determined whether he could live by it seems not to have been considered. Time was when the physician learned his trade (shall I call it so?) in the same practical way. But long ago people refused longer to have life thus experimented upon. Now no man may be admitted to the medical profession who has not had a prescribed training in the schools. It is no longer a trade, but a profession. Strangely enough, men who value their property almost as life itself require the trained doctor, dentist, and pharmacist, but are unconcerned about the preparation of the lawyer to whom they intrust their dearest property interests.

However, the great advance in training required for admission to the medical profession has been due in the main to the interest and activity of the profession itself and not to that of the people at large. In the same way the advance being made in requirements for legal training are the result of agitation by members of the bar, especially through the bar associations, and notably this Section of the American Bar Association. This is in part, at least, due to the fact that the lawyer more clearly than other men sees how much of the criticism of bar and bench is due to the fact that there are so many unworthy and ill-equipped men allowed to offer their legal services to the public. This results in bungling, narrow-minded, technical lawyers, and what is more serious, even, in such a number of them that the struggle for existence leads to questionable, dishonest, and even criminal practices, and lowers the whole tone and ethics of the profession. In taking steps to cure this condition we have lagged far behind our medical brethren, and this notwithstanding the fact that the Legislatures that must pre-

scribe the remedies are largely made up of lawyers who should be alive to the need. This has perhaps been one reason for the lagging. In the past many of those legislators have been lawyers admitted to the bar without any law school training, and naturally enough they have been slow to show interest in changing the conditions under which they came to the bar. It seemed like putting a brand of inferiority on their own credentials. When it is considered how many of the profession to-day, including not a few of its most eminent members, never were enrolled in a law school, it is perhaps to be wondered at that they have been as alert as they have in moving for a change.

There are still protestants, who urge that present day requirements would have barred Lincoln from admission. But the answer to this is plain. They would have done no such thing. On the contrary, present conditions would have made it possible with no great trouble for Lincoln to have secured adequate training before he began practice, and who can doubt he would have done it? Scores and hundreds of men similarly circumstanced are doing it, to their great advantage and to the still greater advantage of the profession and the public. And yet it is still true, so far as I know, that not a single state of this Union requires legal training in the schools as a preliminary to the bar examination, though in all the states where the bar examinations mean anything the practical result of present requirements has been to send to the law schools a very large percentage of those seeking admission to the bar. Curiously enough some bar examining boards even now frame the language of their certificates of legal study on the old condition of study in an office under a practitioner, and law

schools, in certifying their students to the examining boards, have to modify the language of the official forms. So slowly do we adapt ourselves to the changing order.

But it is not my purpose to enlarge upon what has been so often and so much better stated and urged in meetings of this Section, viz. that every man coming to the bar should first have at least three years of training in the law school. I may call attention to the Standard Rules for Admission to the Bar proposed by this Section, and especially to the forthcoming report of the Committee on Legal Education and Admission to the Bar to which these proposed rules were one year ago referred by the American Bar Association. Action upon this report may be expected during the present week. Without giving statistical tables or further argument, it serves the purpose of this paper to remark that to-day nearly all the states have some real requirement for admission to the bar, most of them have some sort of Board of Bar Examiners, and most of those boards give a real written test to determine the legal fitness of candidates, who have first filed certificates showing real legal study for two or three years, and in a large number of the states most of these candidates have had this study in law schools. Let us hope the day is immediately at hand when our Legislatures will require preliminary legal training in the schools, and refuse to accept the confessedly inadequate office study. Certainly it is now true that candidates for admission are coming largely by way of the schools.

Assuming that the bar examination is set largely for candidates preparing in the law schools, what should be its time? Manifestly it should have some relation to the time when candidates are completing their work in the schools. What

should that relation be? A natural and easy plan, followed in some states, is to take the examination to the principal law school in the state and hold an examination at the close of the school. More often it is held at the state capital, but at the time of or even before the close of work in the law schools, usually very early in June. The law schools of the state are almost compelled to close with reference to this date, and candidates from schools outside the state are left to arrange as they can. Not infrequently the date of the bar examination is the same as that of the final examinations in many of the law schools. Manifestly students cannot be in attendance upon both examinations, and the bar examinations will not yield. Often they are in this way penalized for not attending a home law school. This is surely one way to encourage home industry. It tends to make the law schools local, limiting their students to residents of the state, and naturally tending to make the instruction local, based on the peculiar law of the state. The limits of this paper do not permit a discussion of the effect of this, but the writer believes it to be pernicious, in narrowing both the contact of students and the breadth of their training. They have at best three years in the law school for broad training in the great principles of the law. They have all of their later professional lives to devote to the local law. Law schools with a cosmopolitan membership must, others very well may, largely limit instruction in law peculiar to the state in which the school is located. Bar examinations usually overdo attention to local law.

Not all the bar examinations are held so early in June. Some are set for late June or early July, and in some states the examination does not come till Septem-

ber. It is the purpose of this paper to urge that the last is the best date.

What should be the primary consideration in fixing the time for examinations? Manifestly not the temporary convenience of the candidate. That is a secondary consideration, to be given weight only as may be consistent with the permanent good. The primary consideration is to so set the examination for admission to the bar as to insure the best test of that preparation by the examining board. An examination immediately at the close of the law school not merely seriously handicaps men preparing in law schools closing at a date later than the bar examination, it also seriously interferes with the work of the last term of the student in every law school. With our rapidly expanding law the schools have had to abandon the attempt in a three-year course to teach the student all even of the important subjects of the law. Some schools are offering a four-year curriculum; one has announced a four-year requirement for graduation. It is believed all will agree that a full three years of legal study in a law school is hardly adequate to a thorough preparation for the practice of the law. The bar examination should not curtail or interfere with this.

But what is the effect of setting the bar examination at the very end of the school course? We need not conjecture, for we have facts. Some schools make the last term of the senior year a cram for the bar examination, by organizing special review classes; some give a semi-official recognition to review courses offered by an outside instructor; at least one school provides a member of its faculty who has specialized in this examination cram, who, toward the close of each year coaches the seniors for the bar examination, accompanies his students to the cap-

ital where the examinations are held, herds them together in the same hotel, and during the bar examination holds cramming sessions between periods. The worst of it is such methods have a measure of success. By these means many a weakling is got by, and others are encouraged to be content with inadequate preparation and to set a false value upon such an artificial and surface training. But whether or not any of these things be done, the students will inevitably be thinking of the bar examinations and preparing for them, and to this extent will be distracted from the regular work of the law school. The school term that should be most efficient of the whole three years is pretty sure to settle down to just enough attention to the subjects in law school to secure a passing grade, while the major interest seems to the senior to be to insure getting by the bar examinations which stand between him and the practice of his profession.

The schools, too, are apt to yield to the pressure, and let down their standards in order to save their reputations for efficiency as shown by the standings of their students in the bar examination. Not a few of the schools publish with pride the standings in the local bar examination of their graduates. If the results seem to the schools so significant, it is to be expected they will omit no measure to improve the showing. It would be strange, indeed, if the sober permanent work of training did not suffer to make way for effort that shows in the temporary gain of high percentages in the bar examinations. If the time of holding the bar examinations were sufficiently removed from the completion of the school curriculum, this eagerness for high grading might lead to no bad results; but, when the completion of the school curriculum and preparation for the exami-

nations must all be done at the same time, the evil results seem evident enough.

If it be admitted that three years is not too long for the law school training, it seems to need no argument to show that the bar examinations should not be held earlier than July. If three years is too short, the situation is by so much the worse; and if three years is too long, as will hardly be claimed to-day, certainly in this presence, still the examination should not be set at a time that requires the student to divide his attention. In this matter the interest of the bar examiner and of the law school is one, and that is identical with the best good of the profession and of the neophyte just entering. It is fortunate, therefore, that this has received attention, not merely in the meetings of the Association of American Law Schools and in this Section of Legal Education, but that it will be presented the present week by the Committee on Legal Education and Admission to the Bar in its report to the American Bar Association itself. By a considerate exchange of views it should not be difficult to reach a satisfactory arrangement in every state. I earnestly urge that the Section of Legal Education lend all its influence and active co-operation to the movement to have the dates of the bar examinations well removed from the latest date of the closing of the year in the law schools.

Assuming for the moment that the bar examination should not be set immediately at the close of the school year, we may now ask what is the ideal date? In this connection it may be interesting to note when the bar examinations are actually held in the various states and territories of the Union. Conditions of climate, affecting the school year or the sittings of the courts, might lead us to ex-

pect some differences between Northern and Southern states; but, except for these, the conditions throughout the country are so similar that we should look for much similarity in the dates fixed for the bar examinations. As a matter of fact, we find nothing of the sort. No two states have the same dates, and very few the same months, for the various examinations held each year. In fourteen states no specific dates are fixed, though in some of these there is a pretty well followed usage. In one, Indiana, no examination can be required over the objection of the candidate; in two, examinations are held but once; in twenty-six, they are held twice; in five, three times; and in four, four or more times—annually. In some of the above other examinations may be provided in the discretion of the examiners or of the court. Just half the states and territories hold only two examinations each year, and no good reason suggests itself for holding them more frequently. One time should be set for graduates of the law schools and any others eligible to be examined at the same date. Possibly a second examination should be open to such as cannot be ready for this, and who cannot justly be asked to wait for their test a whole year. Something may be said for providing for candidates completing their legal preparation at the middle of the college year, though it may be doubted if their number is very large. The second examination could be set in March or April, so as to provide for them and for all others left over from the summer or fall examination.

There is at least one possible objection to any second examination, and that is that the standard for passing at this examination is apt to be lowered, because the candidates on the average are not so well prepared. Whether this is

the case or not, candidates generally believe it to be so, and often take the winter examination, on the belief that they are more certain to pass then. In order to have a fair standard and uniform treatment, it is desirable that the examiners have a considerable number of candidates before them at the same time, and it seems especially objectionable to have separate examinations for students prepared in different ways or schools. All applicants should submit to the same test, and this test should be broad enough to be fair to all who have had adequate training, whether in a local school or elsewhere. From this point of view one examination each year is to be preferred, and, if this would be unfair to any, then at most only one more should be given in most of our states. New York, and perhaps one or two other states, may have so many candidates as to require a separate rule, in order to spread out the work of the examiner.

Returning to our statistics, we find every month represented in the dates for bar examinations, from three states each for March and May to fifteen for June. Twelve hold examinations in October, ten in December, nine in February, eight in July, and only four each in August, September, and November. These figures as a fact are increased each year by the dates fixed in the fourteen states having no set times. From this it appears that June is the most popular month. It is here urged that May and June should be eliminated entirely from the list. July and August are much less objectionable. The average student will probably put off till the completion of his law school work in early or middle June any special study for a bar examination in July or August. But he may well be allowed longer time than this to make preparation, and an early

September examination will get him ready to appear in court to be sworn in at the first term for the year. This works no hardship to the candidate, for there is little summer business for him to do if he were ready, and there are during the summer no sessions of the courts in which he might by any possibility appear as an attorney, but from which he would be excluded till he was admitted to the bar.

In other words, by taking the examination in September he is as fully prepared for practice as he could be by an examination in June, July, or August; the Supreme Court does not have to hold a special session, in or out of term, to administer to him his oath, and he can complete thoroughly, decently, and in order his law school training and his preparation for the bar examinations. For the lawyer and the courts the new year begins with September or October, and the new member is ready to take his place at that time. Early September, then, seems the ideal time for the main examination for admission to the bar. For the second date, if there is to be a second, March or April is best for the man completing his school work in February, though the left-over, who could not take the September examination, may much prefer the more popular December.

Nothing has here been said of the candidate who prepares by office study. But there should be none such; as a fact their number is ever growing less, and in any case no reason occurs why the dates above suggested do not fully meet the needs of men so preparing for the examinations.

In closing this part of the discussion, may I suggest that it is very desirable to secure a uniformity of practice in this regard throughout the country. Adjacent states at present are as widely vari-

ant in their dates as the most extreme Northern and Southern. Conditions are practically the same in all parts of the country. Our best law schools have students preparing to practice in every state, and it should be so. It is narrowing and deadly to the local school to have the rules of its state such as to encourage only men from that state to attend and to feel pressure to adapt its instruction only or chiefly to local law. Every local bar is the better for having in its membership men trained at many different schools. It is immensely worth while to encourage this. It can be done by making the steps of admission high enough so that only the fit can climb them, but the doors of entrance broad enough so that all the well prepared may enter in.

Our medical brethren have gone far toward that comity among states that gives general recognition in all states of certification by any state having adequate requirements for admission. Can any good reason be suggested why the same comity should not gradually be realized in recognition of certification of admission to the bar? Uniformity in these rules for examinations for admission will materially hasten this much to be desired day; and, once there is this amity among a considerable number of states, the pressure upon other states to raise their legal standards will hasten the time when they can be admitted to the comity sisterhood. It may be we are near the time when we might well ask the American Bar Association to set its Committee on Uniform State Laws to the task of offering an Act for Uniform Requirements for Admission to the Bar, such act to prescribe, not merely the requirements for admission, but the dates for the examinations, and a recognition by all the states adopting the act of admissions to

the bar by all the states maintaining the prescribed standard. The writer commends this to the consideration of this Section on Legal Education.

I pass with some doubt to the last part of our topic. I have had many years' experience with examinations, but none as a member of a Board of Bar Examiners, having to determine by a single written test the fitness of the candidate, a stranger to the examiner, to be admitted to his chosen profession. The following suggestions are made, therefore, with due humility:

If the bar examiner could be inerrant in his judgment, and would be inflexible in his decision, the bar would soon become the most ideal body of men in the world. But no very sure way has yet been suggested of determining fitness of character, not to speak of testing whether the candidate possesses those indefinable qualities without which no training can make a man a successful lawyer. Beyond a doubt, however, insistence upon adequate preparation by way of legal study will greatly reduce the number of those lacking the character and talent to be good lawyers—good for themselves, for their clients, and for the public. No single test, perhaps no test by a single body of men, can infallibly determine the adequacy of legal preparation; but of all the tests yet applied there is no other, short of an actual trial, that so accurately separates the fit from the unfit in preparation as a proper written test. I say this after many years' observation, in some thousands of cases. A proper written test will search out the equipment of the candidate to meet and solve the legal problems likely to confront him. The ability to do this will depend, not so much upon how many legal rules and principles he knows, not upon how freshly he may be crammed with legal defini-



tions, local statutes, and peculiar decisions in his state, as it will upon a broad training in the principles of the law and a natural and an acquired ability to apply them to given situations.

As a seasoned practitioner he will always, as need arises, look up his local law and decisions; incidentally he will gradually memorize them more or less. But the primary thing to be desired, and proved by the test, is a lawyerlike mind, an ability to do legal reasoning leading to sound conclusions. This does not mean that he will always decide a given case as the court did. Interesting questions quite generally produce a divided court, and in practice the lawyer will check up on his conclusions in every case he deals with by examining the decisions. Not one case is likely to be on all fours with any decided case, and it will be his business to compare and distinguish and see whether his case is likely to be decided the same way. This he does by the use of his lawyerlike mind, not by reason of an abundant store in his memory, though such store is not to be despised in the hands of one who knows how to use it. But this store is much more largely acquired in practice than in schools of preparation. One can easily cram in a few weeks on definitions and rules, but no such cram can give legal training of the kind described. Such cometh by natural gift, but still more by months and years of legal study, such as the best law schools are striving to secure from their students. To determine whether the candidate possesses this ability is the first and last aim of the written test. Incidentally he will, of necessity, show whether he has a knowledge and grasp of the fundamental legal principles which he must apply to the problems set in the examination; but his method of attack and the manner in

which he applies legal principles is at this point of more importance than instant correctness as to rules of law. Not infrequently far clearer fitness to be a lawyer may be shown by a candidate who reaches the wrong solution of a problem than by his fellow who by luck or memory reaches a correct solution, but shows no evidence of a mind trained to legal reasoning.

These considerations have an important bearing on the length of the examination. It should be long enough to give a fair indication to the examiner of the candidate's ability in this direction. As there is no previous acquaintance, the examiner should have before him a considerable number of solutions of problems by the candidate, and in a variety of legal fields. Even so, the examiner's task is not an easy one. The writer believes the standard should be high. The candidate should prove his title clear. And yet he writes under conditions so circumscribed by time and occasion that the impossible should not be sought. However, it is far easier in case of doubt to require the applicant to wait and give further proof than to admit him on his doubtful showing, with the idea that he can later be dropped from the profession if he proves unfit. Nobody has a natural, constitutional, and inalienable right to practice law, notwithstanding some opinions *contra*, except, of course, in the state of Indiana. But, once in, he has, for all practical purposes, an inalienable right to stay in; and no one is ever ejected because he was not intellectually as fit as the bar examiner rated him. The only safe way is to keep him out till he proves clear title to enter.

If these be sound principles, then the bar examination should have far fewer questions than are commonly set, to the end that the candidate may have far more

time on each question. The added time should be used in part to condense the answer to each question to from one to two pages of the ordinary examination book—rarely less than one or more than two—and in part more fully to reason out the solutions offered. Such a test for four half days on forty questions, or less, will give far clearer proof of the candidate's fitness for admission to the bar than the one hundred and forty or more questions, ten on each of fourteen or more subjects, required by statute in one of the territories.

This leads to an inquiry as to whether the examination must be long enough to permit of a test on each of the important subjects of the law. The good law schools in the three-year curriculum no longer find it possible to give each student instruction in each of the subjects prescribed by most of the states for bar examination. To do so would crowd a four-year curriculum. Of what importance is it in the bar examination to cover every subject? Almost necessarily thirty or forty questions would contain matter on all the foundation subjects, such as Contracts, Torts, Crimes, Pleading and Procedure, Evidence, Equity, and Property, and incidentally on other important subjects; but why ten on each, or why every important subject in every examination? May the candidate not as well show his fitness by answering forty questions on one properly chosen group of subjects as by forty on another, or by eighty or one hundred and sixty crowded into the same length of time on a combination of the two groups? Leisurely thinking and reasoning will furnish far better evidence of legal ability, and, moreover, save the examiner much needless and deadening labor, leading to confused and doubtful judgment, in reading answers to a great number of questions.

To this end the requirement might well be an examination on the principles of the common law applicable to Real Property, Torts, Evidence, Pleading, Contracts, Negotiable Instruments, Criminal Law, Equity, and such other subjects as the board may from time to time select, as is provided in one of our newest states (Arizona), rather than cover a list of twenty-eight subjects, including Arbitration and Award, Insurance, Domestic Relations, and other subjects of minor importance, as is required in one of the thirteen original states (Connecticut), or twenty-six or more subjects, as is suggested in the proposed Standard Rules for Admission to the Bar, or, worse yet, to require a study of fifty-six specified law books or their equivalents, as is done in one of the Southern states (Florida). In one state (Idaho), "no information as to the substance of any of the questions asked or the subjects treated in the examination will be given to the applicants before the date set for the examination"; while in another (Iowa) the requirement is simply that the Board of Examiners "shall test the applicants as to their legal qualifications by propounding to them at least fifty questions, to be answered in writing, and as many more as they may see fit, to be answered orally." This might well read "at most fifty questions." In two states (New York and West Virginia) the subjects are grouped: Group I, adjective law; and group II, substantive law. The applicant must pass in each group. Another state (Virginia) makes four groups, but does not require a passing mark in each group, if the applicant passes the examination as a whole. This grouping plan suggests an easy, natural, and desirable division, having some relation to the end sought by the examination, and makes it possible and easy to mark on gener-

al ability such as a lawyer should possess, even upon admission to the bar, and not upon knowledge of every individual subject, a thing which he will, if ever, largely acquire in his practice and later study.

These considerations prepare the way for certain general conclusions. The length of the examination and of each session should have regard for the physical condition of the candidate. A two days' continuous written test is a trying ordeal. Therefore, if the end desired can be obtained, the written test should not last more than two days, with two sessions, of perhaps three hours each, on each day. This would provide for two groups, or four groups, of subjects, and preferably not more than forty questions, ten for each session. It is of no particular consequence that each ten should cover every subject in its group, since a test upon one set of related subjects may be as good as a test upon another set of similar subjects, and probably better than upon a greater number of subjects; the aim being not so much to test knowledge of every particular subject as all-around legal ability. This will result in far better considered answers, and it is believed, also, in far better considered questions, since the examiner will have fewer to prepare. If the candidate cannot show by answers to forty questions, in four different sessions, running through two days, whether he is fit for admission, it

does not appear how he can succeed by adding to the number of questions and prolonging the strain upon his physical endurance to the point of exhaustion. Hurried answers to a large number of questions during an unreasonable length of time may test cleverness, agility, and endurance, but not sound, enduring legal ability.

Finally, then, the writer urges an examination for admission to the bar at a time when the applicant will have fully completed his preliminary work in the law school, and have been able thereafter to make reasonable preparation for the bar examination. This should preferably be not earlier than the end of August and not later than early September, with a second examination, perhaps, in March or early April. This examination should be long enough to enable the candidate to exhibit his ability to handle in lawyerlike fashion legal problems such as come to the lawyer in his practice, and not too long for the applicant to continue working in good physical condition. Having made the time and conditions of the examination as favorable to the candidate as is reasonable, the examiner may have some confidence that the result, though not infallible, will afford the best available test of the natural and intellectual fitness of the candidate for admission to our ancient and highly honorable profession of the law.