HOW THE COMMON OBJECTIVE OF BAR EXAMINERS AND LAW SCHOOLS CAN BE ACHIEVED*

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There are law schools and law schools. Their objectives differ. Boards of Bar Examiners, under existing laws, have but a single objective, and it is common to them all,—the exclusion from the practice of law of those who lack a minimum of fitness and equipment to engage therein. That there are law schools whose sole objective is to provide their students with this minimum of fitness and equipment, we professors in institutions members of the Association of American Law Schools have always assumed. But each of us is certain that his own school is attempting to achieve ends far more ambitious, ends which extend even beyond the education of prospective lawyers. We are not in agreement as to what should be the ultimate objectives of law schools; where we do agree, we yet divide as to mediate objectives and as to methods. Mr. Jerome Frank would have our law schools become lawyer schools, would have us rediscover the apprentice method of teaching law students. Dean Pound believes it to be enough if we give to our students "whereon to build to the exigencies of the demands" of different types of professional activity and of public service. Some of us, advocating apprenticeship and even quiz courses as proper interludes between law school and law practice, deny that the schools should attempt to provide their students with all of the knowledge which Boards of Bar Examiners may rightly require.

Law school objectives differing as they do, let us attempt, not to compare them with the present objectives of Bar Examiners, but rather to point out what could be, what should be, common objectives of the schools and the examiners. A leader among Bar Examiners, Mr. Philip J. Wickser, insists that the Bar is overcrowded, its members are maldistributed, and they are not all fit or competent to practice law. Bar examinations alone cannot prevent these evils. In the past, our main reliance has been upon economic competition among lawyers. This has proved too costly both to the public and to individual lawyers. Moreover, whether we like it or not, our society is now collectivistic and it will demand conscious social planning for the legal profession. Mr. Wickser tells us that we educators ought

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to plan for this planning, that if we don't no one will. He calls for a working partnership between the law schools and the Bar Examiners, a joint committee to study the problem, treat with bar associations and courts, build up and wield an influence which will achieve results.

Whether or not there is to be social planning for the legal profession, I think we all agree that there should be fewer lawyers and better ones. The Bar Examiners themselves disclaim ability to achieve this end. There is no absolute standard of fitness, and if there were, bar examinations would still fail to exclude the unfit. Recent studies have shown that cramming and quiz courses enable repeaters to succeed eventually. Conceivably each Board of Bar Examiners might determine for its state how many new lawyers are needed and might fill that quota by admitting those whom the examination showed to be most qualified. But neither existing laws nor public opinion permit the adoption of this procedure; and, if they did, fairness to those who have spent years in studying law probably condemns it. We shall have fewer and better lawyers only when we have fewer and better law students. And it has long been realized that fewer and better law students can be had only if the requirements of prelegal education are raised and the quality of law schools improved.

We professors in schools members of the Association of American Law Schools, teach in the better law schools. Our students are the better students. And our schools are few, our students few, compared to other law schools and other law students. Only 70 or so of the 180 odd degree conferring schools are qualified for membership in this association. Less than 30 per cent of law students are registered in member schools; bar examination statistics show that they achieve higher grades than other law students. Is it then, our responsibility that there are too many poor law schools, that there are too many law students, that many (perhaps most) candidates for admission to the bar are incompetent or poorly equipped? Perhaps the only answer to this question is the one that Mr. Wickser has made, that unless some of us assume that responsibility, no one will; that without our support the few, like himself, outside our ranks who are both capable and interested will fail to accomplish the ends which should be accomplished.

It is, in fact, as a result of suggestions from teachers in Association schools, that a beginning has been made. The American Bar Association, twelve years ago, declared itself in favor of fewer and better law students, fewer and better law schools. The work of the

Root Committee, the standards of pre-legal education, the standards for law schools, the approval of law schools which meet those standards, all this grew out of the efforts of such men as Walter Wheeler Cook, who, in 1917, pleaded, first before this Association and then before the Section of Legal Education of the American Bar Association, for action by the legal profession similar to that by which the medical profession had secured, between 1910 and 1915, fewer and better medical students, fewer and better medical schools.

Our real problem is, why has the legal profession in twelve years made only a beginning toward the accomplishment of what the medical profession accomplished so quickly? Dean Clark has recently compared the situations in the two professions. There are today fewer medical students than there were in 1900. There are several times as many law students as there then were. [Now 22,000 medical; 40,000 law students.] Today practically all medical students have had some pre-medical college education; the medical schools select for admission less than half of the applicants who comply with all formal requirements. A very large proportion of law students have had no pre-legal college education; even persons without a common school education can get into some law school. There are today only a fraction of the number of medical schools there were in 1900; there are nearly twice as many law schools as there then were. Of a total of 80 medical schools, 76 are approved by the American Medical Association; of a total of 185 degree-conferring law schools, only 82 are approved by the American Bar Association. About 90 per cent of medical students are in schools ranked as "approved" by the American Medical Association; only some 30 to 40 per cent of law students are in schools ranked as "approved" by the American Bar Association. Thirty-eight states require that applicants for medical licenses shall be graduates of schools approved by the American Medical Association. Two or three states only require that applicants for admission to the Bar shall be graduates of a law school approved by the American Bar Association. Twelve years after the work of the Root Committee, why are there these differences?

I submit that the chief reason for these differences is that there has been until this year no real attempt to ascertain how bad the poorer law schools are, no real attempt to eliminate even the poorest of them. There has been no real attempt to do this because so many lawyers influential in bar associations cling to the Abraham Lincoln —opportunity for the poor boy—argument in favor of the continued existence of substandard schools; because Mr. Alfred Z. Reed, the Carnegie Foundation's mentor of legal education, believes (and is,

I think, practically alone in believing) that we now have and should plan for a Bar composed of two groups of lawyers—the broadly and highly educated and the not so broadly and not so highly educated. The American Bar Association does not rank all schools, classifying the poor schools as well as the good ones, as the American Medical Association has done in the past. The American Medical Association long ranked schools as Class A, Class B, and Class C; the American Bar Association merely labels certain schools "approved" and has no class of explicitly "disapproved" schools. The miserable standards of the poorer schools were not disclosed by Mr. Reed's survey of American law schools, although this was devastatingly done by Abraham Flexner in his 1910 Report on Medical Education.

How bad some of the poorer schools are is now known. In California there are 21 law schools of which but 4 have been "approved" by the American Bar Association, but three are qualified to be and are members of this Association. Complaints from certain schools that the Bar Examiners discriminated against their graduates led the State Bar to appoint a committee to survey legal education and admissions to the Bar in California. The members of that committee, Professor H. Claude Horack, former adviser to the Council on Legal Education of the American Bar Association, and Mr. Will Shafroth, the present adviser, spent three months (February, March, and April of this year) in California, and inspected every law school. Their report, the Report of the California Survey Committee, has now been published. Ninety-eight pages of it comprise detailed studies of each of the 21 law schools. Each of these studies includes the following topics: History and Background, Financial Structure, Administration and Organization, Physical Equipment, Library, Curriculum, Faculty and Standards of Teaching, Admission of Students, Standards of Scholarship, General Comment. The report is outspoken in its disclosure of conditions in the poorer schools. But it is not based upon preconceptions. Several night schools operated for profit are given clean bills of health. Not since the medical survey of 1910 has there been such a survey made. In many respects the Horack-Shafroth survey is more thorough, franker, than was the Flexner survey.

Ascertainment and disclosure of the facts has led to prompt action in California. The incorporated State Bar controls admissions to practice, subject to the approval of the Supreme Court. In September the State Bar recommended to the court that beginning in 1935 the Bar Examiners give an examination to all first year law students except those in law schools at least 60 per cent of whose graduates pass the Bar Examination at their first attempt. A student failing to pass this examination at the end of his first year cannot count

that year as part of the required period of law study. The 60 per cent figure is to be raised gradually after law schools have been given a reasonable opportunity to raise their standards. Whether or not this action will eliminate the poorer law schools in California, the fact that it has been taken demonstrates that when it is known how poor those law schools are, attempts to eliminate them will be made.

The methods by which the medical profession, following the Flexner report, achieved fewer and better medical schools, medical students, medical practitioners, were sketched by Professor Cook in the 1917 papers to which I have referred. The campaign for higher legal requirements was aided by the federal representative character of the American Medical Association which resulted in practical control of the governing board of that association by physicans connected with the better medical schools. But the principal factor was the Flexner report itself, the damning evidence of the worthlessness of most of the existing medical schools.

I submit, therefore, that only when there has been made in each state, or for the whole country, a survey comparable to the Horack-Shafroth survey, will efforts to insure to the public fewer and better lawyers be successful. These surveys made, it will then be necessary to publicize them and to educate lawyers so that they will assume responsibility for securing effective action toward the elimination of the poor law schools. This is the task which confronts us. It is the Bar Examiners who can most appropriately and most effectively attack it; but the attack will be successful only if the Bar Examiners and the teachers in the good law schools reach a common understanding of the method by which alone their common objective can be attained.