April 1922

The National Conference of Bar Associations

J. W. M.

West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Legal Profession Commons

Recommended Citation

Available at: https://researchrepository.wvu.edu/wvlr/vol28/iss3/7

This Editorial Note is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
a judgment not based on any verdict. Upon the whole, it is believed best to be consistent, even with reference to formalities, especially when to do so will serve to emphasize the policy of the court not to interfere with a right recognized to be as fundamental as that of trial by jury.

—L. C.

THE NATIONAL CONFERENCE OF BAR ASSOCIATIONS.—On August 25, 1920, the Section of Legal Education and Admissions to the Bar, of the American Bar Association, passed a resolution constituting the Chairman, Elihu Root, and six other members to be appointed by him, a special committee, to report to the next annual meeting of the section, "their recommendations in respect to what, if any, action can be taken by the Section or by the Association to create conditions which will tend to strengthen the character and improve the efficiency of those admitted to the practice of law." This committee, of which Mr. George E. Price, of Charleston, West Virginia, was a member, enlisted the aid of the state boards of bar examiners, the state and local bar associations, the faculties of the law schools, and members of the bar throughout the states. They also made use of the exhaustive study of the subject of legal education, carried on by the Carnegie Foundation for the Advancement of Teaching over a period of years, and embodied in the publication "Training for the Public Profession of the Law," issued in 1921.

The committee reported to the section at the 1921 meeting of the American Bar Association, and recommended the adoption of the following resolutions:

(1) The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition of admission at least two years of study in a college.
(b) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only a part of their working time to their studies.
(c) It shall provide an adequate library available for

---

1 46 REPORTS OF AMERICAN BAR ASSOCIATION, 465.
2 BULLETIN No. 15, The Carnegie Foundation for the Advancement of Teaching.
3 46 REPORTS OF AMERICAN BAR ASSOCIATION, 687.
the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

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

(3) The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not and to make such publication available so far as possible to intending law students.

(4) The president of the Association and the Council on Legal Education and Admissions to the Bar are directed to cooperate with the state and local bar associations to urge upon the duly constituted authorities of the several states the adoption of the above requirements for admission to the bar.

(5) The Council on Legal Education and Admissions to the Bar is directed to call a Conference on Legal Education in the name of The American Bar Association, to which the state and local bar associations shall be invited to send delegates, for the purpose of uniting the bodies represented in an effort to create conditions favorable to the adoption of the principles above set forth.

The adoption of the resolutions was moved by Chairman Root, and seconded by Chief Justice Taft. After an enlightening discussion, in which representatives of the Bench, the Bar, both metropolitan and rural, and the law schools of various types, participated, the resolutions were adopted almost unanimously by the section. Mr. Price of West Virginia spoke convincingly in favor of the resolutions, presenting the point of view of one of the older members of the bar who had not had the law school training required by the resolutions, but was convinced of its necessity under present day conditions. On the following day the resolutions were presented to the full session of the American Bar Association where they were again debated, and adopted by an almost unanimous vote.

Steps were immediately taken by the Council on Legal Education and Admissions to the Bar to carry out the provisions of the

---

4 Ibid., 672.
5 Ibid., 661-678.
fifth resolution hereinbefore quoted. All state and local bar associations were invited to send delegates, and boards of bar examiners and law schools were invited to send representatives, to a conference held in Washington, D. C., on February 23 and 24 of this year. The attendance at the conference was large and representative. The West Virginia Bar Association sent a full delegation, as did also many of the county and city bar associations of the state.

Judge Clarence N. Goodwin, a former Justice of the Appellate Court of Illinois, was Chairman of the Conference. In his opening address he recited his own judicial experience as showing that the license of the state to practice law, which purports to "certify to the competency, to the learning and to the ability of a man who represents his fellow citizens in court" often commissions a man "who is not learned nor competent to represent or advise anybody in any legal matter", and that this situation is most likely to result in an injustice to the poor litigant who is unable to know who is competent and who is not, but must rely largely upon the license granted by the state. He said that, in effect, this condition makes equality before the law an impossibility.

Judge Goodwin then introduced Hon. Elihu Root as the representative of the American Bar Association to place its program before the conference. Mr. Root said that the resolutions were the fruit of many years of discussion in the American Bar Association and in the state and local associations, all of which had recognized that conditions in the profession were not as they should be. He pointed out the increasing volume and complexity and difficulty of the law, which made it futile to draw conclusions from experiences under former conditions. He emphasized the growing lack of public confidence in the learning and integrity of the profession, and that the American college is the best place available to absorb not only the learning which is so essential, but the traditions and ideals of American democracy at its best, which the lawyer must have, because of his position of leadership in the community.

Chief Justice Taft presided at the second session. He discussed the subject "The Law is a Learned Profession." He spoke of the necessity for great learning, both in law and in general knowledge, required of the lawyer, but regarded the highly trained mind which would result from a longer period of education, as of greater importance. He had no fear that the proposed requirements would
shut out men like Lincoln, of great native ability and determination, from the bar, and said that if this requirement had existed in Lincoln's day "He would have overcome another obstacle and done so." He regarded the proposed step as a moderate one, representing the minimum necessary for the protection of the public, and the preservation of the status of the law as a learned profession.

Professor Samuel Williston of the Harvard Law School read a paper in which he justified the requirement of two years of college work as a preliminary to the study of law upon the ground that a student with less general education and mental training cannot profitably study the technical law, which is constantly increasing in volume and difficulty. He said that even the brilliant youth who could with some success study law without the general college training was having his wings clipped and his future marred by being admitted to the profession without the adequate preparation which would have fitted him for greater success. He emphasized the greater maturity and general intelligence and facility of mind, as well as the larger store of knowledge of economics, government, science, and other branches useful to the lawyer, which would result from the college training.

Ex-Governor Ralston of Indiana spoke in favor of requiring a better general education for lawyers, but contended that this education might be acquired elsewhere than in a college. He would make the examination test one's ability, without regard to how that ability had been acquired.

Ex-Governor Hadley of Missouri indorsed the resolution, saying that, at present, in the territory with which he was familiar, no presumption of learning or culture or moral character was indulged in by the general public in favor of one simply because he was a lawyer. He said that the public criticism of the administration of justice which was so prevalent ten years ago would come again and that the profession must be better prepared to answer it than they were then. He regarded the solution of the problem as being "education and more education."

Mr. Silas H. Strawn of Chicago, Illinois, who is at the head of a firm which employs twenty-five lawyers, said, "It has been my invariable experience that, given two minds of approximately equal inherent capacity, the college trained mind, when brought to bear upon the solution of any problem requiring concentration and orderly thought, will demonstrate greater efficiency than the
mind without that training." He condemned the proposition that there should be poorly trained lawyers to serve poor litigants, saying "The deplorable truth is that the poor generally pay more for less efficient legal service, rendered by incompetent lawyers, than the well-to-do pay for similar services rendered by lawyers of recognized ability and standing at the bar."

President James R. Angell of Yale University discussed the topic "Economic Conditions and Educational Opportunities in the United States for Students of Slender Means Desiring to obtain a Legal Education Requiring at Least Two Years of College Training." He recognized that the task is not always an easy one, but said that all colleges and universities are earnestly striving to make it possible for the man of fine character and substantial ability to secure collegiate training, no matter what his economic circumstances.

Opposition to the proposal was voiced by Mr. John Bell Keeble of Tennessee, who said "I know that in fifty per cent at least of the county seats in my state the practice does not call for any such learning or attainments." He stated that the bulk of the litigation in those communities involved ejectment suits and hog cases, which could be well handled by a lawyer of mediocre training.

At the third session, Dr. William H. Welch, Director of the School of Hygiene and Public Health of Johns Hopkins University, discussed the rapid strides made by the medical profession in raising the standards for admission, and the uniformly good results that had followed these advances.

Hon. William G. McAdoo presided at the fourth session. He stated that he had never gone to a law school, but that he regarded the steps proposed as necessary and not too drastic, and as setting no bar against one who has "the capacity, the ambition, and the willingness to make the sacrifices which proper preparation reasonably requires." He read a course of study outlined more than a hundred years ago by Thomas Jefferson for a student of law, which was more than sufficient to meet the proposed requirements, both as to general education, and technical legal training. Mr. James Byrne, President of the Bar Association of the City of New York, and Mr. Charles A. Boston, of New York, spoke in favor of the proposals.

Mr. George E. Price of West Virginia was to have presented a paper on "The Failure of the Law Office to Give an Adequate
Legal Training." He was detained at home by illness in his family, and Hon. George W. Wickersham presented the paper. He said: "No other country in the world permits men to become lawyers with such a meagre educational foundation as is fixed in the statutes and rules of the greatest commercial state of our union. The law would soon cease to be a learned profession were these standards to be maintained." He concluded that it was impossible, under modern conditions of practice for a successful practitioner to give the time and attention to a student, necessary to fit him for the profession.

Ex-Senator Thomas, of Colorado, opposed the resolutions citing instances of great lawyers who had succeeded without law school training. Judge Goodwin presented certain resolutions on behalf of the committee, which resolutions were said by Mr. Cohen of New York to embody nearly all of the propositions that had been advanced in opposition. The resolutions were as follows:

RESOLVED; That the National Conference of Bar Associations adopts the following statement in regard to legal education:

1. The great complexity of modern legal regulations requires for the proper performance of legal services lawyers of broad general education and thorough legal training. The legal education which was fairly adequate under simpler economic conditions is inadequate today. It is the duty of the legal profession to strive to create and maintain standards of legal education and rules of admission to the bar which will protect the public both from incompetent legal advisers and from those who would disregard the obligations of professional service. This duty can best be performed by the organized efforts of bar associations.

2. We endorse with the following explanations the standards with respect to admission to the bar, adopted by The American Bar Association on September 1, 1921:

Every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition of admission at least two years of study in a college.

(b) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

(c) It shall provide an adequate library, available for the use of the students.
(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

3. Further, we believe that law schools should not be operated as commercial enterprises, and that the compensation of any officer or member of its teaching staff should not depend on the number of students or on the fees received.

4. We agree with the American Bar Association that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to examination by public authority other than the authority of the law school of which he is a graduate.

5. Since the legal profession has to do with the administration of the law, and since public officials are chosen from its ranks more frequently than from the ranks of any other profession or business, it is essential that the legal profession should not become the monopoly of any economic class.

6. We endorse The American Bar Association's standards for admission to the bar because we are convinced that no such monopoly will result from adopting them. In almost every part of the country a young man of small means can, by energy and perseverance, obtain the college and law-school education which the standards require. And we understand that in applying the rule requiring two years of study in a college educational experience other than that acquired in an American college may, in proper cases, be accepted as satisfying the requirement of the rule, if equivalent to two years of college work.

7. We believe that the adoption of these standards will increase the efficiency and strengthen the character of those coming to the practice of law, and will therefore tend to improve greatly the administration of justice. We therefore urge the bar associations of the several states to draft rules of admission to the bar carrying the standards into effect and to take such action as they may deem advisable to procure their adoption.

8. Whenever any state does not at present afford such educational opportunities to young men of small means as to warrant the immediate adoption of the standards, we urge the bar associations of the state to encourage and help the establishment and maintenance of good law schools and colleges, so that the standards may become practicable as soon as possible.

9. We believe that adequate intellectual requirements for admission to the bar will not only increase the efficiency of those admitted to practice but will also strengthen their moral character. But we are convinced that high ideals of professional duty must come chiefly from an understanding of the traditions and standards of the bar through study of such
traditions and standards and by the personal contact of law students with members of the bar who are marked by a real interest in younger men, a love of their profession and a keen appreciation of the importance of its best traditions. We realize the difficulty of creating this kind of personal contact, especially in large cities; nevertheless, we believe that much can be accomplished by the intelligent cooperation between committees of the bar and law school faculties.

10. We therefore urge courts and bar associations to charge themselves with the duty of devising means for bringing law students in contact with members of the bar from whom they will learn, by example and precept, that admission to the bar is not a mere license to carry on a trade, but that it is an entrance into a profession with honorable traditions of service which they are bound to maintain.

Hon. John W. Davis presided at the closing session. He made no address, stating that he would count his duty fully done if he was able, within the limitations of the office, to help the conference to gather the fruit of its two days discussion. After a period of further discussion, Mr. Root again spoke in favor of the resolutions. It was said by those familiar with Mr. Root’s long career in public life and at the bar, that the short address made by him on this occasion was one of the most dramatic and impassioned appeals ever delivered by him. It left no doubt in the minds of his hearers that he regarded the proposals as being absolutely essential to the preservation of the dignity and self-respect of his beloved profession. He said in conclusion

“All that the opposition here comes to is simply to stop, to stop! to do nothing! stop the American Bar Association, disapprove them, tell them they should do nothing! How much better, instead of beating over the prejudices and memories of a past that is gone, is it to take dear old Edward Everett Hale’s maxim, ‘Look forward, not back; look upward, not down, and lend a hand.’”

At the conclusion of this address, the question was called, and the resolutions were adopted by an overwhelming vote. A resolution was adopted that the delegates and alternates from each state should nominate one person to represent that state on a committee to be known as “The Advisory Committee on Legal Education, of the Conference of Bar Association Delegates.” The delegates from West Virginia nominated Hon. William B. Mathews to serve on that committee.

It is, of course, impossible within the scope of this note to report
adequately even the substance of the splendid discussion which took place at the conference. The full report of the proceedings should be read by every lawyer who is interested in the cause of legal education—and what lawyer is not? The keynote of the whole conference was that the problem should be approached, not from the viewpoint of making possible a great career as a lawyer or statesman for the occasional person of rare mould, but of insuring the adequacy of the average, everyday lawyer to the duties of able and intelligent public service in the administration of justice, required of every member of the profession.

—J. W. M.

STUDENT NOTES AND RECENT CASES

VIOLATION OF CHILD LABOR LAWS AS GROUND OF NEGLIGENCE.—The West Virginia Supreme Court of Appeals has recently reiterated the doctrine that "where the employment in a coal mine was of a minor under the age fixed by the statute, making it unlawful to employ such minors", and the infant so employed brought an action for injuries received in the course of such employment, "the unlawfulness of the employment and subsequent injury to the employee resulting from and in the course of the employment make out a prima facie case of negligence on the part of the employer."

The statute in question is penal, containing no provision for a recovery of civil damages by one injured as a result of its breach. The ground of recovery, therefore, is the failure by the employer to observe the common-law duty of care toward the person injured. Consequently, the right of action is properly founded upon negligence on the part of the defendant.

Prior to the first of the line of decisions establishing the doctrine in question, the West Virginia Court was generally understood as having adopted the doctrine that the violation of a statutory duty is negligence per se, and not merely prima facie negligence. In the

---

1 The age was at first set at twelve years (W. Va. Code 1906, § 412), was later raised to fourteen (1918 Code Supp., Ch. 15H, § 36a XXXII), and by the Acts of 1919 it was raised to sixteen (note 13 post).
3 See the cases cited in the opinion in the case of Waldron v. Garland-Pocahontas Coal Co., 109 S. E. 729, 731 (W. Va. 1921).
4 See L. R. A. 1915E, 500, 506, note.