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LEGAL EDUCATION AND ADMISSION TO THE BAR
REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION
TO THE BAR—PRESENTED BY DEAN HENRY M. BATES, OF THE
MICHIGAN UNIVERSITY LAW SCHOOL, AT THE MEETING OF
THE MICHIGAN STATE BAR ASSOCIATION, AT FLINT,
JUNE 3 AND 4, 1921

The Committee—

Henry M. Bates, of Ann Arbor, Chairman
Victor M. Gore, of Benton Harbor
James E. Duffy, of Bay City
Charles W. Nichols, of Lansing
James M. Turner, of Detroit.

THE year covered by this report has found the law schools of the country working upon a normal basis again, after the disturbances produced by the war. It has also witnessed some notable forward moves affecting both legal education and admission to the bar. Among these may be mentioned the following:

At the annual meeting of the Association of American Law Schools, held in Chicago December 27, 28 and 29, 1920, the possibility and desirability of a four-years' law school course were vigorously discussed. A special committee of the association to present recommendations in regard to this problem, appointed at a former meeting, made two reports. The majority report in substance declared that while a four-year course opened interesting possibilities, the matter of curriculum and the content of the subjects which might thus be added had not been sufficiently studied to justify recommending to the members of the Association the immediate adoption of a four-year course. It was recommended, however, that in those schools in which there were offered four-year courses the results should be carefully studied and discussed at some future meeting.

The minority report urged strongly the necessity of extending the course to four years, pointing out that the medical course now runs from four to six or even seven years; and that in three years it is utterly impossible to cover adequately all of even the important practical subjects.

After vigorous debate the Association adopted the recommendations of the majority report, but it may be said that the general understanding of the delegates present was that this vote did not dispose of the matter, but that the problem is to be further studied and discussed at future meetings.

It may be said that the universities of Michigan, California, and Northwestern University are now offering, beside the regular three-year course, an additional four-year course. At Northwestern the four-year course has been compulsory except for those who possess certain general educational qualifications. It is idle to hope, so long as no state requires more than three years of law and so long as the law schools do not require it, that many students will avail themselves of the additional fourth year. This is the experience of the schools which have been mentioned; but the fact remains that in a law school like that of the University of Michigan, strictly professional courses are offered which aggregate between five and six years of work, and that, including some extra professional courses, such as Roman Law, Jurisprudence, and the History of Law, a student would require six full years to avail himself of all of the curriculum. It is also an undoubted fact that the law is a difficult and technical subject to master and that it is constantly expanding, not only in respect to the volume of statutes, judge-made law and treatises, but also in the number of subjects which have come within the range of legal action. For example, the federal and state income tax laws and various other taxing measures have opened up really new fields of inquiry, involving the consideration of the economic factors in a way and to a degree quite unknown in the classical period of our law. Finally, it may be observed that never before was the country in such need of broadly trained lawyers to meet the perplexing problems in legal, political, industrial, and social readjustments made necessary by the war.

For these reasons, the requirement of a period of four years of study of the law before admission to the bar seems reasonable and even moderate. On the other hand, even when the need of a new policy has been demonstrated, it is frequently impossible to put that policy into force at once because of certain practical considerations. It seems to your committee that this is a subject which the bar should consider carefully, but which it may be content to

leave for the present, so far as any possible action is concerned, to the law schools and the Association of American Law Schools, whose business it is, of course, to study this and kindred problems comprehensively and intensively.

Another highly important development of the year is an appropriation by the so-called "Commonwealth Fund," established under the Harkness will, of the sum of \$50,000 for each of three years, for the prosecution of research into legal problems. There has been a notable lack of attention to the rich field of investigation into legal problems until this time. The Rockefeller, Carnegie, and other foundations had devoted millions of dollars to medical and scientific research; although it seems to this committee, demonstrably, that, important as are these fields, they are certainly no more important to the country and to the race than the careful study of law, not only in books but in actual operation. Our higher educational institutions have shown a similar failure to appreciate the importance of extending legal education and legal research. The fact that we are living in an age devoted to material development has apparently blinded our generation to the indubitable fact that, important as are medicine, engineering, and other occupations, the most fundamental and indispensable of all institutions are our legal institutions. Engineering enterprises would have no opportunity even for existence if our legal and political machinery were not functioning with at least some degree of success. If all the principles of health were known to everyone, a community or a nation would still fail to achieve good health if those same legal and political institutions were not in order. Yet universities will pour money by the millions into medical and engineering schools and adjuncts such as hospitals and laboratories, while legal education is, relatively speaking, pinched and restricted. If our business were merely to give law students knowledge of enough law to enable them to practice after a fashion, this situation would not matter; but the fact is that as the world changes and progresses, unless our institutions change and progress we shall have a maladjustment which will produce internal disorders of the most dangerous character, and ultimately bring on violent revolutions and perhaps the extinction of our present civilization.

There never was a period in the entire history of the world when

it was so important to secure the best possible legal, political, industrial, and social adjustment. That there is maladjustment at the present time is obvious to the most casual observer.

The medical profession have led the way in insisting upon higher requirements for the practice of medicine and broader and better provision for the training of doctors and surgeons. We believe, though we say it with no spirit of criticism, that the legal profession has, in this respect, lagged far behind its rivals. We have not insisted upon proper provision for training the lawyers of the future, nor for an impartial and expert investigation of the great problems in the functions of making, interpreting, and enforcing our law. We believe that the bar should take a more aggressive and enlightened interest in these matters than it has in the past; and that it should look with favor not only upon every forward move instituted by others, but that it should insist that our law schools obtain their fair share of state support for the broad and comprehensive training of young lawyers and the investigation of the numerous fundamental and practically important problems of a legal nature. If we could achieve the purposes thus set forth we should save the state and its people millions of dollars annually by eliminating waste and friction, and lead to the greater utilization of our human and material resources and a better and more harmonious adjustment of all relationships; and therefore develop a more prosperous and happy people.

It may be appropriate here to mention only a few of the problems, the scientific investigation of which would contribute to highly beneficial results of a most practical kind. There will scarcely be found anyone to deny that we need to restudy and restate our whole body of criminal law, particularly in the field of procedure. The law of evidence, of torts, and administrative law also call for a comprehensive and skilled investigation. In Cleveland a study is being conducted of the actual operation of the Cleveland courts, and enough has been done already to justify the assertion that astonishing facts will be brought to light and conditions revealed which must almost certainly be followed by remedial action and reform. It may be pointed out here that a similar study of the entire judicial system of a state would undoubtedly reveal many important respects in which the system could be

improved, to the benefit and profit not only of the courts, the bar, and litigants, but of the entire state. There can be little doubt, for example, that there is great waste of human effort and an inexcusable economic loss in the holding of large numbers of men in court, subject to possible jury service. That it is not necessary to withdraw so many men, often for weeks at a time, from their own pursuits and from the creation of economic assets and wealth, appears clearly enough from the procedure in England, Canada, and other English-speaking commonwealths in which the whole matter of jury service is handled with far greater expedition and economy. A study of this kind, conducted by impartial experts, would prove of almost untold economic advantage to the state. Similarly, a thorough investigation of the procedure and action of our public utilities commissions and other administrative bodies and an examination of the results of the operation of these new governmental agencies would yield valuable results. At present our public utilities commissions are frequently investigators, prosecutors, and judges. To a certain extent they are even legislatures. Nowhere in the country has an adequate study been made of what this condition of things has already produced, nor what may be produced in the future if the system is continued. Administrative tribunals have come to stay and they have already accomplished beneficial results, but that does not mean that the system is perfect nor that better results could not be obtained after a scientific examination of existing data and facts.

Perhaps the most immediately important movement of the year is the appointment of a Special Committee of the Section on Legal Education of the American Bar Association to conduct studies and take steps leading to the raising of the standards of intellectual attainment and of character required for admission to the bar. This committee is headed by Hon. Elihu E. Root, of New York, as chairman, and the other members are as follows: Hugh H. Brown, Tonopah, Nev.; James Bryne, New York, N. Y.; William Draper Lewis, Philadelphia, Pa.; George Wharton Pepper, Philadelphia, Pa.; George E. Price, Charleston, W. Va.; Frank H. Scott, Chicago, Ill.

The Committee has employed a secretary and clerical help and has already begun a comprehensive and systematic examination of

its field of endeavor. The coöperation of a large number of qualified persons throughout the country has been secured, and others will doubtless be asked to serve. This is the most comprehensive and determined effort in many decades to advance the standards of the bar to a reasonable plane of preparation and character qualifications upon which the bar should stand. Doubtless the Committee and the American Bar Association will, as a result of the work thus undertaken, recommend in all of our states the adoption of certain minimum standards.* When these recommendations have been made it is to be hoped that the bar of this state will actively and effectively support the recommendations.

Legislative Program and Recommendations

This Committee, in its report to the meeting of 1919, called attention to three defects in the law relating to admission to the bar and recommended that a consideration of these defects and possible remedies therefor be referred to the Committee on Legislation or to special committees. (See Proceedings Michigan State Bar Association for 1919, page 152.)

The report of our Committee for that year was adopted and approved by unanimous action of the Association, but no active steps were taken to remedy the law in the respects referred to. Our recommendations were outlined in more detail at the meeting of 1920 and drafts of proposed amendments to the Judicature Act, which would have remedied the defects, were presented and considered at the annual meeting. (See Proceedings Michigan State Bar Association for 1920, page 150.) After some discussion, the report of the Committee was again unanimously approved and the recommendations concurred in. (See Proceedings Michigan State Bar Association for 1920, page 64.)

1. Briefly, the amendments proposed in the legislation thus recommended repealed that provision of the old law which permitted applicants for the bar who had had only seventy-five per cent of the required high school education to begin the study of law upon that basis and to make up the other twenty-five per cent of the high school training later.

* This report was made at the Cincinnati meeting of the American Bar Association, August 29, 1921, and adopted by a very large majority of the members present.

2. The recommended legislation repealed the provision of the old law permitting students enrolled at the time of the enactment of the law in 1913, if at any time thereafter they completed a law course, to become members of the bar without state bar examinations.

3. The last item of the proposed legislation provided for the keeping of an official roll of attorneys at the State Capitol, and provided the machinery for doing this.

Following the instructions of President Murfin of the Bar Association, the proposed bill was put in the hands of Senator Condon, of Detroit, who had it introduced into the Senate. Somewhat emasculated, the bill passed the Senate and was introduced into the House of Representatives, and received, in its original form, the recommendation of the Judiciary Committee. Unfortunately, the bill failed of passage there because of a misunderstanding, apparently, of its purport. The ghost of Abraham Lincoln was dragged upon the floor of the House to aid in the argument that these very modest proposals established too high a standard for admission to the bar—a standard so high that Abraham Lincoln could not have passed it, so it was claimed. After having passed the House, but before the bill was recorded, upon the misapprehension referred to, it was voted to reconsider, and on the reconsideration the bill was lost. The action was hastily taken, but when it was discovered what the real situation was, the error could not be corrected, under the rules of the House.

As there is absolutely no sound reason whatever which can be advanced against the adoption of the proposed legislation, and as, on the contrary, such legislation will tend to remove abuses and cure defects, your Committee again recommends to this Association that it urge upon the next session of the legislature the adoption of the bill as drawn. As for the Abraham Lincoln argument, no one who has intelligently studied Lincoln's life could possibly have any doubt that he would, if alive today, meet whatever requirements existed for admission to the bar. But it is time that the absurd misinterpretation of Lincoln's life and attitude toward education were thoroughly dissipated. He was admitted to the bar nearly a century ago, at a time when central Illinois was a pioneer and frontier community, with few schools, little accumulated wealth,

and almost no opportunity for formal education of any kind. Lincoln deplored this, but he did the best he could to secure the equivalent of a comprehensive school training and, as everyone ought to know, succeeded admirably. How different is the state in Michigan in 1921 from that early pioneer community of Illinois! Today graded and high schools dot the state from border to border. Provision is made for students without means, and if Abraham Lincoln were alive today and in his youth no one who really understands his character and his profound belief in education can doubt for one moment that, however poor in money he might be, he would secure not only a high school but a college and law school training, which in fact he did provide for his oldest son, who became not a great public character but a very able and successful lawyer.

State Board of Law Examiners

During the past year our State Board of Law Examiners examined 189 applications for admission to the bar, of which number 143 successfully passed the examination. During the year applications for admission were made by fifteen non-resident attorneys. Of this number, nine were recommended to the Supreme Court for admission, two were refused, one application was withdrawn, and five were, at the date of this report, still pending. Twenty-six persons filed with the Board notices of intention to begin the study of law in law offices.

During the year Mr. Charles W. Nichols, of Lansing, who has served upon the board for many years with great fidelity and efficiency, and who for a number of years had been Secretary of the Board, carrying the brunt of its office work, felt compelled to resign. It is impossible to speak in too high praise of Mr. Nichols' unselfish devotion to the profession which he served in this way or of the beneficial results of his unrequited labor. He is entitled to the cordial appreciation and thanks of the bar of this state, and your Committee ventures to hope that a resolution conveying to Mr. Nichols an appreciation by the bar of the value of his services may be passed at this meeting. We feel that the Board of Examiners and the profession of the state are to be congratulated upon the fact that Mr. Nichols' place upon the Board has been filled by the appointment of Mr. Fitch R. Williams, of East Jordan, Michigan.

In the reorganization compelled by Mr. Nichols' retirement and the appointment of a new member, feeling that it was necessary that the Board should have an office at the State Capitol, and feeling also the importance of a direct connection between the Board and the Supreme Court, the Board and the Governor of the state have prevailed upon Hon. Jay Mertz, clerk of the Supreme Court, to act as Secretary. All correspondence should, therefore, be directed to Mr. Mertz, as Secretary of the Board. This seems a most fortunate arrangement, and the bar of the state will have additional reason for being appreciative of the efficient service of Mr. Mertz, who now comes in contact with the bar in another capacity.

Conclusions

We cannot close this report without some general remarks concerning standards of admission to the bar. An examination of the Proceedings of the American and the various state bar associations during the last few years will show a constant expression of dissatisfaction with the comparatively low standards for admission which prevail. Speaker after speaker, as well as the deans of practically every law school in the country have, within the last two years, pointed out how unfavorably we compare in this respect with the medical profession. Without intending to criticise or complain, we think it is, nevertheless, important to say that this is due, in large measure, to the comparative indifference and apathy of the bar toward the required standards as to intellectual attainments and character. The medical profession have been active and successful in advancing the standards of education and of admission to the practice of medicine throughout the country. They have brought it about that in almost every state in the Union it is now necessary that one aspiring to the privilege of practicing medicine shall have completed at least a four-year high school course and a four-year course in a reputable and efficient medical school. The results of the raising of standards in this way cannot be doubted. While there has been some complaint that the medical schools are not turning out enough doctors to meet the demand, it is to be said that, in the first place, this complaint is greatly exaggerated, and in the second place, the condition tends to, and is, already rectifying itself. The great benefits to the community from improved

standards in the medical profession and the greatly increased and entirely legitimate prosperity of the profession itself, their enhanced prestige and influence in the community, are so obvious and so wholly desirable that the lesson to our profession is very clear. Is it too much to hope that the bar of this state will recognize that we are no longer a primitive community and that the priceless privilege of practicing law, which involves administration of our scheme of justice, the doing of justice between individual and individual, engaging in the noble and difficult work of legislation, the exclusive operation of our judicial system and the occupation of most of our public offices of importance, is a privilege to which only those who have the ability and the inclination to secure a reasonable amount of preparation should be entitled? We have lagged in the march of progress and other professions and occupations have made great gains upon us. This has been followed by a very widespread dissatisfaction with the prevailing conditions in the practice of law, and its results are seen in the tendency everywhere to avoid litigation, even in disputes which cannot be amicably settled, by referring such disputes to arbitration or confiding them to the determination of various administrative officers and tribunals. The "writing on the wall" is plain. We must have, not abler and better prepared leaders—for our leaders are of the best—but we must raise the average of ability and character at the bar, and particularly we must raise the minimum requirements in these important respects.

REGULATION OF CHARGES FOR LEASES FOR RAILROAD PROPERTY

The first case to come before the Michigan Public Utilities Commission under Act No. 303, P. A. 1921, regulating charges of common carriers for leases of railroad property to be used as sites for elevators, warehouses, ice houses, buying stations, coal sheds, etc., has recently been decided, and the following brief summary of the case may be of interest:

E. B. Muller & Co. v. Pere Marquette Railway Co. Plaintiff having weighing and storage stations at Elkton, McGregor, Decker-ville and Sandusky on the right of way of the defendant railway company for weighing and shipping chicory, was unable to agree