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## POST WAR PROBLEMS OF LEGAL EXAMINING AGENCIES

TELFORD B. ORBISON\*

Our profession is faced with many serious difficulties which have arisen as the result of sharp changes during the last two years in our way of life. The war has suspended for an indefinite period the careers of the great majority of law students and prospective law students and of a substantial number of our fellow members. The dislocations and new adjustments that have taken place in the field of legal education as well as in the practice itself have created grave problems which must be solved intelligently if we do not want to nullify the substantial progress which we have made during the past decade. Pressure groups must be vigorously opposed if we do not want to have torn down quickly that which has been built up so slowly.

One of the most serious of these problems is that pertaining to admissions to the bar and the closely related subject of admissions to law schools. After having been in uniform for two or three years, and perhaps longer, it is going to be difficult for the law student, who was called into military service before his admission, to pass the bar examination for the simple reason that "Legal principles, like all other knowledge, fade from memory unless occasionally brought to mind." Then, too, there will be the student who was called into the service before completing his legal education and who, under present regulations, must therefore return to the law school before he can become eligible for the examination. Also, there will be the prospective law student who will not have the necessary two years of college work upon getting out of the service, but who will desire to make up for lost time by jumping directly into law school.

Attempts have already been made to assist the boy in uniform although there is considerable divergence of opinion as to method. In many states bar admission requirements are being moderately and properly relaxed for the benefit of service men. For instance, in Indiana, Rule 3-14a of the Rules of Supreme and Appellate Courts provides that during the period of the war, students of accredited law schools who

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have or shall become members of the military or naval forces before having an opportunity to take the bar examination next following their graduation, shall be admitted without examination upon certificate of the dean of the law school that such student has met the requirements for graduation by that school. However, in several states radical changes in the admission requirements are being proposed as revealed by the clamor for legislation to reward the returned service men by granting them licenses to practice law with no tests for fitness and little requirement of education. And in one eastern state a law has already been passed admitting to practice any veteran who has a law school degree.

There can be no valid objection to assisting the men in our armed forces in every possible way, provided this can be done without risking demoralization in standards. We would be very ungrateful, indeed, if we were not willing for every reasonable concession to be made them. At the same time there is and can be no justification for letting down the bars so that once again it becomes possible for every Tom, Dick and Harriett to hang out his or her shingle.

A timely editorial in the April, 1944 issue of the Journal of The American Judicature Society proves the point I am attempting to make. The editor, among other things, makes the following significant statements:

"A certificate of admission to the bar properly represents a certain amount of knowledge acquired and thinking done in legal subjects. An honorable discharge from army or navy testifies to training and experience in navigation, gunnery, or other arts of war equally remote from the practice of law. To waive the normal bar admission requirements for returning veterans is equivalent to substituting military experience for legal training as preparation for the practice of law. How many of those who advocate lower admission standards for soldiers would submit to an operation by a surgeon whose credentials consisted not of the successful passing of state board examinations, but of a few years in medical school followed by three, four or five years as a jeep-driver in Africa?

"The soldier's sacrifice is a noble one, but it is still true that only legal training can make a lawyer. Some of those admitted would doubtless have the necessary background, ability and industry to bring their legal education up to date on their own initiative. Most of these, however, would get through in any event, and probably would not ask for concessions. The chief result of lowered standards will be to admit some who do not have the minimum qualifications. This may be a favor

to them, but it is not necessarily so. It starts them on a life-time career under a handicap. Failing in legitimate competition and pressed by necessity, some may be driven to unethical practices. Clients and public, as well as lawyers, have an interest here."

The American Bar Association's Council of Legal Education and Admissions To The Bar under the able leadership of Dean Harno of the University of Illinois Law School has been aware for some time of the danger of lowering the standards for admissions during the postwar period, and in the early part of 1942, recommended that there be no relaxation of standards of admission then existing, as shown by the following:

"Any appreciable relaxation of these standards means that men inadequately trained and tested will be held out to the public after the war as fully qualified to practice law, although their capacity to render legal services to the public will be naturally reduced. Moreover, men who are allowed to enter the profession with insufficient preparation and testing will discover their inadequacy in practice to their own disappointment and bitterness, as well as to the injury of their clients. It is false generosity to make such deceptive gifts. After the war, readjustments will be difficult for many, including those who prior to entering the Army and Navy, were studying for the bar. The law schools and the bar admission authorities may at that time be of substantial service to these men offering refresher courses or other training appropriate to their needs, and by giving examinations at convenient times, but it is not the part of either wisdom or kindness to sacrifice now the standards of the profession for a supposed benefit to the law students which is wholly illusory."

There is another angle to this problem which deserves consideration. I do not refer to the law students nor to the prospective law students who are in uniform but to our own members who are serving in the armed forces (of whom there are a substantial number) and who have given and are giving such valiant account of themselves on every fighting front throughout the world. Mr. Karl A. McCormick, Proctor of the Bar of the Eighth Judicial District of New York, in his very excellent Annual Report to the Supreme Court of New York, Appellate Division, Fourth Department, explains this phase of the matter as follows:

"It is of great interest to talk with members of the profession who are serving in the armed forces, and to read the letters

that many of them write. Some such letters have come from those who have been in actual combat in Africa, Europe and the South Pacific. When they talk of the future and their hopes and aspirations, *it emphasizes the responsibility of those at home to make this profession one in which these men will have real opportunities when the war ends and they return to peaceful pursuits.*

"They are making the greatest sacrifice, now, in order that our country may exist and that we may have a free profession. It is for those of us who are at home to take advantage of the opportunities, that now exist to greatly improve the functioning of our system so that when peace comes again there will be a useful place in society for all of our members."<sup>1</sup> (my emphasis)

Will our returning members feel that "real opportunities" are open to them if their chances of earning a decent income are worse than they were when they entered the service? Although the total income of the lawyers of the country was greater in 1940 and 1941 than it was in 1929 and 1930, yet the average lawyer earned less because the number of lawyers increased. In 1941, 50 per cent of the lawyers of the country earned less than \$3,230; 4 per cent operated at a loss; 8.3 per cent earned less than \$1,000; 17.3 per cent earned between \$1,000 and \$2,000; 19.6 per cent from \$2,000 to \$3,000; 14 per cent from \$3,000 to \$4,000; 10.2 per cent from \$4,000 to \$5,000; 7.1 per cent from \$5,000 to \$6,000; 5.5 per cent from \$6,000 to \$7,000; 3.5 per cent from \$7,000 to \$8,000; 2.6 per cent from \$8,000 to \$9,000; and 1.4 per cent from \$9,000 to \$10,000. In the \$10,000 to \$15,000 bracket are found 5 per cent of the attorneys; in the \$15,000 to \$20,000 bracket are found 1.9 per cent and from there on to \$150,000 are only 2.2 per cent.<sup>2</sup>

This unhealthy condition is due, of course, to the fact that our profession is, and, for a considerable period of time, has been over-crowded. It will be more so if present requirements for admission are relaxed, because we will then be confronted with the same thing which happened after the last war,—“the great influx of returned soldiers to law schools of all types, many of them so large and so poor in the quality

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1. The Bar Examiner, Jan., 1944, Our Responsibilities—Excerpts from Karl A. McCormick's Seventh Annual Report to the Supreme Court of New York.

2. These are the figures used by Mr. McCormick in his Seventh Annual Report and which he obtained from the report of the U.S. Bureau of Foreign and Domestic Commerce.

of their courses that swarms of poorly but quickly and cheaply educated youths came knocking at the gates of a badly overcrowded profession," and likewise confronted with the same result,—“Then another generation of many frustrated and useless lives and much damage done to the public through poor service.”

Proctor McCormick in his report to which I have previously referred says that there “has been much talk recently by law school men and some others of the present scarcity of lawyers, and the dire consequences that will result if this ‘shortage’ is not now provided against.” He advises that no one should take this too seriously. I agree. If there is a scarcity it is only temporary and with the ending of the war the surplus will be as great as in the pre-war period.

Unless the lawyers make a united stand against any relaxation of present standards for admission to the bar as well as the law school, we are going to lose considerable ground in the fight to improve our profession. No one is going to do this job for us. Certainly the public generally is apathetic, if not antagonistic. Professor Max Radin in his interesting book, “The Law and Mr. Smith” says that no one loves lawyers and no one ever did love them. I suppose that most of us would dislike very much to admit publicly that this is true. But this much is true—that, for one cause or another, from the time shortly after the Revolution when persons paraded the streets of our cities with great placards bearing the words “Kill the Lawyers!” down to the present time, we have had to fight and fight hard for every worthwhile reform or beneficial legislation even though Mr. Smith stood to gain the most. And so, no doubt it will be in the post war period. If we fail to fight, then not only our profession but also the public in general will suffer irreparable harm because of the aggressive determination of minority pressure groups.

Rest assured that no other great profession will consider relaxation of its standards. In fact, as stated by Proctor McCormick, some are already considering much higher requirements for admission to study in their fields. Can you conceive of the medical profession standing by and permitting the relaxation of its standards? This is not selfishness but merely a recognition of the fact that progress and education go hand in hand. What is needed is more education rather

than less education and higher standards rather than lower standards. Only in this way can our profession take its rightful place in the post war life of America.

All possible assistance which is consistent with the maintenance of present standards should be given to our boys when they return from the war. Steps in this direction are already being taken by the Junior Bar Conference and the Council of Legal Education of the American Bar Association and many other bar organizations and committees as well as many of the law schools. This involves a vast program but one which must be carried out unless we want to break faith with those who are fighting for us. No young man with the necessary moral and mental qualifications should be denied the right or opportunity to practice his chosen profession because he served his country in time of its greatest need. At the same time, the exercise of pressure through emotional appeal by a misguided and misinformed minority should not be permitted to break down our standards for admission so that our ranks will be opened up to receive the unqualified and the unfit. The public good demands a highly trained bar which is fully aware at all times of its duties and responsibilities to society.