Revamping The Bar Examinations

By RAUL O. DEL CASTILLO

SOMETIME ago, a petition was filed by the College of Law of the University of the Philippines to the Supreme Court to hold the Bar Examinations in the month of April instead of August. The practical reasons advanced for the change were: first, that by March the law graduate is fully prepared to take the bar examinations immediately after graduation; second, that the pre-bar review is a mere duplication of the second semester of the senior year; third, that the special pre-bar review, besides being a waste of time to the law graduates and the law professors, is a waste of money to the parents of the bar candidates; fourth, because by giving the bar examinations on April, the results may be announced by the end of June and the successful candidates sworn in when the court meets in July, each year, thus giving the young lawyers an earlier start in the practice of the profession. (*Minutes of Faculty Meetings of College of Law, U. P., 1936-37, pp. 70-71*) Because of the opposition of many private schools for purely economic reasons, the petition was denied.

The petition to change the month for holding the bar examinations, indicates at least a struggle against inertia on the part of certain professors of law and members of the bar who have a sincere interest in the welfare of the bar candidates. But of greater importance than the time of the examinations are the examinations themselves. Pertinent questions are: Do they afford a true gauge of who should be admitted as members of the Philippine Bar; do they serve the purpose for which they were intended; to strain and filter those candidates who pass by the hundreds from law schools? While the time for holding and the procedure of the bar examinations call for some changes, the very substance of the examinations is in greater need of revamping.

"Physicians, like lawyers," says Ferdinand Lundbergh, (*The Priesthood Of The Law, Harpers Magazine, April, 1939*) "operate under political authority. But it is not the license that makes a man a physician. The license is only an afterthought, a purely regulatory measure. With the lawyer, however, it is his license rather than his supposed learning that confers competency upon him. No matter how much one may know about the law, one is not, by any means, a lawyer without a license to practice issued by the bench upon the certification of the bar examiners." Since the license is the passport to the practice of the profession and since passing the bar examinations is the condition precedent to a license, it is of importance for us to critically examine our bar examinations. Justice Laurel, at the Judges' Convention in Baguio, said: "In countries, where an enlightened judicial system is in vogue, admission to the bar, no less than the selection of judges, is regulated with utmost concern. In our case, we have established certain standard require-

ments for the admission to the practice of law, but there is a feeling that the output speaks more of quantity than of quality."

An applicant for admission to the bar is required to show that he has "regularly studied law for four years and successfully completed all the prescribed courses, in a law school or university," and "that, before he began the study of law, he had pursued and satisfactorily completed in a recognized university or college of liberal arts, requiring for admission thereto the completion of a four-year high school course, the first two years of the course of study prescribed therein for a degree in arts and sciences." (*Rule 127, secs. 5 and 6, Rules of Court.*) Normally, therefore, an applicant must have undergone seventeen years of study before he can present himself for admission to the bar. Are the bar examinations, then, of the type to call for the fundamental training of the first eleven years, the liberal studies in the preparatory law and, finally, the four-year specialized and intensive law course? Are they designed to test the "natural ability of the candidate," which is the most important quality to be looked for in applicants for admission to the bar, according to Dean Everett Fraser, of the University of Minnesota Law School? Remarkably, the bar examinations of the last five years have given emphasis on the subject matters requiring not so much ability or study as memory, namely, codal provisions and decided cases.

Law is a science, yet the examinations for admission to its practice are hardly scientific. The difference between the medical or engineering board examinations and the bar lies in the fact that the inquiry in the former are scientific concepts brought "into correspondence with actuality." The answers to their queries do not depend upon the will of the government, much less from a branch thereof, as the legislature. Their findings are beyond the pale and power of the law-making body. What about the science of Law? Law endures because it is in a state of continual change, but even in its process of change to keep pace with progress, there is something fundamental and permanent in it. What Moses J. Aronson says of the spirit of the Common Law can, with equal force, be said of the legal science: that it "plunges its millenary roots into the era of feudal agriculturalism, yet it flourishes in the shadow of the sky-scrapers, and is fertilized by the black soot of steel-mills. Changing and yet unchanged for a thousand years, hoary with age yet contemporaneous in effectiveness, it seems to defy the rhythm of growth and decay."

"In these parlous days of ethical and intellectual frustration, when to re-valuate old values is not only a duty but a necessity," the focal point of our objectives are oftentimes misdirected. We are prone to stress the passing and overlook the permanent values; we enshrine the procedure and subordinate the substance; and when we over-emphasize the statute and the codal provision rather than their underlying philosophy, we lay stress on that which is most susceptible to the legislature's corrosive alchemy. In other words, our quest should be far beyond the mere laws which the legislator may alter, modify and abrogate in a single session, but the sources and the reasons for the rules which find their root in society, faithful to the cumulative impress of experience, yet respon-

sive to the demands of an ever-changing civilization.

The codal provisions are always found in the statute books. They are public records which are always accessible in the practice of the profession. But the *Spirit* of the legislation is not so conveniently found. It is for the researcher to delve beyond the surface of the letter in order to understand the spirit of the law, the very existence of the law. Hence, the accent should be on these permanent values that are less dependent upon the will of the legislature. The crucible should be one which will call for the ability of the candidate not only to know what the law IS—but something deeper: the social conditions which called for it as the answer of the government to a need; the economic factors bearing upon the community which warranted governmental interference, or the political influences which precipitated the calling of a special session.

Another tendency prevailing among the bar examiners is to lay stress on decided cases. It may be natural for the bench to have the conviction that conclusions without the support of a case in point or contrary to a decided one is wrong. But strangely enough, there are lawyers and law professors who take the same stand-pat attitude. It is shared by members of the bar, who, *for the time being,* are interested in maintaining the status quo of jurisprudence. It is also countenanced by some professors who insist that there is no correct way of thinking outside of and beyond that of the Supreme Court, and that we have the absolute obligation "to walk unswervingly within the limits traced by the hands of the honored dead." Lawyers, said Ferdinand Lundbergh in another article (*The Legal Profession, Harpers Magazine, December, 1938*), are often referred to as a conservative force in society, and as the true conservators of permanent values. "The argument takes the form of pointing out that lawyers and jurists depend for their decision upon historical precedent, and they are resistant to changes that jeopardize the vested interests of the profession. While this is true, it is generally overlooked that lawyers, *if required to,* are just as able to quote precedent in support of rapid and social innovation. Although pursuing the method of blind authority, *wholely discredited by modern science,* they have no difficulty in harnessing this method to purely special ends." (Underscoring ours).

Complete subservience to judicial dogma produces a dwarfed and enervated bar. Lawyers in practice should not w h o l l y rely upon antiquated precedents and be guided by outworn legal principles. They will be called upon to champion changes, reforms and deviations from traditions. Lawyers will have to pioneer into new legal frontiers and free themselves from the bondage of oppressive conservatism, if the science and the profession would keep pace with progress. Judicial tyranny is impossible but for the complaisance of a bar profoundly convinced that the law is what the judge says it is.

Mr. Justice Stone, the staunch advocate and champion of the common law, cautioned, "Every new citation, every new digest, every new compilation which we eagerly seize upon to lighten our labors, comes, like Banquo's ghost, to confront us with the disquieting reality that the common law system of precedent which our for-

bears have cherished for some ten centuries cannot continue indefinitely to develop solely through the medium of reported decisions." (*H. F. Stone, Some Aspects of the Problem of Law Simplification [1923] 23 Col. L. Rev. 319, 320*). Again, warning of the disastrous consequences of the application of the precedent-following technique in the hands of a judge schooled and disciplined under the stagnant perfectionism of Coke and Blackstone: "Fearful of transcending the realm of the known and the knowable, the common law runs the risks of forgetting that the past is itself a growing area to which the future is constantly adding new fringes, and that a proper respect for precedent does not necessitate a supine worship of authority when under the stress of changed circumstances it loses its social utility."

Edwin W. Patterson, of Columbia University, admits that it is impossible to impart in three or even four years to the would-be advocate or counselor "the staggering mass of reported judicial precedents and statutory and administrative rules." The fact is that although a specific dosage of decided cases may be enough to pass the bar, it certainly is inadequate equipment to pass the greater bar of public opinion. The candidate who can survive all kinds of "bars" is the one with an academic background, who knows his law,—its philosophy and its purpose. Legal reasoning should take the place of precedent in law training, and it is the "broader synthesis of legal doctrines and concepts, of mental processes in the formation of decisions, of ethics and legal axiology or public policies in the law," which should be sought after in our examinations, if the successful candidate "is to understand and adapt to his uses the legal information and legal phenomena which are not 'covered' by the law school curriculum. The lawyer of the future, said Cardozo, is not the man with only a card index of cases." (*Jurisprudence in Law Training, Edwin W. Patterson*).

It is not enough to confine law within the orbit of precedents and legal formulas. The search must be extended to extra-legal fields, as laws can not exist and function separately from other branches of learning which equally affect the social and economic development of the nation.

"The lawyers," says Professor Edward S. Robinson (*Law and the Lawyers*) "whether judges, counsellors or scholars, represent the dominant social philosophy of our day." If the same proud boast is to be made of lawyers decades from today, then an added responsibility falls not only upon the bar examiners, but upon the numerous law schools which graduate bar candidates indiscriminately.

In a series of articles on lawyers, Ferdinand Lundbergh observes that the "legal profession *as a whole* is not delivering the goods as advertized." From the moment of graduation, the successful candidate embarks upon his career largely at the expense of others. Without a period of supervised internship as required of doctors, upon leaving the law school "the entire body politic is the candidates' entire clinic—with deplorable consequences for society." Then follows a career of self-aggrandizing interest along pliant legalistic lines, and after a mastery of the labyrinthian vagaries and intricacies of the law, the lawyer apparently arrives at his goal: the lucrative practice of

lawcraft. The oaths and the pledges of the profession are lost and forgotten while absorbed in dubious and socially disruptive chicaneries. The administration of justice becomes incidental, even immaterial.

When social service becomes a mere incident, subordinated to mercenary ends the legal profession becomes a misnomer, for it will then be more appropriately termed the "legal trade." And when Justice itself becomes a matter of convenience (depending on whether its maintenance serves the interest of a client) then law itself is "relegated to the status of a ghostly epiphenomenon, a formal mockery "

"AFTER all, law is the product of human experience. Into its warp and woof have entered human interests, human needs, human emotions, and notions of ethics and philosophy which are the products of our racial experience."—MR. JUSTICE STONE.