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Studying Law

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STUDYING LAW*

I welcome this opportunity to discuss informally with you the subject of the study of law, and, as a part thereof, the subject of bar examinations. As a matter of fact, I firmly believe that each prospective applicant for admission in Indiana would benefit from such a discussion by a member of our Board. I believe that it might take something of the mystery and the apprehension out of the examinations.

We frequently hear the statement made, "Why bar examinations? — Certainly graduates of law schools are competent to practice law." Unfortunately, this statement is not true according to the standards of the bar examiners. Law schools all over the country for some reason continue to graduate students who are not ready for admission according to bar admission standards.

A board of law examiners does more than conduct an examination. It has the responsibility of ascertaining the good moral character of each applicant. This has been more or less of a perfunctory matter in the past, but, beginning with applicants after November 1, 1946, the Indiana Board will pay more attention to this indispensable attribute of all lawyers than it did in the past.

A function of the bar examinations which is frequently overlooked is that they keep the law schools on their toes by placing students from these schools in competition with each other. Each year the results of the bar examinations are furnished to the deans of the law schools. They are able to compare the achievements of their own students with the achievements of students from other schools. In this fashion, weaknesses in certain courses are discovered and can be remedied.

*An informal talk delivered to the Notre Dame Law Club on November 14, 1946.
In admitting students to practice law, the Board of Bar Examiners has a great responsibility. If you are admitted, you are held out to the public by the Board as a person who is a competent and honest lawyer.

A moment ago, I mentioned the apprehension connected with the examinations. From my several years on the Board, I appreciate that there is some apprehension and even fear of the examination on the part of some applicants. One young man suffered a heart attack during the examination several years ago, and the Board concluded the examination orally at his bedside.

Lawyers, ten or more years out of school, would have great difficulty with any examination given by any State Board of Law Examiners. In private practice, many of us are more or less compelled to specialize and have very little use for such things as Future Interests, Conflicts of Laws, and many other subjects. Consequently, a student fresh from law school is in a much better position to pass the examination than a lawyer of many years of experience.

Indiana has been more liberal than most midwestern states in the admission of applicants during the last five years. For example, in the year 1943, the latest year for which I have statistics available, we find that the midwestern states admitted the following percentages of applicants:

<table>
<thead>
<tr>
<th>State</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>83 per cent</td>
</tr>
<tr>
<td>Illinois</td>
<td>58 per cent</td>
</tr>
<tr>
<td>Kentucky</td>
<td>54 per cent</td>
</tr>
<tr>
<td>Michigan</td>
<td>74 per cent</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>32 per cent</td>
</tr>
<tr>
<td>Ohio</td>
<td>87 per cent</td>
</tr>
</tbody>
</table>

The country-wide average for 1943 was 55 per cent. Ohio has a rather unusual situation. In that state, no applicant would think of taking the examination without attending the six-week preparatory course given in Columbus.
Let me attempt to dispel your fear or apprehension, if you have any, of the Indiana examination. Every applicant who writes like a lawyer will pass. Perhaps it would be helpful if you knew something about the examination. The Board attempts to cover a broad field — you may have questions on any or all of the following subjects: Administrative Law, Agency, Conflicts of Laws, Constitutional Law, Contracts, Corporations, Criminal Law, Equity, Evidence, Future Interests, Labor Law, Legal Ethics, Mortgages, Negotiable Instruments, Partnerships, Personal Property, Pleading and Practice, Suretyship, Real Property, Sales, Taxation, Torts, and Trusts.

In the last examination, the questions on Administrative Law, Labor Law, and Taxation were optional, and my experience was that those who wrote on these subjects did an excellent job.

We realize, of course, that not all law students have taken all of these subjects, and we make allowances accordingly. It has been our observation that recently graduating students are rather weak in Constitutional Law and Conflicts, and I understand that Constitutional Law is not considered the essential subject that it was in the past.

It is my opinion that one of the principal reasons for the failures among applicants for admission to the bar is that they fail to read each word of each question thoroughly. Oftentimes, one word will change the entire meaning of a question. For example, on a recent examination, one question involved primarily the subject of Agency. A question of Conflicts of Laws was merely secondary. Most of the students saw only the Conflicts of Laws question, and omitted entirely any discussion of the Agency question involved.

One of my law professors gave some very sound advice on this subject. He advised that we read each question in the examination and make marginal notes of our ideas on it before attempting to answer any question. He then sug-
gested that we re-read the questions in order and check the results of the second reading against the marginal notes. It is surprising to see how frequently one's first impressions of the question are altered on the second reading.

I find it very helpful to attempt to read difficult matter aloud. Of course, this is not possible during the examination, but if you make an attempt to whisper each word of the question, you will find that you will not omit any word which may alter the meaning.

Another feature of the examinations which is disappointing to the Board is the failure of applicants to express themselves clearly and forcefully. On this question, Dean Vanderbilt of New York University recently observed:

"Almost everyone who talks about law school students, or even, it must be added, about young law school graduates — has an unkind word to say about their lack of adequate powers of oral and written expression in their native tongue. The complaint goes not only to ignorance of grammar, want of style and expression, and a scant vocabulary; it is addressed to the unstocked and undisciplined mind that the feeble vocabulary discloses and to the inability to think straight as is revealed by such English as is used."

In the experience of the Indiana Board, words in common usage are frequently misspelled. I wish you could see some of the versions of the spelling of *cestui que trust*.

Let me give you a few rules which I consider fundamental for success in the bar examination:

1. Read each word of each question at least twice before attempting to answer it. As I said, a single word may alter the meaning of the entire question.

2. State the question of law involved; reach a conclusion; and give your reasons for it, using any and all legal language which you believe to be applicable.
3. Do not repeat the question or any part thereof in your answer. This reveals to the reader that you are frantically attempting to fill space in your book.

4. Phrase your answer carefully; be certain to use complete sentences.

5. Watch your spelling.

6. Do not be facetious unless you are certain that you have something which will appeal to the reader. Recently, I gave a passing grade to this answer: "Frankly, I do not know. The matter involved is generally covered by statute, and, before advising anyone with respect to it, I would most certainly read the statute."

I warn you, however, that the answer is strictly a one-timer, and will not again be good for a passing mark.

It may help you to know what the Board considers in reading your answers to the examination questions and what credit is given to the various items. They are rated approximately as follows:

1. Recognition of point or points of law involved 25 per cent
2. Knowledge of law displayed 25 per cent
3. Logic and reasoning employed 30 per cent
4. Conclusion 10 per cent
5. Grammar and style 10 per cent

Thus, you can see that the right answer, not supported by logical reasoning, would produce a failing grade. In the last examination, one applicant gave very few or no reasons, but had many right answers. He failed. On the other hand, many applicants whose conclusions disagreed with those reached by the Supreme Court of the United States received nearly perfect grades because of the logical reasoning employed.

The examination consists of forty questions and occupies two full days. It is always given at Indianapolis, and gen-
erally, in the chamber of the House of Representatives when that body is not in session. Apparently, the questions are not too difficult for the time involved for ordinarily, three-fourths of the applicants are finished at least one-half hour before the closing time of each session.

Now that I have revealed the innermost secrets of the Board and told you how to pass the bar examinations, permit me to turn for a few moments to the other phase of this informal discussion.

I previously stated that the law school graduate is not prepared to practice law. Many people disagree with this, and the ordinary layman is at a loss to understand the reason therefor. The law school graduate, depending upon his natural ability, must undergo an apprenticeship for a period of two to five years before he can be considered a lawyer. Unfortunately, many of us require a longer period of time, and the sincere attorney recognizes his incapacities throughout his legal life.

Apropos of the desirability of the apprenticeship idea, I recall the remarks of an English jurist as follows:

"When I was young, I lost many cases I should have won. When I was old, I won many cases I should have lost, and so, on the whole, justice was done."

The advice of a number of legal educators to the law school graduate of today is to attempt to secure a job as a law clerk in the busiest office he can find in the locality in which he intends to practice — not necessarily the town or city which he hopes eventually to make his home. This is advised even though the graduate has to work for nothing — yes, even though he has to pay tuition, because the first few years of actual practice are an important part of his education — learning to apply what he has acquired in law school to practical law office problems. Except for running errands, the graduate fresh from law school will probably be almost a total loss for six months to a year. It is a part
of his education which he can acquire practicing alone, but slowly, laboriously, and often at the expense of his clients.

As a matter of fact, admission authorities have recently been studying a proposal for a compulsory apprenticeship or interneship. It is proposed that this apprenticeship period would be required before taking the bar examination and thus before admission to the bar. It has the support of a committee of the Section of Legal Education and Admissions to the Bar of the American Bar Association. In England, the solicitor's clerk is obliged to undergo an apprenticeship of three to five years, and he must pay, on the average, one hundred guineas per year for the privilege.

Perhaps all of you know, or if you don't, you should, of the work being done by the Practicing Law Institute of New York in cooperation with the Section of Legal Education of the American Bar Association. The Practicing Law Institute is a non-profit organization dedicated to the further education of lawyers. It conducts classes for nominal fees, and has published several series of pamphlets which no lawyer and no law student should fail to read and study. The publications include a series of pamphlets on general subjects covering such courses as Corporations, Leases, Brief-Writing and Appeals, Research, Real Estate, Wills, Administrative Agencies, Unfair Competition, Bankruptcy, Trade-Marks, Copyrights, and others. The series on Trial Practice includes such subjects as Pleading, Evidence, Depositions, Selecting a Jury, Presenting the Evidence, Direct and Cross-Examination, Argument, Instructions to the Jury, and so forth. There is also a series covering fundamentals and current problems in Federal Taxation. I most emphatically recommend that you obtain these publications and study them carefully. They will be of great assistance in passing the bar examinations and will give you a good foundation for practice.

Sidney Post Simpson, in a recent article in the Harvard Law Review, recommends that the apprenticeship of young
lawyers might be served by attending a series of classes based upon the Practicing Law Institute publications. The suggestion is sound theoretically, but it would be extremely difficult to secure competent practicing lawyers to take the time to prepare and give such courses. The average practitioner is compelled more or less to specialize, and some of the topics involved he has not considered since he left law school. Every lawyer and every law student will profit greatly from a study of these publications.

A successful lawyer, measured by his accomplishments in legal fields, never ceases to be a student. Some part of every day is spent in studying, for which he can charge no client — reading the advance sheets, the law reviews, the bar magazines, the releases on labor law, tax law, and administrative law, and the orders of the large numbers of Bureaus and Departments which affect his practice. He must, and is expected to, keep abreast of the great mass of new law that our courts and boards grind out daily. Not only that, but every single question presented to him as a lawyer should require library research in order to reach a sound opinion. In almost twenty years of practice, I have never seen two questions presented which were exactly alike.

Sir Edward Coke once said:

"I should feel that I ought to be put out of my profession if I could not answer a question in the common law without referring to the law books. I should feel that I ought to be put out of my profession if I would answer a question in the statute law without referring to the statute."

This remark is only partly applicable today. With the large number of courts turning out decisions, it is hazardous to cite the common law without referring to the latest decisions.

The lawyer never ceases to be a student. He is expected to know and to be able to find the law. Moreover, he is
expected to render public service and to be informed on national and international political developments. A part of his stock-in-trade is the written and spoken word. He must be able to express himself clearly, logically, and persuasively. To this end, he must be a constant reader. One successful lawyer says that the Bible with its beautifully turned phrases and its noble use of words is required study for the lawyer.

In a recent study of pre-legal education, Mathematics, English and English Literature, and Latin, to develop logic and facility of expression, were commended to the pre-law school. It is my opinion that these subjects cannot be over-emphasized, and incidentally, that is one reason why boards of admission are beginning to look with favor upon a required four-year college course prior to admission to the law school. Let me give you the Indiana statistics on the desirability of four years of college prior to law school training. In a five-year period of Indiana — 1940 to 1945 — applicants for admission in Indiana made the following record on bar examinations:

<table>
<thead>
<tr>
<th>College</th>
<th>No. of Schools</th>
<th>No. of Applicants</th>
<th>No. of Failures</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 years</td>
<td>11</td>
<td>129</td>
<td>37</td>
<td>28 plus</td>
</tr>
<tr>
<td>3 years</td>
<td>12</td>
<td>193</td>
<td>29</td>
<td>15 plus</td>
</tr>
<tr>
<td>4 years</td>
<td>5</td>
<td>37</td>
<td>3</td>
<td>8 plus</td>
</tr>
</tbody>
</table>

This is certainly a dramatic illustration of the value of four years of college education. A number of law schools now require four years of pre-law work as a condition precedent to admission.

Let me call your attention to the recently published book, "Studying Law," edited by Arthur T. Vanderbilt. It is my opinion that every pre-law student, every law student, and, indeed, every lawyer, would profit by reading and studying this book. Such authorities as Wigmore, Pound, Zane, Monroe Smith, and Albert Beveridge will help untangle for you what may now seem, and did seem to me, a hopeless

I have been talking to you informally. Much of what I have said may be deemed to be advice. I should not like you to treat it as such, for I do not deem myself competent to give advice. I hope you will treat what I have said merely as referring you to some of the paths by means of which you may become better lawyers than are we today.

Senator Beveridge in his Essay on the Young Lawyer gave what many consider to be excellent advice. He said:

"Work, work, work. Cling to the loftiest ideals of your profession which your mind can conceive. Do these: Keep up your nerve; never despair; and success is certain, distinction probable, and greatness possible, according to your natural abilities."

Richard P. Tinkham.