SHALL WE GIVE UP THE CASE METHOD?

The orthodox view of legal instruction for the past generation at least has been that the law should be taught by cases. The original idea of the case method was that the student by analysis and criticism of successive cases would work out for himself the true principle of law and thus by his intensive mental effort would gain a firmer grasp on legal principles and differences than if he read these principles neatly set forth in a text.

There is a growing disposition on the part of some law teachers and some makers of law books to get away from this original plan of case instruction. The American Law Institute has suggested that it would be well to place its restatements and commentaries of the law in the hands of students. The American Law Book Company is publishing "Collateral Reading and Review" leaflets to designated case books. These tendencies to dilute the hard reasoning requirements of case instruction with aids that do not differ greatly from the ordinary text book ought to be resisted. There is perhaps no objection to a student examining a text book or other authority for opinions on difficult points or to reading such books for review or in preparation for
examination, although the best law students seldom lean for aid on such props. But if restatements and commentaries and elaborate annotations and summaries are to be put into the hands of the students as the course proceeds, they may recite cases from September to June for three years without getting the first glimmer of an idea as to what the case method of instruction really is.

The study of cases is hard, laborious, painful at times, indefinite in conclusion, unsatisfactory in the amount of information gained. But it makes men think. It trains lawyers. Let us not surrender the spirit of the method, while we profess to keep the form.

BAR EXAMINATION STATISTICS

The Law Student has published since 1923 statistics of bar examinations, showing in each state the number examined, the number passed, the number failed, and the per cent failed. These table are extremely interesting and show that the percentage of those failed is on the increase. It would be an extraordinarily helpful thing if this percentage of failure would continue to increase, for it would demonstrate that the bar examiners are enforcing strict requirements. A high per cent of failures invariably represents not a relatively poor quality of students, but a relatively high standard of examination. Thus, it can be expected that in the states where the bar is definitely committed to high standards, the percentage of failures is high, e.g., in Illinois, 42%; in Massachusetts, 54%, and in New York 46%. It is no doubt true that this large percentage is due in part to the presence in these states of a type of applicant practically unknown in the south, but with full allowance made for such undesirable candidates who are certain to fail, it remains true that in the three states named the bar examinations are difficult, exacting and sound.

It is noteworthy that in eight other states which had a considerable number of applicants, more than half of the candidates failed. These states are Alabama, Florida, New Hampshire, New Jersey, Rhode Island, Texas, Virginia and West Virginia. In Kentucky the published record shows that in April, 1925, only 8% failed. Since that time, the record in Kentucky is as follows:
Number taking exams. | Passed | Failed | % Failed
---|---|---|---
July 1925 | 89 | 59 | 30 | 34%
Nov. 1925 | 14 | 11 | 3 | 21%
April 1926 | 73 | 67 | 6 | 8%
July 1926 | 87 | 80 | 7 | 8%

In comparing these results with those in the states named above, one thing must be borne in mind. It is not fair to compare percentages of failures without comparing also the number of candidates admitted to the bar, their training and preparation and also the need in different states for lawyers. What should be done in each state is to determine the number of lawyers needed each year to supply deficiencies created by death, removal or cessation of practice. The facetitious remark that no additional lawyers will be needed for some time can be disregarded, but it is probably true that in most states more young lawyers are admitted each year than can possibly find useful employment in the law or in kindred occupations. Having then determined the number of young men that could profitably be admitted to the bar in a given year, the examiners would not have much difficulty in selecting the best men on the basis of their competitive showing in the examinations. The rest would fail. No percentage of failures should be rigidly adopted, and the examiners might well choose to pass too many rather than too few. But there would be a recognition of the fact that out of each batch of candidates only the best should be chosen. The rest must wait until by further study or clearer thinking they also prove their right to rank with the best on a subsequent examination.

If such a definite effort were made year after year to meet the needs of each state for lawyers rather than to admit to practice any and all who felt the call to the bar, it is submitted that in most states the percentage of failures would be nearer 50% than 10%.

Lawyers are needed, but only the right kind. Let the bar examinations be made increasingly difficult in all the states, and the standards of the bar will correspondingly improve. Let these examinations be hurdles, to be surmounted only by the best, rather than open doors, to be crowded by the unfit.