1923

Improving Bar Admission Requirements in the Northwest

Lauriz Vold

IMPROVING BAR ADMISSION REQUIREMENTS IN THE NORTHWEST

By Lauriz Vold*

A. Preliminary Sketch

The present law in most states requires little if any general educational foundation for admission to the bar but frequently requires either two or three years of study of law, either in law school or office.[1] The past generation has witnessed a steadily progressing movement for improving the standards of legal education for admission to the bar.[2] This movement culminated in the resolutions of the American Bar Association adopted at its annual meeting in 1921[3] wherein the call is made for two years of collegiate preparation and three years of full time work in a first class law school as a minimum educational qualification for admission to the bar, with a provision for correspondingly more time if part preparation is offered.

The American Bar Association also provided for the classification of law schools by its Council on Legal Education, with the avowed purpose of publishing annually for the benefit of intending law students what schools of law are worth attending. The work of classifying law schools in accordance with the American Bar Association standards is now going on.

The American Bar Association also recommended that the proper authorities in the different states should provide for rules for admission to the bar complying with these standards.

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[1]This article is a revision and condensation of an argument printed in the North Dakota University Quarterly Journal for October 1922 and January 1923 designed to advocate the adoption by the legislature of North Dakota of a proposed bill to carry into effect the American Bar Association standards for legal education.

[2]Mr. Alfred Z. Reed of the Carnegie Foundation, in an article entitled "Raising Standards of Legal Education," appearing in the November, 1921, number of the American Bar Association Journal (Vol. 7 pp. 570-578) reviews this movement in detail and gives fifty references to data upon it from Reports of the American Bar Association, and other sources. Extended historical information covering the whole of the last century's development of legal education may be found in Bulletin No. 15 of the Carnegie Foundation compiled by the same author.

[3]Reports of the American Bar Association (1921) pp. 37-47.

The Conference of Bar Association Delegates representing most of the state bar associations throughout the country and many of the county and city bar associations met in February 1922 in Washington D. C., and after elaborate discussion indorsed the action of the American Bar Association.[4] In a number of states the state bar associations in their annual meetings have already indorsed the American Bar Association standards, and sometimes have recommended draft statutes to carry those standards into effect in their particular states.[5]

With the American Bar Association, the delegates from the state and local bar associations, and many of the state bar associations themselves committed to this program of improving the training for admission to the bar it only remains for the local authorities, state legislatures or courts, to do their part in carrying out the proposed program. The action of the Council on Legal Education in classifying law schools and publishing its list of approved law schools for the information of intending law students will undoubtedly in large measure affect the choice of schools of law for the future. That work is now under way and will go on irrespective of local action. To make the work complete, however, the states ought to require that candidates for admission to the bar satisfy the requirements of two years of college and three years of full time law work and correspondingly more if it is only part time work as a minimum of preparation. It is therefore appropriate that in the various states the legislatures should pass the appropriate statute or the courts make the appropriate rules to carry into effect as the legal rule of the state the standards for admission to the bar set up by the American Bar Association approved both by the Conference of Bar Association Delegates from all parts of the country and by various state bar associations.

It is the purpose of this paper not to argue at length the reasons for and against improving standards for admission to the bar

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[4]See Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, p. 174.

[5]According to the notices of such matters that have appeared in the American Bar Association Journal up to November 1922, the American Bar Association educational standards for admission to the bar have been indorsed in California, Colorado, Michigan, Minnesota, Nevada, North Dakota, and Oregon. The notices appearing in that Journal, however, are not complete or all-inclusive. It is said to have been reported at the San Francisco meeting of the American Bar Association in the summer of 1922 that a dozen states had already at that time indorsed the recommended standards. The present writer has not, however, been able to find any published list of the indorsing states that purports to be complete.

but to point out some local considerations applicable to the discussion in the Northwest. While the specific details have been examined largely with reference to North Dakota conditions, it is believed that North Dakota conditions are for this purpose fairly typical of the Northwestern states. The general arguments for the proposition have been put so frequently in their various phases for the last generation and have been so effectually summarized in the report of the special committee to the Section on Legal Education of the American Bar Association and in the discussion by the Conference of Bar Association Delegates, available both in pamphlet form and in the 1922 volume of Proceedings of the American Bar Association that further repetition of the general arguments is here deemed unnecessary.

B. Need of Better Training for the Bar

The case for better training for the bar was summarized by Elihu Root, by Chief Justice Taft, by Professor Williston, and others, before the Conference of Bar Association Delegates. The substance of their arguments was that better training for the bar is needed under modern conditions, both for the sake of greater legal efficiency and for the sake of strengthening the moral caliber of the bar, to the end that the legal profession may render more effective and more reliable service to the community.

1. *Legal Efficiency.* Local considerations bearing upon the need for more thorough educational preparation in the interest of legal efficiency are in the Northwest sufficiently striking to be worthy of serious attention. Besides the domestic sons of the home states who are members of the bar there is constantly coming to the bar of this region large numbers whose training has been secured in other states, in other educational institutions with all of the preliminary and collegiate grades of preparation provided by the best equipment the entire country affords. Whether or not the home state require of its candidates for admission to the bar the collegiate and law school training set up as a standard by the American Bar Association large numbers of the candidates for admission who come here from outside the state will come equipped with this first class training. This will be so in increasing measure as the classification of law schools according to American Bar Association standards proceeds. It can readily be seen, therefore, that those who are called to the bar without such preparation are induced to begin their practice of law with a great handicap against their probable success in competition with the better train-

ed men who come from other states. Furthermore, it is easy to perceive that the home state clients and the home state public, as the larger factors involved in litigation, are likely to suffer through the relative incompetence of untrained members of the bar who have secured their license to practice in view of the low minimum requirements and who in the practice they succeed in picking up are unable to hold their own against the better trained attorneys who have come from outside the state.

Nor is it necessary to rest on mere personal impressions and personal judgments to determine that the greatest efficiency in the practice of law is shown by the lawyer equipped with a broad collegiate education. In the observations that were some years ago compiled by the present writer from official files and court records bearing upon the success in practice of North Dakota lawyers it appeared beyond question that the college graduate lawyers had on the average far exceeded the success of their less well-equipped competitors. As more elaborately set out in another place,[6] the range of success appearing in the actual achievements of North Dakota lawyers shows college graduates outclassing other practitioners by from fifteen to thirty percent. To put the contrast in relative terms, the college graduate lawyer has in North Dakota practice shown himself about a third more successful than his less well-equipped rivals. If the conditions in North Dakota are at all typical, which there is every reason to suppose that they are, this probably approximates the conditions in most of the states of the Northwest. It is therefore easy to see the importance of thorough educational foundations in securing efficiency in the service rendered by the legal profession to the public of clients whose concerns get involved in trouble or even precipitate them into litigation.

2. *Moral Character.* Statistical material on how far educational qualifications are reflected in the moral conduct of the bar is in the Northwestern states, as in most places, practically negligible. In the opinion of the present writer the moral standard of the bar of the Northwest is exceptionally high. The argument regarding the effect of improved educational qualifications upon the moral character of the bar can therefore not be emphasized in this region to the same extent as is proper in reference to some other places. The bar of the Northwest constitutes a fairly homogeneous body with common ideals, reflecting in this regard the analogous condi-

[6] 33 Harv. L. Rev. 168, 185-189.

tion of a fairly homogeneous rural population with common ideals of thrift, industry, and probity. The individual exceptions that can occasionally be pointed out represent unfortunate developments in a class of narrowly restricted cases rather than a chronically defective moral tone on the part of the bar of the Northwest as a whole.

Even slight consideration of the subject, however, must indicate that improved educational qualifications while not directly eliminating crooks from the profession have a strong tendency to prevent the development of crooked tendencies on the part of incoming members of the bar. In the first place, incompetent members carrying crooked tendencies would fail to qualify as members of the bar for lack of fulfilling the requisite educational preparation. While this feature may not be extraordinarily important taking the group as a whole it will have its good effect so far as it goes. In the second place, thorough educational training for the candidates for the bar who are successful in securing admission will stiffen their backbone and enlarge their range of information to prevent their going astray. Since the first departures from the road of strict uprightness are usully at the time regarded as insignificant or conceived of as justified by temporary emergencies or are simply due to ignorance and lack of attention, the importance of the training that shall reduce such first departures to the minimum can hardly be exaggerated. In the third place, since improved educational qualifications admittedly bring about greater efficiency for legal work on the part of those who profit by it, the greater success in honest practice resulting therefrom must necessarily tend to diminish the strain on the personal honesty of members who might otherwise be sorely tempted. For all these reasons, therefore, it is submitted that even in the Northwest the moral considerations applicable point to improved educational qualifications as appropriate means for improving the bar of the state for its public service to the community.

3. *Inadequacy of Office Training.* Mr. George W. Wickersham of New York, formerly attorney general of the United States says:[7]

"The law school became necessary because the growth and complexity of modern law made it impossible for a successful practitioner to give the time and attention to his students necessary

[7]Report of the Proceedings of Special Session on Legal Education of the Conference of Bar Association Delegates, p. 125.

to fit them to enter upon the profession when so much more was required than had been the case in earlier years."

Mr. William Draper Lewis of Pennsylvania sums up the matter in the following extract:[8]

"The system by which a young man learned law in a law office has been dead for decades. The illusion that it still exists is one of those things that impede legal educational progress. . . . The so-called office student of today learns his law not in the law office, but in the afternoon or evening law school. The law student has not left the law office, the law office left the law student. In the modern law office there is a place for a typewriter, a bookkeeper and a clerk; there is a very real place for the law school graduate who is well-grounded in legal principles and knows how to find the law; but there is no place at all for the young man who wants to sit around and pick up the odds and ends of practice while he reads examination cram books or good or bad legal text-books."

Local information for the Northwest emphatically bearing out the statement that law office preparation has become inadequate as a preparation for the practice of law is abundant. Taking the last twenty years as a whole, 741 candidates have been admitted in North Dakota on examination, of which only 66 have been exclusively office-trained men. This makes an average for each year of only three and a fraction office trained men. For the last twenty years, including the war years when law school training was for the most part suspended by students eligible for military service, less than nine percent of the lawyers admitted on examination have come exclusively by the office route. While others have from time to time registered as office students they have soon found that the so-called office training was not getting them anywhere, and have either dropped out altogether or have gone to some law school. In other words during the past twenty years the candidates for admission in North Dakota themselves have demonstrated that office preparation is by them regarded as inadequate as they have resorted without large exceptions to law schools of one type or another to get their legal preparation. If North Dakota experience is at all typical, this represents a course of development general throughout the Northwest.

Even the remnant of office-trained candidates that is left itself demonstrates, in the acts of its few members, the recognition of the inadequacy of office training. Thus in Bismarck, North Dakota, a few of the government clerks connected with the state departments have been registered as students in law offices. Because

[8]Ibid. p. 196.

of the felt inadequacy of attempted office training steps were taken among them to improvise a law school, thus pointedly illustrating locally the statement of William Draper Lewis of Pennylvania, already quoted, that "the so-called office student of today learns his law not in the law office but in the afternoon or evening law schools." Without pausing to discuss the question of the quality of instruction offered there, or the question of how such clerks in government employ can "actually and in good faith pursue a regular course of study of the law for at least three full years in the office of a member of the bar in regular practice" as the statute now requires, and at the same time be performing their duties as state employees, it is abundantly plain that those so-called office students are finding that office study as a means of legal preparation is sadly inadequate. While the indorsement of the American Bar Association standards was under debate at the meeting of the North Dakota State Bar Association practicing lawyers favoring the resolution declared emphatically their conviction without contradiction from anybody that no active practitioners in the state did in fact give any substantial attention to the training of students registered in their offices. If North Dakota experience is at all typical, similar development may on observation be found in the other states of the Northwest.

Another indication to the same effect is the effort occasionally made by office students to get personal assistance from the law schools. One such office student recently wrote to the University Law School as follows:

"I have registered with a local attorney as a law student and as such I would like to know just what subjects and the time of each such subject to legally meet the requirements of the state to take the bar examination."

Another recent letter to the present writer from a North Dakota office student in quest of information contains the following explanation for the request: "Of course I never had any instruction, or not to amount to anything. All I ever had to guide me was a law quizzer, text book, and code." In the face of such facts all who are not deliberately blind can see that while the system of office registration is still officially maintained in the Northwest, it constitutes only a trap for the unwary since substantial legal instruction to beginners in law offices as a matter of fact does not exist.

4. *The Educational Standard Required.* The American Bar Association standards for law schools, in accordance with

which classification of law schools is now going on and on the basis of which recommendations of schools are to be made, need not prolong the consideration of the question of improving bar admission requirements so far as the Northwest is concerned. Every Northwestern state provides a state university complying with the American Bar Association standards of college education and similarly provides a university law school complying with the American Bar Association standards for law school work. Northwestern law students can therefore not be seriously affected in their educational opportunities through requirements for admission to the bar embodying the American Bar Association standards. It may be added further that there are in other parts of the country numerous universities and first class law schools to which students from Northwestern states may resort and get first class legal education satisfying the American Bar Association standards if for any reason their plans should take them elsewhere than to their own home educational institutions.

C. Objections to the Raising of Bar Admission Requirements

The objections to the raising of bar admission requirements that are met with in various forms and under various disguises may be summarized under three general heads. In the first place it is contended that raising the requirements for admission to the bar is unjust in that it imposes the hardship of excluding the poor man's son who has to work for a living. In the second place it is contended that it would be undemocratic to raise the standard for admission to the bar beyond the reach of the bulk of the population. In the third place is inertia, the conservative attitude which instinctively objects to change because it is change. Attention may therefore appropriately be given to each of these objections in turn.

1. *Hardships on the Poor Boy.* This is the objection upon which most stress is laid by all who oppose improvement in bar admission requirements.[9]

[9]Thus practically all who spoke in opposition before the Conference of Bar Association Delegates in some form or other included this objection in their remarks. The commercial evening law schools of the larger cities also violently stress this supposed objection. Since the fact themselves do not when examined bear out any such objection it is small wonder that those whose financial interest is involved in opposition to the improved standards should try to make up in noise what they lack in substance when resorting to the age-old device of attempting to defeat a sound measure by arguments on the real merits but by specious arguments ad hominem.

The answers to the "poor boy" argument are at least three in number, which may be elaborated in turn.

a. *Facts Belie the Hardship.* The first answer to the "poor boy" argument is that it is not true. Granting that there may have been substance to the "poor boy" argument two generations ago or even one generation ago, the facts in the educational world have become so changed that at the present time no young man with sufficient ability to acquit himself creditably in the practice of law need go without the appropriate preparation of college and law school training. Not only are educational opportunities now universally accessible throughout the Northwest but the presence of opportunities for working one's way while he secures the education is also established by abundant demonstrations.

As appears more elaborately in the statistical tables appended in the note[10] educational opportunities are now practically universally accessible. High school education has in the last fifty years increased almost eight hundred percent in proportion to the popu-

[10]The following figures are taken from

The Department of Interior, Bureau of Education
Bulletin 1920,
No. 11.

Table I (pp. 4-5).

Year	Total population of the United States	Children enrolled in common and high schools	Children enrolled in public high schools	Percent of total population enrolled in common and high schools	Percent of pupils in public high schools
1870	38,558,371	6,871,522	80,227	17.82	1.2
1880	50,155,783	9,867,505	110,277	19.67	1.1
1885	56,221,868	11,398,024	160,137	20.27	1.4
1890	62,622,250	12,722,581	202,963	20.32	1.6
1895	68,844,341	14,243,765	350,099	20.69	2.5
1900	75,602,515	15,503,110	579,251	20.51	3.3
1905	82,584,061	16,468,300	679,702	19.94	4.1
1910	91,972,266	17,813,852	995,061	19.56	5.1
1915	100,399,318	19,704,209	1,328,984	19.63	6.7
1918	105,255,300	20,853,576	1,645,171	19.81	7.9

Comment on page six says the slight decrease in percent of total population enrolled in schools has not been due to less complete enrollment of school children but to the decreasing percentage of children in the total population.

Figure 3 page ten shows that in 1917-1918 the percent of North Dakota pupils enrolled in public high schools was 6.9.

lation in the country. North Dakota figures, as typical of the Northwest, indicate[11] that high school opportunities are universal in this region.

That college education, too, is universally accessible is at the present time readily demonstrable. While statistical data do not carry us back fifty years they show a striking improvement in the distribution of collegiate education throughout the population during the last thirty years. Greater detail is given in the statistical matter in the note.[12] Every state in the Northwest maintains its own state university and agricultural college, either as separate

[11]Counts made from the North Dakota Educational Directory of 1921-1922, issued by the State Department of Public Instruction, show one hundred and forty-seven recognized North Dakota high schools, and three hundred and sixty-eight consolidated schools so listed seventy-seven offer one year's high school work, all the other offering two or more years.

[12]The following figures are taken from
The Department of Interior, Bureau of Education
Bulletin (1920), No. 34, on Universities,
Colleges, and Professional Schools.
From Table I (part 1.) pages 6-8 and Figure 5 page 19.

Year	Total number of students enrolled in universities, colleges, and professional schools	Percent of population of college age (19-23) actually enrolled in universities, colleges, and professional schools
1890	156,499	3.4
1892	171,596	3.5
1894	183,583	3.6
1896	193,946	3.6
1898	187,533	3.3
1900	197,163	3.3
1902	208,765	3.4
1904	226,449	3.5
1906	258,603	3.8
1908	265,035	3.8
1910	274,084	3.8
1912	318,423	4.2
1914	334,978	4.3
1916	387,106	4.8
1918	375,359	4.6

Comment on pages sixteen and nineteen calls attention to fact that total collegiate, graduate, and professional attendance has increased from 1890 to 1918, at the rate of 139 percent, while total population in the country has increased 68 percent in the same period. Comment on pages twenty-eight and thirty estimates that there is now one college graduate for every 116 persons of total population, and one college graduate for every 61 adults.

institutions or in combination. In addition to these collegiate institutions each Northwestern state maintains various normal schools and other educational institutions doing work of college grade while junior colleges, offering two years of work of college grade, are rapidly developing in many of the larger cities. In addition to these public institutions there are also within the various states several privately endowed educational institutions to which students may resort for collegiate work if they so desire. The Northwest therefore presents no lack of substantial opportunities for collegiate training.

Law school training, similarly, is now universally accessible to those who desire to attend and are capable of doing law school work. There are in this country approximately one hundred and forty law schools, at least three fourths of which either are now complying with the American Bar Association standards of law school education or which may readily be brought up to these standards.[13] When put in figures of historical comparison it ap-

[13]The following summary table for contemporary law schools is given by Mr. A. Z. Reed, of the Carnegie Foundation, in the Carnegie Foundation Bulletin, No. 15, at page 441:

SUMMARY

High entrance full-time schools			Part-time schools offering courses of standard length		
*IIIM3	2		IA 3	2	
*IIIM3 or IIIM4	1		A 4E4	3	
IIIM3	4		A 3E4	1	
IIIA 3	1		A 3	7	
IIIM3 or IIM4	1		A 3E3	10	
IIM3	20		IIE 4	1	
IIM3 or equivalent	1	30 (21%)	E 4	16	
			IIE 3	1	
Low-entrance schools offering full-time			E 3	14	55 (39%)
IM3	14		Short course schools		
IM3 or equivalent	2				
M3	17		M2	5	
IM3 IE5	1		M1	1	
IM3 E4	1		A 2	1	
IM3 or equiv. E4	1		E 2	9	16 (11%)
M3 A3	1		Total number of schools		142 (100%)
M3 E4	2				
M3 A3 E3	2	41 (29%)			

I, II, III denote the number of academic years required to have been spent in a college prior to admission; *, that a college degree must have been obtained.

M (morning) denotes that the law course requires the student's full time; A (afternoon), E (evening), only part of his time, while in residence.

1, 2, 3, 4, denote the number of years residence required to complete the law course.

pears that during the last forty years the ratio of law students to the whole population and similarly the ratio of law school graduates has more than doubled.[14] The Northwestern states without exception maintain university law schools already complying with the American Bar Association standards. First class law school training, then, like preparatory and college training, conforming to the American Bar Association standards, is therefore in the Northwest universally accessible to those who desire to attend and are capable of doing the work.

The scores and hundreds of young men working their way in whole or in part through every reputable institution in this country demonstrates that poverty is no limitation to the capable and furnish one of the most encouraging aspects of the development of democracy. The practice of law requires hard work. Adequate preparation for the practice of law requires hard work. The poor boy who has learned how to work works his way through college and works his way through law school just as he works

"Equivalent" denotes a dovetailing of college and law school work, not affecting the total.

The symbols in all cases denote the requirements in force during the academic year 1920-21. Announcements of future changes are not included.

[14]The same compiler gives the following table in the same volume, at page 442.

	1850	1860	1870	1880	1890	1900	1910
Population	23,192,000	31,443,000	38,558,000	50,156,00	62,948,000	75,995,000	91,972,000
Number of lawyers	23,939	34,839	40,736	64,137	89,630	114,460	122,149
Number of lawyers to each hundred thousand of the population	103	111	105	128	142	151	133
Number of law schools	15	21	31	51	61	102	124
Number of law schools to each ten million of the population	6	7	8	10	10	13	13
Number of law school students .	400	1,200	1,653	3,134	4,518	12,516	19,567
Number of law school students to each hundred thousand of the population	2	4	4	6	7	16	21
Number of students graduating	....	....	....	1,089	1,424	3,241	4,233
Number graduating to each hundred thousand of the population ..	....	....	....	2	2	4	5

his way to fame and fortune in every line in activity and just as he works his way to success in the practice of law after his admission to the bar. A conspicuous example is just now at hand in the person of Governor Nestos of North Dakota. Irrespective of his political views Governor Nestos is a demonstration of the truth of the statement that the poor boy can work his way to education, fortune and fame. Governor Nestos immigrated to this country from Norway as a young man and not more than half a generation ago worked his way graduating both from the university academic course in Wisconsin and from the university law course in North Dakota.

That opportunities for working one's way through the required college and law school training are abundant, despite oft-repeated assertions to the contrary, can be made plain by a little investigation of the actual facts themselves.

Mr. William B. Hale of Illinois puts the case for his state as follows:

"One thousand and eighty-three replied to the question of whether they wholly supported themselves while they studied law. Of these 644 wholly supported themselves while they studied law. That is 60 per cent earned their own living while they studied law. Twenty-six percent partially supported themselves while they studied law, that is, 86 percent of all those who have come to the bar of Illinois in the last two years have either wholly or partially supported themselves during their law course. Only 14 percent not at all. Seventeen percent wholly supported someone besides themselves at the same time that they were studying law."

For the larger centers the Illinois showing is suggestive. For the more largely rural states of the Northwest North Dakota experience is roughly typical. It is estimated by the authorities in charge that approximately one half of the students at the University of North Dakota each year earn the whole or a substantial part of their expenses while carrying their regular college work. The business office of the University is in contact with many of such instances. The Y. M. C. A. and the Y. W. C. A. touch others. Lately a committee of the Commercial Club of Grand Forks has been acting to the same end. Roughly similar conditions are known to prevail at the other state universities of the Northwest. Besides these organized agencies, however, for connecting university students with jobs, open in every state in the Northwest, there is the largest factor of all in such matters, the determination and initiative of the student himself to keep his eyes open for opportunities and to grasp opportunities that are available.

For the North Dakota Law School students the data regarding their working their way have been gathered in considerable detail through a questionnaire circulated by the present writer to the graduates of the last decade so far as it was possible to reach them after the unsettled state of affairs left by the war. The replies indicate that of the 46 that could be reached, representing about 40 percent of the entire number, 20 were entirely self-supporting, 18 were self-supporting in substantial part while only 8 acknowledged themselves to have been entirely supported by their parents while doing their educational work. It is apparent that a very substantial fraction, if not indeed a large majority as the figures indicate, of those who have been graduated from the law school in North Dakota in the last decade have been dependent more upon their own efforts than upon anyone else for their means of subsistence. The writer knows of no reason to suppose that this proportion of self-supporting law students would not be substantially reproduced were the figures available for the other Northwestern states.

The following is the list of occupations referred to in their replies by the men themselves; waiting on table down town and at the Commons; library work in the general library, in departmental libraries and in the down town library; odd jobs; farming vacations; working for Commercial Club; collecting; university transfer; essay contest prize; janitor work for the university, for churches, for apartment houses, for down town offices; bookkeeping; stenography; clerking in confectionery store, in clothing store, in grocery store, in bank, in university offices; meter reading; singing in theaters; playing at dances, at theatres and at chautauquas; washing windows; mowing lawns; canvassing as book agents, aluminum salesman, etc.; editing student publications; playing professional ball; acting as secretary; working in hotel; auctioneering; federal seed loan office; saving before entering; business manager of publications; freight handling; legislative committee clerk; working as mason; caring for furnaces; shovelling snow; working in Y. M. C. A.; reporting for newspaper; collecting for newspaper; special contributor to press; agency for student supplies; surveying; laundry agency; fireman; electrician: night baggageman; university bake shop; R. O. T. C. supply department; travelling for machinery companies; assisting professors.

b. *Need of Standards to Protect the Poor Boy.* The second answer to the "poor boy" argument against improved bar admission requirements is that it is unfair hardship upon the poor boy

to mislead him by erroneous advice and low standards for admission to the bar into the delusive belief that complying with those formal minimum requirements is at all likely to open for him a successful career at the bar. Every passing year with the increased resort to college and law schools on the part of candidates for admission to the bar makes it increasingly harder for those who come with the exclusive office training to make good in the face of such competition. More than one of North Dakota's present leading attorneys of the older generation typical of the bar in the Northwest has stated the case in substance as follows:

"Had someone only told me, when I got my office training, how important it was to go to college, I would have been better off as a lawyer than I am now. Nor would the added preparation have deterred me. I would have sought the best, and got it."

Improvement of the requirements for admission to the bar therefore will start the poor boy in his practice with college and law school training and thus afford him at least a fair show of success as compared with his fellows whereas leaving the requirements as they are at present constantly tends to delude the uninformed poor boy into the belief that satisfying the minimum requirements of office training as now fixed by statute is enough for the occasion. This only leaves him to find out his mistake by discovering that he is in danger of failure in his practice when it is likely to be too late in his life to go back and start over again. It is granted that most poor boys are not at the present time thus deluded. They already see the necessity for collegiate and law school education but to the extent that the minimum standard now set by statute actually operates it tends to deceive poor boys to their sorrowful failure without any practical possibility of rectification later in life by a new start.

c. *Counterbalancing Hardship on the Public.* A third answer to the "poor boy" argument against improving requirements for admission to the bar is that the hardship on the public of clients who suffer from the malpractice of incompetent, insufficiently trained attorneys far outweighs any possible hardship that can under present educational conditions fall upon occasional individual candidates for admission to the bar through the requirements of American Bar Association standards of educational qualifications. The point of this feature of the case is grasped most easily when one looks at the situation among doctors and their patients.

If a patient is sick he requires treatment that will cure. A good doctor is required instead of a poor doctor in order to treat his

patient effectively. The incompetent doctor's mistakes are buried under six feet of earth and it is considered no answer to the harm done by a doctor's malpractice that that doctor may have learned something by the mistake in the killing of his patient and that he is therefore less likely to kill the next one. In other words, in the practice of medicine good doctors are required for the benefit of the public whom they serve and no one listens with the slightest patience to the suggestion that the field of practice ought to be open as it used to be to incompetent, untrained doctors in order to give them the opportunity to reap a rich harvest of fees at the expense of avoidable injury to their patients.

In the case of lawyers the argument for superior training in order to give the public that is served competent legal service is in many respects analogous to the case of doctors. Clients who get into difficulty whether in cases of criminal prosecution or in cases of civil litigation involving damages to person or property or involving their legal rights in other respects are practically dependent upon their attorneys in order to assure the maintenance of their legal rights. When a man's affairs are involved and he is in trouble with his fellows erroneous or blundering legal advice may lead not only to loss of the suit in litigation but to the sacrifice of his property and his home, may lead to destitution and want on the part of his family, and may in criminal cases lead to the loss of personal liberty or even of life itself. When such interests of the large public of clients are put in jeopardy by the admission of incompetent and insufficiently trained lawyers to the practice of law it is an entirely inadequate answer to make to suggest that these young practitioners ought to be given the opportunity just like others of securing fees in the legal profession. Legal blunders are hard to avoid even for competent and well informed lawyers. The opportunity to untrained individuals to secure fees in the practice of law is an insignificant consideration when weighed against the harm and the possibility of harm to the large public of clients which will be inflicted through excess of blunders by incompetent and ill-trained practitioners. Those who have suffered from blundering and erroneous legal advice can readily sympathize with these statements.

2. *Is It Undemocratic?* It is sometimes suggested as an objection to raising bar admission requirements to conform to the American Bar Association standards, that such requirements would tend to create a legal aristocracy consisting of the well-to-

do which it is said would be inconsistent with the spirit of free institutions in a democratic country as ours.[15]

Two misconceptions are responsible for the prevalence of this argument so far as the argument is made with sincerity. In the first place there is the misconception that nothing is involved beyond the question of closing the doors of opportunity to worthy young men, thus losing sight of the fact that the candidate himself and the public on which he will practice as already indicated have an interest in securing competent service from the legal profession. The second misconception is that the doors of opportunity would be closed to men capable and willing to work. Enough has

[15]Suggestions of this sort are even made by A. Z. Reed in the Carnegie Foundation Bulletin No. 15 to which reference has already been made. That bulletin was prepared, however, before the American Bar Association standards were formulated, and its suggestions of this character are made in connection with discussions of what the writer conceives as the impossibility of maintaining a unitary bar. This conclusion on the part of Mr. Reed has been widely condemned, has apparently found little if any following, and has been deliberately and purposely rejected in the formulation of the American Bar Association standards. Furthermore after the formulation of the American Bar Association standards, Mr. Reed himself, despite his theories about a unitary bar has in the article referred to in footnote 2, given his support toward the adoption of the American Bar Association standards for admission to the bar.

The most aggressive presentation of this objection that the present writer has seen is found in bulletins issued by the National Association of Evening Law Schools. While the language of those bulletins seems needlessly vituperative, it goes on the misconception of fact, there broadly asserted, that it is well nigh impossible for an unskilled youth to work his way through high school and college and that few men accomplished it. Similar statements, though much more moderate in tone, are also found in a little bulletin by Edward T. Lee, of the John Marshall Law School, one of the best evening law schools of Chicago.

These arguments proceed on the basis that as only two or three percent of the population goes to college, the rest have no opportunity to go, and decry the undemocratic character of rules they say are designed to make a favored class of the two or three percent. Such arguments overlook the patent fact that far more people than actually go have the opportunity to go to college if they choose to make the necessary sacrifice of time and effort. Since the extreme exclusion from educational opportunity which is thus denounced by the evening law schools in fact does not happen, as has already been amply demonstrated in the text, the rest of the emphatic argument seems like knocking down a straw man set up for the purpose. Not only is it plain that the fact thus asserted, that it is impossible to work one's way, is misconceived, but it seems fairly evident that a prime motive for the opposition to higher standards that is coming from the low-standard commercial evening schools is the desire to safeguard their own financial receipts. As it appears to the present writer, the financial interest of those evening law schools, masquerading under the camouflage of unsubstantial arguments for individual opportunity based on misconceived statements of facts is insisted upon without regard to the interest of the candidates themselves in a fair opportunity for success in practice through adequate training, and without regard to the public interest in efficiency of the bar in its service to the community.

already been said to indicate that both these misconceptions are without substantial foundation.

On the other side there is a very striking affirmative reason why improved requirements for admission to the bar should be insisted upon in the interest of that very democracy which it is sought to adduce in opposition. The point is tersely put by Clarence N. Goodwin of Chicago, chairman of the Conference of Bar Association Delegates in the following paragraphs:[16]

"It occurred to me then that this same principle of human equality must be a decisive factor in all our deliberations. We affirm that we believe in equality before the law. But how can equality before the law be possible when the rich and powerful are represented in court by highly educated, thoroughly trained and most competent members of the profession, while a large part of the poor and ignorant who frequently find themselves in court opposed to the more fortunate, are so often represented by ignorant, untrained and incompetent men who have, through the laxity of our methods, been commissioned by the state with authority to counsel and advise and represent them?

"The shrewd and powerful men and interests of large means are able to know who are competent and who are not, but how is the poor man, the ignorant man, to make any just estimate of who is capable of properly advising and representing him?

"During my years as a trial judge I was frequently distressed by the fact that one side or the other in the case before me was so incompetently represented by counsel or represented by such ignorant counsel that, owing to the learning and skill of the attorneys on the other side, it seemed impossible to get the case properly before the court, or keep error out of the record.

"During my years in the appellate court, we found ourselves constantly confronted with records which showed such palpable and unmistakable errors as to make it necessary to reverse the case, although it obviously had merit, and although it was almost a moral certainty that had the errors been eliminated the verdict and judgment would have been the same.

"These miscarriages of justice, due to ignorance and incompetence of counsel, are largely beyond the power of the judge to control, or rules of practice to remedy. It is to be remembered, however, that the men representing these unfortunate litigants were licensed by the state to practice law.

"It seems little less than a crime for the state to certify to the competency, to the learning and to the ability of a man to represent his fellow citizens in court who is not learned nor able nor competent to represent or advise anybody in any legal matter."

3. *Inertia.* The most serious practical objection to improving requirement for admission to the bar, in the opinion of the pres-

[16]Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, pp. 11-12.

ent writer, is the dead weight of inertia. The objection of inertia is well stated and answered by Mr. Elihu Root in his final statement before the Conference of Bar Association Delegates as follows:[17]

"Another class of objection was illustrated this forenoon by my friend, the former senator from Colorado, Mr. Thomas, for whom I have had for forty years or more, since we first met in the Supreme Court of the United States, not only great admiration, but warm friendship. Now my good friend was responding not to a study of this subject, but responding to the natural reaction of a man who rather dislikes to have the old traditions of his life interfered with by somebody else."

His answer to it is equally effective:[18]

"All that the opposition here comes to is simply to stop, to stop! to do nothing! stop the American Bar Association, disapprove them, tell them they should do nothing! How much better instead of beating over the prejudices and memories of a past that is gone, it is to take dear old Edward Everett Hale's maxim, "Look forward, not back; look upward, not down, and lend a hand."

D. Summary

The briefest cursory summary of the arguments here made for improved educational requirements for admission to the bar is that those who favor such improved requirements insist on their importance to the public of clients, in increasing the efficiency and strengthening the character of the bar while those who oppose such improved requirements insist on the supposed injustice of restricting individual opportunity to practice law. On matters of this sort, involving a weighing or balancing of opposing considerations it is not strange that the first instinctive responses of various individuals should differ. Painstaking investigation of the facts involved, however, as already set out in the foregoing pages, can hardly fail to justify the conclusion that increased efficiency and strengthened character of the bar in the interest of better administration of justice is greatly needed while the supposed restriction on individual opportunity to practice law is under present educational opportunities not serious. It is therefore submitted that the improved requirements for admission to the bar should be adopted, both in the interest of the candidates themselves who will thereby be assured of an even chance for success at the bar, and in the interest of the public in general, whether as litigating clients or as members of the community, whose well-being so largely depends on efficient administration of justice.

[17]Proceedings of the Special Session on Legal Education of the Conference of Bar Association Delegates, p. 172.

[18]Ibid, p. 173.