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Review of North Dakota Decisions

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THE PRESIDENT'S PAGE

The 1929 annual review of legal education of the Carnegie Foundation for the advancement of teaching contains a review of several suggested methods for the "improvement of the legal profession on the practical and ethical side." The first is a renewal of the graded bar system that was part of our early history. The criticisms of this method are forcefully stated. The second proposed method is a periodical renewal of the attorneys' license. Several serious objections are pointed out against this method. The last one is that denominated as a Junior or Interlocutory bar. Under this plan the applicant, after passing the bar examinations, is given full right to practice in all courts but conditionally. After a certain number of years these privileges will expire unless confirmed by the Supreme Court. The report has this to say, in part, regarding the interlocutory bar:

"This plan, if properly worked out in detail, would avoid objections that may be urged on principle against the other two. In particular it cannot be fairly criticised as lengthening still further the period of preparation required before young men and women are permitted to begin their professional career. This career, if it ever begins at all, will do so at the precise moment where it begins now; namely, after applicants have been first admitted to practice. Deserving young practitioners who, during the next few years, have been successful in establishing professional connections will find the subsequent qualifying test in actual operation, little more than a formality. The few undeserving who will be excluded on ethical grounds have no claim upon our sympathy. The main end served by the test will be told. Even though liberally administered, as all experience indicates that it would be, it should reduce the number of those who engage in improper professional practices during these early habit forming years, and it will separate from the profession those who, after a reasonable period of trial, have been unable to secure a foot-hold."

Lloyd N. Scott of the New York City Bar, as a member of its committee on Legal Education, has made a careful study of the matter and this is the result of his best thought. He has made the suggestion that the period of conditional practice be limited to two years and has suggested the form of examination at the end of the two year period. Under his plan the candidate for final admission would be required to keep a diary of his legal work during the two years and furnish satisfactory evidence that his legal work and pecuniary transactions have been conducted in a satisfactory and businesslike manner; that he has lived up to the Code of Ethics prescribed by the Bar Association, and that he had then acquired sufficient responsibility for final admission to the Bar. The interlocutory bar plan has much to commend itself as a practical reform.—A. M. KVELLO, President.

REVIEW OF NORTH DAKOTA DECISIONS

State vs. Malusky: Ye Editor undertakes the task of reviewing this decision, knowing full well that whatever he may say may be misinterpreted, just as what the various members of the Supreme Court said may be, and probably has been, misinterpreted.

The Facts: Defendant pleaded guilty to engaging in the liquor traffic as a second offense; he was sentenced; later it was discovered that he had previously been convicted of grand larceny in Wisconsin and of perjury in Minnesota; he admitted both offenses; thereafter,

MAP OF BAR ASSOCIATION STANDARDS

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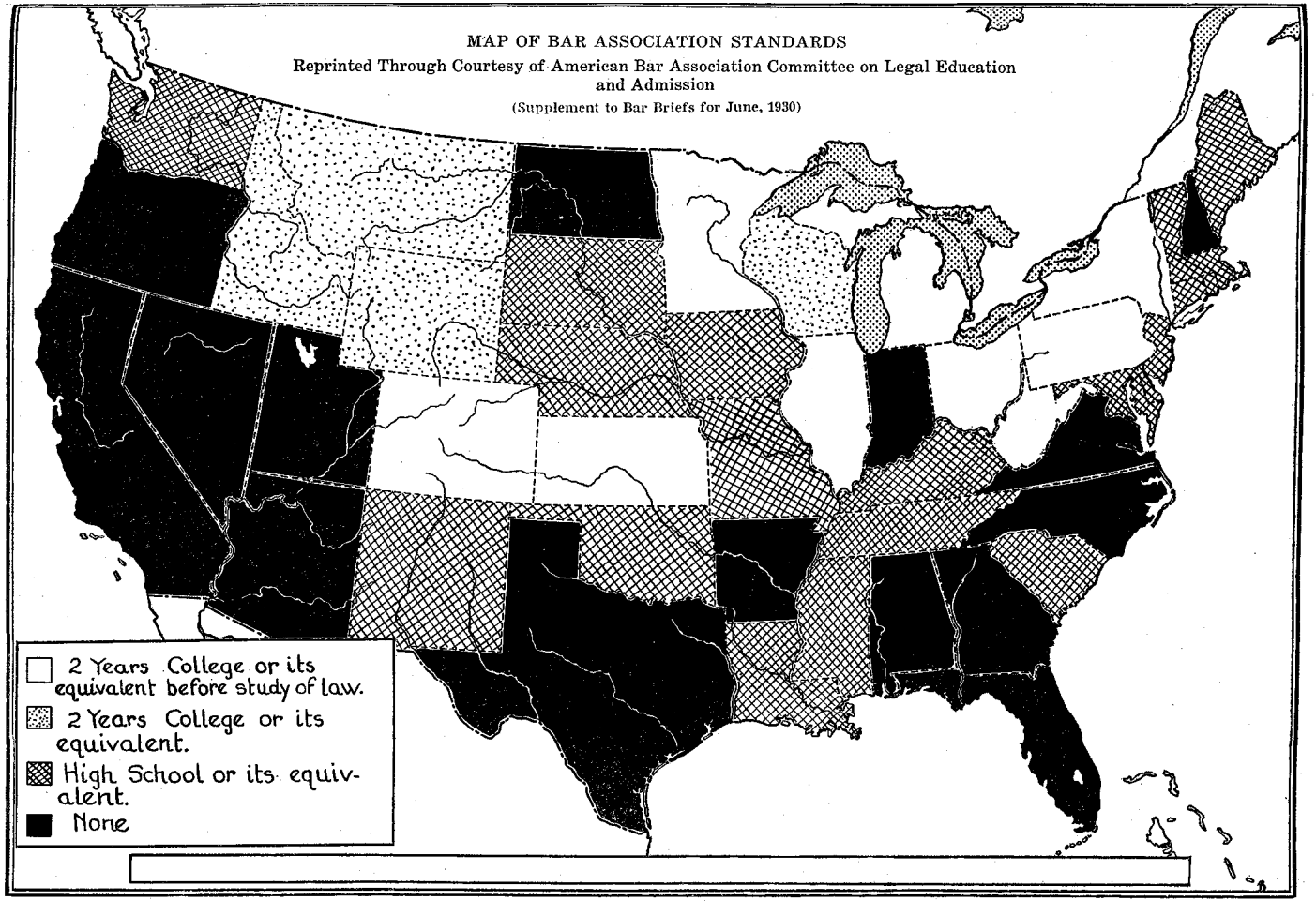

he was re-sentenced under the provisions of Chapter 162, 1927 Laws, the trial Court deciding that the maximum penalty application was mandatory. On appeal, the main question was: What, if anything, is the effect of Section 4 of that statute (habitual criminal act), which reads, *"Provided, that the provisions of this act shall not apply to offenses made felonies by statute not involving moral turpitude?"*

Held: That a violation of the liquor laws involves moral turpitude; that the Legislature intended to include such violations under the habitual criminal act; but that the imposition of the maximum penalty is not mandatory.

This case is going to cause more discussion in North Dakota than any other case decided in recent years. It is interesting, to say the least. In fact, cases concerning liquor law violations are becoming more and more interesting, and productive of more and more and warmer and warmer discussion. One is impressed with a feeling existing among a great many people that courts and legislatures seem to be vying with one another, in the endeavor to see which can do more to make our liquor control program obnoxious—unintentionally, of course.

It is difficult to convince one's self that this decision has actually been rendered, but it is true—we read the 49 typewritten pages. We read them just the day after the decision was handed down, and just two days after our May issue of Bar Briefs went into the mails, covering, on its front page, a bootlegging case in Federal Court. Two decisions so contrary in effect and in general spirit are seldom rendered within the same state in such a short space of time; and, to our mind, neither of them represents quite the reasonable attitude towards these liquor questions.

It will be noted, from these remarks, that we recognize the pronouncement of the majority of the Supreme Court as the law of this state, but that, personally, we prefer the reasoned judgment of the minority of that Court. In fact, we rather believe that the first sixty days of 1931 will see the exercise of a legislative pardoning power or the application of an informal legislative recall of the decision by a further amendment of the law. In other words, we believe the legislature specifically had in mind just such a case as this Malusky case when it wrote the proviso quoted in the first paragraph.

One of the majority opinions states, "A man guilty of a felony is ipso facto infamous, and no man could be rendered infamous without showing moral turpitude". In another place it is stated, "The standard is public sentiment", and again, "Moral turpitude implies something immoral in itself, the act and not the prohibition fixes the moral turpitude". These statements, to us, do not appear "to click". It may, of course, be because of our early environment and training, but it is the fact, nevertheless. Nor does a succeeding reference carry conviction to us. In speaking of grand and petit larceny, one of the majority remarks that the former is a felony and the latter a misdemeanor, but that both involve moral turpitude. The majority, however, fails to consider, at least record, what appears to us to be a rather important thought, namely: that people everywhere recognize stealing to be inherently wrong—law or no law, most any one's conscience registers "It is wrong." We doubt, however, if there has ever been a majority in our country or state that considered it "inherently wrong" to drink, make or sell a certain kind of personal property known as intoxicating liquor. It has been declared wrong by law, because at one time, at least, a majority considered it for the best interests of all the people to

prevent the sale of liquor as a beverage. So far as we know, however, the dispensing of liquor for medicinal purposes has never ceased or been prevented. Well, if it isn't "inherently wrong" to drink or sell it for medicinal purposes, how can it be "inherently wrong" for any particular individual to use it as a beverage? It is wrong to sell it as a beverage but only because the law says so. Repeal the punishment for stealing, and it will still be considered wrong to steal. Remove the punishment for liquor selling, and a host of people will insist that it isn't wrong to sell liquor to a man, unless it is commonly known that the purchaser needs the protection of society to prevent him from making a "hog" of himself.

At any rate, Judges Birdzell and Christianson seem to us to have gathered the gist of the controversial points into a few words. The former says, "The majority leaves no room for the operation of the proviso". The latter, in referring to the legislative intent, says, "They (the legislature) said in words, and in circumstances, too clear for doubt that it was their deliberate intention that no person should be subject to the provisions of the act upon conviction of any offense made a felony by statute 'not involving moral turpitude' ".

As stated before, we had an interesting time going through, over and around the forty-nine typewritten pages of the Malusky decision; we bow to the inevitable; believe others should likewise; and therefore, hope that all of our friends will keep their cellars clean after this.

ANNUAL MEETING

Prospect of obtaining Honorable George W. Wickersham, chairman of President Hoover's Crime Commission, as the principal speaker to address the annual meeting of the State Bar Association at Devils Lake is an outstanding item of interest to lawyers who are planning upon attending the state meeting. The convention is slated to be held August 15th and 16th, followed by a golf tournament on the Devils Lake golf links on Sunday, August 17th.

At the time of the writing of this item, Secretary Wenzel is in Washington for a personal interview with Mr. Wickersham, and hopes to receive his promise to attend the state meeting.

Another item of interest will be the address of the Honorable H. A. Bergman, K. C., barrister and solicitor, of Winnipeg, who will address the Association on the topic, "A Brief Outline of Some of the Principal Differences Between the Canadian and American Systems of the Administration of Justice." Mr. Bergman is just leaving on the expedition to Iceland to participate in the celebration of the one thousandth anniversary of the establishment of the Icelandic Parliament, but will return in time for the North Dakota State Bar meeting. Mr. Bergman is a graduate of the University of North Dakota Law Department. From North Dakota he went to Winnipeg and continued the study of law there, was admitted to practice in Canadian courts, and has now the honor of being known as King's Counsel.

The annual banquet will be presided over by the Honorable George F. Shafer, Governor of North Dakota. It is expected that addresses will be given at the banquet by two members of the Bar of North Dakota, one of them a woman practitioner. Negotiations are also being conducted for the obtaining of a prominent member of the Winnipeg Bar as a speaker at the banquet.

The lawyers of Devils Lake, with Fred J. Traynor chairman, are making extensive plans for the entertainment of the members of the