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## Legal Education in California

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THE RECENT Report of the Special Survey Board on Legal Education and Admissions to the Bar in California<sup>1</sup> is the most thorough and comprehensive study of the system of preparation for and admission to the practice of law that has ever been made in any state. Since it is probable that a great many members of the California bar will not see the Report, or at least will not have the time and patience to study so massive a document<sup>2</sup> in any detail, this article is intended to summarize it, and to offer a few comments upon its facts, conclusions and recommendations.

The Survey was ordered by the Board of Governors of the State Bar of California in the fall of 1947. It followed some fifteen years after an earlier survey,<sup>3</sup> made in 1933 by Will Shafroth and H. Claude Horack, and one of its functions was to supplement the earlier report and bring it up to date. A comparison of the two documents indicates that important changes have occurred in the intervening years, and that many of the old problems remain. "The State Bar of California has been a pioneer in the United States in recognizing the importance of periodic examination by disinterested outside experts of the operations of a state's bar admission procedures and law schools."<sup>4</sup> The present Survey is a very complete exemplification of that policy.

The disinterested outside experts selected as the Special Survey

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<sup>1</sup> Published in January, 1950, by the State Bar of California. It has been known to California as the "Simpson Report," because of the leading part played by Professor Simpson in gathering the information. It will be cited hereafter as "Report."

<sup>2</sup> The Report is 306 pages in length, and is packed with facts, figures and charts. It would be quite impossible to cover all of it within the scope of this article, and the attempt must be limited to those items which appear to have particular significance.

<sup>3</sup> SURVEY OF BAR ADMISSIONS AND LEGAL EDUCATION IN CALIFORNIA (published by the State Bar of California, 1933).

<sup>4</sup> Report 17. The cost of the Report is estimated at \$25,000.

Board were all nationally known. Joseph A. McClain, Jr.,<sup>5</sup> Thomas F. McDonald<sup>6</sup> and Sidney Post Simpson<sup>7</sup> require no comment outside of California and little in the state. Among them they brought to the survey many years of successful practice of law, many years of experience teaching in other law schools, both full-time and part-time, and a wide acquaintance with legal education and bar admission procedures in the other states. Their ability, integrity and conscientious-

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<sup>5</sup> "The Chairman of the Special Board has been Joseph A. McClain, Jr., of St. Louis, Mo., General Counsel of the Wabash Railroad Company since 1945, and Chairman of the Section of Legal Education and Admissions to the Bar of the American Bar Association from 1946 to 1948. Mr. McClain practiced law in Georgia from 1924 to 1926. He then became a member of the faculty of the law school of Mercer University, Macon, Ga., where he served as professor of law, and later as dean, until 1933. From 1933 to 1934 he was professor of law at the University of Georgia, then dean and professor of law at the University of Louisville, Louisville, Ky., until 1936, when he became dean of the Law School of Washington University, St. Louis, Mo., where he remained until 1942, when he became Vice President and General Counsel of the Terminal Railroad Association of St. Louis, leaving that position for his present one in 1945. Mr. McClain holds degrees in law from Mercer University and Yale, and bonorary degrees in law from Mercer and Tulane Universities." Report 1-2.

<sup>6</sup> "Associated with Mr. McClain as a member of the Special Board has been Thomas F. McDonald of St. Louis, Mo., a member of the Missouri bar actively engaged in practice in St. Louis since 1919. Mr. McDonald was Chairman of the Grievance Committee of the St. Louis Bar Association from 1932 to 1935, and President of that Association from 1935 to 1936. He has been Secretary of the Missouri State Board of Law Examiners since 1932, and is a member of the Executive Committee of the National Conference of Bar Examiners. He is Director for Missouri of the American Judicature Society, and was Chairman of the Board of Directors of that Society in 1940 and 1941. Mr. McDonald is a veteran of World War I, and a Past Commander of the St. Louis Post of the American Legion. He holds degrees in law from the University of Michigan, including an honorary degree awarded in 1936 for public service to the legal profession." Report 2.

<sup>7</sup> "The Director of the Survey and the third member of the Special Board was Sidney Post Simpson of New York, N. Y., a practicing lawyer of New York City and professor of law at New York University Law School. It is with deep regret that his death on October 6, 1949, is recorded. . . . Mr. Simpson practiced law in New York and Washington, D.C., from 1923 to 1931, when he became professor of law at Harvard Law School. He continued in active teaching there until 1940, when he became Special Assistant to Assistant Secretary of War Patterson. After four years in the army and in the government service, he resumed practice in New York City in 1944, served during 1945-46 as Veterans' Education Adviser to the Practicing Law Institute, and began teaching at New York University Law School in 1946. He was Chairman of the Committee on Continuing Education of the Bar of the American Bar Association and a member of the Committee on Continuing Legal Education of the American Law Institute. He was a veteran of both world wars. In 1930 and 1931 Mr. Simpson directed a nation-wide study of the Cost of Crime for the Wickersham Commission. He was a member of the Editorial Board of the *Modern Law Review* of London, England, and co-author of standard casebooks on Equity and Judicial Remedies, as well as of a recent casebook on Law and Society, and wrote extensively on legal education. He held a degree in law from Harvard." Report 2-3.

ness is beyond all question. So likewise is their freedom from all bias for or against any law school in California, which is perhaps more than can be said for anyone connected with legal education in the state, including, of course, the writer of this article. One may disagree with the conclusions of these men, but they cannot be ignored.

In the fall of 1948 this Board descended upon the law schools of California like a small swarm of locusts, and went to work with a vigor which presently earned for Professor Simpson the nickname, which he greatly relished, of "Sidney Pest." If the experience of the law school of the University of California at Berkeley is typical, the job was thoroughly done. The visitation almost wrecked the school. The questionnaire inflicted on the dean's office took the faculty a month to answer, and the secretarial staff another month to type. It was followed by personal visits by the members of the Board, who interviewed everyone, sat in the classrooms, looked at the files, records, applications, examinations, minutes of meetings, library and everything else, asked a thousand questions, and generally took the place apart. If there is any significant fact about the school which they did not discover, the faculty does not know what it is. The statements made in the Report about the school are entirely accurate in all respects. It seems reasonable to assume that those made about the other schools are equally accurate.

The information thus assembled was digested, and a draft of the Report was placed in the hands of the Board of Governors of the State Bar late in June, 1949. The portions of the text dealing with individual law schools were submitted to the respective deans, and when complaint was made that insufficient time had been allowed for examination and that some errors were found, they were resubmitted. A delay of approximately six months in publication was due in part to this procedure, and in part to the untimely death, in October, of Professor Simpson, who had charge of the preparation of the final Report.<sup>8</sup> It was issued shortly after the first of January, 1950.

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<sup>8</sup> This delay, which unfortunately was not explained to the public, gave rise to a variety of rumors in California that the Report, or parts of it, would be suppressed. The writer has received personal assurance from Mr. Joseph A. McClain, Jr., Chairman of the Special Board, that except for very minor corrections in the interest of accuracy the first draft of the Report has not been altered, and that the delay in publication was caused entirely by the submission of parts of it to the law deans, the verification of facts where errors were claimed, and the death of Professor Simpson.

The Report speaks for itself. But since the writer was one of those clamoring for early publication, he wishes to go on record as satisfied that the Report is intact, and that

## THE NUMBER OF STUDENTS

The first fact about legal education in California which strikes any reader of the Report is that there is far too much of it.<sup>9</sup> In the year 1946-47 there were more than 3,600 students registered in the law schools of the state. In 1947-48 there were roughly 4,000, and in 1948-49 there were more than 4,800. The enrollment for the current year 1949-50 is 5,230.

When it is considered that the number of lawyers admitted to active practice in California<sup>10</sup> as of June 30, 1949, was 14,571, the staggering fact becomes apparent that the present registration of the law schools of the state is more than a third of the number of the present bar; that the registration of last year was approximately a third, and that of the year before well in excess of one-fourth.<sup>11</sup> This, of course, takes no account of the considerable number of men who will enter California from law schools outside of the state, or of any attorneys from other states who may be admitted here. It is a fact which may well disturb the slumbers of any California lawyer.

The picture is not quite as bad as it looks. The law schools are now engulfed in a tidal wave of veterans who are going to school at government expense. That wave is apparently at its crest this year, and when it subsides the enrollment may be expected to decline. But the projected estimate of the Survey<sup>12</sup> indicates that unless changes are made there will be a registration of almost 5,000 in 1950-51, with 4,500 the following year, and that about 1953 the law school registration may be expected to become stabilized at a permanent figure of something like 4,000.

Another important factor is of course the continued increase in the population of California, which will make room for more lawyers. If, as many people think,<sup>13</sup> we can expect a census of nearly 14,000,000 by 1960, the state may very well accommodate as many as 18,000

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the delay was due to nothing more sinister than an excess of caution where statements objectionable to some of the law schools were to be published.

<sup>9</sup> Report 26-35.

<sup>10</sup> Report 26.

<sup>11</sup> The registration figures for any three years of course duplicate students, since all schools require either three or four years of study. But this means merely that if present registration should continue, and if all students were to be admitted, it would require three law school generations, or at most four, to double the size of the California bar.

<sup>12</sup> Report 32.

<sup>13</sup> Report 27-28.

attorneys.<sup>14</sup> A slow progressive increase in the number admitted each year is not only proper but necessary if the present ratio is to be maintained. As a matter of fact the number admitted in recent years has not kept pace with the growth of California.

But no conceivable increase in population, or any other change in the situation, could possibly provide openings, employment or opportunity for all of the law students that we now have on our hands, to say nothing of those who are in prospect. California now has 135 lawyers<sup>15</sup> for each 100,000 of its population. The figure is nearly equal to those for New Jersey, Ohio and Missouri; it is higher than those for Texas, Michigan and Pennsylvania. It is materially lower than the figures for New York, Illinois and Massachusetts;<sup>16</sup> but these are leading industrial and commercial states, with perhaps a greater need for lawyers, while California is still predominantly agricultural. There is at least no indication that the number is too small.

On the contrary, the specter of overcrowding is already haunting the bar. Graduates of all the law schools are finding it increasingly difficult to enter practice,<sup>17</sup> although the better men from the better schools have as yet encountered no real trouble. The Report<sup>18</sup> quotes the 1949 Occupational Outlook Handbook of the Bureau of Labor Statistics, to the effect that "The legal profession is already somewhat overcrowded at the lower levels and is likely to become much more so during the next few years. The average [law school] graduate of the next few years may expect increasingly stiff competition . . . and will need the best preparation possible."

These law students, appalling as they are in number, are registered in sixteen California law schools. Not only is this a greater number than can be found in any other state, but it is a greater number

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<sup>14</sup> Report 33.

<sup>15</sup> Report 7.

<sup>16</sup> Report 9.

<sup>17</sup> "In 1947, the United States Bureau of Labor Statistics warned that the legal profession in the United States was becoming 'overcrowded.' Until recently there have been fewer harbingers of overcrowding in California than in many other states, but there are now signs that it is becoming increasingly difficult for law school graduates, even those with high scholastic records in approved law schools, either to secure employment in law offices in this state or to find good opportunities to go into practice for themselves. The intense present concern of some of the California law schools with placement problems is perhaps the best evidence of this. With 4854 students presently in the law schools of California (in 1948-49) as compared with 2118 before World War II, the placement problem may be expected to become progressively more acute." Report 26.

<sup>18</sup> Report 35.

in proportion to the population than can be found in any other state of any size.<sup>19</sup> The only competitor which comes anywhere near it is Ohio, which is notorious for too many law schools. New York has ten. If it had as many in relation to its population as California, it would have twenty-two.<sup>20</sup> In the San Francisco metropolitan area alone there are eight law schools. If there were proportionately as many in the area of New York City, there would be thirty-six.<sup>21</sup>

Anyone who points out these facts is likely to be promptly accused of seeking to stifle competition for the existing bar by depriving young men of opportunity. The life of the bar has been competition, and no decent citizen wants for the lawyers now in practice a closed shop, with the kind of oligarchy of which the medical profession is occasionally accused. But it is quite another matter to say that if everyone who would like to be a lawyer should become a lawyer there would be far too many lawyers, and that it would be a calamity not only for those now in practice but also for those who are to enter it, and most especially for the public whose interest is to be served. The menace of a large number of attorneys who may not be able to earn an honest living is sufficiently obvious to need no comment.

There is too much legal education in California. If the predictions of the Report are sound, the situation is not likely to grow better, but worse. After us, the deluge. There is an old story about the superintendent of a county asylum who was asked how he determined whether his patients were imbeciles. "Well," he said, "we've got a big trough, with a pipe running water into one end of it through an open spigot. We hand the fellow a bucket, and tell him to keep the trough from running over. Them as ain't idiots turns off the spigot."

#### THE KIND OF STUDENTS

Who are all these law students? What are their qualifications, and what is their chance of ever being admitted to the California bar? The Report gives the answers rather clearly. A very substantial number of them are the wrong people. Of the total number, more than half will never survive to take the bar examination, but will fall by the wayside, eliminated by the standards of some of the law schools, or will quit in despair at a task which they recognize as beyond their

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<sup>19</sup> Report 23, 25.

<sup>20</sup> Report 23.

<sup>21</sup> Report 23.

ability. And of those who do survive to reach the bar examination, more than half will still fail.<sup>22</sup>

It is surely unnecessary to suggest to the readers of this article that it takes brains to be a lawyer; that it takes brains even to study law, and that some people, while they may be very good citizens and will succeed very well in other endeavors, simply do not have that kind of brains. It will be unnecessary to say to most readers that the law also requires education. This is traditionally beyond all others the learned profession; and the words "my learned brother," whatever degree of irony they may have acquired on occasion between opposing counsel, originated as a recognition that one felt compelled to accord. The lawyer is a literary man. He must write opinions, briefs and letters, wills and contracts, and a host of other documents where the most meticulous accuracy is essential and the use of the wrong word may bankrupt a client; and in the course of a year he must set on paper more words than the average novelist. Beyond that he must know enough to understand what the most complicated problems involve, and have the training to undertake their solution. He is expected to pass from mathematics to accounting, to medicine, to physics or chemistry, to engineering, to the intricacies of business organization and methods, to arguments based on history, economics and political science or even philosophy—in short to anything that may come, however erudite and incomprehensible it may be. As no other man in any other vocation, he must take all knowledge for his

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<sup>22</sup> The statistics issued after the October, 1949, bar examination by the State Bar Association are as follows:

<i>Examination</i>	<i>Number Examined</i>	<i>Per Cent Passed</i>
August, 1934	594	41.9
September, 1935	584	45.7
September, 1936	548	53.6
September, 1937	560	46.6
September, 1938	585	52.5
October, 1939	718	35.4
October, 1940	828	50.3
October, 1941	742	45.0
September, 1942	452	46.2
October, 1943	344	34.3
October, 1944	356	39.6
October, 1945	436	35.3
October, 1946	474	37.1
October, 1947	510	47.6
October, 1948	759	62.6
October, 1949	929	52.7
Average	589	45.4

field. There are few lawyers who will not testify that the law is the most difficult and exacting of all professions, and that it is a very tough game.

For admission to this lifetime of intellectual effort, the basic requirements of California, which are fixed by the State Bar Act, are few and simple. If the applicant is under 25 years of age when he begins to study law, he must have completed two years of college; but if he is over 25 years of age he need have no education at all.<sup>23</sup> What this means is that, provided only that he will wait until he has attained the age of 25 before he begins, there is no man in California so uneducated, so ignorant, so illiterate or so stupid that he is not free to study law. Here let the Report speak for itself:<sup>24</sup>

When consideration is given to the effect of the California 25-year rule exempting a considerable number of applicants for admission to the bar from any requirement as to general education, the rather startling conclusion emerges that the standards for admission to the bar in the state are less than those required of barbers, who must have at least a grammar school education; chiropodists, who must have at least one year of college; chiropractors, who must be high school graduates; cosmetologists and manicurists, who must have at least two years of high school; midwives and nurses, who must be high school graduates; accountants, who must have had two years of college; electrologists, who must have had one year of high school; drugless practitioners, optometrists and osteopaths, who must be high school graduates; and elementary and secondary school teachers, who must be college graduates. The requirement with respect to accountants of two years of college is particularly noteworthy in view of the insistence of the bar that lawyers are better fitted than accountants to handle complicated tax questions.

In all but a few of the other states this problem has been at least partly met by the requirement that every applicant for admission to the bar must have completed at least two years of college.<sup>25</sup> Some states require more. There are only six that require less. California adds itself as the sixth to a distinguished, progressive and forward-looking group made up of Arkansas, Georgia, Louisiana, Mississippi and South Carolina.<sup>26</sup> Even among these it is not preeminent.

The bald fact is that the bar admission standards of California lag far behind those of most other states . . . . The only states whose standards are in all respects as low as or lower than those of Cali-

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<sup>23</sup> Report 11.

<sup>24</sup> Report 117-118.

<sup>25</sup> Report 14-15.

<sup>26</sup> Report 14, 117.



fornia are Arkansas and Georgia. It can hardly be supposed that these are examples which the state of California will desire permanently to follow.<sup>27</sup>

Exactly how many of the law students now registered in California have had less than two years of college education it is impossible to say, if only for the rather amazing reason that some of the law schools have no records and themselves do not know. The number is at least great, and may be as high as one-fourth of the total enrollment.<sup>28</sup> Since the better schools admit few or none who have had less than two years of college, the group is concentrated in the inferior schools. It would be much larger if it were not for the state examination required for all students in unaccredited schools at the end of the first year, which eliminates a good many. To this group there must be added a small number of men who are pursuing the study of law by correspondence, in offices, or in "private study" at home, all of whom will be equally eligible to take the bar examination.

What chance have all these people of admission to the practice of law? Bar examination results of course do not give the complete picture. They say nothing of the prospects of obtaining employment, or of the chances of success of a man who has learned some law but knows little else. But in themselves the examination results are melancholy enough. The percentage of those who have passed over a number of years<sup>29</sup> is as follows:

<i>Education</i>	<i>Per Cent Passing Bar</i>
Three years high school or less . . . . .	12.0
Four years high school . . . . .	25.4
One year college . . . . .	32.6
Average less than two years college . . . . .	25.2
Two years college . . . . .	43.8
Three years college . . . . .	48.5
College degree . . . . .	66.8

<sup>27</sup> Report 118. Since publication of the Report, Georgia has passed a statute requiring a high school education. This leaves Arkansas as the only state whose requirements are as low as those of California.

<sup>28</sup> The conclusion is the writer's, after a study of the enrollment, admission requirements, elimination and voluntary discontinuance of study in the various California law schools, given by the Report 147-301.

<sup>29</sup> Report 40. The figures given are for the six years from 1936 to 1941; but the figures from 1946 through April 1949 show "substantially the same results." Report 39.

It should be noted that "four years high school" includes some men who have failed in the first year of college, and that "one year college" includes some who have failed in the second year.

The value of a law school education itself is at least indicated by these further figures:<sup>30</sup>

<i>Education</i>	<i>Per Cent Passing Bar</i>
Law office study . . . . .	8.7
Correspondence school . . . . .	11.2
Private study . . . . .	11.3
All law schools . . . . .	59.9

But these figures do not begin to tell the whole depressing story. They represent only the men who have taken the bar examination. They say nothing of the number of uneducated men, almost certainly greater,<sup>31</sup> who have been eliminated by those law schools which have maintained standards, or have abandoned the hopeless effort in utter discouragement. They give no hint of the glittering advertisements that you, too, can be a lawyer, and that all that is needed is study in a law school which prepares for the California bar; and they contain no faint suggestion of the years, the money and the fruitless struggle that have gone to waste, or the frustration of human hopes and the sick misery they have involved.

The evil of the present situation in California is not to be found in percentage results on bar examinations. It is to be found in the number of those who enter upon the study of law, in comparison with the number of them who are ultimately admitted to the bar. Few will say that the full duty of the State Bar of California is done when it sees that the gates of the profession are guarded well, and that men who should not be lawyers do not become lawyers. Few will insist that there is no further duty to those who want to study law but should not study it, and that their frustration is none of the bar's concern.

The Report says nothing of the reason that this situation has not been remedied long since. Undoubtedly it lies in a sentiment and a tradition, noble enough in itself, which has carried over from the days a hundred years ago when we were a pioneer country, and Abraham

<sup>30</sup> Report 16. "In view of the consistently poor showing of applicants who have pursued correspondence courses, office study, or private study as roads to the bar, the question must arise whether the present sanction given by the State of California to these inferior methods of studying law does not serve as a trap to the unwary and result in the expenditure, by many young men and women who can ill afford it, of time and energy which would be better devoted to securing an adequate law school education or to some other useful purpose." Report 17-19.

<sup>31</sup> Again the conclusion is the writer's, after a study of the enrollment, admission requirements, elimination and discontinuance of study in the various California law schools.

Lincoln went neither to college nor to law school.<sup>32</sup> It is that every man shall have his chance, that the law is open to all, and that there shall be no discrimination against the poor boy who cannot afford an education. It is the same sentiment and tradition which was carried to its logical conclusion in the old provision of the constitution of Indiana, that any citizen of good moral character, without any education or other qualification whatsoever, could practice law.<sup>33</sup> In all but half a dozen states, of which California is one, it has gone down before the weight of public opinion and the demand that lawyers, on whose advice other men are to rely as to their money, their property, their conduct, their whole futures and even their lives, shall be competent and educated men. The persistence in California of the rule of an older day is at least no kindness to the great majority of those who are deluded into pursuing the marsh fire of hope and opportunity which it purports to afford.<sup>34</sup>

There are men in California who have become fine lawyers without ever going to college. There are even men who have become fine

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<sup>32</sup> This fact crops up sooner or later in every discussion of bar admission standards. Few people know what Lincoln himself had to say about it. It will be recalled that in 1855 he went to Cincinnati as associate counsel in an important patent suit brought by Cyrus H. McCormick, and was treated with condescending incivility by the senior counsel, Edwin M. Stanton. On his way home, he had the following conversation with Ralph Emerson, which is reported on page 118 of *AN AUTOBIOGRAPHY OF ABRAHAM LINCOLN*, Compiled and Annotated by Nathaniel Wright Stephenson, and published in 1926 by Bobbs-Merrill Co.:

"Lincoln: I am going home to study law.

"Emerson: You stand at the head of the bar in Illinois now.

"Lincoln: Oh, yes, I do occupy a good position there, and I think that I can get along with the way things are done there now. But these college-trained men, who have devoted their whole lives to study, are coming West, don't you see? And they study their cases as we never do. They have got as far as Cincinnati now. They will soon be in Illinois. I am going home to study law. I am as good as any of them, and when they get out to Illinois I will be ready for them."

This was nearly a century ago.

<sup>33</sup> The constitution of Indiana has been amended.

<sup>34</sup> In some of the discussions of the California 25-year rule which have appeared in bar association proceedings, in legislative debates, and in private communications to the members of the Special Survey Board, the assumption has been made that this rule affords an advantage to men and women who would otherwise be unable to take the bar examination without first securing two years of college training. The figures above demonstrate that the exact contrary is the fact. In the great majority of cases it is a direct disservice to these men and women to encourage them to spend their time, energy and money in law study, when it is known in advance that they will have only about one chance in four of passing the California bar examination in normal course. Report 41. (That is to say, one chance in four of passing even if they get as far as the bar examination.)

lawyers without ever going to law school. Most of them will say that the road they traveled was rocky enough in the days when competition was less keen than it is now. There are still a few men who win through today, as the bar results show. They are exceptional, remarkable men, as their brethren of the bar will testify. But they are pitifully few, and for every one of them there were many others who fell by the way. In other states there are provisions under which the rules may be waived in a deserving case, and the really capable self-educated man who never had a chance to go to college can be allowed to study law. Certainly that is a proper thing. But it is a very different matter to say that because there are such men all of the ignorant, the illiterate, the unqualified within the borders of the state are entitled as a matter of right to prepare for the learned profession, and to enter upon that long and disaster-strewn path.

Again anyone who points out all these facts is likely to be promptly accused of seeking to limit membership in the bar to the sons of the rich. No one wants that, and the number of men who have worked their way through college and through law school give testimony that it has not occurred. But opportunity for the man who never has had an education does not lie in encouraging him to try to enter a profession which requires that education, any more than opportunity for the man who never has studied mathematics lies in letting him try to work on the atomic bomb. It lies instead in affording him the chance to get the education first. With eight state colleges in California, and fifty-five publicly supported junior colleges,<sup>35</sup> the two years of college required in other states are not now so far beyond the poor man's reach as to justify the continuance of the present rule.

#### THE LAW SCHOOLS

The Report<sup>36</sup> deals with fifteen<sup>37</sup> of the California law schools in considerable detail, and attempts to evaluate each.<sup>38</sup> They fall rather definitely into three different groups.

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<sup>35</sup> Report 41.

<sup>36</sup> Report 147-301.

<sup>37</sup> The new School of Law of the University of California on the Los Angeles campus opened with a small first-year class in September, 1949, after the closing date of the Report. It has made an excellent start.

<sup>38</sup> The Report attempts, on page 78, to rank the fifteen schools on the basis of the aggregate of seven factors: admission standards, scholarship standards, breadth of curriculum, teaching ability of faculty, usefulness of library, expenditure per student for faculty

A. *The superior schools.* Seven<sup>39</sup> of the fifteen are classified as good law schools, which provide sound legal education and maintain reasonably high standards of admission and elimination. All of them are approved by the American Bar Association, and all are members of the Association of American Law Schools, whose requirements are higher than those of the American Bar. These seven schools have led the cumulative bar examination results of the past eighteen years.<sup>40</sup> All of them are now accredited by the State Bar of California under the rule which remains to be discussed.<sup>41</sup>

There are differences between these schools, and some of them are better than others; but all of them are adequate, and a capable and qualified student will find a satisfactory preparation at any one of them. But concerning each of them the Report has this significant thing to say: that it is not as good a school as it ought to be. Some physical plants are quite inadequate; some libraries are deficient; some faculties are not what they should be, and all of their salaries are too low by the standards of the better schools in other states; some curricula are too restricted; there are various other defects, and every school has suffered sadly from lack of money—there is, in short, no one of them which cannot be improved. The Report leaves no room

and library, and results on bar examinations. The ranking, which is obviously at least in part impressionistic, is as follows:

1. University of California School of Jurisprudence, at Berkeley. (On July 1, 1950, the name of this school is to be changed to School of Law.)
2. Stanford University School of Law, at Palo Alto.
3. University of Southern California School of Law, at Los Angeles.
4. University of Santa Clara College of Law, at Santa Clara.
5. Hastings College of Law, at San Francisco.
6. Loyola University School of Law, at Los Angeles.
7. University of San Francisco School of Law, at San Francisco.
8. San Francisco Law School, at San Francisco.
9. Golden Gate College School of Law, at San Francisco.
10. Balboa University College of Law, at San Diego.
11. Southwestern University School of Law, at Los Angeles.
12. Pacific Coast University School of Law, at Los Angeles and Long Beach.
13. McGeorge College of Law at Sacramento.
14. Lincoln University Law School, at San Francisco and Oakland.
15. Los Angeles University of Applied Education College of Law, at Los Angeles and La Habra.

<sup>39</sup>California at Berkeley, Stanford, Southern California, Hastings, Santa Clara, Loyola, and University of San Francisco.

<sup>40</sup>Report 20.

<sup>41</sup>*Infra*, p. 203.

whatever for complacency on the part of any California law school. Stanford, which rates as one of the best, is dismissed with the following statement:<sup>42</sup>

This school, although handicapped by inadequate physical plant, limited financial means, and inadequate faculty salaries, is making first-class legal education available to a well-prepared group of students who can afford to attend this institution. . . . the inadequacies of the school's physical plant will have been measurably corrected by 1950; thereafter the principal problem of the school will be financial. If salaries can be paid and conditions maintained that will retain and attract a superior faculty, there is no reason why this school should not reach its goal of becoming one of the top law schools in the United States.

And lest it be thought that this is quoted by way of revenge for ancient football defeats, let it be added at once that the writer's own school is damned with substantially similar faint praise.<sup>43</sup>

B. *The inferior schools.* At the other end of the scale are a group of law schools which can only be described with politeness as very bad. The Report marshals the unhappy facts about each: wretched physical plants, no usable libraries, poor teaching which falls below any minimum acceptable standards by men who are not qualified, admission of almost anyone who has the price, elimination of almost no one, and a miserable record on the bar examinations for many years. One or two of these schools are credited with good intentions; but as to two of them,<sup>44</sup> the Report has this to say:

This school is deficient in all respects, whether judged by entrance requirements, scholastic standards, faculty, administration, physical facilities, library, the success of its graduates in the California bar examinations, or the ability of those in charge of its destinies to understand their responsibility to the bar and to the public. It is not providing legal education of a quality sufficient to justify its tuition fees. It should not continue in operation on its present basis, nor is there any reasonable probability of such improvement as would justify its continuance.

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<sup>42</sup> Report 254.

<sup>43</sup> "This school, although handicapped by a wholly inadequate physical plant and by inadequate salaries, is making first-class legal education available to a small selected group of students with high scholastic records in college, regardless of their financial position. The inadequacies of the physical plant presumably will have been corrected by 1951; thereafter the principal problem of the school will be to establish a salary scale that will attract and keep a superior faculty. If this can be done, there is no reason why this school cannot reach the goal of becoming one of the top law schools of the United States." Report 265.

<sup>44</sup> Report 190, 198-9.

One of the schools which received this dubious accolade has a present enrollment of more than 470 students, many of them veterans; and the last occasion on which any graduate of that school passed a California bar examination<sup>45</sup> was in the year 1941.

The question may well be asked, how such an institution of learning has continued not only to exist but to receive a subsidy in the form of veterans' tuition paid by the government of the United States. The answer does not lie in any vested interest, or in any loyal body of graduates who rally to defend. It lies solely in the California rule which permits anyone who has put in four years studying law, without even attending so bad a school as this, to take his chances on the bar examination. How many men have been deluded by skillful advertising into pursuing that illusory chance, it is impossible to say.<sup>46</sup>

*C. The intermediate schools.* In between lie a group of schools which cannot be called entirely inadequate, but are still not very good. One of these is a thriving commercial enterprise, which in the year 1948-49 showed a law school profit of some \$64,000, and over a period of years has built up out of tuition a healthy surplus of some \$600,000, of which approximately one-half is allocated to the law school.<sup>47</sup> Its standards of admission and of scholarship are low, it spends little money on its faculty or on its library, which is feeble, some of its teaching is good but much of it is not; and from October, 1946, through April, 1949, thirty-seven per cent of its students passed the bar examinations.<sup>48</sup> It is difficult to escape the conclusion that it could be a better law school than it is, but that it has only been as good as it has had to be.

The other schools in this group are small and struggling institutions, operated by very sincere, earnest and devoted men who are seeking out of motives of public service to provide good part-time legal education where it would otherwise be lacking. In spite of very great financial difficulties, they have achieved a degree of success, and are making a very determined effort to maintain standards and to operate good law schools. Their weakness is that their financial

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<sup>45</sup> Report 114.

<sup>46</sup> The school refused to cooperate in the Survey, or to give information concerning its student body. Report 178-181.

<sup>47</sup> Report 242. Two individuals each receive a salary of \$18,000 for administration, half of which is chargeable to the law school. The nominal dean of the law school is a man of high scholastic standing but has no administrative control, devotes only part of his time to his position, for which he receives a salary of \$4,000. Report 239-240.

<sup>48</sup> Report 232-243.

position is precarious; and when the manna of the veterans' tuition ceases to rain from heaven, they face an uncertain future.

Good legal education costs money. The University of California, in its law school at Berkeley alone, has spent on each graduating student an amount in excess of \$2,300—a figure which takes no account of any allocation of the general overheads of the University. The 1948-49 budget called for expenditures of \$39,850 for the law library alone, and the deficit of the law school for that year, met by the appropriation of public funds, was \$137,805. These figures are low in comparison with those of the great eastern law schools; but they should be compared instead with those of a night law school in San Francisco,<sup>49</sup> whose entire budget for the same year, supported entirely by tuition, was \$18,493, and whose annual faculty salaries averaged \$266 a man.

It would be cheap and easy for the dean of a state university law school, with the resources of California behind it, to sneer at the quality of education offered by such a school. Nothing is more remote from the writer's intention or desire.<sup>50</sup> The difficulties of part-time legal education are sufficiently great under even the most favorable conditions. The busy practicing lawyers who devote their evenings, often out of nothing more than a desire to help, have not the time for the long and patient study of a subject that makes for good teaching. All too often the course can be nothing more than a rehash of classroom notes taken from another man's teaching ten years ago. Nor have students who must work a full day the time to study cases closely. The factor of fatigue alone, when both professor and student have put in a good eight hours before the class even begins, is a major obstacle, and the student who goes to sleep in night school is by no means a rare phenomenon. Few lawyers are willing to continue such teaching for more than a few years, and the faculty turnover is high, with new professors to be recruited at frequent intervals. For obvious reasons they tend to be the younger lawyers, recently admitted to the bar.

When there is added to these difficulties the crowning one of no money, the task becomes all but impossible. When the school cannot operate without tuition, the pressure becomes almost irresistible to lower standards, to admit everyone, however unqualified, and to fail

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<sup>49</sup> Report 226, 230.

<sup>50</sup> The writer has taught for a few years in a night law school, and has not only an appreciation of the difficulties but a lively sympathy with those who are trying to meet them.



no man so long as he can pay. If any qualms of conscience arise, they can be salved with the comforting thought that the man is entitled to his opportunity, and that after all a century ago Abraham Lincoln never even went to school. The inevitable result is a bad record on the bar examinations, which tends to drive the good men away from the school and to complete the vicious circle. Full honor, and a salute of twenty-one guns, is due to the deans of a small number of night law schools in California who have resisted this pressure, have insisted on standards, have refused to admit men who were not qualified, and have failed students of low scholarship even though their money was badly needed.<sup>51</sup>

The American Bar Association has set up minimum standards for the approval of any law school; and in many other states these standards have been adopted and must be met before the graduates of any school can take the bar examination. In the main they are quantitative standards, laying stress on such matters as the number of full-time teachers and an adequate library, and they have been criticized as not demanding enough in the way of quality. They are at least good standards of the irreducible minimum, and it is idle to pretend that they are not. Eight of the California law schools meet them, and there are few others that would not meet them if they could. There are not many deans who would refuse to accept an adequate law library if it were presented to them, or to hire their best part-time professors away from practice into full-time teaching if someone would give them the money to do it. But to insist on standards which cost money when there is no money available is to insist on the manufacture of bricks without straw. One passage in the Report<sup>52</sup> stands out above all others:

The law schools in California, in common with law schools throughout the United States, are suffering from financial starvation, and have been from the time of their organization. Vast sums of money have been made available for education and research in medicine and in various scientific fields, but practically none has been provided for the education of the bar . . . .

This is the keynote for the long-range improvement of legal education in the state of California and anywhere else. Ultimately, superior legal education is a matter of superior personnel and adequate facilities for their work. But neither can be secured except by paying

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<sup>51</sup> For example, the San Francisco Law School, which from 1946 through 1948 admitted only 38 per cent of the applicants, and dropped a high percentage of its students for deficiencies in scholarship. Report 224-225.

<sup>52</sup> Report 74-75.

for them. It is the duty of the organized bar, even more than it is the duty of the law schools, to demonstrate to the public that the price should be paid.

The final fact about the law schools which the Report makes clear is that the geographical distribution of the good ones is not good. Of the eight superior schools, five are concentrated in the San Francisco area, and the other three, one of them only newly started, are in Los Angeles. The facilities for good part-time legal education, where the student needs the most help,<sup>53</sup> are especially inadequate. The Report discusses at length<sup>54</sup> the situation in Los Angeles, San Diego and Sacramento, and concludes that in all three cities there is a real need for good part-time law schools which is not being met. Even in San Francisco, where the situation is the best in the state, the recommendation is made that two of the good night schools should merge with the Hastings College of the Law to create a single strong school with night classes.<sup>55</sup> This suggestion of a shotgun marriage<sup>56</sup> has been received by all three schools with a definite lack of enthusiasm. It is at least not necessary for the present; but it remains as a suggested possibility for the indefinite future if financial difficulties should ever change matters for the worse.

#### THE BAR EXAMINATION

The picture which emerges from the Report is thus one of too many law students, too many of them unqualified and with little chance of ever becoming lawyers, and too many poor law schools in which they are induced to spend their time and money. The saving factor in the California situation, and the only dike which stands in the way of the inundation, is the state bar examination.<sup>57</sup>

The Report deals with the examinations at length,<sup>58</sup> and concludes

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<sup>53</sup> "If part-time professional instruction in law is to be given, it is highly important that it be of the best possible quality. Studying law at night requires an unusual degree of perseverance, energy and concentration. The night law student needs help from his teachers more than does the day student." Report 82-83.

Of the law students in the San Francisco metropolitan area, 22.9% are attending classes at night, while in the Los Angeles metropolitan area the proportion of night students is 35.8%. Report 81.

<sup>54</sup> Report 84-91.

<sup>55</sup> Report 88-89, 142.

<sup>56</sup> The phrase is that of Dean Paul S. Jordan of Golden Gate College School of Law.

<sup>57</sup> "The result, it has been well said, is that the California bar examiners are in the position of holding defensively on the one-yard line. The bar examination system is the only protection which the people of California have against an influx of uneducated and unqualified persons into the legal profession." Report 93.

<sup>58</sup> Report 93-118.

that they are excellent. In this it agrees with the preliminary report of the survey now being conducted by the American Bar Association,<sup>59</sup> which says that California has the best bar examination questions in the country. The Bar Examiners are men of ability and integrity, and their conscientiousness, high-mindedness and devotion to duty is beyond all question. The examinations are conducted with a strict system of double-coding which means that no one grading any book can have any clue as to the identity of the applicant, and they are absolutely impartial and fair.<sup>60</sup> "No applicant, whether from within or without the state of California, . . . has any basis for thinking that he has been or can be discriminated against."<sup>61</sup> All the answers of the applicants receiving a composite grade between 65 per cent and the passing grade of 70 are reappraised by a special reviewing staff. After the examination has been given, the questions are submitted for independent analysis to members of the California law school faculties who are teaching in the various fields. So far as administration is concerned, nothing is omitted that can be done to insure that the examination is a fair one and fairly given. The bar examination grades show a reasonably high degree of correlation with the grades of the students, not only in the California law schools, but in those outside of the state such as Harvard, Yale and Michigan.<sup>62</sup>

The Report offers a number of minor suggestions, but makes only two major criticisms of the California system. One is that young lawyers are employed as readers and reappraisers. The difficulty here is one of time and money, since the number of books to be graded is formidable, and there is occasional complaint even now about the delay in announcing the results. The Report does not find this to be an unmitigated evil, but suggests only that the Bar Examiners might do more in the way of discussion with the readers and check-reading.<sup>63</sup>

The second criticism, which is more serious, is that too many subjects are required on the bar examination.<sup>64</sup> Altogether there are

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<sup>59</sup> BAR EXAMINATIONS AS TESTING DEVICES (mimeographed) p. 58, n. 100.

<sup>60</sup> "The Special Survey Board is prepared to state categorically that there is not the slightest partiality in the administration of the bar examination or administration procedures in favor of or against any law school in the state of California or outside it." Report 122.

<sup>61</sup> Report 97.

<sup>62</sup> The correlation is relatively low for California and Stanford, which have higher admission standards than any of the other schools listed, and a more homogeneous student body.

<sup>63</sup> Report 99, 101.

<sup>64</sup> Report 53-57.

twenty, and together they amount to the traditional law school curriculum of a generation ago.<sup>65</sup> Some revision of the list may well be called for in the light of the present-day practice of law and current legal education in the better schools. But apart from this, the mere number of the required subjects has the effect of prescribing the courses which will be taken in all California law schools by nearly all of their students. It is reasonable to expect, and the experience of the schools has been, that students will take the bar courses to the exclusion of all others. When there are so many, little or no room is left for anything else. The result has been that in such schools as California at Berkeley important, valuable and useful courses such as labor law, creditors' rights, corporation finance, federal jurisdiction, insurance, legislation, government regulation of business, restitution, or a second year of taxation are given year after year to a bare handful of students, notwithstanding the large number who would like to take them. The effect has been that of a straightjacket. The curriculum is simply frozen. Not only is it impossible for any school to omit any of the required subjects in any year, but the teaching of anything else, however desirable it may be, takes on the aspect of an empty gesture.

The Report recommends<sup>66</sup> that the number of required subjects be reduced, with provision at the same time for an equal number of optional questions on several other subjects, which shall "include subjects of modern importance not now included." This kind of change has been made in a number of other states, and it is recommended by the American Bar Association. From the point of view of the better California law schools it is a consummation devoutly to be wished. It must be recognized, however, that there are some difficulties in the way, and that there are now law schools in the state which will offer only the bare minimum number of subjects that they must, and will seize any opportunity to concentrate on a few optional subjects and offer no courses, or only token courses, in the rest.

A tremendous burden and a heavy responsibility rests upon the California bar examination as the only real barrier to the admission of the unfit, and upon the men who must administer it and alone make

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<sup>65</sup> The subjects are: Agency, Bills and Notes, Community Property, Conflict of Laws, Constitutional Law, Contracts, Corporations, Criminal Law, Equity, Evidence, Mortgages, Personal Property, Persons and Domestic Relations [Pleading and Practice], Real Property, Sales, Taxation, Torts, Trusts, and Wills and Administration. Report 122 note.

<sup>66</sup> Report 144.

that decision. Instead of being the last in a series of determinations of the individual applicant's achievements "in the prescribed course of general and professional education which modern legislation requires before the neophyte may become a candidate for admission to the Bar,"<sup>67</sup> the one examination carries the entire load. There is no indication in the Report that the responsibility has not been honestly and effectively met. There is every indication that so great a burden should not rest solely upon the Bar Examiners.

#### THE ACCREDITATION RULE

The Report discusses<sup>68</sup> the California rule as to the accreditation of law schools, which has lately been a matter of controversy in the press. The rule is peculiar to California, and unique in the United States. Briefly stated, it is that the accreditation of any California law school for any given year depends upon the success of its former students on the state bar examination for the last three years; and that for any school to be accredited its students who take the examination for the first time must have maintained a cumulative average of 60 per cent success over those examinations.

The rule is fixed by the Board of Governors of the State Bar, upon recommendation of the Bar Examiners. It is not an accreditation rule at all, in the sense in which accreditation is used in all other states, which is that only the graduates of accredited schools will be permitted to take the bar. The State Bar is without power to establish a genuine accreditation rule in that sense. This is because the State Bar Act<sup>69</sup> provides that anyone who has "studied law diligently and

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<sup>67</sup> Committee on Cooperation between the Law Schools and the State Bar, *Report of the Section on Bar Examinations and Statistics*, 16 CALIF. STATE BAR J., part II, 98.

<sup>68</sup> Report 111-117.

<sup>69</sup> CALIF. BUS. & PROF. CODE § 6060, which provides:

"To be certified to the Supreme Court for admission and a license to practice law a person . . . shall:

- (a) Be a citizen of the United States.
- (b) Be of the age of at least twenty-one years.
- (c) Be of good moral character.
- (d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination.
- (e) Before beginning the study of law, have completed at least two years of college work or have reached the age of twenty-five years.
- (f) Have registered with the examining committee as a law student within three months after beginning the study of law. The examining committee, upon good cause being shown, may permit a later registration.
- (g) Have either:

in good faith for at least four years" is eligible to take the examination, even though he has failed out of a law school or never has attended one. The accreditation rule was, however, adopted in 1937, two years before the statute, which merely accepted the policy of the Bar Association at the time. The rule was adopted at a period when there were twenty-one law schools in the state, the great majority of them very bad. It was apparently something of a makeshift and a compromise, which was expected over a period of years to strengthen the good schools, to lead to the improvement of some of the others, and to force the elimination of the rest. In furtherance of this general purpose, the required percentage of passing students has been gradually raised from 30 when the rule was initiated to 60 at the present time.<sup>70</sup>

Since the Bar Examiners have had no power to apply any real sanctions, the Report concludes that "the actual effect of the rule moreover has been comparatively slight."<sup>71</sup> It has accomplished only four things:<sup>72</sup>

1. Students in unaccredited law schools are required to pass a state examination at the end of their first year, which has meant the elimination of a substantial number of them. The examination has, however, not accomplished its full object, because it has been graded much more leniently than the final bar examination.<sup>73</sup> It might be more effective if it were graded on the same basis, and to that extent it has perhaps not had a fair trial. At best, however, it cannot prevent a considerable number of men from wasting at least one year in bad law schools, or even from obtaining their entire legal education there.

2. Students in unaccredited full-time schools must study law for four years instead of three. This has meant little, as the students in

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1. Graduated from a law school accredited by the examining committee requiring substantially the full time of its students for three years.

2. Graduated from a law school accredited by the examining committee requiring a part only of its students' time for four years.

3. Studied law diligently and in good faith for at least four years.

(h) Have passed a final bar examination given by the examining committee.

(i) Have passed during the period of his law study such preliminary examinations as may be required by the examining committee. This requirement does not apply to students of law schools accredited by the examining committee."

<sup>70</sup> In 1937 the required percentage was 30. In 1938 it was increased to 35, in 1940 to 40, in 1942 to 45, in 1947 to 50, in 1948 to 55, and in 1949 to 60. Report 113-115.

<sup>71</sup> Report 112.

<sup>72</sup> Report 112.

<sup>73</sup> Report 106.

unaccredited schools are almost entirely part-time students, who are required to study for four years in any event.

3. Unaccredited schools cannot accelerate their program to less than four years, as for example by summer work. This has meant little, since a part-time program is very difficult to accelerate anyway.

4. Unaccredited schools may not advertise that they are "accredited by the California Committee of Bar Examiners." This again has meant little, since the same schools may, and do, advertise that they are "recognized law schools, chartered by the State of California, whose graduates are eligible for the state bar examinations." The distinction is not one that the ordinary reader of advertising will comprehend.

Except to this extent, the accreditation rule has been more or less a gesture, indicating that the Bar Examiners find certain schools acceptable, but do not approve of the rest. There are nevertheless two things to be said for the rule. One is that it has been rather surprisingly successful in separating the sheep from the goats, and that the list of the schools which are accredited at the present time<sup>74</sup> is the list of ten which are found by the Report to be the ten best in the state.

The other is that over a period of years the rule has in fact tended to improve the caliber of legal education in California. Like the bundle of hay held out in front of the horse's nose, it has provided a continued incentive for progress, and it is quite probable that several of the law schools would not be as good as they are today if that incentive had not existed. The moral effect of the rule, with the publicity given to the accreditation, and the fear of dwindling enrollment if it were denied, has not been negligible.<sup>75</sup> Since the rule was first adopted, six unaccredited and very bad law schools have gone out of business. While no one can say with any certainty that this was not due to other causes, and that the shortage of students during the war would not have accomplished it anyway, at least the schools eliminated were

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<sup>74</sup> Report 112.

<sup>75</sup> The accredited schools, with their three-year averages following the October, 1949 bar examination, are as follows: California at Berkeley 91.6; Stanford 89.6; Southern California 85.5; Loyola 75.5; University of San Francisco 74.6; Santa Clara 67.4; San Francisco Law School 66.7; Hastings 65.0; Golden Gate 60.0. California at Los Angeles is accredited, although none of its students have yet taken the bar examination.

The unaccredited schools are: McGeorge 50.0; Balboa 44.4; Southwestern 40.2; Pacific Coast 37.5; Los Angeles University of Applied Education 30.0; Lincoln University 0.0.

The records of three eastern law schools for the same period are: Harvard 77.9; Michigan 75.8; Yale 64.1.

very low on the list. There is reason to think that more of them might have gone if it were not for the utterly indefensible governmental policy which has continued to pay the way of veterans through some of the worst of the schools.

Notwithstanding all this, the rule has been condemned by the dean of every law school in California. Their motives are perhaps not all the same, and some of them no doubt would object to any rule whatever which interferes with the freedom of their particular schools to admit everyone and try to put him through the bar. "But the testimony from the accredited schools, and especially from the schools approved by the American Bar Association, cannot be lightly disregarded."<sup>76</sup> The writer cannot speak for any other law school; but the faculty at Berkeley do not like the accreditation rule. The writer's own objections to it are the following:

1. It is quite obvious from the Survey that in the twelve years the rule has been in force it has not succeeded in eliminating some of the law schools which should be put out of business, or in improving the standards of all the schools which are capable of improvement. This is largely due to the fact that the statute does not permit the Bar Examiners to apply any effective sanctions against the unaccredited schools.

2. In spite of the record, the results on bar examinations in any particular year do not necessarily bear any close relation to the merits of the school from which the students come. A good law school is to a considerable degree at the mercy of accident. Students may fall ill and insist on taking the examination anyway; they may be disappointed in love, or distracted by family troubles, or forced to work, or merely over-confident, and fail to review for the examination; they may take benzedrine pills and go to pieces; or they may even have the bad luck to encounter questions on the few parts of their law school course from which they were absent, or which they fail to remember. Such men may pass the examination without difficulty on the second attempt; but their failure on the first one is charged against the school. The three-year average takes care of these difficulties to some extent; but where the numbers are small a run of such bad luck may be almost fatal to a good law school. A striking illustration is the record of the University of Santa Clara College of Law in October, 1949, when seven of its students took the examination and six of them failed. Santa Clara is still as good a law school as it was during the

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<sup>76</sup> Report 116.



immediately preceding three years when it maintained an average of 76.9 per cent.<sup>77</sup> As the Report points out,<sup>78</sup> the statistical accuracy of the bar results becomes entirely unreliable when the number of students is so small.

The fact is that success in the bar examinations is not so much a measure of the excellence of a law school as it is of the kind of students who come to it and the number of them it fails. This is well illustrated by the latest records from the writer's own school. On the October, 1949, examination eight men from the school failed. One of these stood about in the middle of a graduating class of 78; the other seven were all included in the bottom sixteen of the class. If the school had been willing to fail an additional twenty per cent of its students, it could have maintained a record on that examination of 98 per cent instead of the 89.5 it actually had. It did not fail that additional twenty per cent because to do so it would have been necessary to fail nine other men who did pass the bar, and most of those who did not may be expected to pass it on the second attempt. They were obviously entitled to their chance, regardless of the school's accreditation record. But the point of the figures is, that if the school had had only those lowest sixteen students, then with the same faculty, the same teaching and the same standards its record on that examination would have been 56.3 per cent, which is below the minimum required by the accreditation rule. That the figure which actually resulted was not 56.3 per cent, or that it was not 98 per cent, was not due to the quality of legal education provided by the school, but only to the kind of students who entered it and the number of them it failed.

In other words, within some reasonable limits a poor record on the bar examinations does not necessarily mean a poor law school. It may mean only a high proportion of inferior students, or a leniency in failing the worst of them that may need correction. Where this is the case, even a slight elevation of the bar examination standards in dealing with marginal cases may have a marked effect on the record of a particular school. The fact that the California rule has succeeded in arriving at something not too far from the actual rank of the schools is due in no small part to the fact that the better schools attract the better students in the first place, and their elimination of the weak ones is more merciless.

### 3. The inevitable result of the system is pressure upon all the law

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<sup>77</sup> Report 290.

<sup>78</sup> Report 113.

schools to fail all of their doubtful students. This pressure is felt even by the stronger schools, which try to resist it, but it is especially heavy upon the schools in the middle range. A school which is in any danger of losing its accreditation, or which is trying to get it back, does not dare to give the benefit of the doubt to any man. When the bar results for any year are bad, the school tightens up to preserve its average, and the sins of that class are visited upon its successors. The result is a constant fluctuation in standards, which cannot be desirable. The critical point is the moment of admission to the last year of law school, after which the student is charged against the school even though he fails to graduate; and as the Report indicates,<sup>79</sup> the second-year failure records of several of the schools are unduly high in relation to those of the first year. The very bad schools, which have no hope of accreditation, of course feel no such pressure, and continue merrily on their way with few failures, or none at all.

4. The bar results for any school are affected by the bar review courses given in San Francisco and Los Angeles during the interval before the examination, and by similar review courses given before or after graduation by some of the schools themselves. No one disputes the value of a good review course, although its value becomes questionable when it is little more than an attempt to get "the inadequately prepared and intellectually weak through the bar examination"<sup>80</sup> by predicting what the questions are likely to be. Most of the review courses given in California are good ones; but it should be obvious that their very excellence is a factor which adds to the unreliability of the bar results as an index of the kind of education the student has already received.

5. There is obviously something wrong with a system under which a law school may be accredited one year, unaccredited the next, and accredited the third, with no visible change in the school in the meantime. Some of the California schools have popped on and off of the accredited list in a manner almost as startling.<sup>81</sup>

6. One feature of the rule which has caused difficulties in some schools is that any student who is admitted to the final year of any

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<sup>79</sup> Report 46.

<sup>80</sup> Report 306.

<sup>81</sup> Balboa was accredited in 1937, 1938, 1945, 1947 and 1948 (Report 147). Golden Gate was accredited from 1939 through 1943, and has been accredited since 1946 (Report 158). Southwestern was accredited in 1938, 1939, and from 1944 through 1948 (Report 232).

law school is charged against it if he takes the examination without delay, even though he does not graduate. This provision was introduced with the laudable purpose of preventing a school without a conscience from taking a student's money for the entire course and then refusing to graduate him in order to preserve its record on the bar. It obviously cannot prevent any school from taking the man's money up to the final year and then dropping him. It is certainly arguable, as the Report has said,<sup>82</sup> that if a student is a failure the school ought to be able to find it out before his last year. But the man who coasts toward the finish is not exactly unknown to law schools, and there are a sufficient number of men who leave the part-time schools during the year but take the next bar examination to inflict a real injustice upon some of the schools.

7. The worst feature of the rule, from the point of view of the better schools, is the preoccupation with bar results, amounting almost to a disease, which it has induced throughout California legal education. The Report says that the Survey Board never have observed anything like it anywhere else in the United States.<sup>83</sup> The schools are engaged in a rat-race of competition with one another for standing on the examination, and the published figures are the only criterion by which anyone judges them, no matter what their other merits may be. As a result, in far too many of them everything else is sacrificed to that single end. A bad year on the examination brings alarmed inquiries from the alumni as to whether the school has gone to pot and suggestions that the dean be fired, reminiscent of the clamor which breaks over the head of a football coach after a bad season.<sup>84</sup> Many schools are forced, whether they like it or not, into the position of giving one long cram course for the bar examination.<sup>85</sup>

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<sup>82</sup> Report 115.

<sup>83</sup> Report 116. A footnote states that the experience in teaching and practice of the members of the Special Survey Board covers Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New York and the District of Columbia, and that all the members of the Board have had occasion to familiarize themselves with legal education and bar admission procedures throughout the United States. The writer's own impression, based on teaching in seven law schools in as many states, and visits to a total of 33 law schools in 25 states, is the same.

<sup>84</sup> "As the dean of one approved and accredited school has put it: 'The school dean is put in the position of a football coach in a competition as to who gets the highest percentage in the bar examination.'" Report 112-113. (This was not the writer.)

<sup>85</sup> "In this connection two specific instances are illustrative. At a hearing in Los Angeles on January 14, 1949, a student from one of the approved and accredited law schools in the southern part of the state, arguing for the continuance of semiannual

The evil of this is only aggravated by the number of required subjects and the frozen curriculum, to which reference already has been made.<sup>86</sup>

Surely it is not the only function of a law school to coach its students for an examination. Surely everything else should not be jettisoned for that. Surely it is part of the job to prepare a man adequately for what he is to do after he is admitted to practice. If he is to spend three days taking the bar, and forty years in the practice of law, it may ultimately not be so important that he can answer from memory a question on a rule of law which he can, after all, look up, as that he shall know what to think about when he sits down to draw a will. When the lawyers of California complain that the graduates of some California law schools know only what is in books, let them give a thought to the competition for standing on the bar examination.

Since the writer's school is currently at the top of the accreditation list, it is an appropriate moment to say that the school does not regard that fact as the brightest jewel in its crown; that it was as good a school, and perhaps a better one, when it did not occupy that position, and will still be as good a school if it falls from it; and that the greatest single obstacle to its improvement is the necessity of preparing its students in elaborate detail for the questions they are to be asked on the bar.

#### REMEDIES

These objections are surely valid ones; but the question remains, what can anyone do about it? Assuming that the accreditation rule is a bad one, is there anything acceptable to put in its place? The answer is not an easy one to give. Certainly nothing in the Report, or in these comments, can carry any reproach to the Committee of Bar Examiners, or to the Board of Governors of the State Bar Association, who are honest, able and devoted men, faced with a problem of extreme difficulty.

It is simple to say that the reasonably good law schools in California should be accredited outright, and that only the graduates of those schools, or of comparable schools in other states, should be ad-

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student examinations, stated to the Committee: 'All of us are going to law school for one purpose only—to learn to pass the bar examination.' Again, the dean of an approved and accredited school stated to the Special Board that his school, and every law school in California, was to all intents and purposes a three-year cram course for the bar examination." Report 116-117. (Again this was not the writer.)

<sup>86</sup> Text after note 64, *supra*.

mitted to the California bar. That is the position of the American Bar Association, and it is the rule in all but a very few other states. It is at present quite impossible in California.

It is impossible in the first place because of the statute<sup>87</sup> which gives any man who has studied law for the required length of time the unqualified right to take the bar examination and to be admitted if he can somehow pass it, even though he may have gone to a very bad law school, or failed out of it, or never have gone to any law school at all. Any attempt to change that statute would undoubtedly meet with vigorous opposition, based on the Abraham Lincoln tradition, with the cry that the effort is being made to close the law to all but the sons of the wealthy. Yet there is no visible way to put the very bad law schools out of business, and to protect the unfortunate deluded people who are induced to enter upon a four-year struggle that is all but hopeless, until that statute is changed. The effort should at least be made by the bar.

Similar changes have been made in other states because the supreme courts have long since assumed full control over legal education and admission to the bar. The power of the courts to do so is unquestioned. It has been recognized in California for at least fifteen years since *In re Lavine*,<sup>88</sup> where the Court said:

An attorney is an officer of the court and whether a person shall be admitted is a judicial, and not a legislative, question. However, notwithstanding the inherent power of the courts to admit applicants for licenses to practice law it is generally conceded that the legislature may prescribe reasonable rules and regulations for admission to the bar which will be followed by the courts. The regulations so prescribed must, as stated, be reasonable and shall not deprive the judicial branch of its power to prescribe additional conditions under which applicants shall be admitted. . . . such legislative regulations are, at best, but minimum standards unless the courts themselves are satisfied that such qualifications as are prescribed by legislative enactment are sufficient. The requirements of the legislature in this particular are restrictions on the individual and not limitations on the courts. They cannot compel the courts to admit to practice a person who is not properly qualified or whose moral character is bad. In other words, the courts in the exercise of their inherent power may demand more than the legislature has required.

It is thus apparent that the statute is in force only because the Court has chosen to permit it to remain in force rather than to require

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<sup>87</sup> Note 69, *supra*.

<sup>88</sup> 2 Cal. 2d 324, 41 P. 2d 161 (1935) quoted in the Report 130-131.

any higher qualifications for admission to the bar. One effective remedy for the present situation therefore lies in the hands of the Supreme Court of California. It may at any time decide to take over the control of admission and the accreditation of law schools, and either appoint its own Committee of Bar Examiners or, as in a number of other states, delegate that appointment to the integrated bar. The Survey Board concludes<sup>89</sup> that any permanently satisfactory solution of the admission problem in this state will require such action by the Court. One may readily understand the reluctance to assume the responsibility and to take such a step, particularly in a state where the referendum makes amendment of the constitution a relatively easy matter. The Survey Board may nevertheless be right.

But even if the obstacle of the statute were removed, a real accreditation rule would be a present practical impossibility in California. Too many of the weaker part-time law schools which it would necessarily eliminate are filling, however inadequately, a real need in their communities which no one else is in a position to meet. A good example is the situation in the city of Sacramento, where a law school which is ranked as one of the four weakest in the state<sup>90</sup> is making a desperate and very honest effort, with no facilities whatever and very little money,<sup>91</sup> to provide the only available legal education in an area which has a total population of some 637,000, and which is crammed with state employees who have special reason for studying law and obtaining admission to the bar to advance their civil service careers.<sup>92</sup> It is no answer to that situation to say that that school should go out of business. There is nothing to take its place. The alternative is that the Sacramento part-time students shall travel to San Francisco for their legal education.

The Report finds<sup>93</sup> a situation almost as bad in the San Diego area, with a present population of 562,000 and a rapid rate of growth. Perhaps the worst picture of all is in Los Angeles, where the entire metropolitan area, one of the greatest in the nation, contains only one law school offering good part-time legal education, with limited facilities and room for only some 160 night students.<sup>94</sup> It is all very well to say that all California law schools should be required to meet the

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<sup>89</sup> Report 132.

<sup>90</sup> Report 86.

<sup>91</sup> Report 209-216.

<sup>92</sup> Report 86.

<sup>93</sup> Report 84.

<sup>94</sup> Report 89-91, 199-209.

standards of the American Bar Association—they are good standards, and the schools which fall below them are not good law schools. But when they cannot be met because of lack of money, and insistence upon them means that there will be no law schools left where they are needed, they can remain nothing more than a hope for the future. The Report contains the best statement of the problem that has ever been made:<sup>95</sup>

It has not always been sufficiently realized that any attempt to raise standards for admission to the bar necessarily presupposes the existence of, or the possibility of immediately creating, facilities for legal education that will enable all or substantially all persons qualified for law study to prepare themselves to meet the new standards. To use an extreme illustration, if there were no law schools, it would be neither possible nor desirable to prescribe graduation from law school as a prerequisite to taking the bar examination. In California today it is similarly impossible immediately to prescribe graduation from a law school approved by the American Bar Association as a prerequisite to taking the bar examination when, in Southern California, the approved schools are accommodating only 44.4% of the young men and women desiring to study law. Adequate facilities for legal education must be established first; higher standards for admission can then follow. On the other hand, the prospective and gradual imposition of higher standards may well go hand in hand with the development of facilities for legal education adequate to meet those standards.

Improvement of the weaker law schools, or the creation of new ones, would take money, in a state where the lack of money has been the root of all evil. The Report makes various suggestions<sup>96</sup> as to the merger of existing law schools, or the taking over of some of them by others, which in the nature of things are unlikely to occur in the near future, and which the State Bar of course has no power to compel. Concerning these suggestions, it can be said only that even the strongest schools at the present time lack the funds to do what is proposed.

The most revolutionary suggestion, however, is that the University of California should enter the field of part-time legal education and either take over existing night law schools or establish new ones in at least some of the larger cities.<sup>97</sup> The Report says flatly that the University is not discharging its responsibility to the state, the bar and the public, and that it is the only existing agency which has or can obtain the money to do what is needed.

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<sup>95</sup> Report 91-92.

<sup>96</sup> Report 142-143.

<sup>97</sup> Report 85, 86, 88, 90.

At the time this article is written<sup>98</sup> the Report is too newly published to afford any opportunity for those in positions of responsibility in the University to consider the baby which is thus unexpectedly laid upon their doorstep. Until there has been such opportunity, the writer obviously cannot speak for the University, or even for his law school, and can offer only a few very tentative and inconclusive reflections of his own.

There can be little doubt that the University of California has not been doing its share of the job of legal education in the state, and that at least some part of the blame for the present situation rests upon its shoulders. Because of limitations of facilities which are almost beyond belief for any major law school, the University's funds have gone to educate only somewhat more than six per cent of the law students now registered in California. This is in remarkable contrast to the large state universities of the middle west, where the percentages range from 25 to 90. It is at least arguable that it is the responsibility of the state to provide a good legal education at low cost for any qualified person who wishes to take advantage of it. On that basis the law school at Berkeley, with its enrollment of 275 year after year, has been pitifully inadequate. It has been able to take only one applicant out of four, and there are probably as many more who do not apply because they know that they cannot be accepted. In particular the recent flood of veterans have received shabby treatment at the hands of the state, and only a small number of them who have college degrees and high averages have been taken care of. Until 1949 the University did nothing at all outside of the San Francisco area.

The University, in short, has been educating the cream, and the milk has been left to other schools, some good, some weak, some very bad. This situation is now about to be remedied. Within two years a new law building at Berkeley will permit the enrollment of that school to be at least doubled, with room for further increase in size as the state continues to grow. Within the same period the new school established last year at Los Angeles will have a building which will permit it to accept an equal number of students. Both schools are expected to be improved in respects other than mere size. It may be that this expansion and improvement, already under way, will absorb all the resources and energies of the University in the field of legal education for a few years to come. If there is to be further expansion, and particularly if the University is to enter the night school field, it will need

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<sup>98</sup> February 8, 1950.



a great deal more money. There may be reasonable doubt whether the legislature could be expected to provide that in the absence of a popular demand which is not in evidence at the present time.

Furthermore, the University is acutely aware that there are other good law schools in California, and that any great and sudden expansion on its part might affect them adversely.<sup>99</sup> It expects to move slowly. It has no desire to do anything which would be ruinous to any other reasonably satisfactory school. If there is need for it to intervene in the part-time field, it should obviously do so only after careful study of the situation and of the effects of the step. As for coming to the aid of the weaker schools, it is one thing to rush to the rescue of a man who is crying for help, and quite another to force rescue upon anyone who has not asked for it. It is common human experience that the lot of the uninvited rescuer is a most unappreciative reception.

At least it is clear that improvement of the California law schools will be a slow process, requiring money, which may take several years. As to what can be done in the meantime, the Report makes one concrete recommendation<sup>100</sup> which is worthy of immediate consideration by the State Bar. It is that those schools which are approved by the American Bar Association<sup>101</sup> be fully accredited outright, and freed from the percentage competition. This would at least relieve the better schools of the pressure to fail all their marginal students, and would lessen to some extent the intense concentration on bar examination results which is now one of their greatest evils. If this could be done, and if the number of subjects required for the bar could be cut down,<sup>102</sup> these schools could be released from shackles which are extremely irksome.

There is only one objection that can be offered to this proposal. The writer has heard it said that some of the approved schools are not to be trusted, that their standards are still none too high and their improvement since 1937 has been reluctant and forced upon them by

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<sup>99</sup> "At the present time, the University of California, by expanding sufficiently the capacity of the School of Jurisprudence at Berkeley and that of the new law school about to be opened at Los Angeles, could destroy or cripple every other approved law school in the state. This would be disastrous to legal education in California. If the University is to expand in the field of legal education, which is believed to be desirable, this should be done in a way which will not injure the other approved schools of the state but will meet the demand for first-rate part-time legal education at low cost." Report 264.

<sup>100</sup> Report 126.

<sup>101</sup> California at Berkeley, California at Los Angeles, Stanford, Southern California, Hastings, Santa Clara, Loyola, University of San Francisco.

<sup>102</sup> See text following note 64, *supra*.

the accreditation rule, and that if they were to be relieved of it they would promptly lapse into the old ways. If this is true it is a serious objection. The writer does not believe it to be true. All of the schools in question, in addition to their American Bar approval, are members of the Association of American Law Schools, whose requirements and standards are materially higher. The incentive to retain that double approval, without more, should be a sufficient assurance that they will not lapse. It is at least a sufficient assurance that these schools are as good as others which are accredited without challenge in other states. Furthermore, all of these schools have maintained on the bar examinations over a dozen years a sufficient margin over the minimum required for accreditation to indicate that they are not disposed to do as little as they have to. But if there is doubt, it is possible for the accreditation to be for a limited period only, for ten years or even five, with re-examination at the end of it.

As for the other schools, there are two possibilities. One is that the bundle of hay shall continue to be held out in front of Dobbin, and that the present percentage rule, unsatisfactory as it is, shall remain in force. It has, after all, effected some improvement in some schools. The other is that a decision shall be made now as to which of these schools are entitled to survive and which should perish, taking into account the need that they fill in their particular communities, and that the public be informed of that decision. The Survey Report, which is the most complete study of its kind ever made, affords a sufficient basis for decision, and few would have any difficulty in making it. There is a point at which very bad legal education becomes worse than none at all; and some of these schools are quite undesirable institutions, engaged in a form of misrepresentation to the gullible which is an indirect reproach to the bar. They can only be savagely condemned by any honest judgment. Others, which are meeting a very real need in cities where there is nothing else, are making heroic efforts against almost impossible odds, and would improve greatly and rapidly if someone would only give them a little money. For them some form of provisional accreditation from year to year, or for a limited time until they can be improved or their place can be filled, with further inspections from time to time comparable to that of the Survey, is at least one possible solution.

The greatest service which the Bar can render to the public is to make the facts known. It cannot be expected that the Survey Report can be placed in the hands of laymen, or that they would make very

much of it if it were. But to the extent that publicity can be given to the fact that there are good law schools and bad ones in California, and to the reasons why, and to the formidable task which uneducated men are undertaking when they seek to study law, the public will be protected.

This article is intended as an initial step in that direction.