Denver Law Review

Volume 26 | Issue 11 Article 3

January 1949

Another Approach to the Question of New Standards for Admission to the Bar

Allyn Cole

Another Approach to the Question of New Standards for Admission to the Bar

Another Approach To The Question of New Standards For Admission to The Bar

By ALLYN COLE
of the Ninth Judicial District Bar

Most reluctantly I again find myself out of harmony with thinking of the official leaders of the Colorado bar. I am sure this failure to keep in step is not entirely the result of chronic perversity. Personally, I love these fellows as brothers. But, it seems to me, they constantly think in terms entirely foreign to traditional concepts of the bar, which have been believed to be healthfully individualistic and democratic. Regimentation and paternalism were formerly the ideals of others than lawyers, at least as applied to their own profession. Either finds basis in the belief in supermen (of whom the proponent is generally willing to be one) and in whom I have no faith. To continue the mixture of metaphor, I can neither tune my tin horn to harmonize with the paternal orchestra nor stretch my midget-like legs to step with the marching regiment. So, while the right to toot as best I may and to guide my halting step in my own course remains, let me voice opposition to a proposed program to guide those who, in my opinion, need no guidance, and to appoint guardians for those of full age. I refer to articles in recent issues of DICTA proposing new and stringent standards for admission to the bar.

It seems that we, as a bar, are now exercised over the matter of overcrowding of our profession. Of course this concern is not from fear of competition in our field of activity, but purely a philanthropic urge to "protect" the youth from engaging in an activity which will, of necessity, result in a shortened belt and break his heart, and to "protect" the public from irreparable damage through faulty advice and representation by this new brood. Articles on such restrictions are always so prefaced. Yet, I have heard of no suggestion from the present bar, that the proposed regulation be retroactive. Nor, have I heard of complaints on the part of new lawyers, nor students of the law, that other than themselves should shape their lives, or that the world in general is to blame for their study of law. I have not even heard complaints from the general public concerning our profession which seemed to differentiate between new members of the bar and those of long standing. In fact, the new members of the bar seem to bear their hardships with commendable fortitude, and, so far as I can see, the public is quite oblivious to the fact, if it be a fact, that they are being injured at all by the overcrowded condition.

In short, we, as older members of the bar, expressly disclaim personal interest in the situation, and, so far as I know, the other two interested parties, the new lawyers and the public, have made no complaint. If either of them do, ready remedy lies in their own hands. The one may follow some other vocation, and the other may employ legal counsel from among older lawyers. Could it be possible that the present paternal urge can arise from

the fear (unconscious, of course) that newer men will "stay in there and pitch" and that the public will like their vigor in preference to the staid ways of older men? The suspicion exists. The bar should be above that suspicion.

Restrictions Too Cramping Already

It is my conviction that we may have gone too far already with impediments to the study and the practice of law—that our ever tightening requirements are more calculated towards thinning the ranks than improving the quality. If not, then why not make regulations retroactive and eliminate from the profession those whose basic qualifications do not meet requirements, and make room for the young men and women who have 'em? The plain fact is, of course, that such procedure would discard many of the ablest members of the profession. There is no proof that the younger generation is of different timber than their sires.

Under proposed restrictions, or in fact those we now have, Lincoln would never have been allowed to sit at a counsel table, and the Great Emancipator would have spent his life as an unknown woodchopper in the wilderness. His is not an isolated case. Why do we, as a bar, want to impose restrictions on the ambitious youth of today, which many of us could not have met in our own youth? It is anxiety for his welfare, or the welfare of the same public we have served faithfully and well, or is there other motive? No distress signals seem to go up from either group in which present interest is proclaimed. If a young man or woman thinks he, or she, is a lawyer, let it be proved in court. And, if he, or she, is a better lawyer than I, let me be eliminated, though I have been a lawyer all my life. I had that opportunity with minimum of requirements, and I would not ask more of him, or her. Changed times may make for greater proved skill for the try, but that is the office of the bar examination, and not for a chart as to *how* the skill was obtained. The important thing, and the only important thing, is that he or she *has* it, and not *where* or *how* the skill was obtained, or how much time was consumed in the acquisition.

Bar examinations are not, and necessarily cannot be, a complete measure or guaranty of ability, but they do set up a reasonably safe standard. Beyond that, we have no moral right to go. That they are tough enough now is indicated by the results of the last examination in Colorado, when, I believe eighty-five passed and fifty-two failed. And of these, all had met stiff requirements already before allowed to take the examination. Many good potential lawyers were doubtlessly eliminated, who ought to be allowed to try and try again, if ambition supports such effort and further study.

That the profession is already overcrowded is small argument for stifling the ambition of those who would enter its ranks. The same might with equal, if not greater, force be urged by farmers and artisans. If they were fewer, demand would increase their take, it is true, yet we have small regard for such selfish attitude and decry the restrictions against entering other lines of endeavor.

Proposal Would Penalize Those Without "Connections"

By the most recently proposed "plan", even passing the bar examination, however brilliantly, would give meagre privileges. The older members of the bar, regardless of competency, and regardless of the probable facts as to lack of formal education according to the new standards, would still enjoy their monopoly of appellate and worthwhile cash business, and the apprentice would, unless possessed of favored circumstance, be kept at starvation's door. He could not practice on his own, but must be bound out to "an experienced and *approved* attorney of his own selection", and even then could not appear in appellate courts. So, while he could start a lawsuit, he couldn't finish it. If a client wanted to hire him, he could at the beginning count on hiring one lawyer to get him into trouble and another to get him out, the second having the perfect alibi, in case of failure, that the beginner threw the case away at *nisi prius*. What a fat chance a young lawyer would have under such circumstances! Then, suppose no "experienced and *approved* attorney" could be found to take the poor chap under wing. ("approved" by whom?) Or, who would fix the terms of the connection? Suppose the poor chap wanted to practice law in a country town with one, two or three attorneys there who were perfectly satisfied with the status quo. They want no help and desire no competition other than that already existing. His choice then is to look to other fields. Nothing else. It must be admitted that such regulations would prevent overcrowding of the profession, but it is not immediately perceived how it would help the new lawyer or the public.

Here are the proposed discouragements to prospective "overcrowders" of the bar. One must take a four year pre-legal course in which he must study economics and anatomy and several other subjects. At the end of a year of legal study, he must pass "a comprehensive examination" by the bar examiners. If he failed here, he is washed up so far as practicing law is concerned. He would be allowed to continue just for fun if he wanted to, and no matter how brilliant he later became in the knowledge of the law, he could never become "learned in the law" as that term is generally applied to the bar. He might accumulate legal degrees as long as your arm, but having flunked a freshman examination, he would be permanently disqualified from hanging out a shingle carrying the sacred label "Attorney at Law". His advice on legal matters would be "scab" advice and subject him to dire punishment.

Under the proposed plan, only aften ten or twelve years of labor and a lot of luck and pull, can one become a lawyer, and hope to begin to make a living at it. Such a plan would go far indeed towards wrecking the profession, would deprive ambition of chance of success except for the favored few, and deprive the public of legal services which it is hoped is found of value to it. The legal profession should not become an aristocracy. The bar can well busy itself with other things. It would do well to smooth the path, rather than clutter it with obstacles only the rich could hope to overcome.