LEGAL EDUCATION: THE BAR EXAMINATION AS QUALIFYING PROCESS *

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I. INTRODUCTORY

A. Generally

Bar examinations are not indispensable requisites for admission to the legal profession. Some jurisdictions altogether do without them; [1] in the others where bar examinations are prescribed as qualifying tests, practices vary. They are administered with different degrees of strictness [2] or

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[1] Examples are Indonesia and Malaysia among Southeast Asian countries; others follow the English system of training barristers and solicitors or modified forms of it; and still others have modes of legal clerkship as substitute for the bar examination requirement.

In the United States controversy continues to surround the "diploma privilege," a term applied to admission to law practice on the basis of graduation from law school, without need of a bar examination. The Montana statute extending the privilege was upheld in a challenge against constitutionality in the 1974 decision of *Huffman v. Montana Supreme Court,* 372 F. Supp. 1175 (D.C. Mont.). Wisconsin, West Virginia and Mississippi are the only other jurisdictions that allow admission on diploma privilege. [*Admission Upon Diploma to the Wisconsin Bar,* 58 MARQ. L. REV. 109 (1975)].

[2] Korea has reported the tightest bar examination requirements. A Korean participant in a Legal Education and Development Seminar jointly sponsored by the International Legal Center and the University of Malaya in Kuala Lumpur, August 6-8, 1976, placed the percentage of successful candidates at less than 1% of the annual number of applicants which may come up to thousands.

Japan comes next as Hattori and Rabinowits observed in VON MEHREN (Ed.), LAW IN JAPAN: THE LEGAL ORDER IN A CHANGING SOCIETY 143 (1963) in their contribution entitled *The Legal Profession in Japan: Its Historical Development and Present State in Japan:* "it is extremely difficult for law graduates to succeed in the National Legal Examinations unless they undertake further extensive studies."

Basis for this statement were the following statistics they obtained from the Ministry of Justice:

	1958	1959	1960
Number of applicants (appro.)	7,000	7,800	8,300
Number of successful candidates (appro.)	346	319	345
Percent successful (appro.)	4.85	4.09	4.16

liberality,[3] with or without requirements of formal law school education,[4]

[3] See graphs showing national percentage of applicants who passed the Philippine Bar Examinations and the average considered passing in the Philippine Bar Examinations from 1946 to 1976. *infra*.

[4] Bar examination educational requirements given in tabulated form in Am. Jur. 2nd Desk book 235-242 (1962) offer interesting information on the rules and practices in various jurisdictions. Thus: (1) Private unsupervised study without law school attendance is accepted as qualification in: Mississippi (2 yrs.); Alaska (if begun before January 1, 1956); Louisiana (if begun before October 15, 1959); North Carolina (3 yrs.); North Dakota (3 yrs.); Arkansas (4 yrs. if not less than 48 wks. annually); California (3.456 hrs., must pass 1st yr. law examination). (2) Study in law office is acceptable in: Kansas (3 yrs. prior to June 1, 1960), Pennsylvania (4 yrs.); Rhode Island (4 yrs.); Illinois (4 yrs.); California (4 yrs.); California (4 yrs.); Washington (4 yrs.); New York (4 yrs.); Massachusetts (3 yrs.); Maine (3 yrs.); Idaho (4 yrs.); South Carolina (3 yrs.); Texas (36 months part-time or 27 months full-time); Delaware (3 yrs.). (3) A combination of private study and law school attendance is possible: Vermont (4 yrs.); Georgia (2 yrs. law school and 2 yrs. private study); Delaware (3 yrs.); Washington (3-4 yrs. law school plus further study in law office); New York (4 yrs.); North Carolina (3 yrs.); Massachusetts (3-4 yrs.); Louisiana (3 yrs.); Illinois (4 yrs.); Idaho (2 yrs. law school plus 1½ yrs. law office); Kansas (14 semesters of law school plus 3 yrs. law office study). (4) California allows study of law by correspondence for a 4 year period. (5) The following require law school residence: Alaska; Arkansas (1250 class room hrs.); California (3-4 yrs.); Delaware (3 yrs.); Georgia (2 yrs.); Illinois; Maine (3 yrs.); Massachusetts (3-4 yrs.); Mississippi; New York (3-4 yrs.); Pennsylvania (4 yrs.); North Dakota (3 yrs.); Vermont (3 yrs.); Virginia; Alabama (4 yrs.); Iowa (3 yrs.); Michigan (3-4 yrs.); Montana (2 successive years); West Virginia (3 yrs.).

The 1974 American Bar Association tabulation of minimum educational residence requirements for legal practice as of September 1, 1970 reveals a trend towards stricter rules requiring formal legal training, the states accepting less than completion of full law school courses having diminished in number compared to the 1962 data. Thus, (1) law study done wholly outside a law school is accepted in only five states, namely California (4 years in a law office or in California Judge's chambers, or by correspondence for an aggregate of 3,456 hours but must pass first-year law students' examination at the end of the first year of study,) Mississippi (2 years of office study with approval of such study in advance,) Vermont (4 years after registration,) Virginia (36 months of law study, registration required,) and Washington (4 years law office study and registration required.) (2) Seven states accept law study done partly in law schools, namely, California (combination of outside law school study and law school study) Maine (successful completion of 2/3 of requirement for graduation from an A.B.A. approved law school followed by 1 year of law study,) New Jersey (completion of law school study in an A.B.A. approved school plus completion of a skills and methods course or nine months clerkship,) New York (first year in approved law school, thereafter, study in a law office for an aggregate total of four years,) Texas (36 months, registration required) Vermont (4 years after registration with credit given for law school study toward 4 year requirement,) Virginia (credit allowed for law school toward three year requirement) Washington (study in a law school but not yielding a degree, followed by further study in school, or in law office in the state at the discretion of board) and Wyoming (1 year in approved law school and 2 years in law office study; (3) all states accept study done wholly in a law school as satisfying educational requirement for admission to legal practice. (Law Schools and Bar Admission Requirements a Review of Legal Education in the United States Fall 1974 published by the American Bar Association Section of Legal Education and Admission to the Bar.)

orally, in writing, or in both.[5] There is no universal rule followed.

B. Mystique or myth?

In the Philippines bar examinations have become institutionalized and have acquired in the popular mind a mystique all its own. It has assumed such a dominant place in the legal education subculture as to obscure other objectives ostensibly pursued.[6] The fanfare accompanying the release of the results of the examinations is an example of the emphasis popularly attached to these test.[7] It has been invested with glamour but has not been untouched by scandal.[8]

If these were all, it could be of passing duration. But the influence of bar examinations on legal training is of more far reaching proportions since it reaches out to the entire period of training which an aspirant for admission to the bar in this jurisdiction of necessity has to undergo.

It is not necessary for this purpose to repeat the Supreme Court rules governing applicants for the examinations.[9] It is enough to say that to qualify for the test, the examinees' credentials must show completion of prescribed courses of study leading to as well as during the regular law course.[10] The format of the examination,[11] the interval in which the specified subjects are given,[12] the precautions taken to insure the integrity of

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[5] Bar Examinations and Requirements for Admission to the Bar published for the Survey of Legal Profession by Shepard's Citation (1952) mentions that in the United States examining boards in several states have authority to give oral as well as written examinations, but as of 1952 the practice was relatively little used. Only in Iowa, Rhode Island and Vermont was it a regular part of the examinations; in Indiana and Massachusetts only applicants whose written examinations were in the borderline zones were orally examined and in New Mexico only in an exceptional case as when a written answer is ambiguous. (p. 326). The oral examination has the advantage of bringing the applicants personally before one or more members of the bar examiners who have an opportunity to observe the applicants as they are questioned. The disadvantages are said to outweigh the advantages. When there is a substantial number of applicants each can be given only a few minutes and it is impossible to ask equally searching questions of each. The examiners will have to conduct the examinations separately and their ratings will hardly be uniform. pp. 36-37.

The last sentence in the last paragraph of Rule 138, sec. 10 of our Rules of Court explicitly states: "No oral examination shall be given."

[6] Cortes, *The Law Curriculum: Assessment and Recommendations in the Light of a Developing Society*, 47 PHIL. L.J. 446-486 (1972).

[7] "1,038 Pass Bar Exams; Ateneo Graduate Tops", Bulletin Today, March 5, 1978, p. 1, 112; March 6, 1978, p. 17; "1,038 Out of 1,710 Hurdle Bar Exams", The Philippine Daily Express, March 5, 1978, p. 1, 6; '1,038 Candidates Hurdle Bar Exams", Times Journal, March 5, 1978, p 1, 8 front page news, if not the headlines.

[8] People v. Castro, 54 Phil. 42 (1929); People v. Romualdez, 57 Phil. 148 (1932); *In re* Amparo, G.R. Resolution dated July 18, 1974; *In re* Lanuevo, G.R. Adm. Case Nos. 1162-64, August 29, 1975, 66 SCRA 245 (1975).

[9] RULES OF COURT, Rule 138, sec. 2.

[10] RULES OF COURT, Rule 138, secs. 5 & 6.

[11] RULES OF COURT, Rule 138, sec. 10, 1st par.

[12] RULES OF COURT, Rule 138, sec. 11.

the examination, [13] including the secrecy maintained, until the examinations, most recently given, as to the identity of the members of the committee of bar examiners appointed by the Supreme Court. [14] All these contribute to that mystique.

Yet one who actively exercises a profession must undergo constant testing. This is more so in the case of lawyers. Nowhere is this better put than in a commencement address entitled, "The Game of the Law and its Prizes" by Mr. Justice Benjamin Nathan Cardoso. Let me share his thoughts with you:

> *As long as you live, and surely as long as you practice law, an examiner will dog your foot-steps. When you enter some law office, an apprentice to some older lawyer, there will be some one looking over your shoulder, criticising your work, pointing out its defects, cheering you, once in a while, by a concession of its merits, educating, examining, testing — the process repeated without end. When a little later you start for yourselves, there will be trial judges and appellate courts, all examining, testing, approving or rejecting, just as in the days of adolescence which you thought were left behind. Sometimes when these critics are compassionate or silent, you will have to meet a test still sterner, a scrutiny yet more rigid, the merciless test and scrutiny of a defeated and reproachful client. As years go by, some of you may cease to be advocates, and gain a seat upon the Bench. You may think then that you are safe, but alas! it is not so. Examiners will crowd about, and no longer are they to be propitiated by the invocation of a patron saint. If you happen to be a trial judge, there are your colleagues, ever lying in ambush vigilant and keen, and perhaps some other court yet higher than your own. If you live through all these dangers with reason unimpaired there are other trials as searching. The Bar, with its associations and committees, and, worse than these, the law schools and the law reviews, are still waiting at the door. Let there be a joint in your armor, a flaw in your opinion, it will not be long before probe and scalpel will expose a gaping wound. The examiner is near at hand.* [15]

The bar examinations are qualifying tests, undoubtedly important, but not *the test* to end all tests. They have, however, been elevated from a determination of fitness at a particular point in the training of applicants, to a qualifying process by which the Supreme Court through rule-making

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[13] RULES OF COURT, Rule 138, sec. 10, 3rd par. and Regulations implementing these.

[14] Bar test 'secrecy' policy is scrapped, Bulletin Today, Nov. 5, 1977, p. 36.

[15] CARDOSO, SELECTED WRITINGS 414-415 (M.E. Hall ed., 1947)

has reached out to prescribe preparatory baccalaureate training,[16] at least four years of formal law school specifying fields of study,[17] hence touching on curricular content, besides stating the subjects of the examinations, relative weights and passing grades.[18]

II The Examinations *Qua* Examination

A. This study, Methodology

With so much emphasis given to these examinations, they deserve to be subjected to searching scrutiny. This study explores some aspects but it is no more than a beginning. It is limited in coverage as to time and subject matter. It explores the role of the bar examinations in the making of a lawyer. The focus is on one area, political and international law, during the post World War II period, 1946-1975.

The questions asked each year were content analyzed; empirical data were gathered by random interview of bar examiners during the period, from a structured questionnaire.[19]

The views of examinees regarding bar examinations were obtained for this study from an ongoing project sponsored by the Law Research Council which includes in its questionnaire a section on bar examinations.[20]

To start with it must be emphasized that the analysis and description of data are confined both as to time and the field of law covered. However, observations of a more general character have also been unavoidable.

B. The Examinations

1. Testing for what?

The avowed objectives of bar examinations may be briefly summarized into a determination of the examinees': (1) logical reasoning; (2) thorough

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[16] RULES OF COURT, Rule 138, sec. 6 provides that "No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts and sciences with any of the following subjects as major or field of concentration: political science, logic, English, Spanish, history and economics."

[17] RULES OF COURT, Rule 138, sec. 9.

[18] RULES OF COURT, Rule 138, sec. 14.

[19] The data gathering was made possible through the generous cooperation of the members of the judiciary from the Supreme Court, the Court of Appeals and district courts, the Bar Confidant, as well as of other members of the Integrated Bar of the Philippines, starting with the pre-test stage onwards. The Law Center took care of the financial requirement of the survey.

[20] Part of the data used in this paper is a result of this lecturer's venturing into areas of multi-disciplinary research. The cooperation of Dean Manuel Bonifacio, Law Research Council fellow; Professor Purificacion Quisumbing, a senior lecturer in the College of Law and Researcher in the Law Center as well as Misses Vicky Llaguno and Theresa Alma Malinis was invaluable in the formulation of the questionnaire and in obtaining empirical data. The legal aspect of the lecture was undertaken with the usual cooperation of the law library staff.

knowledge of fundamental principles of law and their application; (3) ability to analyze and solve legal problems, and (4) ability to communicate in precise language. [21]

These are best demonstrated through problems calling for a shifting of relevant from irrelevant facts, a determination of issues, and an application of fundamental principles of law to the solution of legal problems. Another type of examination which may work towards these objectives would be questions that call for analysis and discussion of legal implications.

A good memory is useful in determining the applicable legal principles whether embodied in the constitution, in legislation, in court decision or general concepts. But questions that call for specific information, by directly asking for definition, enumeration, differentiation, or the like stress memorization and nothing else. Even a problem can have the same effect if it simply reproduces a decided case with no attempt to modify even the names of the parties, the chronology of events, the statement of facts and the issues involved. Despite the forms taken the questions may just as well be couched in objective terms saving valuable time otherwise needed to correct the laboriously-prepared answers.

2. The actuality

To determine how close to accomplishing the desired objectives examinations in political law and international law have been, the questions given each year from 1946 to 1975 were analyzed. From 1946 to 1963 international law was treated separately from p "tical law. After that they were combined in one examination. [22]

The questions in international law during the period 1946-1963 reveal how definitions, enumerations, differentiations and specific information outnumbered and outweighed problems based on court decisions or on hypothetical cases. The frequency of problems fluctuate from 1 out of 36 items to 11 out of 17 or a range of 3% to 65%. The frequency of problems during the period totalled 91 compared to the total frequency of items calling for definitions, enumerations, differentiations, and specific information which amounted to 226 items all told during the same period. [23]

In political law the examinations during the same period reveals a heavier problem component. There were 141 problems — or a frequency ranging from 4 out of 28 items to 12 out of 20 items or 14% to 60% for the years involved. However, there were problems and problems. Some were hypothetical cases calling for identification of issues, the application of principles of law to the facts and a solution of the problem posed.

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[21] Taken from the responses to the questionnaire and as stated by Committee Chairmen in meetings with law deans where the lecturer was present.

[22] By amending of Rule 138, sec. 11 Rules of Court which took effect on January 1, 1964.

[23] A total of 262 items per Table I, Appendix A

Others specified the issues and called for answers to questions based on them. Still others were frankly based on decided cases with no modifications whatsoever. In the last case, the question became one of simple recall of the pertinent decision. During the 1946-1963 period the questions calling for specific information, which could be a constitutional or statutory provision, a decision, or principle of law were numerous. (100 items) These added to the items on definitions, distinctions, differentiations, and enumerations, far exceeded the problems. [24]

From 1964 to 1975 with the two subjects combined, no drastic change appeared at first in the trend as to the frequency of problems. But from 1968 onwards (except 1974) there was a discernible increase in the frequency of problems. For example in 1971, of a total of 44 items, 30 were problems. [25] However, except for four subdivisions which involved hypothetical cases, the rest were decisions of the Supreme Court or single issues. This particular year the examination was unduly long and almost none of the questions touched on international law. What happened with the two subjects combined was that international law was sometimes crowded out except once when the reverse occurred and there were fewer questions in political law than in international law. [26]

The tables will illustrate the type of questions given and an idea of the number of items in the examinations. [27] A scrutiny of the content of these questions reveals no consistency. They fluctuate in length and in difficulty, they vary in style.

The way some examiners framed their questions left much to be desired. There were questions highly reminiscent of quiz shows. A few examples will illustrate this:

a. When and where does one file (a specific instrument). [28]
b. Give the composition of the Council of State. [29]
c. Wherein, among State documents relative to development of Philippine constitutional law, do you find the absolute separation of state and church specifically provided? [30]

There were questions ambiguously framed, others which posed a puzzler like: "What is *the* crime committed against the law of Nations." [31]

3. Assessment and evaluation of answers

The examiners in answer to a question about correction of the examinations stated that they employed no correctors, they gave weight to substance

[24] Table II, Appendix A.
[25] Table III, Appendix A.
[26] See the 1967 bar examination questions.
[27] Tables I-III, Appendix III.
[28] Political Law Examination, 1947.
[29] Political Law Examination, 1947.
[30] Political Law Examination, 1955.
[31] International Law Examination, 1956.

and content principally, logic and reasoning next, and grammar third, these being basic tools of a lawyer. [32]

Aside from the heavy responsibility of what none of them came out to say is a tedious job, (those who know law teaching can well understand this); they said that what rendered their job difficult were illegible penmanship and poor language.

Of 17 who participated in the final interview only one had used the Law Center prepared answers. These were not prepared until lately, while another respondent bluntly said "No" because of the view that these could be wrong anyway. [33] Since examiners are expected to start correcting almost immediately the week following the examination, suggested answers should be prepared right away. However, it would be even more useful if the questions submitted by each examiners were accompanied with suggested answers including all possible implications.

But these are details of evaluation. The over all picture of the Committee evaluation and deliberation can be gleaned from the national percentage of successful candidates each year and what was considered passing average. The record through the 1946-1975 period is unpredictable. The following graph which has peaks and abysses will better demonstrate these. By far the lowest number of successful candidates was in 1961, (19.34%) among 4,370 applicants and the highest was in 1954 with 75.47% of 3,206 applicants making it. The variation is depicted in a graph found in the next page. [34]

C. The Examiners

The members of the Bar Examination Committee perform a function "impressed with the highest consideration of public interest." [35] It is a delicate and no easy job for already busy lawyers in the judiciary, in the government service, in private or other fields.

During the thirty year period covered by the study there was a total of 169 bar examiners, 10% of whom were randomly interviewed. Thirty-six of the total number handled two different subjects, some handled three or four and one examiner during the period handled 5 different subjects in as many years. The repetition of bar examiners had all but disappeared during the 1969 to 1975 period. [36]

Among 17 respondents the congruence between line of specialization, if any, and subject assigned was the exception rather than the rule. [37] At

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[32] Questionnaire, Appendix B, III, 1

[33] *Id.*, III 3.

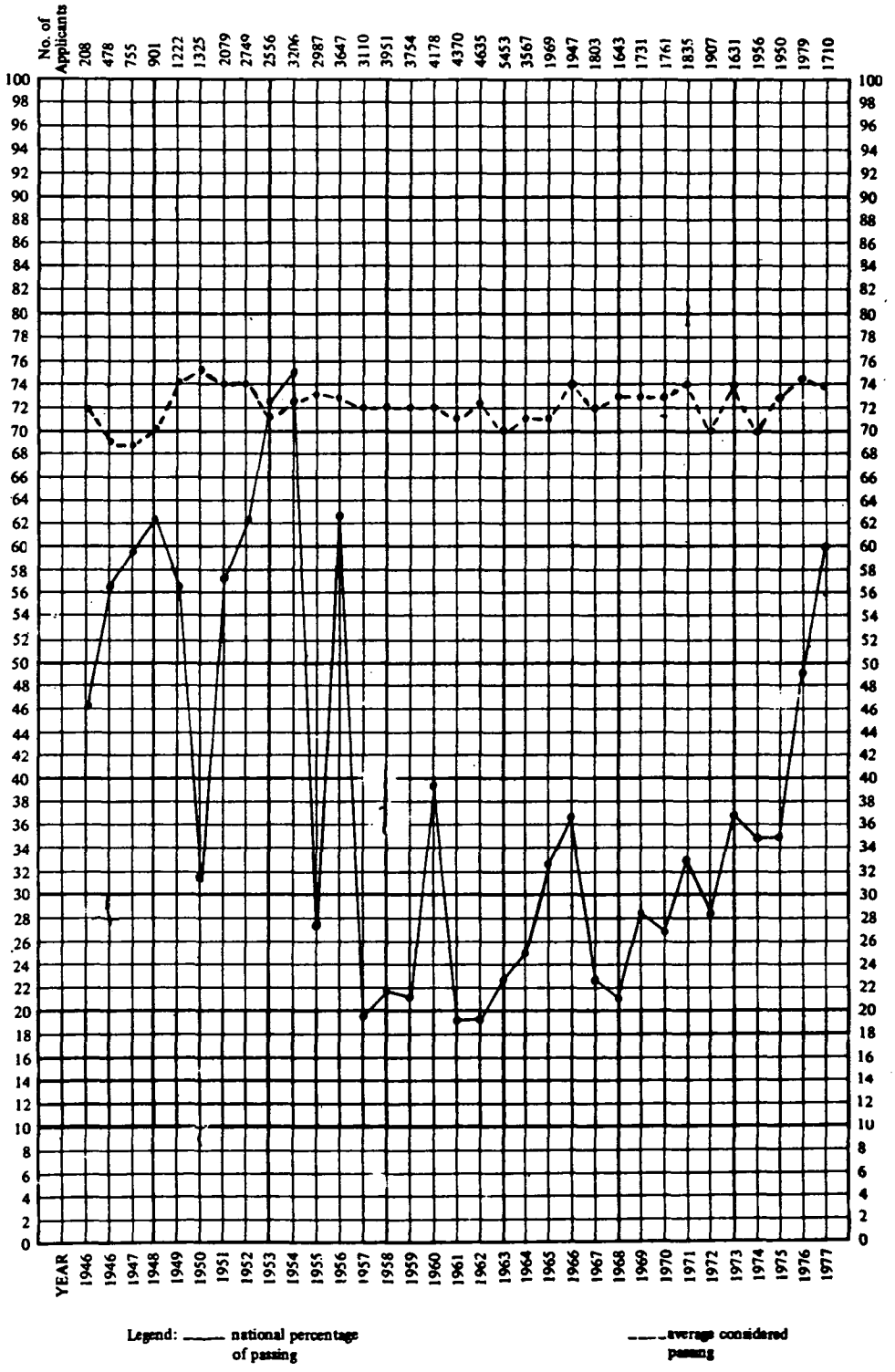
[34] The data were furnished by the Office of the Bar Confidant, Supreme Court and the graphs executed by Professor Myrna S. Feliciano.

[35] *In re* Lanuevo, G.R. Adm. Case Nos. 1162-64, August 29, 1975, 66 SCRA 245 (1975).

[36] Taken from an analysis of the composition, experience and expertise of the bar examination committee membership during the period 1946-1976.

[37] *Ibid.*

NATIONAL PERCENTAGE OF PASSING



meetings between law deans and various chairmen of the Bar Examination Committee, this point was time and again brought up and the answer usually given was that an expert on the subject would ask questions too complicated or sophisticated for the examinees to grasp.[38] This is a debatable matter but the study confirms the practice followed especially in recent years.

Fourteen of the 17 respondents had some law teaching experience, a majority of these from 1 to 10 years. The largest number of examiners were recruited from the government service, with the judiciary and government administrators in the lead and state prosecutors forming an equal number with private law practitioners.[39]

Less than half of the examiners in the final interview had published any work in law. A majority used local materials as reference in preparing the questions[40] which took time and effort.[41]

D. The Examinees' Views

An ongoing project sponsored by the Law Research Council[42] with Dean Manuel Bonifacio and Professor Merlin Magallona as project directors is a Survey of the Legal Profession in the Philippines: Focus on Region IV. With their permission 10% of the total response so far received were used as samples. These included those from Metro Manila and the provincial areas including the provinces of Batangas, Quezon, Laguna, Oriental and Occidental Mindoro, Rizal and the sub-province of Aurora.

The findings conform to those among the bar examiners up to a point. The lawyers representing the examinee sector by and large consider the bar examinations important, although some hardy souls consider them not important at all (12%) or only somewhat important 15%) and not surprisingly, there were more in these categories in the Metro Manila area, than in the provinces (19% and 12%) respectively.[43]

On the matter of whether or not the bar examinations are a good index of legal competence[44] a significant percentage (42%) of the examinees expressed the negative view about the examinations being a good index in contrast to the examiners who on more probing inquiry tended to be more sanguine as to the helpfulness of the examinations for the functions the examinees may be called upon in the future to perform.[45] The dif-

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[38] The lecturer was present in a number of these meetings during the period 1970-1977.

[39] Appendix B, I, 5.

[40] *Id.*, II, 3.

[41] *Id.*, II, 1.

[42] This is also funded by the U.P. Law Center and is undertaken as the start of in depth studies of the legal profession with a view to find out inter alia what can be done by way of improving legal training, and achieve greater awareness of the role and responsibility of lawyers in the society.

[43] Appendix C.

[44] *Id.*, No. 2.

[45] Appendix B, IV, 4.

ference could be in the form the questions was asked. On the other hand, this can well be a subject for further inquiry and more deliberate consideration by educationists as well as other members of the profession.

In an earlier study covering Manila and Cebu 73 influentials in the legal profession among the Supreme Court and other courts as well as members of the Integrated Bar of the Philippines were asked to rank in the order of importance 14 attributes desirable in a young lawyer. Performance in the bar examination ranked a poor *12th.* [46]

E. A Critique of Examinations

1. There was no consistent discernible trend in the examinations under study. No uniform guidelines appeared, and the interviews with examiners revealed from their recollection of instructions, the absence of a clearly defined policy with the possible exception of maximum security to keep the questions from leaking out, a problem that plagues the whole exercise and produced tales of the cloak and dagger variety. Thus different chairmen were supposed to have issued instructions to be: (1) "considerate"; (2) "strict in the corrections" or (3) "not to make the questions difficult considering that most private law school graduates were taking the examinations."

One chairman asked for 30 sets of questions, another for 50 and specified the coverage including percentages to be alloted to branches of law covered. Two examiners stated that they did not know of any guidelines given and 5 categorically said no guidelines were issued. This adds up to a significant 29.8% of the sample survey. If two others are added, one who remembers no guidelines except that the questions were "to fit time allowed for the examination" and the other whose recollections were "none except absolute secrecy must be observed", the proportion reaches almost 50%. The inevitable conclusion is that, on the whole, there was a paucity of instructions coming from chairmen of the committee. [47] In fairness it must be stated here that there are outstanding exceptions. The deans of law schools who have conferred with chairmen of these Committees for a number of years are witnesses to the thoroughness of some of them. [48]

2. By far too much stress has been laid on extracting specific information directly by questions calling for definition, enumeration, and differentiation. These emphasize memory work since they can be perfectly answered by quoting provisions of the constitution or statute, citing court rulings, or definitions and expositions given in some textbook or quizzers used in the law school. Even items taking the form of problems may be no more

[46] Cortes, *op. cit. supra,* note 6.
[47] Appendix B, IV, 2.
[48] Per meetings, previously referred to.

than decisions of courts the solution to which lies in total recall of a particular case.

3. Too many stereotyped questions were given year in and year out. Favorites among these include constitutional amendments, impeachment, dangerous tendency as against clear and present danger rule, de facto government/officers, citizenship, domicile, residence, lex fori, lex loci contractus, jus postliminium, and recognition.

4. Some questions appear to be tests of what the examinees do not know instead of what they know. On one occasion Mr. Chief Justice Castro is reported by a metropolitan daily to have made a stinging criticism of this kind of esoteric information seeking, that these "have had a tendency of becoming less a test of competence and more a trial by ordeal." [49]

5. The style of formulating questions leaves much room for improvement. The questions tend to be simplistic and expository. Instead of determining the examinees' logical reasoning and ability and to analyze facts and apply the fundamental principles of law to the solution of the issues raised, the questions probe the capacity to memorize a plethora of details which in no time at all the examinees will likely discard for being obsolete, and which may never be of any use in the actual work a lawyer will have to do.

6. Questions, even problems are lifted bodily from quizzers used as textbooks or cram texts in the review courses. [50] The frequency in which

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[49] Philippine Daily Express, March 2, 1975, p. 7.

[50] A few illustrations giving the year of the examination and the item subdivision of questions lifted verbatim from existing published works follows:

The Register of Deeds of Rizal refused to register a deed of donation conveying a parcel of residential land in favor of the religious organization "Ung Sui Si Temple". The founder, deaconess, trustees, and administrators of the religious organization are Chinese citizens. The religious organization contends that the refusal of the Register of Deeds to register the deed of donations violates the guarantee of freedom of religion. Is the contention meritorious? Why? Found in Gonzales, Political Law Reviewer, 539 (1969); 1 Martin, Political Law Reviewer 702 (1965). (1975 Bar Examination, 6).

What fundamental attribute of a municipal corporation distinguishes it from a purely public corporation? *Briefly* describe the dual character of municipal corporations. Found in Gonzales, Political Law Reviewer, 859 (1969). (1974 Bar Examination, 5).

What is extradition? What are the established principles governing extraditions? Found in Martin, Prebar, p. 530-551 (1965). (1973 Bar Examination, X a).

What are the essential requisites for the validity of a municipal contract? Found in Gonzales, Political Law Reviewer, 294 (1969). (1971 Bar Examinations, III, 1.

(a) Distinguish an officer de jure from an officer de facto and the latter from a usuper or intruder. Found in Gonzales, Political Law Reviewer, 699 (1959). (1970 Bar Examination, IV, 1).

What are the requisites for the valid exercise of police power by a municipal corporation? Found in Gonzales, Political Law Reviewer, 949 (1969). (1970 Bar Examination, VIII, d).

this has been done is disturbing and this study is limited it must be recalled. Besides exposing complete absence of imagination this also reveals either lack of skill in the framing of intelligent questions in law or unwillingness to devote time and care to think out questions that will test the mettle of the examinees.

7. In many instances the examiner assigned in each subject was not known to have expertise in the field. Although care should be taken against the ivory tower, purely theoretical and dogmatic of the species, it is important that a person giving the examination and evaluating the answers should have a firm grasp of a particular area of law. A broad perspective will render that examiner sensitive to the implications or legal issues raised in the question. For not infrequently, reasons may be given contrary to conventional thinking but nonetheless persuasive for it is the very essence of the adversary system that counsel should be able to take opposing sides of a case and be capable of raising the best argument possible. How often it has come about that the highest court has reversed itself. It is indeed necessary to bear in mind that law continues to develop and to reflect changes in society. Because of this the examiners chosen should be quick to note and give credit for analysis and logical reasoning regardless of the agreed solutions to problems they have given in the examinations.

There is still a wide gap between the avowed objectives of the bar examinations and the actuality. Not enough is consistently done to bridge that gap.

8. Despite their shortcomings undue emphasis is given to the bar examinations. They are one series of examinations and a single day of indisposition could write off for a year, the chances of an otherwise promising candidate, no matter how excellent his academic record, how first rate his mind or great his potential for the legal profession. The blot in his record will stay. If the examinations were perfected and proven instruments, if performance in them were correlated with scientific precision to performance as members of the legal profession, there would be justification for the status accorded the examination in the scheme of legal education. But this has not been done. Again it would be most enlightening to undertake a hard-nosed study of the "achievers" in the examinations and demonstrate

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State briefly the legal basis, scope and limitations of legislative investigations. Found in Gonzales, Political Law Reviewer, 129-131 (1969). (1969 Bar Examination, V, b).

May the Government of the Republic of the Philippines be sued? Discuss fully. Found in Martin, Prebar, 23 (1956). (1966 Bar Examination, II, a).

What do you understand by the principle of "government of laws and not of men"? Also 1946 Bar question. Found in Martin, Prebar Reviewer, 20 (1965). (1965 Bar Examination, I, b).

how they have fared subsequently as members of the profession. On the other hand there are celebrated cases of public knowledge of some who did not do well or even flunked the bar examinations but turned out to be brilliant law practitioners and legal luminaries.

As things go in most law schools these examinations divert attention from the higher objectives of legal education and from preparing students to meet the expectations which society has and will increasingly have in the legal profession.

9. There is no firm idea as to the place of the bar examinations in the scheme of legal culture in this country. Tighten or loosen its requirements, bring the legislature in, pass as many of the candidates as possible or flunk as many, retain or abolish the examinations. So what is new?

II. LANGUAGE

In the interview of bar examiners one of the questions asked was on the main factors contributing to incidence of failures. The largest percentage by far was that of inability of the examinees to express themselves (34%) and poor grammar (4%). Language deficiency therefore accounted for a total of 38%. Elaborating on this the suggestion was made to emphasize good grammar and teach students to write and analyze with logic. [51]

The language factor is more than a mastery of English and the ability to communicate effectively in writing. When a national language shall have been adopted it will become even more complicated for this country of diverse language variations. The law schools will have to be prepared for this development, even anticipate it by making available to the great number of the people the more important laws in a language they can understand. [52]

IV. RECOMENDATIONS

A. In General

Of late views on what needs to be done about bar examinations range from outright abolition to plastic surgery of sorts.

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[51] Appendix B, V, 3.

[52] While law affects every person not only are its concepts little known to most of the people but it is not even communicated in a language they understand The problem in the pluralistic society that is the Philippines is rendered even more complex with English and Spanish as official languages and a national language yet to be generally spoken and used. Other jurisdictions like Indonesia and Malaysia have taken drastic steps to solve their language problem. The Philippines has taken some steps towards the development of a national language, but this has had little effect in the field of law. However, with the policy of wider use of the national language in all levels of education, it is not far fetched to expect that the wider use of the national language may profoundly affect the law schools and the law profession.

At the forefront of the move for abolition is Mr. Chief Justice Fred Ruiz Castro himself.[53] What may have sounded heretical some years back is gaining adherents.[54] Others are for less drastic action.

Change will not be brought about simply by wishing for it, nor willing it. This will require sustained effort. Nor will it suffice to direct these efforts to the examinations taken in isolation from the whole legal education system. The earliest years in fact of a person's life have bearing on the attitudes and capabilities that will determine fitness. I am well reminded of the words of wisdom given a young boy of 12 who had written a well-known jurist about his dream of one day becoming a lawyer.[55]

Advice to a Young Man Interested in Going Into Law

My dear Paul:

No one can be a truly competent lawyer unless he is a cultivated man. If I were you, I would forget all about any technical preparation for the law. The best way to prepare for the law is to come to the study of the law as a well-read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a truly liberal education can give. No less important for a lawyer is the cultivation of the imaginative faculties by reading poetry, seeing great paintings, in the original or in easily available reproductions, and listening to great music. Stock your mind with the deposit of much good reading, and widen and deepen your feelings by experiencing vicariously as much as possible the wonderful mysteries of the universe, and forget all about your future career.

With good wishes,
Sincerely yours
(Sgd.) Felix Frankfurter

Master M. Paul Claussen, Jr.

1. Objectives

To begin with the law schools themselves need to direct their attention to the attainment of their announced objectives. Passing the bar examina-

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[53] Times Journal, Nov. 27, 1975, p. 1; Bulletin Today, March 29, 1975, p. 16; Times Journal, Nov. 24, 1975, p. 4; Bulletin Today, Nov. 20, 1975, p. 6; Times Journal, Nov. 19, 1975, p. 1; Philippine Daily Express, May 28, 1976, p. 8.

[54] More views have been expressed as to the feasibility of abolishing the bar examinations and finding some substitute for determining fitness for admission to the legal profession in letters to the editor and among members of the bar, especially law teachers.

[55] OF LAW AND MEN: PAPERS AND ADDRESSES OF FELIX FRANKFURTER (Elman Ed.) 1939-1956, 103-4 (1956).

tions has never admittedly been an end in itself, but what has developed in most schools is that it has become the principal goal. The curriculum, the methods of instruction, the review courses in the fourth year — all contribute to emphasize this.[56]

2. Expanding concepts, relating other discipline

In the meantime events have relentlessly moved forward. As the 21st century draws nearer, science and technology bring in an entirely new age — computerized, highly complex with as much need for rules governing human relations and problems as any society. But the rules and those who will have to do with their formulation, interpretation and application will have to deal not only with the new but with what should be retained of the existing ones. The concern for development embraces the gamut of human activities. The extent to which law is involved is not as yet appreciated, but if the members of the profession are to perform their functions adequately as counselors, advocates, planners, policy makers, legislators, administrators, and leaders in other fields, their training will have to be well-rounded and forward-looking. Schools cannot discharge the responsibility entrusted to them by narrowly confining their efforts towards success in the bar examinations.

Other disciplines will have to be related, like economics, sociology, and psychiatry, through joint programs of study, seminars, research or other arrangements.

3. Realistic approach to law teaching

Within the field of law a more realistic approach will have to be adopted. Instead of attempting to cover all the law there is which cannot be accomplished without unduly prolonging the course, a more realistic approach could be adopted to enable students of law to learn to master laws on their own, after learning the technique of how this can be done in a course of study planned for intensive and thorough training.

4. Other components

All components that make up the law school will need to be geared to accelerated needs — faculty, curriculum, library, methods of instruction, and facilities. A selective process for admission of students will have to be adopted, as well. Not every person will make a lawyer whose training

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[56] Cortes, *op. cit. supra*, note 6. These pointed remarks in a paper on legal education are still relevant: "The law schools while not disregarding the bar examinations, could de-emphasize these examinations and steer away from regarding the bar examinations like a derby for which students must be conditioned. At present, even the language of horse racing is used in speaking of the bar examinations; e.g., best bet, dark horse, tips — none of which contribute to the respectability of exercise" Cortes, *An Appraisal of the Law Curriculum and Prevailing Methods of Teaching Law* in PHILIPPINE PERSPECTIVES ON LEGAL EDUCATION PROCEEDINGS OF THE FIRST CONFERENCE OF LAW DEANS 1976 (U.P. LAW CENTER), 30, 34.

takes years and drains the manpower which could otherwise be more suitably engaged in activities where latent potential can reach full maturity.

B. Iconoclastic Alternative — Abolition

Knocking down the bar examination establishment would be almost like smashing a venerated object. It can of course be done, but unless it will serve a useful purpose, what for? The move has not been proposed without justifications. Having taken a close look at the legal profession, at law schools, at the bar examinations and been in the core of things Mr. Chief Justice Fred Ruiz Castro in his usual methodical way, acquainted himself with institutions and practices in other jurisdictions. He drew his conclusions and announced his proposals. The legal profession both on the bench and in active practice are now witnesses of the results of the innovations introduced.[57]

On the matter of legal education and the bar examinations developments have yet to unfold. These are so related that they can not be separately dealt with.

The principal obstacle on the way of abolition of bar examinations is the need to substitute an effective way for screening applicants for admission to the practice of law as a profession. If law schools kept a consistenly high standard of performance in their training program, the problem would not arise. But this is unfortunately not the case in all law schools of this country. Even the better ones are hampered by restrictions that operate to peg them down to inflexible requirements which in turn stem from qualifications prescribed for applicants for the bar examinations.[58] Too many law schools operate on less than adequate faculty, library, facilities, financing, even enrolment, yet manage to keep on for one reason or another for years.[59]

A system of law school accreditation as properly understood has yet to be generally accepted.[60]

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[57] Philippine Daily Express, April 5, 1976, p. 8. Improvement in the bar examinations themselves were noted during the years he acted as chairman of the Committee. He initiated the meetings with law deans to take up matters relating to the type of questions and the evaluation of answers. Along similar lines for the improvement of the profession are his contributions towards the integration of the Philippine bar and the efforts to upgrade the performance of the judiciary.

[58] The detailed provisions on bar admissions particularly on the administration of the examinations under Rule 138.

[59] The accurate number of law schools actually operating in the country is not easy to secure. The official list in the DEC changes frequently and is not kept up to date.

[60] The beginnings have been made towards a system of accreditaion. Through a working group composed of members of the Integrated Bar Committee of Legal Education and Bar Admission, with the financing of the Philippine Accreditation Association of Colleges and Universties (PAASCU) and the Educational Development Projects Implementing Task Force (EDPITAF) and the support of the Supreme Court, an instrument of accreditation was drawn up Members

In my view the bar examinations as qualifying tests for admission to the bar should be abolished, however, three essential pre-conditions need to be satisfied:

First. A system of accreditation for law schools.

This has to be established and followed so that only graduates of schools consistently maintaining minimum standards of adequate legal training are admitted to membership in the legal profession.

When this has been done schools will be free to innovate. No ceiling will be placed on standards. Core curricula, electives, multidisciplinary approach, etc. can then be adopted without running the risk of violating the too rigid curricular prescriptions now imposed on private law schools under the Department of Education authority of "supervision" and perforce followed by the state university law school because of court rules on bar examinations.[61]

Second. Annual examinations for every level of law classes to be drawn up by a competent and impartial body of examiners and administered simultaneously in all these schools.

To begin with admission to the school itself should be on a selective basis. Subsequently, this yearly screening out of the unfit can take place, on the basis of class performance and the examination results. The students have therefore every chance to prove themselves in the year round work plus the year end national test.

Third. A system of apprenticeship or practical training for one year out of four in an area of the student's preference as requirement for completion of the law degree. For the academic work completed a bachelor of jurisprudence degree could be conferred. There will likewise be a rating of performance for the practicum.

The whole period of legal training will in this manner be a thorough screening process of candidates for bar membership. Academic as well as moral qualifications will be under scrutiny. Instead of a single set of tests at one point in the training process, the selection will be continuous, although carried on in stages as the student develops under guidance. It would place the responsibility of selection in the hands of professional teachers and persons devoting time principally to the task instead of the ad hoc committee system the composition of which can be unpredictable.

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of this woring group were drawn from law deans, practicing lawyers, members of the U.P. Law faculty, and the PAASCU. As of the time of writing two private law schools have begun the preliminary steps towards voluntary accreditation.

[61] While in theory the state university law school could adopt its own curriculum without being bound by that prescribed by the Department of Education and Culture for private law scrools, since for graduates to qualify for the bar examinations all courses specified in the Rules of Court will have to be satisfied, the state university law school has not been able to deviate too far.

C. Alternative Palliative Measures

Short of the drastic step and until decisive action can be taken what can be done is to find ways of improving what exists. To do that a clear idea of how things are and what should be done are required.

Whichever alternative is followed the need to maintain high and consistent standards of training in law schools would be essential. Products of schools indifferent to the requirements of the legal profession can hardly be expected to perform the functions of a lawyer with competence and responsibility. Law schools which aim no higher than to prepare their students for the bar examinations do them and the profession a disservice.

The critique previously given of bar examinations suggests areas for improvement. The recommendations of a palliative character would be addressed to: (1) The appointment of examiners to their own fields of expertise or the feasibility of a professional body of examiners could be looked into who could work for a term instead of ad hoc. (2) Having a consistent policy and following it as to admission, type of questions, evaluation, percentage of passing, etc. (3) Upgrading the examinations themselves — as to coverage, format, and evaluation. (4) Last, but most important, doing something about legal education itself — that is the heart of it all.

A good hard look at all aspects of bar examinations beyond this limited one may be done. As stressed at the beginning, this study does not comprehend all areas of law, nor touch on all issues. Like an iceberg there is much more of the subject than appears in this inquiry. But if this lecture has given some food for thought, some desire for further study, then your participation and the generous cooperation of those who helped make this lecture possible, will have contributed to more than a futile exercise.

APPENDIX A

TABLE I
DISTRIBUTION OF QUESTION CONTENT IN INTERNATIONAL LAW FROM 1946-1963

	Definitions		Enumerations		Differentiations		Problems		Essay		Specific Information		Total
	F	%	F	%	F	%	F	%	F	%	F	%	
1946	7	19	10	28	1	3	1	3	2	6	15	42	36
1947	4	21	7	37	2	11	3	16	1	5	2	11	19
1948 F %	1	9			2	18	3	21	2	18	3	27	11
1949 F %	4	24	6	35			3	18			4	24	17
1950 F %	3	18	2	12	1	6	11	65					17
1951 F %	2	12	3	19			1	6	1	6	9	56	16
1952 F %	6	19	6	19	2	6	5	16	1	3	11	36	31
1953 F %	6	33	2	11	2	11	3	17	2	11	3	17	18
1954 F %			1	8	1	8	1	8	2	15	8	62	13
1955 F %	2	9	5	23	2	9	1	4	5	23	7	32	22
1956 F %	6	22	1	4	3	11	7	26	2	7	8	30	27
1957 F %	1	8	4	33			5	42	2	17			12
1958 F %	3	19	1	6			6	38	6	38			16
1959 F %	1	5					13	62	4	19	3	14	21
1960 F %	2	14	1	7	1	7	8	57	1	7	1	7	14
1961 F %	3	16	5	26	3	16	5	26			3	16	19
1962 F %	1	6	3	17	4	22	6	33	3	17	1	6	18
1963 F %	1	4	7	29	2	8	9	38			5	21	24
Total F	53		64		26		91		34		83		351

TABLE II
DISTRIBUTION OF QUESTION CONTENT IN POLITICAL LAW FROM 1946 – 1963

	Definitions		Enumeration		Differentiation		Problems		Essay		Specific Information		Total
	F	%	F	%	F	%	F	%	F	%	F	%	
1946													
F %	2	8	6	23	2	8	11	42			5	19	26
1947													
F %	4	11	9	26			7	20	6	17	9	26	35
1948													
F %	2	8	3	12	3	12	9	38	4	17	3	12	24
1949													
F %	7	22	6	19	1	3	10	31	1	3	7	22	32
1950													
F %							8	33	13	54	3	12	24
1951													
F %	10	38	1	4			8	31	1	4	6	23	26
1952													
F %	2	8	11	46	1	4	6	25			4	17	24
1953													
F %	6	17	7	20			7	20	2	6	13	37	35
1954													
F %			3	23			4	31	2	15	4	31	13
1955													
F %			6	30	1	5	5	25	1	5	7	35	20
1956													
F %			5	36	1	7	5	36	2	14	1	7	14
1957													
F %	6	27	1	4	2	9	8	36	3	14	2	9	22
1958													
F %	5	25	6	30	2	10	4	20	3	15			20
1959													
F %					1	5	12	60	2	10	5	25	20
1960													
F %	2	9	5	22			7	30	3	13	6	26	23
1961													
F %	1	3	6	15	1	3	12	31	4	10	15	38	39
1962													
F %	2	6	8	24	1	3	14	42	6	18	2	6	33
1963													
F %	1	4	13	46			4	14	2	7	8	29	28
Total													
F	50		96		16		141		55		100		458

TABLE III

DISTRIBUTION OF QUESTION CONTENT IN POLITICAL LAW AND INTERNATIONAL LAW FROM 1964-1975

	Definitions		Enumeration		Differentiation		Problems		Essay		Specific Information		Total
	F	%	F	%	F	%	F	%	F	%	F	%	
1964 F %	2	8	7	29	2	8	3	12	9	38	1	4	24
1965 F %	3	14	7	32	2	9	3	14	2	9	5	23	22
1966 F %	1	6	3	18			8	47	3	18	2	12	17
1967 F %	9	31	8	28	4	14	2	7	5	17	1	3	29
1968 F %	5	19	5	19	2	8	10	38	3	12	1	4	26
1969 F %	3	10	6	21	3	10	9	31	3	10	5	17	29
1970 F %	4	12	8	25	1	3	12	38	2	6	5	16	32
1971 F %	1	2	8	18	3	7	30	68			2	4	44
1972 F %	4	8	2	4	1	2	18	38	11	23	11	23	47
1973 F %	1	6	3	18	1	6	10	59			2	12	17
1974 F %	3	14	2	9	3	14	8	36	4	18	2	9	22
1975 F %			1	5	1	5	13	65	2	10	3	15	20
Total F	36		60		23		126		44		40		329

APPENDIX B

BAR EXAMINATIONS

Please provide the information needed by answering all the questions. Your answers will be treated in strict confidence.

I. DATA ON EXAMINER

1. Name:
2. Academic Preparation:

a. Degrees obtained School Year

.....
.....
.....
.....
.....

b. What areas of law do you specialize in? (pls. check)

criminal law
civil law
commercial law
remedial law
labor law
political law
taxation legal ethics
jurisprudence
administrative law
private international law
public international law
others (pls. specify) .....

c. Aside from degree programs, what other training have you had?

Place Year

.....
.....
.....
.....
.....

3. Present position: .....
4. Position held and length of service in each:

Position Duration

.....
.....
.....
.....
.....

5. Have you had any teaching experience?

YES
NO

If yes,

a. Duration: .....

b. Subjects taught: .....
.....
.....
.....

c. Level:

undergraduate graduate
others (pls. specify) .....
.....

6. Have you published any work in law?

YES NO

If yes,

a. What fields? (pls. check)

criminal law	others (pls. specify)
civil law	taxation
commercial law	legal ethics
remedial law	jurisprudence
labor law	administrative law
political law	private international law
	public international

.....
.....
.....

b. What kind?

treatise(s)	quizzer(s)
article(s)	annotation(s)
textbook(s)	lecture(s)
others (pls. specify)	

.....
.....

II. PREPARATION OF EXAMINATION

1. How much time did it take to formulate your questions?

less than one week
one week
more than one week but less than 2 weeks
two weeks
more than 2 weeks

2. How much effort did you put in formulating your questions?
   not much effort
   with considerable effort
   with a lot of effort

3. What materials did you mainly refer to?
   local
   foreign
   others (pls. specify)
   .....
   .....
   .....

4. What type of questions did you generally ask?
   definitions
   enumerations
   others (pls. specify)
   cases/problems
   essay
   .....
   .....
   .....

5. What guided you in selecting the particular questions you asked? (i.e. teaching experience, provisions, etc.)

6. If you were to be an examiner again, with full discretion, would you: (pls. check)
   choose the same subject
   ask the same questions
   give the same type of examination (taken as a whole)
   Please explain your choice/choices.

III. CORRECTION OF EXAMINATIONS

1. What factors did you take into consideration in correcting the examination?
   grammar
   logic/reasoning
   others (pls. specify)
   facility of expressions
   substance/content
   .....
   .....
   .....

2. Would you consider the same factors if you were to be an examiner again?
   Yes No
   Why?
3. Did you consult suggested answers such as those prepared by the U.P. Law Center?
   Yes No
   Why?
4. What were the main problems you encountered in correcting the examinations?

IV. PERCEPTION OF EXAMINERS

1. In your opinion, what were the main factors considered in your appointment as an examiner?
2. What were the guidelines given to you by the chairman?
3. If chairman,
   a. What criteria did you set in the choice of examiners?
   b. What guidelines did you set for your examiners?
4. How helpful is the bar examination in determining how well prepared prospective lawyers are for:
   a. legal advising and counselling
      very helpful
      helpful
      uncertain
      helpful to some extent
      not at all helpful
   b. advocacy (court & administrative appearances)
      very helpful
      helpful
      uncertain
      helpful to some extent
      not at all helpful
   c. judicial functions
      very helpful
      helpful
      uncertain
      helpful to some extent
      not at all helpful

d. law teaching
very helpful
helpful
uncertain
helpful to some extent
not at all helpful

e. research and writing
very helpful
helpful
uncertain
helpful to some extent
not at all helpful

f. estate planning
very helpful
helpful
uncertain
helpful to some extent
not at all helpful

g. corporate practice
very helpful
helpful
uncertain
helpful to some extent
not at all helpful

h. government lawyer
very helpful
helpful
uncertain
helpful to some extent
not at all helpful

i. others (pls. specify) .....
very helpful
helpful
uncertain
helpful to some extent
not at all helpful

V. PERCEPTION OF EXAMINEES

1. What is the primary factor contributing to incidence of failures?
poor knowledge of the law

complete ignorance of the law
inability to express themselves
failure to follow instructions
failure to go straight to the point
phyical exhaustion
others (pls. specify)
.....
.....
.....

2. How would you assess the capability of the examinees (that year) to practice law?
   excellent
   good
   fair
   poor
   very poor

3. What means of improving/redirecting legal education in the Philippines would you suggest?

THANK YOU FOR YOUR TIME AND COOPERATION!

APPENDIX C

1. Aside from officially conferring professional status, how important is the bar examinations in preparing prospective lawyers?
   Very important
   Important
   Somewhat important
   Not important

2. Is the bar examinations a good index of legal competence?
   Yes
   No Why not? .....
   .....

3. Do you feel that the bar examinations should undergo revisions?
   Yes No

4. What revisions would you recommend to make the bar examinations a more relevant and a better index of legal competence?

5. Do you agree with the coverage of the bar examinations?

   Yes No

   If "no"

   a. What subjects should be deleted?

   b. What additional subjects should be included?

6. Regarding the types of questions used in the bar examinations, which questions do you dislike most?

POINTS RAISED IN THE OPEN FORUM

Participant A did not identify himself. Preliminary to his question, he expressed preference for yearly examinations on a national basis for students in each level of the law school course, suggested how the examination questions should be prepared, and the manner of dealing with those who fail the examination.

Q. — Would it not be better if professors teaching in different law schools were to submit questions yearly to the Supreme Court from which could be chosen the questions to be included in the annual examinations for students in the first year, second year, and so on up to the fourth year so that a student who passes all these tests and serves apprenticeship will qualify for the bar without need for bar examinations?

A. — That will be one possible way of implementing the idea of national annual tests for every class of law students and of determining how questions will be prepared. The idea is for tests to be adminitsered nationally like the National College Entrance Examinations. The NCEE of course is an objective type of examination given to the graduating seniors of secondary schools for admission to college. But what is proposed is a system including, *first* selective admission to law schools through aptitude tests and *second,* tests to be done in the law school level annually for every year of the law course. But these annual examinations should be administered by a competent and impartial body. The nitty-gritty of the administration and implementation may take a form such as you suggest. What I hope will happen is that one examination will cover the whole year's curriculum — not each subject separately, but all the subjects combined in hypothetical cases calling for the student's mastery of the fundamental principles and for a knowledge of the law applicable to the facts and points at issue. The kinds of problems to be posed must be suited to the level reached by class of law students. If they are freshmen, only matters covered

by the freshman curiculum will be included; if sophomores, the examiners will take into account what will have been covered in the freshman and the sophomore years. It will thus gradually become more complicated as the level of law studies rises, until the final year when the whole law curriculum can be made the basis of the questions. A student who can pass that inquiry can go through to earn the first academic degree, call it a Bachelor of Jurisprudence. If he or she completes the practicum he or she will qualify for an LL.B. or equivalent degree and become a full-fledged lawyer. If he or she had gone into a practicing lawyers office for the practicum he could go into practice. If his ambition is for the judiciary he may have trained in the courts; if he has plans to join the bureaucracy the student may have done his practicum in some legal department of the government. In this manner law training may develop well-rounded, well grounded and better prepared members of the bar.

PROFESSOR ALFREDO F. TADIAR —

Q. — I am somewhat hesitant to make the particular observation that I have in mind because what was called for by our moderator is for a question to be raised. I do not have a question; I only have some thoughts, some remarkss and observations which I would like to make, if these will be entertained.

An irrelevant but popular standard for evaluating a law school is its ability to have its candidates place among the top ten of the bar examinations. I say it is irrelevant because that certainly should not be the standard for evaluating the quality of performance of a law graduate. As correctly pointed out by the lecturer, this focus by the popular mind has a deleterious effect on legal education.

A law professor finds himself in a quandary trying to discharge an often-competing dual responsibility — that of preparing his students to master technical rules with sufficient proficiency for passing the bar examination and that of teaching them the more profound and philosophical aspect of law as the bases of such rules. There is just not enough time for discharging this dual responsibility. Knowing the quality of bar examinations questions, and their emphasis on mere memory work study by rote often has to be emphasized at the unjustified expense of neglecting the more profound aspect of legal study. As a result, we are training more master mechanics rather than the more desirable master craftsmen and designers of the law.

My suggestion to this problem is taken from the experience in the United States where certain schools have achieved the status "national law schools" that attract students from all over the United States. These national law schools teach law on general principles and philosophy. They cannot teach technical rules because statutes and procedure vary from state to state. Their graduates, however, must pass the bar examination in the particular state where they are residents of or where they intend to practice. The responsibility for passing the Bar is placed upon the institution conducting the Bar review course. The suggestion therefore that I have in mind is that bar examinees should not carry the name of the school that they graduated from but should carry the name of the bar review center which must be made to bear the responsibility of their passing the bar examination. The quality of the law school should be judged by the quality of performance of its graduates in practice or in the field of law which he enters rather than the grade he obtained in the examination. This is the delineation of responsibility followed in the United States where the bar review centers bears responsibility for passing the bar candidate while the law schools concentrate on teaching the law as it should be taught.

PARTICIPANT B —

Q. — Dean Cortes my question is premised on language.

It is well known that in the Philippines students in the public schools especially from the primary grades up to college have to master three languages. One is Pilipino or the National Language; second, is English and the third one is Spanish. My question is this: What would be the probable solution to the problem in order that the study of law may be established (sic) on one language alone?

A. — It seems to me that as far as future lawyers are concerned there is no escape from being a linguist of sorts. The reasons for this are: (1) we are deeply indebted to the Civil Law system for many of our legal institutions in this country and the sources are written in Spanish; (2) our development in the last 75 years owes much to the common law and the literature is in English; (3) our future development may well be in the National Language, therefore, we have to anticipate the development of a national language. If it is the hope of those who will go into law studies to concentrate on one language so they can have an easier time of it, they should banish the thought. They must concentrate on the task of learning and improving their English, on learning the national language,

and learning some Spanish, if they are to be the kind of lawyers they hope to be. Otherwise, they will not even be adequate. It is within their power to make up their mind as to what kind of lawyers they are going to be. In this lies what distinguishes the first rate from the mediocre.

ATTY. QUIASON —

Q. — It may be a sort of cold comfort to know that in the recent survey of the American State Bar Examination Systems, the complaint of bar exaimners is the poor command of English of the American examinees. Dean Cortes, would you have a strategy to adopt for those who if the annual examinations scheme were adopted, would not be able to pass the examinations say in the first year or the second year and so on. Is there any limitation as to how long these students can be allowed to pursue the law course?

A. — My own view is that in a country such as ours, we may have to adopt a more strict selection policy for students to be admitted to the law schools. If we start with that, we may have students who are basically equipped with sufficient intelligence and aptitude for the law course but then find during the first year, for one reason or other, that they can not quite come up to the standards of at least the first national annual law examination. Their performance for the first year however would not be rated exclusively on basis of one examination. What I suggest is that the performance should depend not only on the year end examination but also on the year long work that will have been in the law school. It is possible that sickness or accident may have affected a student's performance in the annual test. Problems of this sort will have to be taken into account. In a course of national examination system, the problem should not prove insoluble. It should yield to some way of handling that will be fair both to the students as well as to the purposes of the testing system. The testing process will be continuous, instead of one done at the end of four years. So some way will have to be deviced for handling the problem of failure in the annual examination. One way would be to refuse enrolment to the next higher year after repeated failure in the annual test.

PROFESSOR ESPINOSA —

Q. — Taking the bar examinations as they are now, I am prompted to make comparisons between the bar examinations and the CPA Examination as given now. I am not knowledgeable about the

CPA examination but this is what I hear. Any candidate in the CPA examination takes all sets of subject prescribed for the examination he fails in some and passes the others. I understand that he has to take a re-examination in those subjects only where he failed. But on those subjects here he passed, he need not be re-examined. I was thinking what the opinion of Dean Cortes would be with respect to adopting this procedure in our current bar examinations where students taking the examinations — they pass in some; they fail in others — to be re-examined only in those subjects where they failed. What do you think, Dean?

A. — You remember, the late unlamented bar-flunkers law? That was precisely one of the features introduced and never proved acceptable. It tended to bring in people who were not prepared. You see, with the quality of bar examinations the way they are, the examinations passed might have been the easiest in years in that particular subject. And if one looks at the examinations, the inconsistency and the unequal character of the questions is striking. Therefore, it is possible that the sets of questions, the particular chairmen of the examination committees each year, and the Supreme Court policy militate against passing a bar examination piecemeal. Instead of tightening the requirements, it tends to lossen requirements for admission to the bar. There would be even less consistency under the rules suggested.

Q. — I am just feeling a little curious why in the CPA examinations, that method has been adopted and has been found to be workable, efficient, for that matter, and simply to say that in the case of the bar examinations, let us say we are not going to adopt it because the Supreme Court has regarded it with a certain amount of distate, well, I am sorry to say this, but I can's find the reason satisfactory. I hope you don't mind my saying that. Maybe, the Supreme Court has its own way of looking at it and say for instance, "Well, we don't like passing the examinations piecemeal." But it is not so much that I ask as to the reason why that is objectionable.

PROFESSOR MARTIN —

Q. — I had also the occasion to study in the previous years how these bar examinations can be improved. But what then occurs to my mind is that with the suggestions, I am afraid that ultimately we have to close our law schools in the future. Because if the students will find out that every year they will be subjected to bar examinations instead of having one bar examination, there would be four bar examinations. Then it is in this connection also at one time

an editor of certain big newspaper in the Philippines attacked the the legal profession that after the bar examination was released he made a comment: What should we do with these so many lawyers that have been produced now? Unlike other professions we can not export our professionals to other countries, unfortunately the lawyers cannot be exported. No country will hire Philippine lawyers. I have the occasion also to answer this editor on this point. I told him we have no need to export our lawyers to foreign countries because right here in our country lawyers are even insufficient to cope with legal activities and affairs. This is because the legal profession embraces all human activities. You can place a lawyer in any human activity for the law is pertinent, material and relevant to that activity. Because all activities are governed by laws. In this particular occasion also there was a survey made as to whether our professionals are employed or not. According to the survey they made, board profession have several unemployed professionals except one: the lawyers. There is no unemployment in the legal profession because either they are employers or they are the employees. In fact now you go anywhere or any place the lawyer is there. In other words, I come to the conclusion that the more lawyers we have in the Philippines, the better.

If we are going to discourage lawyers in their studies in due time we have to close the law schools, we have to cut off the supply of lawyers in the Philippines. I believe sincerely that one bar examination is sufficient but the fault lies in the Supreme Court. First, the chairman, is he competent to be the chairman? You must understand that the legal profession has several branches. Commercial Law, like my subject, Political Law, like the subject of our beloved Chief Justice, Civil Law, etc. I was informed and I would like to verify whether our beloved Dean Cortes has made a research on the matter of how the Supreme Court appoints its chairman on bar examination and how the Supreme Court also supervises the chairman in appointing the individual examiners to compose the bar examination committee. In other words, to make my suggestion and observation, I believe that if we could only improve how the Supreme Court is conducting the bar examination, well, we can . . . But one thing almost in my mind the law schools must go on because we need more lawyers in the Philippines.

PROFESSOR FLERIDA RUTH P. ROMERO —

Q. — This is a follow up of the comment and question of Dean Martin on the choice of the chairman of the bar examination committee.

As you know, the practice is to appoint the most junior of all the Supreme Court Justices as chairman. Therefore, they tend to lack experience in the matter of administering bar examinations.

There is also another point. In this hall with us is a former examiner who incurred the ire of many examinees during his time because some questions asked were obsolete. I asked him later, why he asked questions on a repealed law. He said: "To tell you franlky, I did not submit those questions. It was the chairman who included those questions formulated by him." You see, that is his prerogative as the chairman; he can either choose from the sets of questions submitted by the examiner or he can substitute some with his own questions. It may happen, as Dean Martin said, that the chairman may not have any expertise in that particular field of law.

At times, the chairman reneges on what is agreed upon between him and the deans of law schools on included and excluded topics, i.e., the scope of the examination as well as the nature or type of questions to be asked.

So, the deans and even the examinees are betrayed or double-crossed. The Chief Justice, more often than not, gives the chairman complete powers and autonomy to conduct the bar examination as he wishes. I submit therefore, that the Supreme Court should study this matter of the appointment of the chairman of the bar examination committee more carefully.

A. — My remark that bar examinations should be placed in a competent body is intended to comprehend the entire committee in the examination system, the chairman included. The *ad hoc* committee system is certainly very defective. If you have a professional competent body that works impartially, it can be expected to come up with a professional piece of work. But under the Rules of Court the Supreme Court appoints the committee of nine composed of a chairman who comes from among the Supreme Court justices, and eight members. In the Supreme Court there is a pecking order: the youngest in point of service usually gets it. But sometimes the most junior associate justice for one reason or another, may decline the appointment. It then devolves on some other justice willing to take it. He is responsible for picking out the other eight examiners whom the Supreme Court will appoint. The yearly turnover to committee membership is certainly inefficient. You may not only have a chairman who does not know what the examination process is all about, but also members who may know a particular area but not the one to which he may have been assigned as examiner. The result is less than satisfactory. So, I can see

your point that it goes back to a defect that can be traced to the Supreme Court's appointment of the examination committee. However, we have had some more thorough people with experience in law teaching who have assumed the chairmanship. One cannot generalize and say that every chairman has been incompetent and not knowledgeable about law teaching or about administration of the bar examination because that is not true. There have been exceptions. But on the whole the defects are there.

As to having enough or not enough lawyers in the country, the question has been raised before. The earliest published "question and answer" given on that point in 1913 was in the first issue of the Philippine Law Journal: "Do we have too many lawyers in the Philippines?" The editors proceeded to cite statistics; they had a count of lawyers. Statistics can serve different purposes, the United States for example in the year 1974 reached a certain very significant point — the four hundred thousandth lawyer qualified that year. But one of the countries I visited lately does not have practicing lawyers, they have law but no legal profession and it serves their own purposes very well. So, ladies and gentlemen of the law, lawyers may not after all be indispensible in a society.

In the greater Manila area the density of lawyers is enough to create environmental pollution while there are other places in the country where no lawyer is to be found. Whether or not there are too many lawyers in this country may be a question of distribution, a question of territorial location. It is also a question of what exactly the lawyers are doing. Are they lawyering or [illegible] something else.

I am afraid that if strict standards are followed, some law schools will have to be closed. If the less than minimum standard law school are closed will it be too great a loss? The aim should be to have enough good law schools to train students and prepare them to perform the lawyer functions with competence, with intelligence. *and* responsibility according to the high ideals of the law profession. It is not enough to produce lawyers for the sake of having lawyers.

I agree that one can find a lot to do for lawyers. Some have been known to do custodial jobs. I know lawyers in government service who had been satisfied with ₱450.00 a month. Why? Lawyers are not out of job. They are employed. Yes, but what kind of employment? And what kind of lawyers are these to be content with any kind of employment? Did the schools give them the kind of self-respect a lawyer should have for the training he

had after years of arduous work that go into their training? Or could they have been better employed doing something else? One will have to look at it from the proper perspective and not for the sake of having lawyers content with being styled a lawyer. That is not the end of lawyering. What is a lawyer for? What are his functions?

Ask a bar examiner how useful the bar examinations are. They say that it helps. Most of the answers are rather sanguine, very helpful, yes. What does the bar examinee, now a practicing lawyer, say: "Not at all helpful, scrap it." They know whereof they speak. They were at the receiving end. We can be very general in our opinion and very strong in our sentiments but let us give it a little more careful scrutiny, a little more objectivity. We could have some people graduate as Bachelor of Science in Jurisprudence. Some went into the law course for the sake of a well-rounded education, to broaden their knowledge. But not everyone is going to law practice. Not even twenty percent of lawyers are in practice. The records of the IBP show that. So, why is it that we all expect them to take the bar examinations, to practice law when most of them will not practice law? All they want is to have a degree of sorts, so they go to the law school. If law students want to go through the law course, make it as thorough as can be so that they will be prepared for any of the functions that they will be expected to play. In fact their role as lawyers is going to be harder. As it is now, where do you think most of the decrees the President signs come from? Do not think that they come from the Law Center. Not many of them start from here. The bureaucrats elsewhere formulate the decrees and send them to the President to sign.

They are more adept at making these drafts now. They have gotten along without lawyers. I have seen this happen. Legislation on scientific maters that have been coming through the mills, on financing, etc., — very few had the benefit of lawyer drafting. The legal profession used to be in the lead of practically everything but unless lawyers have a broader training and sounder foundations, that leadership will not only slip from them, the profession itself will also lose ground. And unless something is done about it, things are bound to worsen, not improve.

The better graduates know that they have to do a good deal of studying on their own after graduation. That is good because the aim of the school should be to train students to be able to study by themselves. Law schools do not aim at turning out finished products. Their hope is to ground the students well on the fundamentals and give them the preparation to start on their own.

JUSTICE JOSE B.L. REYES —

Q. — I was wondering if the main fault of the bar examinations is that they do not measure the moral fiber of the candidate. The issue also raises the question of need of moral fiber in the examiners themselves.

A. — I touched on that in my lecture and in the recommendation. I said the screening process during the four years will be continuous. The screening would have to be undertaken in the law school through professional teachers who will have to pick students to be admitted to the law studies and evaluate their moral character by observation through the years. Development of moral fiber cannot be achieved through a formal course offering. But it can be made a part of every course. There will be a way of keeping in the students' mind the moral aspect in human relations. They can learn it through observation; it can be pointed out on every occasion the subject arises in the different courses during law school training; as well as in their apprenticeship.

As to the moral fitness of bar candidate, one of the methods that has been adopted in the United States where they have committees of bar examiners and a national conference of bar examiners is that the permanent staff of the national council has been made available to undertake the investigation of the moral fitness of candidates for admission to the bar of the various states. This staff has become very helpful to bar examiners in determining fitness and in looking into cases involving fitness.

In our case here we have had complaints regarding moral fitness. The records are considered confidential. The only statistics available are cases of disqualifications or disbarment that have reached the court. But even then, of late, causes that used to be considered ground for disqualification are no longer so considered. It would seem that the standards of what may be considered fitness have likewise undergone transformation. The responsibilities of the lawyer that students must assimilate during their training period have to be learned by actual doing and from examples of their law teachers rather than by theorizing and the study of cases. One way adopted is to involve students in legal assistance for the underprivileged. This training is also aimed at imbuing them with a sense of the public responsibilities of a lawyer. Rules regarding students' conduct and discipline also are aimed at developing the moral fiber. The fact is stressed that would-be lawyers should be the first to observe, follow and obey rules instead of violating them. Those are part of the training of students. Conduct in the class-

room also is a prelude to conduct in the courts. But the development of moral fiber should be part of the overall training program, it cannot start too early.

JUSTICE SANCHEZ —

Q. — I heard Dean Cortes say, correct me if I am wrong, that even the Supreme Court changes its mind on decisions. Very likely — the questions for instance of the requirements in the records on appeal as to the timeliness had suffered a drastic change. Now, in the formulation of the curriculum, what do you think, Dean Cortes, would be the proper criterion: rely on students ability to memorize the provisions of the law; rely on his ability to argue a debatable point; or both of them? Or, if there is anything more, I would like to hear what Dean Cortes would say.

A. — That has been the burden of our discussion: what we expect of students' of law are reasoning ability, the ability to analyze facts, determine issues and apply the law to them. It is not possible for students to take up all the law there is. The law changes very rapidly. There is a use for a good memory because a lawyer even in the conduct of a trial will have to have a retentive memory. He or she will have to be able to tell when a particular witness has contradicted himself; if that witness is for the opposing party, on cross examination the lawyer can capitalize on some statements that could be of great use to him. A good memory will enable the lawyer immediately to relate the facts to issues and the applicable laws. So, a well-trained memory will do very well. However, one should not stop at that. It takes ability to use what one has memorized and to recognize that these things that he may have committed to memory may change completely. The law may be repealed. It may be rendered obsolete in no time at all by the reversal of a decision. Therefore, the training in law school will have to be much more on how the student of law when he or she leaves the school will be capable on his own, to handle the most complex of problems even if they had never been touched on in any of the textbooks he used. He or she will know how to deal with that because he or she will have mastered the technique of knowing how to get the relevant laws up to the very latest and to relate it to the issues as he or she sees it from facts as a client may have recited to him, giving the relevant as well as the irrelevant. A client who comes to a practicing lawyer will never recount to him the facts of a case in a methodical manner nor tell him: "Attorney, I have a problem in civil law. It is on succession." He is most likely to give the whole story perhaps accompanied

with tears and other incidents having nothing to do with the problem. The lawyer will have to shift the grain from the chaff. After he has done that, he will have to extract the issues and develop a theory of the case. This will be true whatever branch of law is involved. That is the essential thing in the training. If it is a contract, to determine what are the issues raised about the contract: does the question of validity come in? Were the parties competent? What about the consideration? Was it perfected and so on? So if this approach has been so instilled that the students can do it on their own, the school will have done a marvelous job of training. Finally, no lawyer can afford to relax and rely only on what he learned in law school. He has to keep up-to-date. I do not know if that answers the question. But there is really no formula for producing the compleat lawyer out of law school. All the school can hope for is to develop the material from which he will develop.