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DICTA

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RECRUITING THE PROFESSION

By Roger H. Wolcott of the Denver Bar

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A LEGAL directory lists 1625 attorneys in Colorado, 1050 of them in Denver, and 575 elsewhere in the state. The list includes judges, and includes some persons who are giving their main attention to enterprises other than practice, but even after such deductions, the showing is impressive. The length of the roll is due to past rules of admission and not to present rules. After allowing for deaths and withdrawals annually, the list is probably increasing each year by thirty or forty names, as sixty-three new attorneys were enrolled after the two 1928 bar examinations, for instance, the majority of whom will remain in the state, and there are also several attorneys each year who move to Colorado from other states and are admitted without examination.

These figures are for our own state only, where the number of law students and candidates for the bar now remains fairly constant, the number in local law schools being no greater today than it was five years ago. In the nation at large also, the profession is growing, but judging by the increase in law students, the growth in the nation is at an accelerating rate and has not kept down the way it has begun to in Colorado. Mr. Alfred Z. Reed, of the Carnegie Foundation for the Advancement of Teaching, states that there were 24,503 students in American Law Schools in 1919-1920 and 44,340 in 1925-1926, an increase of over 80 per centum in six years. His estimate for the fall of 1927 is 46,786. In New York City, Dean Young B. Smith of Columbia Law School points out that the half dozen larger law schools there had a combined enrollment of 2,705 in 1916, which increased to 6,225 in 1923, and to more than 10,000 in 1928.

If no new attorneys had been admitted to practice in the United States during the past year or two, it is probable that the attorneys already in practice could have met the public's legal needs, which means that the profession is in a position to experiment, if it wishes, with the raising of standards for admission to its ranks, and the experimenting is taking place.

This is something which the lawyers have been slow to do. The profession has been on a high plane, and in spite of occasional accusations of exclusion, no profession has been less mercenary or less inclined to raise requirements for admission from monopolistic motives. In North Carolina, for instance, the Committee on Legal Education, under the direction of Mr. Alexander B. Andrews, made a study and tabulation last year, and found incidentally that in that state a person who had finished grammar school could become a lawyer with one-third the further period of study which he would have to have if he should aspire to become a chiropodist, optometrist, or elementary school teacher. To become a dentist he would need four and a half times the course required of candidates for the bar, and the future doctors must take a course nearly six times as lengthy as the future lawyers. Trained nurses in North Carolina are rather low in the scale, and are required to have only twice the amount of higher education demanded of lawyers but the committee states that most of the hospitals there refuse to accept nurses who have had no more than such minimum education. There are nine states which require less from law candidates than North Carolina requires, and six states besides which require less from their lawyers than the one-year of high school and three years of professional study required of North Carolina trained nurses.

Suggestions for limiting bar admissions, or of raising standards of education, have begun to come from the outside. President Robert Appleton, of the Association of Grand Jurors of New York County, speaks favorably of the suggestion for conditional admission to the bar, withholding life-time admission until after a period of probation and observation. Mr. Alfred Z. Reed, who, although a leading authority on legal education, is not a lawyer, points out that the law is a public profession, requiring a high standard of

character and ability, and that the public is directly interested in the profession's personnel and training. His own special interest is in legal education, which he has greatly furthered by his writings and reports.

This article is not intended to urge restriction of numbers, nor increase of numbers in the profession, but merely to report on what is going on. Within the legal profession there has been great breadth and tolerance on the subject of bar admissions and preparation, aside from the desire of members to avoid accusations of selfishness. Those within the profession who have given thought to the matter have been inclined to assume that some other organization than their own was considering the problem. The American Bar Association has realized that admission to practice is a matter for each state to settle for itself. Many of the state bar associations are only moderately active and they do not universally have Committees on Legal Education with a bent for research. Some of the most active and well organized bar associations have been those of counties and cities, whose primary attention has been given to questions of less than statewide import. The lawyers have perhaps taken it for granted that the law schools are organized on this subject and are working to secure higher requirements for admission to practice in the several states, both of which the law schools generally are not. In Massachusetts, for instance, a candidate for the bar need have only two years of night high school, or its equivalent, by way of pre-legal education, while the commonwealth's oldest law school, Harvard, has for thirty years been requiring college graduation as the pre-legal minimum for entrance. The state and the school have gone their respective ways and there is no indication that either of these two institutions has any inclination to try to convert the other, or that it would be desirable. The question of enlarging or contracting the list of lawyers is for the lawyers.

The American Bar Association manifested an interest as early as 1890 when its membership was 1000 as compared with the present 26,595. Its Section on Legal Education was created in 1893, and in 1897 the Association endorsed high school graduation and a three year course of law study as requirements for admission to the bar. This position was

again affirmed in 1908 and 1918. In 1921 the Association recommended two years of study in college, followed by a three year period of law study, as a requisite for admission to practice, and has for several years given wide publicity to the recommendation. It has met generally with approval or indifference rather than with any active opposition. This 1921 requirement is now effective in 12½ per cent. of the states, and the same requirement, or something beyond, is in force in 42 per cent. of the law schools as the requirement for graduation. The law schools have been more responsive than the states. For the law schools observing these standards and certain further standards, there is the Association of American Law Schools, which by the reward of membership has furnished a further incentive to law schools for self-improvement, and has caused them to be less inclined to stand still than the states have been.

The American Bar Association's Council on Legal Education now has regulations which make its standards the same as those of the Association of American Law Schools, and the Council publishes from time to time the names of law schools which comply with its standards. The Council is directed by the American Bar Association "to make such publications available so far as possible to intending law students". Sixty-five of the country's 175 law schools are on the Council's approved list and of these same 65 law schools, 62 are members of the Association of American Law Schools.

The Council's persuasion and the influence of the Association of American Law Schools is upon the schools rather than upon the states, and it has been here shown that in percentage of compliance with recommended standards the schools have risen above the level of the states. In the direction of supplying the bar of the future with fewer and better lawyers, about all has been accomplished for the present that can be accomplished by working on the schools. Of the 110 schools which are not yet approved by the Council on Legal Education, two or three a year in the next few years may succeed in meeting the standards, but many of them cannot do it until the states in which they are located raise the standards for admission to practice. Harvard and Columbia, with their high standards, have been able to flourish in states

which have in the past had low bar admission requirements, because Harvard and Columbia are financially independent, and a majority of the law schools of state universities have been able to also, for a like reason. It is to be noted, however, that only one-eleventh of New York City's law students are at Columbia, Columbia being the city's sixth school in size, and that Harvard Law School has two neighbors that are both larger in enrollment than she is, so that the bar's benefit from receiving Harvard and Columbia trained members is diluted by the influx from other sources.

The principle may be elaborated upon by an illustration from a neutral point like Arizona. In Arizona the state's only law school requires two years of college for admission, while for admission to the bar of Arizona, one need apparently have no more than a grade school education, or perhaps even less. If the state had a large population and several metropolitan centers with law schools in them requiring only grade school education for admission, there would be a six-year differential against the state's standard law school and in favor of the schools founded on the strength of lenient bar admission requirements. The heavier enrollment would be in the short-cut schools and the additions to the bar of the state would be more from that type of school than from the school requiring the six years of pre-legal training. This is what has happened in some of the more thickly populated states, and is why many of the 110 unapproved law schools cannot raise entrance requirements and other standards until their states raise bar admission requirements. New York, by the way, has now raised its requirements for the bar to two years of college plus three years of law school, effective October 15, 1929.

At present therefore, the situation is that over one-third of the country's law schools are observing American Bar Association standards, some of them being influenced and aided to do so by the rules of the Council and the Schools Association. The number of approved schools is slowly increasing and the proportion may reach one-half of the total number of American schools within the next few years, but meanwhile, from two-thirds to one-half of the admissions to the bar will be from the schools not so approved, and some of the schools

not approved are not susceptible to the influence of either the Council or the Association, and will remain unapproved. The situation will stay fairly stationary until the states whose requirements for admission to practice are below those recommended by the American Bar Association raise the standards gradually to those of the American Bar Association, thereby gradually decreasing the present differential in favor of schools designed for the passing of bar examinations rather than for preparation for the after years of practice.

Some states are increasing the severity of their bar examinations. It is almost impossible, however, to devise a bar examination which will perfectly separate the sheep from the goats, and instead of trying by the examination to check the invasion of applicants at the state's last line of defense, it is fairer both to the state and the candidate to do some of the checking by a process of selection at an earlier period in the candidate's career. In Massachusetts in December, 1927, there were 498 candidates who took the bar examinations and 66% failed. In examinations of November, 1927, in Maryland, and March, 1928, in Rhode Island, the failures respectively were 69% and 79%, percentages which are materially higher than in the states requiring a larger amount of educational preparation of candidates. Would it not have been a better method of choosing future lawyers to have required a year or two more of study preceding the bar examinations, rather than to induce a period of cramming following a failure? The cramming will be with examinations in view, rather than preparation for practice.

There was little criticism a generation ago of requiring high school graduation of our future lawyers. Today there is nearly as high a proportion of the population who have completed two years of college, or who have had the opportunity to, as there used to be who had completed high school. Not only have colleges increased in number and doubled and trebled in enrollment, but summer schools, extension courses and the like have become far more common than formerly. The junior college movement, covering the first two years of the college course, is so recent that many of us have not awakened to it. The 1928 "Blue Book" lists some 374 junior colleges in our 48 states, in addition to our older colleges and

universities. It is possible that a present day requirement of two years of college does not represent a real increase over the apparently lower requirements of thirty years ago.

What has been accomplished to date, in planning the make-up of the next generation in the profession, is that Colorado and five other states require two years of college plus three years of law school, of future attorneys, these requirements for the most part being put into force very gradually, to give ample notice. Colorado extended every consideration to those whose preparation had begun under earlier rules, and hardships were avoided when possible. Several additional states seem likely to join these six in the near future. Delicacy interferes with suggesting to a sister state that she raise her bar admission requirements, but example is very effective. In Colorado the number of new attorneys per annum is not growing larger. Law schools, under the regulations of Colorado and many other states, have largely superseded law offices as a place of preparation for the bar. Colorado's law schools all require their graduates to have two years of college work, followed by three years of law school study, and the same is true of over a third of the country's law schools.

The American Bar Association's Council and the Association of American Law Schools have gotten into close touch and co-operation, with increased effectiveness, and have created a standard by which law schools can be measured and compared. The Carnegie Foundation for the Advancement of Teaching is making elaborate and impartial studies of the work of these two organizations, and of legal education, and is giving them publicity. The Colorado authorities have made full use of the material in recent revisions of rules, as have the authorities of Illinois, Kansas, New York, Ohio and West Virginia. Montana and Wisconsin are close behind. When the bench and bar of other sections come to consider the data now so complete and accessible, it seems likely that other states, whose bar admission requirements were fixed before there were ready reference works on the subject, will act in the matter, and revise their bar admission requirements upward or downward, consistently with the policies upon which they determine.