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STANDARDS OF THE BAR

ALBERT COATES*

Between the publication of Locke's Constitution for the Carolinas in 1663 denying to lawyers the right to make a living out of the practice of law,¹ and the publication of a list of 182 applicants for admission to the North Carolina Bar at the August term in 1927,² there is to be found the story of North Carolina's legal tradition. That story charts the stages in the growth of the legal profession from a day when lawyers were prohibited to a day when lawyers are required—from a day of isolated practitioners to a day of an organized bar—from a day when there were no requisites for admission to the legal profession except the arbitrary will of a Royal Governor, to a day when the applicant must prove his character and his competency to the satisfaction of a democratic judge. Throughout the story runs the ever rising murmur of the bar against practices bringing the profession into disrepute—a murmur finding expression in increasingly insistent calls for higher standards of fitness for the practice of the law.

First, in 1753 the lawyers are found protesting to his "Majesty's Honorable Counsel" against the admission to the bar of "persons not properly qualified for that business, on no other recommendation, capacity or ability than that of being obsequious tools of a bad administration";³ and in the laws of 1760 is found the answer to the protest:

"Whereas, as well the dignity of the Courts as the security of the suitors depends greatly on the capacity and probity of lawyers practicing in the same, be it enacted by the authority aforesaid that

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¹ *The State Records of North Carolina*, Vol. 25, p. 131: "70th. It shall be a base and vile thing, to plead for money or reward; nor shall any one (except he be a near kinsman, nor farther off than cousin germain to the party concerned) be permitted to plead another man's cause till before the judge in open court, he hath taken an oath that he doth not plead for money or reward, nor hath, nor will receive, nor indirectly, bargained with the party whose cause he is going to plead, for money, or any other reward for pleading his cause. . . ." "Since multiplicity of comments, as well as of laws, have great inconveniences, and serve only to obscure and perplex, all manner of comments and expositions on any part of these fundamental constitutions, or on any part of the common or statute law of Carolina, are absolutely prohibited."

² *Raleigh News and Observer*, July, 1927.

³ *The Colonial Records of North Carolina*, Vol. 5.

no person who hath not already obtained a license shall hereafter be admitted as an attorney to practice the law or a counsellor to plead in the superior or inferior courts in this province unless he shall first have been regularly examined as to his knowledge in matters of law and the practice of the courts by someone of the Judges of the Superior Courts, and shall have obtained a certificate under the hand of such Judge recommending him to the Governor or Commander-in-Chief for the time being as properly qualified to practice the law or plead as aforesaid."⁴

Again in 1889 there is a growing sentiment among the lawyers that the prevailing requirements are insufficient to equip an applicant for the proper practice of the law; and in the same year in the *Rules of the Supreme Court* is found the answer to the sentiment: "Each applicant must have read law for twelve months at least."⁵ Again in 1900 this sentiment comes to a head in a two day discussion on the floor of the newly organized North Carolina Bar Association, in a call to the Supreme Court to raise the standards of the bar;⁶ and in 1901 in the *Rules of the Supreme Court* is found the answer: "Each applicant must have read law for two years at least."⁷

In 1927 the same spirit that for a century and three-quarters had stirred the leaders of the bar to press on for higher standards, found expression in the resolutions adopted in a regular meeting of the North Carolina Bar Association at Pinehurst:

"Resolved: That the North Carolina Bar Association hereby requests the Supreme Court to review and revise the requirements of study for admission to the bar in accordance with the standards prevailing in other advancing states, and in accordance with educational standards prevailing in other professions and occupations, admission to which is regulated by statutory provision."⁸

And now the attention shifts again to the Supreme Court of North Carolina while the profession and the public wait to hear the answer it will make.

Thus, these recent resolutions of the North Carolina Bar Association are lifted out of their local setting and revealed against a historic back-ground as the high peak in a 175-year struggle of the bar for standards justifying a lawyer's pride and deserving a people's confidence.

⁴ *The State Records of North Carolina*, Vol. 25, p. 448.

⁵ 104 N. C. 916.

⁶ *Reports*, North Carolina Bar Association, Vol. 2, p. 49.

⁷ 128 N. C. 631.

⁸ *Reports*, North Carolina Bar Association, Vol. 29, p. 76.

The story of the struggle as it is contained in the requirements for admission to the bar—their evolution through the past, their operation in the present, the claim for their advancement in the future, is the theme of this paper. The justification for the labor of searching through the Statutes from 1663 to 1927, the Rules and the Decisions of the Supreme Court since 1787, the Proceedings of the North Carolina Bar Association since its organization in 1899,—the justification for the effort involved in the analysis of the conditions behind the call of the bar for higher standards is an unwavering faith in the stand the bar has taken. The inspiration for it is found in the spirit of the men who throughout our history have fought for it,—from the young lawyer and law teacher who in the year 1900 dared to differ with his dean on the floor of the association he had the year before helped to organize,⁹ to the present Chairman of the Committee on Legal Education whose splendid brief brought forth the present resolution.¹⁰

BAR ENTRANCE REQUIREMENTS

Three essentials for admission to the Bar of North Carolina have been required throughout the state's history: (1) Maturity, (2) Character, (3) Competent knowledge of the law.¹¹

⁹ *Reports*, North Carolina Bar Association, Vol. 2, p. 58.

¹⁰ *Reports*, North Carolina Bar Association, Vol. 29, p. 56.

¹¹ "Before a *resident applicant* can obtain license to practice law in North Carolina he is required (1) to reach the age of twenty-one years, (2) study law for two years, (3) covering a course of study or its equivalent, prescribed by the Supreme Court of North Carolina, (4) notify the Clerk of the Supreme Court of his intention to apply for license at least thirty days in advance of the day of examination, which is held on the last Monday in January and the Monday preceding the last Monday in August, (5) by noon of Tuesday preceding the day of examination, file with the clerk (a) a certificate of good moral character, signed by two members of the bar who are practicing attorneys of this court, (b) a certificate of the dean of a law school or a member of the bar of the court that the applicant has read law under his instruction, or to his knowledge and satisfaction for two years, and has been examined by the instructor and found competent and proficient, (c) deposit with the clerk \$23.50, (6) stand on the day set an examination of 67 questions and answer at least 50 to the satisfaction of the court. On complying with these requirements the applicant is entitled to a license to practice law, issued by the Supreme Court, and signed by all the members of the court. Thereafter, on taking in open court the oath of allegiance to the United States:

"I, A. B., do solemnly swear (affirm, as the case may be) that I will support the constitution of the United States, so help me, God";
the oath to support the constitution of North Carolina:

"I, A. B., do solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and

BAR ENTRANCE REQUIREMENTS: THEIR EVOLUTION
THROUGH THE PAST

Maturity: The early laws of North Carolina contain no age requirement for admission to the bar.¹² Nor was an age requirement specified in the *Rules of the Supreme Court* until 1884, when the Court ruled that "Each applicant must have obtained the age of 21 years."¹³ For many years an applicant was allowed to take the examination given by the Supreme Court even if he was not 21 years of age, but his license was withheld until he arrived at that age. Later an applicant was denied the privilege of taking the examination unless he was 21 years of age at the time, or unless he would arrive at the age of 21 before the next examination. In the latter event his license was withheld until he reached the requisite age. This is the

defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God";

the oath prescribed for attorneys:

"I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God."

the applicant is admitted to practice law during good behavior.

If the applicant is a non-resident, he may have three avenues to the bar: (1) if he has not obtained license to practice law in another state, he may obtain license to practice in North Carolina on the same terms as a resident applicant except that in lieu of the certificate of good moral character, signed by two members of the bar who are practicing attorneys of the Supreme Court of North Carolina he may file a certificate signed by any state official of the state in which he resides. (2) If he has obtained license to practice in another state and that state licenses attorneys, already licensed in this state, without examination, he may obtain license to practice law in this state without examination, (A) by filing with the clerk thirty days prior to the day of examination a statement of his intention to become an applicant; (B) by furnishing to the clerk by noon on Tuesday preceding the day of examination a certificate from a member of the court of last resort of the state from which he comes (a) that he is duly licensed to practice law therein, (b) that he has been actively engaged in the practice of law for five years or more, (c) and is of good moral character; a certificate from two practicing attorneys of the state from which he comes that the applicant had good moral character; a deposit of \$23.50; (c) and satisfying the court on the date set for examination, that he is a bona fide resident or citizen of North Carolina, or intends immediately to become such. (3) If he has obtained license in another state, but does not come within the provisions of the Comity Act, he may obtain license on the same terms as a resident applicant except that he may file in lieu of the certificate of proficiency required of a resident applicant, the license which has been issued to him, and in lieu of the certificate of good moral character signed by two members of the bar who are practicing attorneys of this court required of a resident applicant, he may file a certificate of good moral character signed by any state official of the state in which he resides. *Consolidated Statutes*, chapter 4, p. 59 (1919); *Public Laws* 1920, chapter 44; *Rules of Supreme Court*, 192 N. C., 839 (1926).

¹² *Colonial Records of North Carolina*, Volume. 5.

¹³ 89 N. C., 595.

law as it appears today in the Consolidated Statutes and in the *Rules of the Supreme Court*.¹⁴ This age requirement is satisfied by the applicant's signed statement.

Character: The early laws of North Carolina contain no character requirement for admission to the bar.¹⁵ Only the favor of a Royal Governor was necessary. In 1760 every applicant was required to be of "good character."¹⁶ This requirement has continued in force to this day.¹⁷

The manner of proving "good character" has varied during the intervening years. Under the laws of 1760 it was proved by "a certificate from the justices of the inferior court of the county" wherein the applicant resided.¹⁸ The laws of 1777 made the Judges of the Superior Court the judges of the applicant's character and left the method of proof to their discretion.¹⁹ And in 1818, when the Supreme Court was organized, this same power was lodged with the Supreme Court Justices.²⁰ The method of proving character adopted by these justices does not appear in the records until 1889, when the Supreme Court in the exercise of its discretionary power ruled that character must be proved by "a certificate signed by two members of the bar who are practicing attorneys of this court."²¹ This certificate was not conclusive proof of the applicant's character but only evidentiary. In 1904 this rule of the court was carried over into the *Revised Statutes*,²² and is today the method of proving character.²³

Knowledge: The early laws of North Carolina contain no knowledge requirement for admission to the bar, only the favor of the Royal Governor was necessary.²⁴ In 1760 it was provided that no license to practice law should be issued except on a certificate under the hand and seal of some Judge of the Superior Court that he had examined the applicant "as to his knowledge in matters of law," and

¹⁴ *Consolidated Statutes*, Chapter 4, Sec. 3. Supreme Court Rules, 192 N. C. 839 (1926).

¹⁵ *Colonial Records of North Carolina*, Vol. 5.

¹⁶ *State Records of North Carolina*, Vol. 25, p. 448.

¹⁷ *Consolidated Statutes*, Chapter 4.

¹⁸ *State Records of North Carolina*, Vol. 25, p. 448.

¹⁹ *State Records of North Carolina*, Vol. 24, p. 50.

²⁰ *Laws of North Carolina*, 1818, p. 5.

²¹ 104 N. C. 916.

²² *Revised Statutes*, Chapter 5.

²³ *Consolidated Statutes*, Chapter 4, Rules of the Supreme Court, 192 N. C. 839.

²⁴ *Colonial Records of North Carolina*, Vol. 5.

had found him properly qualified for the practice.²⁵ The requirement of an examination to test the applicant's knowledge of the law continued in effect until 1868, when knowledge of the law was declared to be unnecessary for the practice of law, and an applicant was allowed to secure his license without knowledge or examination on payment of \$20.00 and proof of good character.²⁶ Evidently there were applicants who wanted the Supreme Court's endorsement, for in 1869 it was provided that an applicant might undertake the preliminary course of study, acquire a knowledge of the law, take an examination and secure license from the Supreme Court if he so desired.²⁷ In 1870 the provisions of 1868 and 1869 were repealed, the provisions of the Revised Code of 1854 restored, and the applicant for license was again required to possess "competent knowledge of the law."²⁸ The requirement is in effect today.²⁹

The manner of proving "competent knowledge" of the law is by: (1) Studying for a definite period of time, (2) a prescribed course, (3) under the direction of or to the knowledge and satisfaction of the dean of a law school or a lawyer who is a practicing attorney of the Supreme court, (4) standing satisfactorily a preliminary examination given by such dean or lawyer, (5) a final examination given by the Supreme Court.³⁰

(1) Time of Studying: Prior to 1760 no preliminary study of any kind was required.³¹ From 1760, when the court began to examine applicants, to 1889, it does not appear that there was any fixed period of time which the applicant was required to devote to study before he could obtain his license. In 1889, the Supreme Court required each applicant to have "read law for 12 months at least."³² In 1901 the Supreme Court required each applicant to have "read law for two years at least."³³ This requirement is still in force.³⁴

(2) Prescribed Course: The laws of 1760 did not prescribe a course of study for an applicant for license to practice law. They simply required an examination "as to his knowledge in matters of

²⁵ *State Records of North Carolina*, Vol. 25, p. 448.

²⁶ *Public Laws of North Carolina*, 1868-9, Chapter 46, p. 118.

²⁷ *Public Laws of North Carolina*, 1869-70, Chapter 131, p. 175.

²⁸ *Public Laws of North Carolina*, 1870-71, Chapter 120, p. 189.

²⁹ *Consolidated Statutes*, Chapter 4.

³⁰ *Consolidated Statutes*, Chapter 4, Rules of the Supreme Court, 192 N. C., 839.

³¹ *Colonial Records of North Carolina*, Vol. 5.

³² *Supreme Court Rules*, 104 N. C. 916.

³³ *Supreme Court Rules*, 128 N. C. 633.

³⁴ *Supreme Court Rules*, 192 N. C. 839.

law and the practice of the courts."³⁵ From the time the court began examining candidates in 1760 until the year 1849, it does not appear that the court prescribed any course of study. In the year 1849, the Supreme Court made the following rule:³⁶

The Judges of the Supreme Court will hereafter require that applicants for license shall have gone through the following courses of reading:

FOR THE COUNTY COURTS

Blackstone's Commentaries, 4 Vols. 2d Vol. particularly.
Coke on Littleton, or Cruise's Digest.
Ferne on Remainder and Executory Devises.
Saunders on Uses and Trusts.
Roper on Legacies, or Toller on Executors.
Revised Statutes, Chapter 37, Deeds and Conveyance; 38, Descents; 121, Widows; 122, Wills and Testaments.

FOR THE SUPERIOR COURT

Third Book of Blackstone.
First volume of Chitty's Pleadings.
Stephens on Pleading.
Fonblanque's Equity.
Newland or Powell on Contracts.
Mitford or Copper, Equity Pleading.
Fourth Book of Blackstone.
First volume Phillips or Starkie on Evidence.
Revised Statutes, Chapter 31, Courts, County and Superior; Chapter 34, Crimes and Punishments; Chapter 63, Lands of Deceased Debtors.
Selwyn, Nisi Prius.

By gradual changes³⁷ the Prescribed Course of Study today includes:³⁸

Constitution of United States; Constitution of North Carolina; Creasy's English Constitution; Shepard's Constitutional Text-book; Cooley's Principles of Constitutional Law; Blackstone's Commentaries, as contained in Vol. 1 of Ewell's Essentials of Law; Bisham's Equity; Sharswood's Legal Ethics; Consolidated Statutes N. C. (Vol. 1).

³⁵ *State Records of North Carolina*, Vol. 25, p. 448.

³⁶ *Supreme Court Rules*, 32 N. C. 607.

³⁷ *Supreme Court Rules*, 33 N. C. 665 (1850), 45 N. C. 132 (1855), 61 N. C. 249 (1869), 80 N. C. 487 (1879), 89 N. C. 595 (1884), 104 N. C. 916 (1889), 115 N. C. 832 (1895), 119 N. C. 929 (1897), 128 N. C. 633 (1901), 135 N. C. 747 (1904), 174 N. C. 827 (1917).

³⁸ *Supreme Court Rules*, 192 N. C. 839.

Also some approved text-book on :

Agency, Bailments, Carriers, Corporations, Contracts, Evidence, Executors, Negotiable Instruments, Partnerships, Sales.

(3) Under the Direction of Lawyer or Dean: From 1760 to 1904 no supervision of the applicant's study was required. In 1904, the applicant was required to study "under the direction" or to the "knowledge and satisfaction" of the dean of a law school or a member of the bar of the Supreme Court,³⁹ and so it is today.⁴⁰

(4) Preliminary Examination: Prior to 1904 it does not appear in the records that an applicant was required to stand a preliminary examination before taking the examination given by the Supreme Court. In 1904 each applicant was required to be examined by the instructor under whose direction or to whose knowledge and satisfaction he had studied law for two years, and upon "examination by such instructor found to be competent and proficient."⁴¹ This certificate is evidentiary and not conclusive, but is nevertheless indispensable. And so the law stands today.⁴²

(5) Examination by the Supreme Court: The early statutes vesting the examining and licensing power first in the Superior Court,⁴³ and later in the Supreme Court,⁴⁴ left the form and content of the examination to the discretion of the judges giving it. In the exercise of this discretion, it appears that the judges gave oral examinations until 1898, when the Supreme Court ruled "that in the future all examinations shall be in writing."⁴⁵ This rule was embodied in the *Revised Statutes* of 1904, and exists in the same form today.⁴⁶

³⁹ *Supreme Court Rules*, 135 N. C. 747.

⁴⁰ *Supreme Court Rules*, 192 N. C. 839.

⁴¹ *Supreme Court Rules*, 135 N. C. 747.

⁴² *Supreme Court Rules*, 192 N. C. 839.

⁴³ *State Records of North Carolina*, Vol. 24, p. 50.

⁴⁴ *Laws of North Carolina*, 1816, p. 5.

⁴⁵ *Rules of Supreme Court*, 121 N. C. 694.

⁴⁶ *Consolidated Statutes* ch. 4; *Rules of Supreme Court*, 192 N. C., 839:

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Time of Examination. From the time the Supreme Court began the examination of applicants for license to practice law until 1815, there appears to have been no set date for the holding of examinations. In 1815, it appears that applicants might be examined at any time during the terms of the Supreme

Court, but at no other time, Supreme Court Rule, 4 N. C. 223; in 1838, during the first seven days only of each term, 22 N. C. 198; in 1847, during the first two days of each term, 80 N. C. 487; in 1888, on Friday and Saturday preceding the first week in each term, 99 N. C. 600; in 1895, on the first Monday of each term, 115 N. C. 832; in 1904, on the first Monday in February and the last Monday of August of each year, 135 N. C. 747; in 1917, one week prior to the spring and fall terms of the Supreme Court, 174 N. C. 827. And so it is today. C. S. Chapter 4.

Place of examination. Prior to 1815 there appears to have been no set place where the examination might be held. Since 1815 it has been held in the place where the terms of court are held. And so it is today. C. S. Chapter 4.

Judges giving examination. In 1760, it was provided that the examination should be held by one of the judges of the Superior Court, *State Records of N. C.*, Vol. 25, p. 448; in 1777 by two or more judges of the Superior Court, *State Records of N. C.*, Vol. 24, p. 50; in 1818 by two or more judges of the Supreme Court, *Laws of N. C.*, 1818, p. 5; in 1917, by the Chief Justice and two associate justices, to be designated by the court, *Public Laws of North Carolina*, p. 840; in 1923, by the Chief Justice and four associate justices, *Public Laws of North Carolina*, 1923, p. 270. And so it is today.

Compensation of the judges. Prior to 1917, it does not appear that judges received any compensation for the work of examining applicants. In 1917 it was provided that each justice giving the examination be paid \$100.00 and actual expenses, *Public Laws of North Carolina*, 1917, p. 140.

Source of the Licensing Power. Prior to 1760 licenses were issued by the Royal Governor at Will, *Colonial Records of N. C.*, Vol. 5. After 1760 they were still issued by the Royal Governor, but only on recommendation of some judge of the Superior Court in a certificate under his hand and seal, *State Records of N. C.*, Vol. 25, p. 448. After 1777, they were issued by two or more judges of the Superior Court under their hands and seals, *State Records of N. C.*, Vol. 24, p. 50; after 1818 by two or more judges of the Supreme Court, *Laws of N. C.*, 1818, p. 5; in the Revised Statutes of 1904 the law is rephrased in its present day terms: "No person shall practice law without first obtaining license to do so from the Supreme Court"—C. S., Chapter 4. In 1917 by the Chief Justice and two associate justices to be designated by the court, *Public Laws of N. C.*, p. 140; after 1923 by the Chief Justice and four associate justices, *Public Laws of North Carolina*, 1923, p. 270.

Scope of License. The laws of 1777 provided that the Supreme Court on examination might license attorneys to practice law in "any court in this state for which they deem him qualified," *State Records of N. C.*, Vol. 24, p. 50. In 1815 a rule of the Supreme Court provided that license only to the county courts might be issued in the first instance, and that applicants for license to practice in the Superior Courts should practice law in the county courts for one year after the license obtained to practice law in the county courts, 4 N. C., 223. In 1868 it was provided that those having license to practice law in the county courts as they heretofore existed were now privileged to practice law in other courts of the state. Since 1868 applicants obtaining license from the Supreme Court have been privileged to practice in all the courts of the state, *Public Laws of N. C.*, 1868, p. 118.

Disposition of License Money. In the Revised Statutes of 1836-7 a tax of \$10.00 was imposed on attorneys for license to practice in the county courts, \$10.00 for license to practice in the Superior Courts. This tax was to be paid to the Clerk of the Court where the attorney first exhibited his license to practice law, and was to be accounted for by the clerk in the same manner as he accounted for taxes on suits, Chapter 28, S. 5. See *Public Laws of 1784*, Chapter 220, S. 2; *Public Laws of 1806*, Chapter 698, S. 1. By 1854 this tax was being paid to the Clerk of the Supreme Court, *Revised Code*, Chapter 99, S. 40. That part which was paid to the clerk at Raleigh was paid over by him into the public treasury and that part which was paid to the clerk at Morganton was expended by him under the direction of the court for books

BAR ENTRANCE REQUIREMENTS: THEIR OPERATION
IN THE PRESENT

For one hundred and seventy-five years the bar of North Carolina has insisted on maturity, character, and competent knowledge of the law as standards to be attained by applicants before admission to the bar. We cannot improve upon these standards. They do not need to be raised—they need to be reached. Are we reaching them by our present entrance requirements?

The lawyers among themselves agree that we are not. In the first meeting of the North Carolina Bar Association after its organization we find this fact publicly proclaimed by lawyer after lawyer in open meeting. *As to knowledge*: "I know of my personal knowledge men who have been admitted to the bar here who were absolutely unfit and unqualified to practice. I know of two young men, admitted to the bar, who were ostensibly studying law twelve months in a lawyer's office and who told me that they did not study until

for the library at that place. The clerk was entitled to six per cent for receiving and accounting for the money. In 1868 separate licenses were dispensed with; it was provided that all applicants having license to practice in the county should be allowed to practice in all the courts of the state. The tax for this license was \$20.00 and was to be paid to the sheriff or tax collector of the county in which the applicant shall reside for the benefit of the county. *Public Laws of N. C.*, Chapter 1, p. 43, Chapter 46, p. 118. In 1870 the provisions of the *Revised Code* of 1854 were restored. *Public Laws of North Carolina*, Chapter 123, p. 189. In 1883, the clerk was still entitled to six per cent and was required to expend the money as prescribed in the chapter on Public Loans. In 1884 the applicant was required by rule of the Supreme Court to deposit with the clerk a sum of money sufficient to pay for his license before he was examined, and on failure to pass, this money was restored to the applicant, *Code of N. C.*, Chapter 4, S. 20. In 1904, the amount required to be paid by applicant was \$21.50. Of this \$1.50 was taken for the clerk in lieu of his previous six per cent; \$20.00 was for the tax which was to be paid by the clerk to the librarian for the use of the Superior Court Library, or to be restored to the applicant on failure to pass the examination, *Revised Statutes*, Chapter 5, S. 205. In 1913, \$2.00 was added to this amount to cover cost of parchment on which license was issued. In 1917 \$100.00 and actual expenses was paid to the Chief Justice and each justice assisting in holding the examination; and this was to be paid out of the fees, *Public Laws of North Carolina*, 1917, p. 140. And so today each applicant for license deposits \$23.50 with the Clerk of the Superior Court, \$1.50 goes for the clerk's fee, \$2.00 to the printer; \$20.00 to pay judge's fees and for the library. If the applicant fails, \$22.00 is refunded, *Rules of Supreme Court*, 192 N. C., 839.

Non-Resident Applicants. An applicant having license to practice law in another state may be granted license to practice law in this state without examination, if the state from which the applicant comes allows the same privilege to North Carolina. It appears that in the beginning non-resident applicants were required to prove their knowledge of the law in the same way as resident applicants. In 1904, the Supreme Court ruled that if any applicant had license from another state, he might file it in lieu of the certificate of two years study and proficiency, but he was required to pass the examination given by the Supreme Court, *Supreme Court Rules*, 135 N. C., 747.

three months before the examination and then crammed and went down and passed creditably."⁴⁷ *As to character*: Six years later the president of the North Carolina Bar Association speaks of men "who have desecrated the name of lawyer and used their position and learning to increase both the number and the harmful influence of the demagogues who have made the profession of the law a source of gain dishonestly acquired at the expense of their clients."⁴⁸ *As to standards*: Twenty-one years later another Bar Association president is saying, "that we owe it to ourselves to assert that leadership which from time immemorial has been accorded to our profession, but we will never obtain it until we have shown that we have put aside low standards and commercial greed and lax discipline."⁴⁹ *As to entrance requirements*: In the same year another lawyer is saying on the floor of the Assembly: "As a young attorney who has but recently been admitted to the practice of law, I wish to register my protest against the old requirements for entrance into the practice of law, and the nature of the test that determines a man's fitness for and knowledge of the law."⁵⁰ These expressions represent the rising tide of protest in the legal profession against entrance requirements which do not attain the standards of the bar, and in this protest the members and the public concur with an alacrity altogether too alarming.

The heart of standards beats in their provisions for enforcement. If these provisions are insufficient or unenforced, the standards themselves are shams. They are not raised, they are not reached, but lowered.

The proof of maturity is the applicant's signed statement that he is twenty-one years of age.⁵¹ Its adequacy is not in issue.

The proof of character: If the applicant is a resident he must have the certificate of any two attorneys who are members of the bar of the Supreme Court.⁵²

The inadequacy of this proof as a guarantee of "up-right character" is apparent. As long as *any two attorneys* can furnish an

⁴⁷ *Reports*, North Carolina Bar Association, Vol. 2 (1900), p. 53.

⁴⁸ *Reports*, North Carolina Bar Association, Vol. 8 (1906), p. 20.

⁴⁹ *Reports*, North Carolina Bar Association, Vol. 23 (1921), p. 20.

⁵⁰ *Reports*, North Carolina Bar Association, Vol. 23 (1921), p. 44.

⁵¹ *Consolidated Statutes*, Chapter 4.

⁵² *Supreme Court Rules*, 192 N. C. 839: "If the applicant is a non-resident and comes within the terms of the Comity Act, by a certificate of a member of the court of last resort of the state from which he comes. If the applicant is a non-resident and does come within the terms of the Comity Act, by a certificate of any state official of the state from which he comes."

applicant with a certificate of good moral character, acceptable to the Supreme Court, it is possible for applicants to enter the profession on the recommendation of men of low ethical standards with little appreciation of moral values and no sense of professional responsibility. In the final analysis it makes the worst, and not the best in the profession, the guardians of professional standards—the judges of moral fitness. This very fact brings to other lawyers a sense of the futility of isolated efforts to maintain the character standard, and the consciousness that the responsibility for character fitness now rests upon all lawyers indiscriminately tends to lessen, if not to take away, any lawyer's sense of personal obligation. The *proof* of character is not the *proving* of character.

The Supreme Court itself has been of that opinion. It has ruled and it still adheres to the rule that the certificates of attorneys are not conclusive proof of the applicant's character, but only evidentiary. The Legislature has been and is of the same opinion. Once when three members of the Supreme Court thought the Legislature made the certificate conclusive proof of character, the Legislature immediately repudiated the idea.

But though the certificates are theoretically evidentiary, they are practically conclusive. The Supreme Court does not have the time to make and it does not make on its own initiative any inquiry into the applicant's character or in any way go behind the certificate. It leaves that responsibility to the individual members of the bar. There is no possible way in which the individual members of the bar can know who the applicants are until thirty days prior to the date of examination. There are two chances that they will find out then: (1) the chance that they will see the list when it is published in the daily papers; (2) the chance that they will within the thirty day period preceding the examination go to the office of the Clerk of the Supreme Court to inspect it. They sometimes miss the published list. They seldom, if ever, inspect the clerk's files. In either case, they may be totally ignorant of the applicants or may have only a casual acquaintance with them. In neither case do they make any systematic investigation of them. Only in the extremest cases is any protest made. The result is that not only is the proof of character inadequate, but the check on that proof by the Supreme Court and the bar is ineffective.

The Proof of Knowledge as we have said is (1) a definite period of study covering (2) a prescribed course on which (3) a prelimi-

nary examination is given by the dean or lawyer under whose direction or to whose knowledge and satisfaction the applicant has studied, followed with (4) a final examination by the Supreme Court.⁵³

(1) Time of Study: A rule of the Supreme Court in 1901, passed at the instance of the North Carolina Bar Association, calls for "two years of study at least" before an applicant may be admitted to the bar.⁵⁴ This is to be proved by the statement of the applicant supplemented by the certificate of a practicing lawyer or the dean of a law school.⁵⁵

By construction the two year period of study has been cut down to eighteen months, and it is a nine months-year, and not a twelve-months year, of study that the rule requires. Since the Supreme Court had before required twelve months of study, the added year is only an added six months.

The rule is silent as to the amount of time within the eighteen months period to be devoted to study, one hour a day, three hours a day, eight hours? A fair interpretation would seem to call for a full time study, but it is an open secret that this interpretation is not followed. If studying half a day for eighteen months complies with the two year requirement, a candidate may argue that studying all of each day for nine months is a substantial compliance. If two hours of study each day for eighteen months satisfies the requirements, then studying all of each day for four and one half months ought to be satisfactory.

Thus unless the rule is interpreted as requiring full time study, hopeless difficulties are involved in its application. In the absence of interpretation by the Supreme Court, any lawyer who gives a certificate is left free to put his own interpretation on the rule. The very indefiniteness of this requirement renders it practically inoperative and totally inadequate.

(2) The prescribed course of study calls for the reading of a number of specific books and also approved texts on a number of subjects.⁵⁶ The requirement of specific books requires constant revision to keep abreast of the best. The requirement of "approved texts or their equivalents" is open to the criticism (1) that it is rather indefinite, (2) that every applicant and everyone who certifies an applicant to the court may interpret it as he pleases without reference

⁵³ *Consolidated Statutes*, Chapter 4. *Supreme Court Rules*, 192 N. C. 839.

⁵⁴ *Supreme Court Rules*, 128 N. C. 633.

⁵⁵ *Supreme Court Rules*, 192 N. C. 839.

⁵⁶ *Supreme Court Rules*, 192 N. C. 839.

to any unifying standard, (3) that consequently it tends to cut down the already too meager course of study to a new low level.

(3) "Under the direction" or to the "knowledge or satisfaction."⁵⁷

What is meant by "under the direction of"? Is it that the study must be under the personal supervision of a lawyer? If so, how much supervision must the lawyer give? Is it enough for him to assign books to be read? Or must he do more? And if so, how much more?

What is meant by "knowledge" and "satisfaction"? Must the lawyer know of his own knowledge that the applicant has studied law "two years"? Or may he take the applicant's word for it? What does it take to "satisfy" a lawyer that the applicant has read law for two years? Here again the tutelage of the poorest and not the best in the legal profession meets the requirement for admission to the bar. And again the indefiniteness of this requirement renders it practically inoperative and totally inadequate. There is no uniformity. Every lawyer has his own standard and the legal profession has none. There is an inevitable tendency to pass the buck to the Supreme Court, and the passing of the buck is the passing of the requirement.

(4) "And upon examination by such instructor has been found competent and proficient in said course." What sort of examination is to be given—oral or written? What is the scope it is to cover—the Prescribed Course?—then how thorough must it be? Enough to test his knowledge of the principles of each subject studied and the problems involved in their application? Or enough merely to test his memory of definitions? As a matter of fact, are any lawyers today examining the applicants they certify to the court? Nobody knows—everybody understands.

(5) The final examination given by the Supreme Court until 1923 consisted largely of questions calling for definitions. Formerly applicants prepared for it largely by studying quizzers containing copies of the questions on all preceding examinations, together with the answers to them. Some of these applicants boasted that these quizzers were all they studied before taking the examination. The late Dean McGehee commented that in one examination, fifty-five of the sixty-six questions were taken from prior examinations, and in view of this fact one can well perceive that the boast might have been well grounded.

⁵⁷ *Supreme Court Rules*, 192 N. C. 839.

In 1923 Mr. Justice Stacy gave an examination which set new standards. It consisted largely of cases of a sort that called for thought and analysis, the application of legal principles rather than for a particular memory of legal rules. This policy has been to some extent adhered to and the type of examination has been immensely improved, but even today the examination of sixty-seven questions does not and cannot hope to cover the whole field of law, or the "Prescribed Course" with any degree of thoroughness. The time—seven hours—is too short for proper answers to the questions that are given.

BAR ENTRANCE REQUIREMENTS: THE CLAIM FOR THEIR ADVANCEMENT IN THE FUTURE

Since our present admission requirements do not achieve our present professional standards, two questions face us: (1) Are our present professional standards too high? (2) If not, can our admission requirements be made to meet them?

(1) Are our present standards too high? As to this there can be only one answer: Maturity, Character and Competent Knowledge of the Law, are not too much to ask of anyone who would become a lawyer. From the standpoint of the legal profession it is not too much to require because the standing of the profession in its own eyes and in the eyes of the people cannot be built up, and when built up cannot be maintained on any other basis. From the standpoint of the client it is not too much to require because his property, his liberty, and may be his life, cannot be secure or secured on any other basis. From the standpoint of the applicant himself it is not too much to require because possibly his hope of making a living, certainly his standing at the bar and in the community, cannot be raised on any other basis. From the standpoint of the public at large, it is not too much to require because the respect for law and order, the foundations of our society, cannot be built or kept on any other basis. Though theoretically law is distinct from the officers who enforce it, practically it is not. The heart of the law beats in law enforcement. The esteem in which the law is held is to a considerable extent determined by the esteem in which its practitioners and administrators are held. Law will not be respected unless they are respected; lawyers will not be respected unless they are respectable.

(2) Can our admission requirements be made to meet them? Here again there can be only one answer. The test for maturity is not questioned and calls for no comment.

The test for character lends itself to further discussion. At present the applicant picks the committee which is to pass upon his character. At least a committee could be appointed to pick the applicant. At least this committee could be required to conduct a systematic and thorough examination into the character of each man: by looking into his record in his community and elsewhere, by consulting with people of character and standing who are in a position to know him, by calling the applicant before the committee, or in any other way the committee might see fit. If there are members of the New York bar who are willing to serve as many as thirty days in the year on such a committee out of their interest in the standards of the legal profession in their state, surely there are lawyers in North Carolina who would be willing to put the comparatively limited amount of time necessary for the work in this state. Such procedure would have two immediate beneficial results: by taking the responsibility that is now everybody's and consequently nobody's, and centering it upon a picked group of men representing the bar and responsible to it, a Bar Association standard is created where before there was none; by the systematic and thorough examination of the character of each applicant, the profession would at once rise in the estimation of the applicant who would have increased respect for a profession that had increased respect for itself, in its own estimation, because its members would feel more keenly the dignity of a profession whose standards were being asserted and upheld, and in the estimation of the public because of its consciousness that steps were being taken to raise the level of practice.

The test for knowledge calls for further discussion: It would be a distinct improvement if the present requirements were made definite enough to be enforceable: (1) interpret two years to mean twenty-four months, instead of eighteen; (2) state whether two years of study means two years of full-time study or whether less than full time is enough, and if less, then how much less; (3) make clear what is meant by study "under the direction," or to the "knowledge and satisfaction" of a lawyer or dean; (4) check up on the time of study by requiring the applicant to register at the beginning of his course of study, instead of thirty days before the end of it; (5) require the lawyer or dean "under whose direction" or "to whose knowledge and satisfaction" the applicant is studying law, to send in reports as to the manner and extent of their supervision, and as to the applicant's progress; (6) prescribe a comprehensive course of

study which would include the leading cases and the leading texts in the varied branches of the law and hold the applicant to strict accountability for their mastery; (7) require the lawyer who certifies that he has examined the applicant on the Prescribed Course of Study, and has found him proficient, to send in to the Supreme Court copies of the examination he has given to the applicant to test his proficiency; (8) make the final examination more extensive and intensive by increasing the number of questions to the point where it will be possible to make a thorough examination of the applicant's knowledge of the various branches of the law and by lengthening the time for answering.

THE NEED FOR A LONGER PERIOD OF LEGAL STUDY

Is the two-year period of study, even if enforced, a sufficient safeguard or an adequate guarantee that the applicant will come to the bar equipped to practice law? In 1900 in an open meeting of the North Carolina Bar Association, two years was declared to be insufficient even at that time.⁵⁸ In 1925, the President of the Bar Association affirmed that statement.⁵⁹ In 1927, the President of the Bar Association,⁶⁰ the Chairman of the Committee on Legal

⁵⁸ *Reports*, North Carolina Bar Association, Vol. 2, p. 62: "The only objection I have to the resolution is this, that it does not require a longer course of study. I believe that the young man of ambition, who is determined to enter our profession and make a success of it, will be willing to enter upon the duties and study law well and carefully for three years, and I should prefer that the resolution should require a study of three years."

⁵⁹ *Reports*, North Carolina Bar Association, Vol. 27, p. 22: "I am glad to believe that sheer ignorance of the spirit of law and legal ethics is much more the cause of the falling into disrepute of certain members of the profession in this state than is the lack of character. It has been proven by accurate survey that there is a real relation between unprofessional conduct and the want of training. I wish to repeat here the substance of what I said on the occasion of the dedication of the new law building at the University of North Carolina: 'There was a time when it would have been harsh and unjust to demand of entrants of our law schools the equivalent of at least two years of collegiate education. Happily that time has passed. At present the doors of our institutions of learning swing wide open, and whosoever wills may enter. The day has also dawned when the study of law should no longer be crowded in one or even two years. Rather, the student who applies for license to direct the most complex and sacred relations of life should fully familiarize himself with the fundamental principles of law and procedure, as well as with their past history and present application. More than this, he should be deeply grounded in the ethics of the profession and the high responsibilities of the lawyer as an officer of the court.' He should enter the profession thus equipped, and not otherwise."

⁶⁰ *Reports*, North Carolina Bar Association, Vol. 29, pp. 10-11: "Under the rules of the Supreme Court and the laws of this state, two years study of the law is required of the applicant who presents himself for examination, and he must be a man of good character. This short term of study is hardly suffi-

Education,⁶¹ and the Bar Association itself,⁶² declared it insufficient. And why?

In 1889 when the Supreme Court of North Carolina required one year of law study as a prerequisite to law practice, there were 102 volumes of North Carolina Reports. In that year the court handed down 427 opinions covering 876 pages. In 1901 when the Supreme Court adopted the two year requirement there were 128 volumes. In that year the court handed down 507 opinions covering 975 pages. In 1926, the year before the Bar Association called on the court to raise the standards further, there were 192 volumes. In that year the court handed down 593 opinions covering 1,738 pages. Thus from 1889 to 1901 there was an increase of 26 volumes and from 1901 to 1926 an increase of 64 volumes. From 1889, when the opinions covered 896 pages, to 1901 when they covered 975 pages, there was an increase of 79 pages. From 1901 to 1926 when there were 1,738 pages, there was an increase of 763 pages. A glance at the legislative enactments for these periods reveals corresponding increases.

In 1889 there were 12 judicial districts in North Carolina and 416 weeks of court; in 1901, 16 judicial districts and 583 weeks of court; in 1926, 20 judicial districts and around a thousand weeks of court. In recent years the pressure of business on the courts has been increasing so rapidly that several successive steps have been taken to relieve it: first, retired judges of the Superior Courts and

cient, in this era of great advancement in science, with all the developments in the various subjects of trusts, unlawful combinations, electricity, the telegraph, the telephone, the phonograph, the aeroplane, the hydroplane, the radio, the submarine, and the complicated question of prohibition as a national measure, and the enormous new phases of international laws, to qualify and enable a man to enter upon the practice of the law; and it would not be a hardship to demand and exact a three years course of study instead of two, to better equip the applicant to enter. In fact, your president believes and suggests that there should be two at least of these three years spent in a college. In North Carolina we have now practically a compulsory system of education, with splendid schools of various grades, all ascending to the apex of the university and college. There can be no excuse for any resident of this state today not to avail himself of a college education, whatever lack of opportunity may have existed in the past. There are here no less than three great state colleges, including a university, the most richly endowed in the world, where men and women are both admitted, and in every section of the state one or more reputable colleges within easy reach of any person desiring an education, with funds easily obtained from sources established to assist the worthy applicant who is unable to raise the necessary means of support while pursuing his studies."

⁶¹ *Reports*, North Carolina Bar Association, Vol. 29, p. 56.

⁶² *Reports*, North Carolina Bar Association, Vol. 29, p. 76.

the Supreme Court were called upon to hold special terms; then various lawyers throughout the state were called upon for the same purpose; now four emergency judges have been appointed to serve full time. Throughout the same period—particularly since 1901, there has been created a flood of new courts: municipal courts, city recorder's courts, county recorder's courts, and lately provision has been made for the creation of county courts.

Throughout the same period, *beginning* with the commission in 1891 for the regulation of railroads doing business in the state, *advancing* with the creation of the Corporation Commission in 1899 having jurisdiction over (a) all railroad, street railway, steamboat, canal, express and sleeping-car companies, and all other companies engaged in the carrying of freight or passengers; (b) all telegraph and telephone companies, and other companies engaged in the transmission of messages; (c) all electric light, power, water and gas companies, other than those owned by municipal corporations; (d) all flume companies availing themselves of the power of eminent domain; (e) all water power, hydro-electric power and water companies; (f) all corporations or individuals, other than municipal corporations, operating public sewerage systems; (g) all public and private banks, all loan and trust companies;⁶³ advancing still further with the creation of such agencies as the State Board of Health, the State Board of Charities and Public Welfare and the like, a new type of tribunal has been swiftly coming into our law. "The manifold response of government to the forces and needs of modern society is building up a body of laws not written by legislatures, and adjudications not made by courts and not subject to their revision. These powers are lodged in a vast congeries of agencies."

With this increase in the volume of laws pouring from the Legislature, the courts, the administrative tribunals,—with this increase in the number of courts, the kinds of courts, the terms of court, and the various governmental agencies, the conclusion is inevitable that if one year of legal study was necessary to fit an applicant for the practice of law in 1889, and two years in 1901, three years at least are necessary in 1927.

Add the further fact that the activities of the Federal Government are coming continually closer to the lives and interests of the individual citizen and drawing him into its tribunals. Witness the yearly increase in volume of the business of the U. S. District Courts,

⁶³ 2 N. C. Law Review, p. 74.

Circuit Courts of Appeals, and the Supreme Court, the yearly increase in volume of Federal Statutes and the work of the Interstate Commerce Commission, Federal Trade Commission and the like. Read the statement of Charles E. Hughes before the American Law Institute in 1924:

"We have in this country the greatest law factory the world has ever known. Forty-eight states and the Federal Government are turning out each year thousands of new laws, while at the same time the courts in the performance of judicial duty are giving us thousands of precedents—175,000 pages of decisions in a single year, an average of 12,000 or more statutes each year and an average of 13,000 or more permanently recorded decisions of the highest courts each year."

Add the further fact that the briefs filed with the Supreme Court of North Carolina and the decisions of the court are relying with ever increasing frequency on precedents from these other states. And the argument for a more extensive term of legal study for a mastery of the principles of the law and their myriad of applications is even more compelling.

With the sheer increase in mass of legal materials three years of legal study will give to an applicant for license to practice law today no better equipment than one year in 1889, or two years in 1901. The requisites for admission to the bar do not have to drop back in order to fall behind—they only have to stand still.

THE NEED FOR THOROUGH PRELIMINARY EDUCATION

These facts and figures indicate not merely a growth in the volume of legal business but a growth in variety; not merely a change in content but a change in kind. They chart steps in "the vast transformation of thirteen seaboard colonies into a great nation,"⁴⁴ and a series of separated settlements into the connected Commonwealth of North Carolina. They tell a tale of transition from steam to electricity; from buggy, stage coach and wagon—to passenger and freight train—to motor car, motor bus and motor truck—to commercial aviation in the offing; from courier to telegraph and telephone, to radio; from the small scale business and the personal relation of master and slave and master and servant to the tremendous establishments and the consequent and consequential impersonal relation of employer and employee. These forces have written

⁴⁴ 40 Harvard Law Review, 1110.

themselves into the laws of the land. They are the stuff with which legislatures and courts and administrative tribunals are working to-day and out of which they must fashion the enactments, the decisions, and the determinations of tomorrow. They are not Mosaics formed from nice fittings of precedents into a combination to which the common law alone can give a key of revelation.

If the lawyer of today and tomorrow must go to the books to find these laws, he must go to the life from which they came to find their meaning. They cannot be grasped and the issues they involve cannot be grasped without an understanding of the structure of the businesses and the complexity of the multiplying human relationships out of which they come,—without an insight into the structure of the society in which these businesses and these relationships live and move and have their being. Nor can the principles announced in these laws be applied to situations coming and to come without an understanding of the structure and the spirit of the law and the structure and the spirit of the society which gives birth to the situations the common law is called upon to solve.

The problem was stated by Mr. Frankfurter a few months ago:

"It is idle to feel either blind resentment against 'government by commission' or sterile longing for a golden past that never was. Profound new forces call for new social inventions, or fresh adaptations of old experience. The 'great society' with its permeating influence of technology, large-scale industry, and progressive organization, presses its problems; the history of political and social liberty admonishes us of its lessons. Nothing less is our task than fashioning instruments and processes at once adequate for social needs and the protection of individual freedom."⁶⁵

It was stated by Mr. Root in 1922:

"Somebody has got to solve these questions. How are they to be solved? I am sure we all hope they will be solved by the application to the new conditions of the old principles of justice out of which grew our institutions; but to do that you must have somebody who understands those principles, their history, their reason, their spirit, their capacity, for extension, and their right application."⁶⁶

It was stated in 1920 by Mr. Hendren, of the Winston-Salem bar, formerly president of the North Carolina Bar Association:

"Legal thought and popular thought need closer companionship. The present day lawyer should be a student of sociology, economics

⁶⁵ 75 University of Pennsylvania Law Review, 617.

⁶⁶ American Bar Association Journal, March, 1922, p. 139.

and politics, as well as of law. He should know not only what the courts decide and the principles on which they decide, but quite as much the circumstances and conditions, social and economic, to which these principles are to be applied. He should know the state of popular thought, and feeling, which makes the environment in which these principles must operate and control. Lawyers who pass their lives in an atmosphere of pure law, from which every worldly and human element is excluded, can not shape practical principles to be applied to a restless world of flesh and blood. Notwithstanding a rule or doctrine may be surrounded at its birth by logic and reason, yet it may in practice defeat or retard the end in view because not adapted to the environment in which it is to be enforced."⁶⁷

"Unless the lawyer is equipped to penetrate to the core of these issues, to move freely in the world of ideas and knowledge which they imply, his technical training will be either futile or obstructive to the overwhelming enterprise of growing modern society by law."⁶⁸

There was a time when life was local and its currents did not go beyond the neighborhood of their origin and came root and branch within the daily observation and experience of everyone. They were the days of the origin of our present requirements for admission to the bar: one year and then two years of the study of law with no preliminary education. In those days a normal life in normal surroundings might give one an understanding of the problems and certainly would acquaint him with the factors and the forces with which as a lawyer he would have to deal. Thus the average person would bring to the study of the law something of an understanding of the simple structure of the society in which he would be called upon to apply the law he learned. Those days are gone forever. In North Carolina—throughout the South, they were prolonged for fifty years by the cruel effects of a devastating war. The closing years of the last century saw them fading in the light that was beginning to shine in the face of a new South. The beginning years of the new century saw them out of sight. The end of the first quarter of that new century finds North Carolina transcending ancient limits and in the main stream of currents of an American life that is pulsing in the limits of the world.

Unseen and unknown forces strike us from afar. Local merchants beset by chain stores within the community, and by an ever widening sphere of competition from without—due to good roads,

⁶⁷ *Reports*, North Carolina Bar Association, Vol. 22, p. 55.

⁶⁸ 40 *Harvard Law Review*, 1128.

automobiles and increasing facilities of transportation. Farmers get word from afar that they will not get a profit on their products. The cotton and tobacco growing in the fields symbolic of world wide forces. The two thousand farmers who met in Winston-Salem the other day to protest against prices that shook the foundations of their homes—helpless to help themselves—in the grip of forces that their “common sense” and experience could not then and cannot now explain. All of them know they are hit but they don’t know who or what has hit them. North Carolina is living in a changing country. North Carolinians are living in a changing North Carolina. It is in this changing North Carolina that North Carolina lawyers must practice law. It is in terms of this new environment that they must find the modern meanings of the law. It is a profound knowledge of the factors and forces creating and changing this environment that one who aspires to be a lawyer ought to bring to the study of the law. That is the ground on which North Carolina calls to the North Carolina Bar to live up to the traditional standards: Maturity, character, competent knowledge of the law. That is the ground on which the North Carolina Bar Association calls for a high standard of preliminary education as well as a high standard of legal study as a prerequisite to admission to the bar.

STIFFER STANDARDS

A tightening all along the line is needed. Maturity is as essential as ever. Character is as essential as ever,—more essential if possible in the delicate adjustments of modern life. And so of Knowledge—not only of a technical legal sort, but of a sort that brings an understanding of the inner workings of our social and economic life. The bar cannot live up to its responsibility to clients or to public without making the most stringent and searching investigation into the maturity, character and knowledge of each applicant for admission to the bar.

It has been said that of these requirements, character is *the* prime essential and that if it is guaranteed everything else can take care of itself. That character is *a* prime essential, no one with wits will want to deny. And knowledge in itself may not be a guarantee of character. But neither is ignorance. Character without knowledge is as helpless as knowledge without character is vicious. An elemental knowledge of the difference between right and wrong may be North Carolina’s test of sanity. The reflection of that knowledge

in times of conduct may be North Carolina's test of character. But neither one alone is North Carolina's test of fitness to practice law. That is the meaning of the North Carolina Bar Association's action at Pinehurst:

"Resolved: That the North Carolina Bar Association hereby requests the Supreme Court to review and revise the requirements of study for admission to the bar in accordance with the standards prevailing in other advancing states, and in accordance with educational standards prevailing in other professions and occupations, admission to which is regulated by statutory provision."

THE SITUATION IN OTHER STATES

There are sixteen states having no preliminary educational requirements—only the ability to read in order to prepare for the examination, and the ability to write in order to stand it. North Carolina is with them on the lowest level in the union. Thirty-two states rise above that level in general educational requirements ranging from high school graduation before taking the bar examination before beginning the study of law.

is among them. Thirty states and the District of Columbia require three years of law study at least, and several of them require that

Eighteen states require two years of law study. North Carolina to the completion of two years of college study or its equivalent these years shall be spent in a full time law school or four years in a law office.

But the North Carolina Bar Association's resolution calls for a place among the "advancing states." What does that mean? In 1921 the American Bar Association adopted the following resolution:

1. Every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:
 - (a) It shall require as a condition of admission at least two years of study in a college;
 - (b) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course equivalent to the number of working hours, if they devote only part of their working time to their studies;
 - (c) It shall provide an adequate library available for the use of its students;
 - (d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

2. The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

Since that time Illinois, Kansas, Ohio, Wisconsin, West Virginia, and New York have complied with these requirements. That is what the North Carolina Bar is asking for: to be abreast of the "advancing states."

NORTH CAROLINA'S LEGAL TRADITION

North Carolina is not only called to this conclusion by the claims of the present and the future; she is driven to it by the logic of her life and history.

It is in line with the traditions of the bar beginning the fight for higher standards with the protest in 1753 and continuing it without interruption to this day; achieving them in 1760, 1889, 1901.

It is in line with the tradition of the Legislature beginning in 1760 with a recognition of the protest by placing the regulation of admission to the bar in the hands of the highest court and confirming over and over again the Supreme Court's policy of advancing standards by enacting the Supreme Court rules into the statute law.

It is in line with the tradition of the highest court of the state beginning in 1760 the task of raising professional standards by examining into the character and competence of applicants for admission to the bar—a task it has continued ever since: in 1849 taking a forward step by prescribing a definite course of study to be covered; in 1889 the double step of (1) deciding that the certificate of two attorneys was not decisive of character but merely evidence which the court could question, and (2) requiring that the prescribed course be studied for twelve months; in 1901 the further step of requiring two years of law study; in 1904 the steps (1) requiring that the prescribed course which was to be studied for twelve months be supervised by the dean of a law school or a lawyer who must (2) examine the applicant and find him "competent and proficient" before certifying him to the court; in 1925 denying admission to a protested applicant and further safeguarding the standard by requiring every applicant to file notice of his intention to take the examination thirty days in advance of the examination day.

It is in line with the tradition of those few and isolated members of the bar who without training other than that which they imposed

upon themselves fought their way to eminence in the legal profession. They belong largely to a day of limited educational opportunities—not one of them but wanted such an opportunity, not one of them but regretted he didn't have it, not one of them but felt he would have been better off for having had it, not one of that generation but went to work to see that his sons and the sons of other men should have the training which was denied to him. That day they dreamed of and fought for is here. The record of boys on every college campus in North Carolina today is evidence that poverty is no bar to the best training afforded in the state and is an overwhelming answer to the charge that high standards for admission to the bar shut the door of hope in the face of youth—the day of Aycock was its prophecy, and the day of Morrison was its realization. It is something of a travesty on the lives of those men to point to a handicap they tried so hard to overcome as the source of their greatness, or to hold up to the youth of today as an example to be followed a condition of affairs that they in large measure gave the effort of their lives to spare to their children. If those men held up their own inadequate training as a burden to be avoided, why should we hold it up as a policy to be avowed? Is the fact that these men rose *in spite of* these things any proof that we can rise *because of* them? Shall stepping stones be turned to stumbling blocks?

NORTH CAROLINA'S EDUCATIONAL TRADITION

It is in line with the educational tradition of North Carolina from grammar grades to colleges. It is in line with the whole democratic tradition of a people that has lifted itself through its own efforts to the front rank of Southern States. Democracy was not destroyed when college entrance requirements were raised, nor when high school standards were raised, nor when applicants for license to practice pharmacy were required to have the equivalent of a high school education and three years study of pharmacy, nor when applicants for license to practice medicine were required to have the equivalent of a college education and four years of medical study. Its power was increased. The question is not whether democracy can live with standards, but whether it can live without them.

The raising of standards has not shut the door of hope in the face of youth; it has opened it. More boys and girls are going through that door today than ever. Poverty does not hold them

back. A Lincoln who would walk five miles after a hard day's work to borrow a book and then sit up by the flame of a lightwood knot to read it can today with less effort work his way through school and college and have money in his pocket when he graduates. Boys on every college campus in North Carolina are doing it today. It is not the challenge of the depths, but the challenge of the heights that calls to youth.

NOW AND THEN

The gist of the argument to the present day applicant is: what those men did then you can do now. Along with that argument should go the distinction between those days and these days. (1) Then, schools were scarce and inaccessible save to the limited few, and, except for the few fortunate enough to get an education, untrained lawyers were pitted against untrained lawyers on an equal footing. Now, schools are plentiful and within the reach of everyone who cares to reach, and untrained lawyers are pitted against trained lawyers on a hopelessly unequal footing. (2) Then, life was local and simply organized and daily experience would ordinarily acquaint one with the forces with which as a lawyer he would have to deal. Now, life transcends neighborhood boundaries and state lines in its sweep, is full of forces and complexities whose origin and operations one's normal experience is powerless to reveal. (3) Even in the days when only a small minority had the advantages of schooling and an overwhelming majority had not, that small minority provided an overwhelming majority of those who rose to distinction in the legal profession. Out of around forty-nine judges who have sat upon the Supreme Court bench of North Carolina twenty-eight were college graduates, eight had college training, three had high school or private school training; information as to seven of the remaining ten is lacking at this writing; only a very few had no schooling at all. Out of around sixty-nine judges who have sat upon the Supreme Court bench of the United States, forty-seven were college graduates, eleven had college or academy training; information as to some of the remaining eleven is lacking at this writing; only a few had no schooling at all. Of the twenty-four judges on the Superior Court bench of North Carolina today, the great majority had excellent college training. Of around one hundred and eighty judges on the Federal Court bench today, not including United States Supreme Court, one hundred and thirty-six had excellent

college training, twenty had public school, private or academy training; information on the remaining twenty-six is lacking at this writing. Of the five judges of the Supreme Court of North Carolina today and the nine judges of the Supreme Court of the United States, all had excellent college training.

These facts and figures do not mean that men with excellent preparatory training have greater native ability than those without it. But they do mean, and they demonstrate beyond question that the man who is properly equipped to practice law has a tremendous advantage and the man who is not has a tremendous handicap in dealing with the legal questions of today. The brilliant few may by the sheer genius that is within them rise in spite of the handicap,—as, for instance, Lincoln. But what of the many who struggle almost hopelessly along? We should not forget the thousands in the thought of one.

INVERTED LOGIC

It is a fatally inverted logic that holds up the stumbling block of the lawyers of the past as the stepping stone of the would-be lawyers of the present and the future. It was said in open meeting of the North Carolina Bar Association some years ago: "Shysters are lawyers whose capabilities will not permit them to overcome difficulties, and a system of licensing that builds low obstacles before the door of entrance to the profession is most highly conducive to the making of that class of individuals that tear down and never build up, and are forever a liability and a drawback to the profession."⁶⁹ Neither

⁶⁹ *Reports*, North Carolina Bar Association, Vol. 23, p. 45.
the bar nor the court can escape its responsibility in view of the fact that the terms on which licenses are granted are to some extent a representation to the applicant than on those terms he is equipped to practice law.

WHAT'S A LICENSE FOR?

We can no longer follow the easy going doctrine of admitting applicants to the bar on the theory that they will later learn the law. Such a policy robs a license of its meaning and advertises to business men and to the public that the policy of the profession is to let men in without knowing their business and allow them to learn it by experimenting on their clients. That is a costly learning process—costly to the lawyer, costly to his client, costly to the profession in that it forfeits the public's confidence and undermines respect for law and order. That is the policy which has brought about the condi-

tions referred to by Mr. Root in his argument to the National Conference of Bar Associations in favor of higher bar entrance requirements:

"That there is trouble I think everyone of us feels. It may not be trouble in this particular county, in this particular bar, in this or that state; but it is trouble in so large a part of the bar that it affects the whole. You cannot have too many rotten spots in an apple and have the rest of it good. We have for years been hearing just such things as Judge Goodwin tells us out of his experiences on the bench, about the sacrifice of clients' interests, increased expense, the continual delay, the sending back of cases for new trial, notwithstanding their merits, owing to the inefficiency and incompetency of members of the bar. Those reports have been coming from all over and they have blackened the name of the bar. They have led to the public observing the manifold defects of our administration of justice. Its delays, its technicalities, its repeated and oft-repeated appeals and reviews, its long delays which prevent the honest man of modest means from getting his rights, while the rich man, with abundant income, and the sharper, with subtle and adroit ingenuities, can put off indefinitely the granting of justice—that is the charge against us, against you and me; and, what is worse, it's a charge against the great profession of the law, and what is worse, it's a charge against our free institutions, that is sapping the faith, the confidence, the loyalty of the millions of people in this land in those institutions."⁷⁰

One needs only to look at the statement of the North Carolina Supreme Court, speaking through Chief Justice Stacy in 1926, in order to see how it is that incompetent lawyers can sap the faith and confidence of people in the law and legal institutions:

"Consider for a moment the duties of the lawyer. He is sought as counselor, and his advice comes home in its ultimate effect to every man's fireside. Vast interests are committed to his care; he is the recipient of unbounded trust and confidence; he deals with his client's property, his reputation, his life, his all. An attorney at law is a sworn officer of the court, whose chief concern, as such, is to aid in the administration of justice. In addition, he has an unparalleled opportunity to fix the code of ethics and to determine the moral tone of the business life of his community. Other agencies, of course, contribute their part, but in its final analysis, trade is conducted on sound legal advice. Take, for example, a commercial center of high ideals, another of low standards, and there will invariably be found a difference between the bars of the two localities. The legal profession has never failed to make its impress upon the life of the community. It is of supreme importance, therefore, that

⁷⁰ American Bar Association Journal, March, 1922, p. 139.

one who aspires to this high position should be of upright character, and should hold, and deserve to hold, the respect and confidence of the community in which he lives and works."¹

THE RESOLUTIONS OF THE BAR A CHALLENGE TO THE BENCH

It is because "in its final analysis trade is conducted on sound legal advice"; because the lawyer "has an unparalleled opportunity to fix the code of ethics and to determine the moral tone of the business life of his community"; because "vast interests are committed to his care"; because "he deals with his client's property, his reputation, his life, his all"; because he is "a sworn officer of the court, whose chief concern, as such, is to aid in the administration of justice"; because "he is sought as a counsellor and his advice comes home in effect to every man's fireside"; because the Supreme Court of North Carolina has said these things and knows that they are true, we have faith that it will accept the Resolutions of the Bar as an opportunity to translate its pronouncements into policies which will guarantee "that one who aspires to this high position should hold and deserve to hold the respect and confidence of the community in which he lives and works."

¹ In re *Applicants for License*, 191 N. C., p. 235, 239.