

UNM School of Law
Faculty Meeting
May 18, 1972
12:00 noon
Convened in Faculty Lounge

MINUTES

Present: Dean Hart; Assistant Dean Geer; Professors Bingaman, Daniels, Fink, Goldberg, Muir, Utton, R. Walker, and Weihofen; Mr. Deloria

The meeting was presided over by Dean Hart and attention was given to the following matters:

The attached letter was approved by the faculty and Dean Hart was authorized to send it to the American Bar Association Board of Governors.

The meeting was adjourned sine die.

Respectfully submitted,



Hunter L. Geer
Assistant Dean

HLG:kgn
Attachment

May 19, 1972

Mr. Peter H. Holme, Jr. -
Chairman
American Bar Association
Special Committee of the Section
 on Legal Education and Admissions
 to the Bar
1700 Broadway
Denver, Colorado 80202

Dear Mr. Holme:

This response to your Committee's report was discussed at a meeting of this law faculty and was unanimously adopted by the faculty on May 18, 1972.

The faculty of the The University of New Mexico School of Law is deeply committed to the goal of increasing the trustworthiness and integrity of legal practitioners; we commend the Council of the Section of Legal Education for their work in furthering this goal; however, we have grave misgivings concerning that Committee's February, 1972, recommendations.

The recommendations are ambiguous concerning whether they anticipate that law schools will be required to reject candidates who are not given pre-registration approval by a Board of Bar Examiners. This ambiguity is reflected in the following parts of the Committee's report:

1. The name of the special committee which drew up the recommendations suggests that one's character and fitness must be approved prior to one's acceptance as a student.
2. Recommendation No. 1 says that tests are to be administered to "students" -- apparently meaning to people who have been admitted and who have matriculated. However, that recommendation also says that the tests and questionnaires to be used are ones that appropriate admission authorities may find useful -- suggesting that test results are to be used by law schools as admissions criteria.

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3. Recommendation No. 7 urges the National Conference of Bar Examiners to develop questionnaires to be given to matriculated students.
4. Paragraph 2 of the "discussion" suggests that the recommendations are designed to exclude from competition for a legal education those people not best qualified from the standpoint of proper moral character attributes.
5. Paragraph No. 4 of the "discussion" suggests that the recommendations are directed toward assembling dossiers on only freshman law students.
6. Paragraph No. 5 of the "discussion" disclaims any current attempt, so long as a significant number of schools feel their function is educational and not investigatory, to require law schools to make character judgments. One might infer from this that neither will there be a current attempt to require law schools to refuse admission to candidates who have not been approved prior to admission.
7. Paragraph No. 7 of the "discussion" says "the Committee . . . feels that the mere fact that all students would be obliged to take such a test very early after matriculation would serve a salutary purpose. . . ."

Thus, the recommendation seems to be that no current attempt should be made to require exclusion of candidates who have not received pre-registration approval, but that foundations should be laid for a future attempt to require such exclusion. We oppose such a requirement, and we oppose laying a foundation for such a requirement in the future. As educational institutions have developed in the United States, law schools definitely should concentrate on helping prepare men and women to practice law in the United States. However, that is not the only justifiable function of a law school, and restrictions on possible admission policies should not prevent a law school from pursuing other justifiable functions.

In view of the possibility that the recommendation may be a giant step in the direction of requiring law schools to exclude candidates who have not received pre-registration approval, we are particularly disquieted by the vagueness of recommendation No. 6 and the discussion concerning it. While a healthy, scientific attitude requires one to hold open the possibility that the American Bar Association and the American Bar Foundation might make a revolutionary breakthrough in the area of behavioral testing and behavior prediction, this is extremely unlikely. Without massive outlays

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of resources, the possibility that such a breakthrough could be achieved in the near future is remote. Perhaps the American Bar Association and the American Bar Foundation should fund psychiatrists and psychologists who are working in this pioneering area. Perhaps people working in this area should be encouraged to focus on the particular problems of the legal profession. Perhaps long range, longitudinal studies, such as those currently being conducted at many medical schools, should be funded. However, no such funding should be made and no such project should be commenced with the anticipation that useful screening devices can be developed in the near future.

Recommendation No. 6 calls for identification of character elements that may predictably give rise to violations of professional responsibility. This is a particularly vague concept. No scientifically valid measure of character fitness has ever been identified. Character fitness, itself, is a moral construct -- not a scientific or psychological construct.

The statistical fallacy of misidentification is particularly dangerous in law school admission and in bar admission. While a particular instrument might identify a certain percentage of applicants who should not be admitted, that same instrument might misidentify many others who should be admitted. It is primarily because of the fallacy of misidentification that statistical instruments are not reliable for screening. No significant outlay of resources is required to determine whether the present state of the art of behavioral testing is adequate for screening law school and bar applicants. It is not.

If the American Bar Association or the American Bar Foundation devotes resources to this area, it should be with the clear understanding that they are supporting pioneering experimental research which cannot be expected, in the near future, to produce a useful screening instrument.

Sincerely,

Frederick M. Hart
Dean
For the Faculty of the School of Law

FMH:kgn

cc: Professor Millard H. Ruud
Mr. Edward W. Kuhn
Mr. Leon Jaworski
Mr. Robert Taichert