

MAKING ETHICAL LAWYERS—SOME PRACTICAL
PROPOSALS FOR ACHIEVING THE GOAL

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THE improvement of the ethics of the bar is an enterprise requiring the hearty co-operative support of all branches of the legal profession at all times. Practicing lawyers, judges, law teachers and special groups such as bar examiners and grievance committees may and should lay aside those differences in viewpoint which exist intra-professionally and join forces to the end that the standards of conduct may be made higher and that the public may be brought to realize that fact.

The administration of justice in the United States is constantly under fire of criticism. The lawyer, as an integral part of the machinery, finds himself a conspicuous target.¹ In many instances attacks both against the bar as a group and against individuals are based on misunderstanding of the facts, and time may be trusted to bring about a more balanced judgment.² There are many points, however, about which the criticisms are only too well justified. A brief reference to three of them will suffice. Confusing volume and the diversity of holding of substantive case law by 1920 had become so well recognized in the profession and elsewhere that it was possible to establish the American Law Institute to endeavor to bring some order out of the chaos.³ Far more serious than the confusion of the substantive law, and less clearly recognized, however, has been

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¹ See Cooper, *Lawyers in Crime* (Mar. 16, 1935) 207 *SAT. EVE. POST* No. 37 at 5 (an interview with Homer S. Cummings, United States Attorney General).

² See *Report of the Section of Bar Organization* (1935) 3 *DUKE B. ASS'N J.* 10 (where the Section reports the number of complaints filed with the Grievance Committee of the North Carolina State Bar during its first year of operation as compared with the number of actual disbarments).

³ See Wickersham, *The American Law Institute* (1923) 72 *U. OF PA. L. REV.* 1; Lewis, *The American Law Institute and Its Work* (1924) 24 *COL. L. REV.* 621; Wickersham, *Making the Law More Certain* (1927) 1 *CONN. B. J.* 235.

the breakdown in the administrative machinery.⁴ A multitude of agencies, some led by lawyers and others by laymen, have endeavored for the past quarter of a century to overcome the defects of expense, delay and uncertainty which increasingly attend the procedure of litigation.⁵ Alternative methods of handling controversies have been set up and are in operation. The legal aid societies of the country have battled valiantly for over fifty years to bring freely to the man without financial resources the same quality of justice that his wealthier neighbor can purchase.⁶

In spite of all this activity the prestige of the legal profession is at too low an ebb.⁷ Leaders of the bar are becoming acutely aware of it and the present program of the American Bar Association is a concerted effort to improve the situation.⁸

⁴ Pound, *Causes of Popular Dissatisfaction with the Administration of Justice* (1906) 29 A. B. A. REP. 395, 408. It is probably not necessary to cite further articles in support of this proposition. See also the Reports of the National Economic League in which the administration of justice is reported again and again as being the most serious problem in American life until 1929.

⁵ As early as 1917 a joint committee of the Chamber of Commerce of New York and the New York State Bar Association adopted a series of rules for the prevention of unnecessary litigation. It is probably unnecessary to cite much material in support of this proposition.

See Nordlinger, *The Price of Justice* (1926) 12 A. B. A. J. 443; McCain, *Delay in the Administration of Justice* (1932) 7 NOTRE DAME LAWY. 284; Friedman, *Some Causes of the Delay of Criminal Justice* (1927) 1 CAL. ST. B. J. 173; Wickersham, *The Program of the Commission on Law Observance and Enforcement* (1930) 55 A. B. A. REP. 212, 214.

⁶ *Report of the Standing Committee on Legal Aid Work* (1932) 57 A. B. A. REP. 512, 515 (containing a bibliography of legal aid work).

⁷ See Evan, *Responsibility and Leadership* (1934) 59 A. B. A. REP. 278, 284.

See also Jackson, *The Lawyer; Leader or Mouthpiece* (1935) 20 MASS. L. Q. 49 (a reprint of an address by Robert H. Jackson, Chairman of the National Conference of Bar Association Delegates, at Milwaukee, August 27, 1934); *Racketeering Lawyers* (1935) 69 U. S. L. REV. 166 (a judge's viewpoint on the present low standard of the bar); William O. Douglas, *The Lawyer and the Federal Securities Act* (an address made before the Duke Bar Association on April 22, 1935). See Evans, *The National Bar Program* (1934) 36 N. C. B. A. REP. 86, 91.

⁸ See *Report of the Committee on Professional Ethics and Grievances* (1929) 54 A. B. A. REP. 111, 147 (where the American Bar Association adopted a resolution that Legal Ethics should be a compulsory course in law schools).

Beyond this articulated program suggestions for improvement cover a wide range. At all periods of civilization there have been those who would do away permanently with the legal profession.⁹ Such persons fail to realize the need for a trained body of professional men to deal with complex legal problems. At the other extreme come suggestions for improvement of the bar. These again are of several sorts. On the one hand there are those who would require courts and grievance committees to institute a rigid process of elimination of the morally unfit.¹⁰ On the other hand, there are those who would start to purify the stream at its source and see that agencies are set up all along the line of a lawyer's life to restrain him from improper practices and at the same time to guard the profession against loss of prestige.¹¹

The following suggestions are based on certain assumptions. The membership of the profession with respect to assumption of ethical responsibility may be divided arbitrarily into three groups: The definitely unethical predatory "lawyer-criminal," and the slinking shyster; a group of men interested in their own affairs, some of them without the initiative to be unethical

See also (1933) 58 A. B. A. REP. 150 (where a somewhat similar resolution was adopted urging the bar examiners to adopt a separate examination on legal ethics).

See Shafroth, *The National Bar Program* (1933) 19 A. B. A. J. 562.

⁹ Luke 11:46.

See WARREN, *HISTORY OF THE AMERICAN BAR* (1911) 3-18 (introductory chapter entitled "Law Without Lawyers").

From the time of the Bolshevik Revolution until June 16, 1922, the bar in Russia was non-existent. Komar, *The Legal System of Soviet Russia* (1924) 10 A. B. A. J. 434, 436.

¹⁰ See N. Y. Times, Aug. 21, 1933, at 12 (Blackstone Black Sheep, an editorial); N. Y. Times, Nov. 15, 1931, § 3, at 1 (Co-Ordinated Legal Ethics, an editorial); N. Y. Times, Jan. 12, 1935, at 10 (news article in which the Joint Conference on Legal Education proposed five years' probationary period subsequent to admission to the bar).

Mr. George W. Wickersham emphatically recommended what he described as a period of clinical training comparative to the practical experience in the hospital given to the young graduates of medical school.

¹¹ Arant, *Measure of Responsibility Which Should be Assumed by Law Schools* (1929) 15 A. B. A. J. 780.

See *Report of the Special Committee to the Section of Legal Education and Admissions to the Bar of the American Bar Association* (1921) 56 A. B. A. REP. 679-688. See also *Report of the Section on Legal Education* (1916) 41 A. B. A. REP. 652, 655.

or the courage to fight for higher standards;¹² a group of more or less practical idealists struggling for improvement of conditions. It is difficult, if not impossible, to tell the relative strength of the three groups. The public believes that the first and second groups are larger than they should be.¹³ To eliminate them entirely would seem a colossal task. To control the stream feeding the bar so that the balance of power may swing further to the third group would be a more likely solution.

The following suggestions adopting the second alternative are based on the assumption that by properly protecting the approach to the bar there can be directed into it a larger percentage of men who have a positive desire to improve its prestige. At the same time it can be made increasingly harder for men who are inconclusive or actually negative in their point of view to gain admittance.

I

PRESENT EFFORTS TOWARD A REMEDY

One cannot discuss the remedies in this direction without referring definitely to the work of the American Bar Association during the past few years and the corresponding work of the Association of American Law Schools.¹⁴ The result of this

¹² WILLOUGHBY, PRINCIPLES OF JUDICIAL ADMINISTRATION (Brookings Inst. 1929) 400.

¹³ For material on this point, see a series of cartoons appearing in the daily press in which the lawyer is depicted as in close contact with the criminal element in the community. See, for example, a cartoon in the Philadelphia Inquirer, March 18, 1935.

See also 4 WEST PUB. CO'S. DOCKET (Spring, 1935) No. 27, at 3740 (a cartoon).

¹⁴ The principle that there should be a special examination as to character goes back a long way. *Section of Legal Education* (1916) 41 A. B. A. REP. 652-655 (Standard Rules for Admission to the Bar adopted by the Section on Legal Education and Admissions to the Bar). (1920) 45 A. B. A. REP. 465 (special committee set up to study the whole problem). The committee report, (1921) 46 A. B. A. REP. 679, 685, makes the following statement:

"We have referred before to the need of high moral character. This includes not only freedom from positive wrongdoing, but a strong sense of positive social obligation and a sympathetic understanding of the ethics of the profession. The rules of ethics may be taught in the class room, but the professional spirit which gives them vitality and instills a sense of social obligation is the natural outcome of personal contact with those who possess it. The intimate personal contact of the student with a member of the bar of high professional standards, which was in the first half

effort has been a wide-spread acceptance of the principle that a course in legal ethics should be required before graduation.¹⁵ The efforts toward a remedy, then, begin with the courses in legal ethics.

A. *The Goal of a Course in Legal Ethics*

The teacher of legal ethics may apply himself to gather for instructional purposes material which will appear as a scholarly system of rules; he may spend time on building character; or he may endeavor to combine the two. In either of the two latter courses he confronts a real problem. It is comparatively easy for the clever student to exhibit restraint, self mastery, gentlemanly conduct, and sensitive recognition of ethical factors in the cloistered atmosphere of a class room. But a knowledge of the rules without more, is of little use in law practice. The average young lawyer upon admission is faced at once with all sorts of pressure, social, economic, and political.¹⁶ He must make a living in a strange world. He sees practices condemned in class discussion openly accepted by older members of his profession. He hears whispers of dishonorable acts by lawyers.

of the last century a frequent result of the preceptorship system, is lacking in much of our modern legal education. We look forward to the day when the organized bar, realizing its responsibilities, will provide a practical system by which students may be put in touch with those men in active practice who can best guide and inspire them."

See also Parker, *Enforcement of Professional Ethics* (1935) 21 A. B. A. J. 514.

¹⁵ *Report of Committee on Teaching of Professional Ethics in Law Schools* (1931) PROC. ASS'N AM. L. SCHOOLS 157-162:

71 member schools investigated:

- 56 (78.9%) give course
- 81% of students in all member schools have the course available
- 42 of 56 schools offer it as a separate formal course
- 38 of 56 (53.5% of all member schools) require it for graduation
- 30 of 56 (53.6%) use case method
- 17 of 56 (30.4%) use lecture method

109 of 116 non-member schools investigated:

- 93 of 109 (85.3%) offer a course
- 87 of 93 (93.5%) require it for graduation
- 68 of 93 (73.1%) offer it as a separate formal course
- 9 of 93 use case method exclusively
- 17 of 93 use combination lecture and case method
- 48 of 93 use lecture exclusively.

¹⁶ See Pearshall, *The Young Lawyer and Self Preservation* (1934) 36 N. C. B. A. REP. 169 (an address).

His own clients, on occasion, require of him something unethical. In case he is fortunate enough to find shelter in a first class law office, his bewilderment is at an end. But his neighbor who is not so lucky discovers in law practice a progressive disillusionment. In such an atmosphere idealism must be a sturdy plant to survive. A man may rationalize that the rules of legal ethics are largely theoretical abstractions which if not too flagrantly violated will not incommode him on his way to successful practice. He may even justify postponing his ethical career until his practice picks up. If he does not know the rules he may unwittingly offend and should not be blamed too severely for his ignorance. But, if he knows them, the familiarity does not guarantee character. Something more is needed. Certainly the passing of a law school test, whether it be of the essay or the true-false type is no indication that this student will pass the unwritten examination he must face at the hands of his professional brethren and the public. It would seem that the passing of this second examination is the sounder goal of the course.

To hold the possibility of such a conception is not impractically idealistic. It is well recognized that the responsibility of a lawyer extends in four directions: to his client, the court, the profession and the community.¹⁷ Economic necessity will insure that the lawyer performs his duty to his client. The court is eternally watchful to detect violations of practitioners' responsibility to it. It is in the field of encouraging a law student to discharge his obligations to his profession and to the community that special thought should be given. Some writers express this idea in terms of preparing the student to be a leader in his community.¹⁸ At other times the emphasis is on the need for a broad cultural as well as technical background which will equip the student in a practical sense to enter into any form of activity where a lawyer's services may be required.¹⁹ The fundamental problem may be stated in still other terms; namely, in close cases where personal interest is in conflict with

¹⁷ SHARSWOOD, *PROFESSIONAL ETHICS* (5th ed. 1884) 9.

¹⁸ Gardner, *Why not a Clinical Lawyer-School?* (1934) 82 U. OF PA. L. REV. 785, 802.

¹⁹ ROBERT J. WHITE, *A LAWYER AND HIS PROFESSION* (published privately 1934): "This course aims to give the student a consciousness of his duties and privileges as an attorney in a society which had definitely assumed a new social outlook."

duty to the profession or to the public to train the student to decide consistently in favor of the higher ethical standard. There is always the difficulty of securing a sanction for such decision where there is no immediate risk of detection as a result of choosing the selfish path but, where there is a belief that a choice in favor of selfish interests is likely to be followed by severe punishment, no further sanction is necessary.

Students can be interested in the abstractions of legal scholarship. It is possible to detect those who have the spark and those who do not. This result was achieved by the trial and error method. It is the purpose of this paper to make a suggestion as to how a similar result may be achieved in the selection of men in accordance to their devotion to ideals of ethical practice.

B. The Nature of Law School Courses in Ethics

Accepting the principle that the law schools have practically supplanted law offices in the education of lawyers, the law teachers have directed their attention in legal ethics courses along three different general lines. Some courses are different only in degree from other classes. They employ the case method with collateral readings for the purpose of developing in the minds of the students an understanding of the principles of law in this field, the way the courts have dealt with problems and a critical discussion of what ought to be the law.²⁰ A second group of instructors has been concerned with imparting an understanding of the history and traditions of the legal profession, and its present position in the administration of justice.²¹ In such courses the figure of the lawyer as a community leader is emphasized and the rules regulating his conduct are grouped about certain of his functions in the office, in court, and before the legislature. The third type of course emphasizes the great figures in the history of the legal profession and by

²⁰ (1934-35) IOWA ST. U. BULL. 21:

"Legal Ethics: The law as a profession. Relation of the lawyer to the state, the court, his clients, other members of the bar, and the public. Canons of Ethics of the American Bar Association. Selected ethical problems. Arant's Cases on Legal Ethics."

²¹ For example, see the course as given at the Catholic University of America and at Columbia University.

readings in biography or in the philosophy of the law, approaches closely the field of jurisprudence.²²

This training is of value. It is more orderly and comprehensive than is obtainable in a law office,²³ yet it is not the whole story.

Law school courses in legal ethics deal with rules which lie almost exclusively in the field of substantive law. This is in accordance with the general tendency in law school work to devote the short time available to the substantive rather than the procedural side of the law.²⁴ This has resulted in the gradual recognition by young lawyers that there is an intermediate stage between their law school training and the period when they are qualified to handle legal problems.²⁵ During this interval of extreme economic pressure and competition for a stable financial foundation there is not much chance to learn the application of ethical principles and there are many temptations to fall into unethical practices.²⁶ The trial and error method while sound in theory has many distressing stages during which a professional career may be ruined.

²² Courses which approximate this idea are given at the University of Pennsylvania, (1935-36) U. OF PA. L. BULL. 21, 22; and at Northwestern University under the heading of "Profession of the Bar," 35 NORTHWESTERN U. BULL. No. 23 at 20. Also in this connection one should record the work of law student bar associations as now in operation at the University of Southern California, Duke University, Ohio State University, and elsewhere.

²³ ARANT, CASES ON LEGAL ETHICS (1933) iii.

| ²⁴ School | Percentage of Courses Dealing With Substantive Law | Percentage of Courses Dealing With Procedural Law |
|---------------------------|--|---|
| Columbia _____ | 88 | 12 |
| Cornell _____ | 87 | 13 |
| Duke _____ | 73 | 27 |
| Georgetown _____ | 77 | 23 |
| Harvard _____ | 90 | 10 |
| Michigan _____ | 89 | 11 |
| Northwestern _____ | 81 | 19 |
| Southern California _____ | 80 | 20 |
| Stanford _____ | 77 | 23 |
| Texas _____ | 80 | 20 |
| Yale _____ | 71 | 29 |

²⁵ See Reed, *The Annual Review of Legal Education* (The Carnegie Found. Adv. Teach. 1929) (Missing Element in Legal Education).

²⁶ See Cochran, *Young Lawyer, Now What?* (1935) 7 MISS. L. J. 378.

II

THE ETHICAL PROBLEM FROM THE STANDPOINT OF THE BAR

The next stage in the process is examination by the board of bar examiners. Here certainly is no chance for education—only a testing.²⁷ The character side of the examination is difficult to classify. Sometimes²⁸ it is covered by a few easily secured letters of recommendation. At other times the basis is a personal interview²⁹ in which the ability of the examiner to read character at sight must be severely tested. In more extreme cases there is a detailed report prepared by a lawyer with whom the student has done work,³⁰ or even by a private detective.³¹ The information available here is not likely to be complete except where unusually conscientious lawyers or detectives have been engaged. This system is subject to many objections. Among them are expense,³² perhaps humiliation of the applicant, and perhaps connotations as to the character of appli-

²⁷ Wickser, *Bar Examinations* (1930) 55 A. B. A. REP. 639, 643.

²⁸ RULES FOR ADMISSION TO THE BAR (22d ed. 1935).

The California investigation consists of writing to the character references listed in the applicant's application. If the replies are satisfactory and if no complaint has been received, it is assumed that he has a good moral character.

In Georgia each applicant files with the judge of the Superior Court of the Circuit in which he is a resident a certificate of two practicing attorneys of the Georgia Bar vouching for his character.

In Michigan a diploma from a reputable law school has been accepted as evidence of good moral character.

Shafroth, *A Study of Character Examinations in Forty-Nine Commonwealths* (1934) 3 THE BAR EXAMINER 195, 202.

²⁹ Kentucky is the only state that uses a personal interview as the exclusive means of determining the applicant's character. Personal interviews are had as part of the examination in the following states: Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Indiana, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Vermont, and West Virginia. (1934) 3 THE BAR EXAMINER 195, 200, 202 *et seq.*

³⁰ See *New Rules Promulgated by the Supreme Court of Pennsylvania* (1927) 2 TEMPLE L. Q. 11-28 (introduction by Moschzisker). Appel, *The Pennsylvania System* (1933) 3 THE BAR EXAMINER 10. McCracken, *Explanation of the Pennsylvania System* (1932) 55 N. Y. ST. B. A. BULL. 61. Douglas, *The Pennsylvania System Governing Admission to the Bar* (1929) 54 A. B. A. REP. 701.

³¹ Gest, *Character Investigation* (1932) 2 THE BAR EXAMINER 51, 54.

³² *Control of the Practice of Law* (Mar. 1935) BOSTON B. BULL. 1; reprinted, (1935) 1 L. A. B. BULL. 166.

cants to the bar, which may not be warranted because, as to many of them, character has not developed. A lawyer with whom a student has come in contact may or may not be in a position to give a fair character recommendation. Some attorneys have better opportunities, more time, greater insight than others. To put all on the same plane involves a large assumption that in particular cases may not be justified. But the law office is no longer primarily a place for legal education nor is it equipped to compare a man with his fellows.³³ If a better device can be found there is no particular reason to hold on blindly to the existing system.

With this training and testing the student becomes a lawyer and thereafter it is the court and the grievance committee that regulates his ethical education and testing. It needs little argument to satisfy one that to throw the entire burden on the court and committee is inefficient.³⁴ Not to speak of the unfairness to the student of delaying so long in determining his status, the existing system proceeds too much upon the old common law theory that every dog is entitled to one bite.³⁵ This can hardly result in increased prestige for the profession.

This, then, is the system for training students in legal ethics and testing them. Having discussed and criticized the stages separately, it becomes necessary to comment upon the entire system as a co-ordinated, integrated device to accomplish a given end.

III

THE WEAKNESS OF THE EXISTING MACHINERY

Criticisms of the present procedure for building character among prospective leaders of the bar, may be grouped under four main headings as follows:

1. There is a lack of continuity in the process of character building and insufficient co-ordination among the agencies which are called upon to examine character and act upon it.³⁶ If it is possible to look upon the character development of the

³³ Clark, *The Selective Process for Choosing Law Students and Lawyers* (1933) 2 THE BAR EXAMINER 274; Clark, *Admission and Exclusion of Law Students* (1932) 7 AM. L. SCHOOL REV. 397.

³⁴ GOWIN, *THE EXECUTIVE AND HIS CONTROL OF MEN* (1915).

³⁵ *Burton v. Moorhead*, 8 Sess. Cas. (4th Ser.) 892 (Scot. 1881), BOHLEN & HARPER, *CASES ON TORTS* (1933) 440.

³⁶ Reed, *The 1934 Annual Review of Legal Education* (Carnegie Found. Adv. Teach. 1935) 35.

individual as a whole it is easier to detect trends and deviations from the normal than when one examines an isolated segment. There is a gap between the individual's character development in the pre-law school and the law school periods.³⁷ Similarly, the exchange of data from law school to board of bar examiners and later to the grievance committee is made with difficulty.³⁸ At present there is no effective method by which each succeeding group can come into possession of the full information possessed by the preceding examiners.

2. Even if all the information which is gathered were available it would show too little as to the personal habits of the applicant. Where a man has committed a crime, has cheated in an examination, has been guilty of outstanding disorderly conduct, he is usually removed from the race before he gets to the point of admission. It is not hard to gather information where misconduct is a matter of public or quasi-public record.³⁹

³⁷ For example, the application for admission to Duke University Law School requires in addition to information as to name, birth, religious affiliation, parentage and purely educational record, the following questions which may have a bearing on character: the academic degrees from college; how the student has spent his time since leaving college; whether he has ever attended another law school; his business experience and whether he is wholly or partly self-supporting. The following statement is made:

"Each applicant should request from the Registrar of the institution from which he proposes to offer credits a transcript of his college record and a statement of honorable dismissal, such transcript and statement to accompany this application."

This application blank which is substantially similar to the application blanks in other good law schools accepts as a basis for character the opinion of the faculty where the student has taken his undergraduate work. This opinion is a conclusion based on facts exclusively in the possession of the undergraduate faculty and ordinarily does not reveal the facts.

³⁸ For example, Duke University furnishes the bar examiners a transcript of the student's record. There is a certification that he has completed the prescribed course of study and that he is of good moral character. Such is the policy of the better law schools. But such a certification is in effect negative. Nothing is known against the student's character. The bar examiners are permitted to assume that if the student has done anything which the law school faculty thought unfitted him for practice, it would have removed him from law school, and that the granting of the degree is in the nature of a blanket pardon for any and all offenses. While this assumption is based on sound facts in the majority of cases, it does not seem wise to allow the matter of character examination to be based on any assumption when the facts might be available.

³⁹ *In re Wolfe's Disbarment*, 288 Pa. 331, 135 Atl. 732 (1927); *Delano's Case*, 58 N. H. 5, 42 Am. Rep. 555 (1876).

The man to be watched is the one who corresponds in the ethical field to the intellectually marginal student who just passes his courses through the sympathy of the law faculty.

Boards of bar examiners, however careful they are to get first hand data on the intellectual qualifications by exhaustive written tests, estimate the character of applicants on the basis, not of a first hand life history, but of opinion, hearsay and general reputation evidence.⁴⁰ If a man comes up before a grievance committee it is only in exceptional cases that it has before it any material except such as is presented by the particular complainant. The hearings are conducted in the spirit if not the form of the orthodox criminal prosecution. Seldom is there an effort to determine for the benefit of others a picture of the circumstances of the character deterioration. The question is "guilty or not guilty?" rather than "how did you come to do it?". It is the carefully investigated answers to the second question which, if collected from a sufficiently large number of persons, might suggest the points in the present process at which we should be building defenses. Preventive legal measures have not become as popular as preventive medicine. Thus the agencies which might best serve to investigate character have insufficient data.

3. It is urged that the attitude of these examining organizations toward the problem is a negative one where it should be positive. The courts have said that the burden is on the applicant to show that he has a good character.⁴¹ In practice it is difficult to refuse a man admittance if there is nothing against him. The writer submits that unless the applicant shows a distinguished aptitude for the law and gives reasonable promise of a desire and ability to make a positive contribution to the prestige of the profession and the welfare of the community he is not needed.⁴² This promise can only be shown on the basis of a long-time supervised record of character as well as intellectual

⁴⁰ Shafroth, *A Study of Character Examination Methods in Forty-Nine Commonwealths* (1934) 3 THE BAR EXAMINER 195.

⁴¹ *In re Garland*, 219 Cal. 661, 28 P. (2d) 354 (1934); *People ex rel. Colorado Bar Association v. Webster*, 28 Colo. 223, 64 Pac. 207 (1901).

⁴² (1929) 31 N. C. B. A. REF. 38-49; Garrison, *A Survey of the Wisconsin Bar* (1935) 10 WIS. L. REV. 131.

The attitude of the board of bar examiners in Pennsylvania is that there are so many people applying that there is no reason to take any except the best.

achievement. But if we take such a test where shall we fix a standard? Obviously it should be on a high plane.

Problems facing a lawyer where ethical factors must be considered are roughly classifiable. There are certain offenses which are definitely criminal—such as appropriating a client's funds,⁴³ committing murder,⁴⁴ falsifying public records.⁴⁵ Men who commit such acts should be dealt with as are other criminals. A second group consists of disbarable acts which are not necessarily criminal, improper solicitation of business,⁴⁶ intoxication such as tends to bring the profession into disrepute,⁴⁷ contempt of court.⁴⁸ In the third group are acts which while not always disbarable, nevertheless are characteristic of the shyster—ambulance and hearse chasing,⁴⁹ over-much association with the criminal classes,⁵⁰ using questionable tactics to achieve a result. In the fourth class fall violations of the code of etiquette, such as refusal to grant a fellow lawyer a continuance, taking a default judgment without notice to the other party, rushing the opposing party into a compromise unfair to him and obtainable only because he is not represented by counsel, and using a technical defense to defeat a morally just claim.

If a man commits an offense in the first class it is comparatively easy to secure general approval of the decision to refuse him admission to the bar or to reject him if already a member. One group shades into another by indistinguishable gradations so that short of actual crimes the student's and lawyer's con-

⁴³ *In re Stephens*, 92 Mont. 549, 16 P. (2d) 410 (1932); *In re Garrity*, 60 N. D. 454, 235 N. W. 343 (1931).

⁴⁴ See *People v. Egan*, 135 Cal. App. 479, 27 P. (2d) 412 (1934); *People v. Tinnin*, 136 Cal. App. 301, 28 P. (2d) 951 (1934).

⁴⁵ See *State v. Harwood*, 206 N. C. 87, 173 S. E. 24 (1934).

⁴⁶ *In re Cohen*, 261 Mass. 484, 159 N. E. 495 (1928) (concerning the improper use of advertisements); *In re Schwarz*, 195 App. Div. 194, 186 N. Y. Supp. 535 (1921) (concerning the use of circular letters by attorneys).

⁴⁷ *Wood v. Boykin*, 45 Ga. App. 783, 165 S. E. 908 (1932).

⁴⁸ *In re Hanson*, 134 Kan. 165, 5 P. (2d) 1088 (1931); *In re Ulmer*, 268 Mass. 375, 167 N. E. 749 (1929). See also *Re Peter Breen*, 30 Nev. 164, 93 Pac. 997 (1908), 17 L. R. A. (N. S.) 572 (1909); Note (1928) 53 A. L. R. 1244.

⁴⁹ *In re Rothard*, 225 App. Div. 266, 232 N. Y. Supp. 582 (1929). For cases on ambulance chasing as a ground for disbarment or suspension, see Note (1931) 73 A. L. R. 401.

⁵⁰ *In re Moses*, 186 Minn. 357, 243 N. W. 386 (1932) (dealing with disbarment of attorney due to conspiracy with racketeers).

duct is less and less likely to be frowned upon by the majority of lawyers the higher we go in the scale. If an applicant has in his mind the possibility of committing offenses in any other of the groups than the first the present machinery is not adequate to eliminate him at the threshold. The burden of the present argument is that unless in his daily contact with those competent to judge he shows himself sensitive to the unprofessional character of such acts as those listed in the fourth class, he should be placed on some sort of probationary list for further observation and not admitted to the bar—however intelligent he may be—until it is apparent that the bar needs him. Requiring adherence to such standards would shortly produce a different professional atmosphere. If the student shows that he plans to make himself an asset to the profession and the community not merely for personal gain, those who have worked with him and supervised his progress are in a position to vouch for his future. While occasionally they may be disappointed, the case will merely be the exception which proves the rule. No system is perfect.

4. Finally, the present system is accepted because it prevails or because of the comforting belief that nothing better can be put into effect. By passing the responsibility for making the decision from hand to hand until it comes to rest with the grievance committee, the other agencies avoid trouble and annoyance but they do not shoulder their share of the burden. The problem is to detect the undesirable man at the earliest possible moment and halt his progress.

This attitude on the part of those who are in a position to do something leaves out of consideration the possibility of improving conditions which may arise from their initiative, imagination, a flexibility of mental outlook and a determination to improve.

It is easy to argue that nothing can be done because nothing has been done; that the bar is democratic and necessarily is a cross section of the community, so little improvement can be expected; that character is so far crystallized in men of law school age that it cannot be changed; that character in men of law school age is still amorphous so that one cannot judge it. If existing methods, such as those to which the legal profession has become accustomed, are to be used, little can be accomplished beyond the present. But if other devices may be employed other

results may be secured.⁵¹ The use of such unorthodox devices as aptitude tests is a step forward.⁵² Perhaps a proponent of new measures should not go further than urging that they be given a trial. The present position of the public prestige of the bar calls for experimentation toward a remedy.

IV

THE SUGGESTED REMEDY

A solution requires co-operative effort. Approaching the matter functionally as the student comes to see it, there are certain tasks for the law schools, others for the boards of bar examiners, and still others for the bar itself to perform. The suggested remedy, then, will fall into these three divisions: what the law schools should do, what the bar examiners should do, and what the bar should do. But naturally the emphasis will be on the law school's responsibility because of the fundamental character of its work.

A. *The Division of the Course*

The perfect course in legal ethics, that is, one which would be generally recognized as such, might well contain some of the characteristics of the chameleon.⁵³ There is doubt among law

⁵¹ Scott, *Junior or Interlocutory Admission to the Bar* (1934) 3 THE BAR EXAMINER 99, 100; Shafroth, *The Plan for a Junior Bar* (1931) 3 N. Y. ST. B. A. BULL. 426; Green, *Bar Examinations and the Integrated Bar* (1932) 1 THE BAR EXAMINER 213; Clark, *A Plan for Temporary License to Practice is Adopted by the United States District Court for the District of New Jersey* (1932) 18 A. B. A. J. 551.

See *First Annual Report of Director* (S. Calif. Leg. Aid Clinic Ass'n 1929-30) 8, 9; *Second Annual Report* (Duke Leg. Aid Clinic 1933) 20, 21; *Report of the Committee on Small Loans and Investments* (Nat. Ass'n of Leg. Aid Org.) 66-72.

⁵² Crawford, *Use of Legal Aptitude Test in Admitting Applicants to Law School* (1932) 1 THE BAR EXAMINER 151; Correspondence (1930) 24 ILL. L. REV. 301 (Crawford, *Legal Aptitude Tests*); Crawford, *The Legal Aptitude Test Experiment at Yale* (1932) 7 AM. L. SCHOOL REV. 530.

⁵³ 1 BOUVIER, LAW DICTIONARY (3d Rawle ed. 1914) 1086, and BLACK, LAW DICTIONARY (3d ed. 1933) 693, emphasize the thought that legal ethics is that branch of moral science which treats of the duties which a member of the legal profession owes to the public, to the court, to his professional brethren and to his client.

WEBSTER'S NEW INTERNATIONAL DICTIONARY (1934) 877, contains the following statement:

"Ethics—The science of moral duty: more broadly, the science of the ideal human character and the ideal ends of human action. The chief

teachers as to the value of such training, in any event.⁵⁴ There is no complete uniformity of opinion as to the content of the lectures.⁵⁵ Some legal scholars feel that as a practical matter about all that can be accomplished is to see that the student emerges with his memory stocked with a new set of rules and his analytical powers strengthened.

The remedy suggested is to divide the subject of legal ethics into at least two courses, and teach the administrative side of it by the clinical method.⁵⁶ The legal aid clinic is a device which has survived an experimental period and which is still flexible enough to be adapted for further usefulness.⁵⁷ Its main claim to effectiveness is that it introduces the law student to conditions closely approximating those of actual practice, supervises his efforts and records with great care his progress. It may be adjusted so that it will record those reactions which are indicative of character.

It is not as yet a perfect device nor should too much be claimed for it, but it is capable of producing a far more effective

problems with which ethics deal concern the nature of the *summum bonum*, or highest good, the origin, and validity of the sense of duty, and the character and authority of moral obligation."

12 ENCYC. SOC. SCIENCES (1930-35) 475:

"Professional ethics has introduced two factors which have traditionally been too little emphasized; the fiduciary relationship of the professional men to his client, and the relation of groups as groups to each other and society."

⁵⁴ See *Proceedings of the Association of American Law Schools* (1929) 6 AM. L. SCHOOL REV. 424, 459. (The Association declined to adopt a resolution calling for a required course in legal ethics in each law school.)

⁵⁵ For example, see the expressed opinions of the following three professors regarding the teaching of legal ethics courses: Harris, *The Teaching of Professional Ethics* (1931) 17 VA. L. REV. 473, 476; *Proceedings of the Association of American Law Schools* (1929) 6 AM. L. SCHOOL REV. 458 (McCaskill's remarks on motion to require course on Legal Ethics in member schools); Arant, *Measure of Responsibility Which Should be Assumed by Law Schools* (1929) 15 A. B. A. J. 780.

⁵⁶ See BALLOU, SUPPLEMENTAL HEARING OF THE DISTRICT OF COLUMBIA APPROPRIATION BILL OF 1936 (1935) 27 (a pamphlet on character education):

"The result of the outcome of education must be thought of in terms of human beings as well as in terms of grades earned and subject matter pursued."

Reports of the Special Committee to the Section on Legal Education and Admission to the Bar of the American Bar Association (1921) 46 A. B. A. REP. 679.

⁵⁷ *Report of the Standing Committee on Legal Aid Work* (1932) 57 A. B. A. REP. 512, 515.

record of the characteristics of the individual student than it is doing at present. The student and the instructor work side by side for a year handling actual cases and endeavoring to render a first-class type of service to the public.⁵⁸ In the process the instructor comes to know the student, and be known by the student, intimately, and to fathom his attitude to a considerable degree⁵⁹

In the last analysis it is the knowledge derived from this personal contact which supplies the basis of judging character and moral development. The instructor, of course, should be of high ethical standing, should have the ability to meet the student on a friendly basis and train him as painlessly as possible to cultivate certain approaches to a lawyer's problems. One cannot guard against all conceivable contingencies, but one can develop a point of view toward law practice as well as toward legal scholarship.

Lengthening the period of clinical instruction, elaborating the situations confronting the student, giving him more leeway for the working out of his own ideas, will produce two significant results.

It will tend to develop in him certain correct mental habits.⁶⁰ It will increase the opportunity for observing him. Certainly it is an improvement over the apprenticeship method because in the clinic the student shares the center of interest equally with the client. In a law office he is, too often, only a glorified office boy.⁶¹

But merely putting the student in touch with real clients and keeping an eye on him is not enough. Successful operation of

⁵⁸ David, *The Clinical Lawyer-School: The Clinic* (1934) 83 U. OF PA. L. REV. 1.

⁵⁹ Frank, *Why Not a Clinical Lawyer-School?* (1933) 81 U. OF PA L. REV. 907.

⁶⁰ Frank, *supra* note 59, at 922:

"First rate courses in logic and psychology with specific references to legal thinking should form a part of the curriculum. There the student can learn something of the importance of open-mindedness, of the folly of dogmatism, of the provisional, experimental, and tentative nature of most conclusions—particularly those relating to the conduct of human beings.

"Professional ethics can be effectively taught only if the students while learning the canons of ethics have available some first-hand observation of the ways in which the ethical problems of the lawyer arise and of the actual habits (the 'mores') of the bar."

⁶¹ Berle, *The Modern Legal Profession* (1930-35) 9 ENCYC. SOC. SCIENCES 340, 342.

the legal aid clinic as a means of character training calls for new techniques in dealing with human beings. As these techniques have not been developed in the field of law, it is necessary to go into other professional fields to learn them.

B. *Inter-professional Borrowing*

Where the law prescribes rules regarding property it has a fairly solid basis and is for the most part effective. Where, however, as in the fields of crime or of domestic relations, it endeavors to deal with a person its resources are inadequate. It may restrain the individual. It may take some of his property away from him and give it to somebody else. Besides these two alternatives it can do little. The result is much as though the medical profession limited its services to surgical operations. Many persons in contact with the law need what is comparable to that rendered by the physician as distinguished from the surgeon.

The physician with the assistance of legislation has built up a procedure for diagnosing, preventing, treating and curing human ills.⁶² The social service worker, also with a background of legislation, has developed that process of gathering facts known as the social investigation,⁶³ and has added to it a technique of diagnosis, prevention, treatment and cure.⁶⁴ Neither of these professional groups has an exclusive right to the exercise of these procedures.

The field of social work has brought to a degree of effectiveness the social case history and probation. These two devices if adequately transplanted into the field of legal education, should add materially to the success of the proposed remedy. The social case history⁶⁵ is a method of recording data about a human problem. It may be compared with the medical chart hanging at the foot of the bed of the hospital patient. It differs from the legal record as built up in litigation because the latter is an embalming of a set of facts already dead. The case his-

⁶² *Medical Care for the American People* (U. of Chi. Press 1933) (Final Report of the Committee on the Cost of Medical Care).

⁶³ RICHMOND, *SOCIAL DIAGNOSIS* (1927).

⁶⁴ *Interviews—a Study of Methods of Analyzing and Recording Social Cases* (Am. Ass'n Social Workers 1928); *Social Case Work, Generic and Specific* (Am. Ass'n Social Workers 1931) (studies in the practice of social work).

⁶⁵ RICHMOND, *WHAT IS SOCIAL CASE WORK* (1922) (Social Case History).

tory is a record of a living case and shows the steps from day to day. It may be made as trustworthy as a series of bookkeeping entries which are admitted as legal evidence. Case histories also are made in the ordinary course of business and therefore entitled to consideration. If the legal aid clinics were to adopt the practice of building up a case history of each law student the results would be the basis for something unique in the field of legal ethics. It would be possible to trace on this record the daily progress of the student in the same fashion as a judge of a juvenile court can go over the record of a ward of court.

Probation,⁶⁶ as an application of the principle of supervision, is a socio-legal device better understood in the fields of criminal and domestic relations law than elsewhere. The fundamentals of this supervision are the trained probation officers, and their freedom to suit the treatment to the individual needs of the probationer. Transplanted into the field of character education for the bar the system would be forced to develop its group of trained workers and a series of highly individualized techniques suited to the wide variety of human problems. The probation record in consideration of the high grade of material available in the better law schools should be invaluable to boards of bar examiners and grievance committees.

The second inter-professional borrowing is from the medical field. It consists in the technique of clinical instruction.⁶⁷ The differences between this and the case method are very great. The case method among other results envisages the student as a critic of the judicial process. The clinical method puts him in the arena as a participant in the case from the beginning to the end. In the close contact of instructor and student the customary barriers are surmounted and each knows the other as a human being. On the basis of this knowledge it is possible to venture a reasonably accurate prediction as to future actions. Such a prediction is no mere guess or fond hope. The event may not always be as anticipated, but the percentage of mistakes should be less than under existing conditions. It has already demonstrated its usefulness.

⁶⁶ JOHNSON, PROBATION FOR JUVENILES AND ADULTS, A STUDY OF PRINCIPLES AND METHODS (1928); PROBATION AND CRIMINAL JUSTICE (Glueck ed. 1933).

⁶⁷ Flexner, *Medical Education in the United States and Canada* (1910) 4 CARNEGIE FOUND. ADV. TEACH. BULL.

Such then is the tentative proposal for teaching legal ethics by the clinic method. To teach law students the administrative side of ethics by the clinical method; to compile a case history of each student; to provide probation for those who do not show immediate promise of a goal; to contribute to the prestige of the profession and the welfare of the community—these adequately correlated and woven into the present fabric should produce more and better-focused ethical responsibility. It is no panacea. The existing agencies would have to undergo considerable readjustment before they could produce results that would satisfy even reasonably exacting critics. But the possibility is inherent in the situation.

C. *Objections Requiring an Answer*

At once come objections. We fear to try the untried—yet every part of the plan separately has demonstrated its feasibility. The only novelty here is in putting them together. It will be much trouble and expense; yet the public which by its fees makes possible the legal profession is interested primarily in the product of legal education and only incidentally in the trouble and expense.⁶⁸ We do not see how one can test character—yet character building agencies in the field of social work point with pride to their achievements, with material less promising than the law student.⁶⁹ We see no sign posts to guide the supervisor. His whims and personal fancies may become the basis of the record—yet the lawyer in whose office a student serves an internship is just as likely to be temperamental.

⁶⁸ *The Advance Program of the American Bar Association* (1934) 43 (containing Chief Justice Hughes' communication to the New York Joint Conference on Legal Education).

⁶⁹ Pray, *Are There Reliable Distinguishing Characteristics of Competent Professional Social Work?* (1934) PROC. NAT. CONF. SOCIAL WORK 517.

For a general survey of the progress made in studying character and measuring it, see 3 HARTSHORNE & MAY, *STUDIES IN THE ORGANIZATION OF CHARACTER* (1928-30) 371; FOLSOM, *SOCIAL PSYCHOLOGY* (1931) 275 *et seq.*; HARTSHORNE & MAY, *STUDIES IN DECEIT* (1928-30) 402 *et seq.* Perhaps the situation may be summarized by a statement appearing in *Studies in Deceit* at 414:

"The main attention of educators should be placed not so much on devices for teaching honesty or any other 'trait' as on the reconstruction of school practices in such a way as to provide not occasional, but consistent and regular opportunities for the successful use by both teacher and pupils of such forms of conduct as make for the common good."

It will be argued that such regimentation would be intolerable to individualistic lawyers. Such a conclusion assumes that the process be carried to an extreme. Only by experimentation will it be possible to find the point at which the plan is workable.

It will be argued that the preparation of case histories for everyone is cumbersome and expensive. Admitting that it may be so, it is a question of practical administration as to how far such trouble and expense may be justified for the interest of the profession and for the protection of the public, but unless the instruction is careful, the record adequate and the probation strict, the plan will be of no value. Maintaining a high standard is meritorious but expensive.

It will be argued that the collected material is of such a highly confidential nature that it should not be gathered except where a definite accusation has already been lodged against a lawyer and it is necessary to ascertain the truth or falsity of the situation. But credit ratings on lawyers by lay agencies are already a matter of common use. Certainly if an investigation of the character and fitness of a lawyer is to be made there can be no more desirable agency to make it than the bar itself.

There are definite values in the work. The average law student has a large share of native idealism. If it is given reasonable opportunity for growth it will survive the hardships of the first few years of practice. At present the opportunities for constructive work in this field are too often neglected. The legal aid clinic work is coming increasingly to provide the needed moral support. Here is an atmosphere in which no fees are charged,⁷⁰ in which the clients belong to a group of persons frequently victimized,⁷¹ in which the greatest return to the student is the sense of a task well done. If in such an atmosphere he fails to show positive evidences of an ethical enthusiasm it is unlikely that he will show them later on in practice. An extension of the clinic work to provide probationary supervision during the first few years of practice will permit the student to adjust himself. He will learn how others have successfully resisted demoralizing influences and if he does not profit by

⁷⁰ (1934) 40 PA. B. A. REP. 243, 245; (1933) 39 PA. B. A. REP. 299, 301.

⁷¹ Miller, *The Difficulties of the Poor Man Accused of Crime* (1926) 125 ANNALS 63; Hughes, *The Poor Man and the Law* (April 1926) 24 LEG. AID REV. No. 2 at 8; *Report of the Standing Committee on Legal Aid Work* (1934) 59 A. B. A. REP. 492.

such knowledge there will be fewer persons to feel that his denial of admission is unfair.

V

ILLUSTRATIONS

While further experimentation is necessary in order to give a complete picture, it is possible at the present time to illustrate some of the possibilities that lie in an extension of the clinic device. The first question concerns the quantity and quality of problems of an ethical nature coming to legal aid clinics. The records that are kept by legal aid societies indicate that a substantial number of cases each year fall into this field.⁷² As in matters coming before a grievance committee they vary from the misunderstanding to the act which is disbarable or criminal. A student working in such an atmosphere comes in contact with these cases. He learns that a large percentage of clients are dissatisfied with their lawyer because the lawyer does not take the client into his confidence;⁷³ that some clients are easily convinced that their lawyer has sold them out because he has had conferences with counsel on the other side of the case;⁷⁴ that certain clients are dangerous persons against whom the lawyer should protect himself by witnesses, records and otherwise.⁷⁵ In some instances he comes across specific disbarable offenses and participates in the procedure by which complaints are made against members of the bar and lodged with grievance committees.⁷⁶

⁷² Chart showing the number of complaints received by Legal Aid Clinics against attorneys:

| Year | Number of Complaints Received |
|------|----------------------------------|
| 1924 | 976 |
| 1925 | 781 |
| 1926 | 939 |
| 1927 | 1,387 |
| 1928 | 1,340 |
| 1929 | 1,522 |
| 1930 | 1,628 |
| 1931 | 1,856 |
| 1932 | 1,938 |
| 1933 | 1,705 |

⁷³ Case 291, Duke Legal Aid Clinic.

⁷⁴ Case 74, Duke Legal Aid Clinic.

⁷⁵ Case 541, Duke Legal Aid Clinic.

⁷⁶ Case 862, Duke Legal Aid Clinic.

The second problem relates to the marginal student who does not care about adopting a high ethical standard of practice except for the purpose of passing the examination. It is easy enough to justify this point of view to oneself by contending that the law is essentially a business and not a profession;⁷⁷ that duty to one's client requires shrewd dealing; that one needs to adopt only a minimum standard. The educational task here is to divide such students into two groups—those who show promise of a change in viewpoint and those who do not. For the latter there is no need in the profession quite aside from the intellectual capacity of the man. For the other group probation is indicated. It is in making this classification that the clinic work is not as yet completely developed. Even at the present time, much is possible provided the clinic instructional staff is adequate to permit of intimate contacts with the student.⁷⁸ It

⁷⁷ COHEN, *THE LAW—A BUSINESS OR PROFESSION* (Rev. ed. 1924).

⁷⁸ The following table shows the number of staff members in three legal aid clinics:

| University | Legal Work Exclusively | | Legal and Administrative work | | Clerical Work Exclusively | | Clerical and Administrative work | | Investigation or Social Work | |
|----------------------|------------------------|------------|-------------------------------|------------|---------------------------|------------|----------------------------------|------------|------------------------------|------------|
| | Paid | Vol-unteer | Paid | Vol-unteer | Paid | Vol-unteer | Paid | Vol-unteer | Paid | Vol-unteer |
| Duke.... | 3 | .. | 1 | 7 | 1 | 0 | 1 | 0 | 1 | 15 |
| Harvard.. | .. | 25 | 1 | 1 | 1 | .. | .. | .. | .. | .. |
| Southern California. | 1 | .. | 1 | .. | 2 | 1 | 1 | .. | .. | 1 |

At the Duke Legal Aid Clinic and at the University of Southern California the staff is entirely a part of the law school group. At the Harvard Legal Aid Bureau supervision is in charge of one member of the bar and the third year members of the organization.

For a description of the various Legal Aid Clinics including a discussion of their administrative and supervisory problems, see the *Annual Report* (Harv. Leg. Aid Bureau 1933-1934); *Annual Report* (Duke Leg. Aid Clinic 1933-1934). Similar descriptions of other organizations will be found in the following: So. Cal. Leg. Aid Clinic; Northwestern Leg. Aid Clinic; David, *The Clinical Lawyer School: The Clinic* (1934) 83 U. OF PA. L. REV. 1; MacNamara, *Teaching Legal Ethics by the Clinical Method* (193-)—AM. L. SCHOOL REV. — (a paper read before the Association of American Law Schools, Section on Legal Aid Clinics).

is not impossible in the course of a year to distinguish between a healthy competitive spirit and a consistent indifference to standards.

From the foregoing it appears that here is a field in which developments may well be made. There is reason to argue, however, that if they are made, the result will be a new type of testing machinery in the field of legal education which will (1) build up the kind of record that is needed to determine a man's character, (2) distinguish between the group which has a contribution to make to the profession and the community and the other group, perhaps equally able, which does not. Boards of bar examiners and grievance committees may find such machinery of interest.

A word should be said as to the elementary efforts to create the sort of record referred to. At the Duke Legal Aid Clinic the students are graded in three ways.⁷⁹ Each month the members of the staff grade each student on his general ability. The average of the class is the basis, and the individual is credited with being either average or better or worse. As each case is completed the staff again grades the student on the way it was handled. Twice a year a more elaborate system is employed for determining the rating of each student with respect to ten characteristics taken more or less arbitrarily as representing qualities that are desired in a practicing lawyer. The results of these three systems of grading and the final examination make up the final grade.

Where a student is obviously a marginal man, he is the subject of much staff discussion. At the end of the year a report containing the composite staff opinion of the man is prepared and filed as a permanent record.

VI

WHAT THE BAR SHOULD DO

This article has emphasized the responsibility of the law school for the problem. This is inevitable because of the fundamental character of law school training; without an adequate system at the start the rest of the plan is ineffective.

But the practicing profession and the courts have an equally large responsibility which may not be delegated. The interest

⁷⁹ *Third Annual Report* (Duke Leg. Aid Clinic 1934) 35-41. The student is graded on the following characteristics: Adaptability, Dependability, Imagination, Attention to Detail, Ability to Organize.

of the boards of bar examiners in the subject is clear.⁸⁰ So is that of grievance committees.⁸¹

Every lawyer should feel himself bound to:

(1) Co-operate in setting up a more adequate system than now exists.

(2) Insist that records of applicants for admission give in writing a full picture of character as well as the intellectual attainments. Conclusions of law or fact are helpful but the record should go behind these conclusions to the facts. The student's life is not lived in compartments where by shutting the door on one he emerges into the next a different man.

(3) Require a greater degree of continuity in the process of examining for character. Conferences between bar examiners, grievance committees and law faculties should produce valuable results in co-ordinating tests and equalizing standards.

(4) Be willing to accept ideas which have proven successful in other professional fields and which may be adapted to the needs of the bar.

No one knows the answer to the problem discussed here. The trial and error method is indicated. It can not succeed without the hearty co-operation of the entire profession at all times.

VII

CONCLUSION

We have now considered the problem of teaching the administrative side of legal ethics. An effort has been made to indicate that the ineffectiveness of that teaching has been the failure to observe and chart the extent of the desire of the student to make contributions to the profession and the community. A solution of the problem has been suggested tentatively—instruction by the clinical method. It has been urged that the successful operation of that method requires the lawyer to borrow from other professional fields the devices of the social case history, probation and the polished technique of grading men by the

⁸⁰ Wormser, *Fewer Lawyers and Better Ones* (1929) 15 A. B. A. J. 206; Wickser, *Law Schools Bar Examiners and Bar Associations: Cooperation Vs. Insulation* (1933) 2 THE BAR EXAMINER 151; Reed, *The Annual Review of Legal Education* (Carnegie Found. Adv. Teach. 1929) 32 (The Missing Element in Legal Education; Practical Training in Ethical Standards).

⁸¹ See Clark, *The Selective Process of Choosing Law Students and Lawyers* (1933) 2 THE BAR EXAMINER 274.

clinical method. Opportunities exist to attempt this experiment in any law school. In certain legal aid clinic courses, especially where the same instructor also gives the course in legal ethics, the opportunities are peculiarly attractive. The plan in its fullest operation calls for closer relationship between boards of bar examiners and law schools. Public criticism of the legal profession is the stimulus for activity.

Here in embryo is a system which may be developed to meet a series of needs. The point of view of the clinic instructor is the point of view of a practicing lawyer. The clinic is an active law office. There is present an atmosphere of idealism. If the student is not stirred by it the bar has no need for him, however intellectually capable he may be. If, after a year of clinic work, he does not have a positive desire to contribute to the prestige of the bar and the welfare of the community, one may predict with reasonable accuracy that he is not going to exert himself to those ends in practice. It is submitted that the legal aid clinic is a device which, developed and improved, will take a leading part in bringing to the bar men with a more highly developed sense of a lawyer's responsibilities, and in eliminating more surely those who lack such vision.