

The Attorney in the Civil Service

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NOTES AND COMMENT

THE ATTORNEY IN THE CIVIL SERVICE

A common American fallacy is that "public service is always less capable and efficient than private enterprise".¹ It was felt that only the unambitious drone or the spoilsman would stoop to take a position in the government service, and it is because of this low regard and national unconcern that civil service reform, until recently, has made slow progress.² The economic situation caused many, including attorneys, who were unable to secure other work, to seek to join the public payroll with its reasonably good income, pleasant work, ample vacations, security of tenure, opportunity for promotion, and provision for retirement and pensions.³ Public enlightenment on government benefits and achievements through numerous official and unofficial committees' research, published articles, proposed reforms, and legislation, has resulted in a growing appreciation and favor of the merit system.⁴ President Roosevelt recently said, ". . . there is no disagreement among thinking men that the great social and technological advances of our national community have made inevitable a large extension of governmental activity. The civil service conception is a postulate of our government."⁵ With this expansion, an opportunity has been presented to those with ability and promise to take an active part in important governmental functions.

One of the most damaging types of legislation against a political organization is a civil service statute, which does away with patronage and the constant upheaval of office holders after a change of administration. It is a recognized fact that the spoils system results in incom-

¹ Prashker, Book Review (1935) 10 ST. JOHN'S L. REV. 395.

² N. Y. Times, Feb. 25, 1941, p. 14, col. 2; (1939) 5 LEGAL NOTES ON LOCAL GOV'T 16; (1938) 32 AM. POL. SCI. REV. 332; BETTER GOV'T PERSONNEL, REPORT OF THE COMMITTEE ON PUBLIC SERVICE PERSONNEL (1935) 16 ("It is apparent that the weakest link in the American democracy, the point at which we fall most conspicuously behind the other self-governing peoples, is the appointive service where the great bulk of the modern government is carried on"). This most excellent and comprehensive report, in analyzing the methods and objectives of creating and carrying out an efficient, zealous and honest civil service, compares the American and British attitude toward government service, which, unlike the former, considers it an honor to serve the state. Leonard D. White, in THE BRITISH CIVIL SERVICE 44, writes that the outstanding characteristic of the British Service, the finest system anywhere, is its neutrality concerning political issues, an essential concomitant of permanent employment, especially in higher ranks.

³ (1938) 1 NAT. LAWYER'S GUILD Q. 294.

⁴ (1937) 31 AM. POL. SCI. REV. 292 ("To-day, according to polls conducted by the Institute of Public Opinion, approximately 88% of the people are in favor of the merit system."); (1929) 33 AM. POL. SCI. REV. 826 ("After receiving lip service for decades, the merit system has made more gains in the last three years than at any previous time since the passage of the Pendleton Act by Congress in 1883."); (1939) 28 NAT. MUN. REV. 9.

⁵ N. Y. Times, *supra* note 2.

petent and inefficient government, partisan conduct of public affairs, and a breakdown of democratic institutions. To eradicate these evils and to improve the standard of governmental service, agitation for reform has resulted in the merit system of appointment and promotion by competitive examinations to determine the merit and fitness of the candidate.⁶ Thus the highest type of employee with capacity and training develops in proficiency by the assurance of a continuous tenure of office. It is due in no small measure to the many enlightened decisions of the Court of Appeals and the lower courts that the system has been maintained so well and has progressed so far.⁷

I

Oddly enough, the attorney, whom one expects to play an important part in government functions, has generally been included in the exempt class,⁸ whereby appointments are left to the discretion of the department head. The arguments against the attorney being in the classified positions of the civil service have become well settled:

First: The competitive system should be confined to the lower grade positions, *i.e.*, clerics and menials. Appointment to the higher posts by department heads is the only practicable method of carrying on the effective administration of government, so that responsibility will be centralized in the appointing official.⁹

Second: "Attorney positions present a unique problem in the professional service which must be solved individually rather than by application of a general formula."¹⁰ It is contended that results of written competitive examinations are often incompetent guides for legal capabilities, some attorneys being more adept at courtroom procedure while others show exceptional research ability. Therefore

⁶ N. Y. CONST. Art. V, § 6 ("Appointments and promotions in the civil service of the state, and of all the subdivisions thereof . . . shall be made according to merit and fitness to be ascertained, so far as practicable, by examination, which, so far as practicable, shall be competitive").

⁷ *Rogers v. Buffalo*, 123 N. Y. 173, 25 N. E. 274 (1890); *People v. Lyman*, 157 N. Y. 368, 52 N. E. 132 (1898); *Seeley v. Stevens*, 190 N. Y. 158, 82 N. E. 1094 (1907); *Social Investigator's Eligibles Ass'n v. Taylor*, 268 N. Y. 233, 197 N. E. 262 (1935); *Wood v. City of New York*, 274 N. Y. 155, 8 N. E. (2d) 316 (1937); *Palmer v. Bd. of Education*, 276 N. Y. 222, 11 N. E. (2d) 88 (1937); *Andresen v. Rice*, 277 N. Y. 271, 14 N. E. (2d) 65 (1938); *Wipfler v. Klebes*, 284 N. Y. 248, 30 N. E. (2d) 581 (1940); *Kornbluth v. Reavy*, 261 App. Div. 60, 24 N. Y. S. (2d) 514 (3d Dept. 1941); *Matter of Weaver*, 72 Misc. 438, 131 N. Y. Supp. 144 (1911); *Rotheim v. Patterson*, 172 Misc. 353, 15 N. Y. S. (2d) 247 (1939); 5 R. C. L. (1914) 603, § 1; (1938) 27 NAT. MUN. REV. 83; (1939) 28 NAT. MUN. REV. 213; (1939) 5 LEGAL NOTES ON LOCAL GOV'T 16.

⁸ N. Y. CIV. SERV. LAW § 13.

⁹ See note 3, *supra*.

¹⁰ N. Y. Times, *supra* note 2, p. 14, col. 1; (1939) 5 LEGAL NOTES ON LOCAL GOV'T 16.

Justices Reed, Frankfurter, Attorney General Jackson and Gano Nunn, an engineer, of the President's Committee on Civil Service Improvement,¹¹ propose an "unranked register", giving an equal opportunity to all federal attorneys for appointment after passing an examination. Under a classification and certification procedure, the appointee has little opportunity to choose the department or agency, or the type of work he is to perform. The high-standing law school graduate, who is especially sought after by the Civil Service Commission, will demand this very thing.

Third: Legal positions partake of a confidential nature, and therefore have been excluded from competitive examinations, as not being within the intent of the New York Constitutional provision,¹² nor the public interest.¹³

II

In answer to these contentions, *supra*, it should be noted that:

First: It is the officers in the higher ranks who are of great importance, having the power to demoralize the rank and file, and impair the quality and effectiveness of the personnel by their incompetence. Former Attorney General Wickersham, in a report on his department, advocated as a permanent policy the selection by competitive examination of all attorneys in his office. He was of the opinion that it was a highly satisfactory method to strengthen the legal force, and showed it to be practicable and convenient. The Interstate Commerce Commission also indorsed its preference for the open competitive system for the selection of attorney's position. The United States Civil Service Commission itself, in 1933, "finds no difficulty in supplying well qualified attorneys for jobs through open examination."¹⁴ President Roosevelt, in a recent message to Con-

¹¹ This group, together with Justice Murphy, William McReynolds, Dr. Leonard White and General Robert Wood, made up the President's Committee, appointed in January 31, 1939 by Executive Order 8044, to make a comprehensive study of civil service procedure in relation to governmental positions, inquire into the needs and recommend the most effective methods of meeting them.

¹² See note 6, *supra*.

¹³ *Chittenden v. Wurster*, 152 N. Y. 345, 46 N. E. 85 (1897); *Volgenau v. Finegan*, 163 Misc. 554, 296 N. Y. Supp. 101, *aff'd*, 250 App. Div. 757, 295 N. Y. Supp. 758 (1st Dept. 1937), *motion granted*, 275 N. Y. 546, 11 N. E. (2d) 746 (1937).

¹⁴ (1938) 1 NAT. LAWYER'S GUILD Q. 294; N. Y. Times, *supra* note 2. SEN. REP. NO. 2089, 75th Cong., 3d Sess. (1938) "To Prevent Discrimination in Legal Appointments and Promotions", urged the passage of S. 3549, which incorporated a letter from the United States Civil Service Commission. In effect it pointed out that the federal legal positions were divided into two classes: (1) legal advisors and adjudicators, which class is within the classified Civil Service; (2) attorney and hearing examiners, which offices are filled in many ways, mostly excepted from examination. Attorney positions in the Veterans' Administration, Employees Compensation Commission, and attorney

gress,¹⁵ presenting the two-year President's Committee Report, *supra*, advocated the extension of the classified civil service to all federal positions except those determining policy and where Senate confirmation is required.

It is essential to the best and most efficient administration of government that we have those with sufficient capabilities, training, character and integrity, who will perform their functions objectively and without prejudice. A true "career service" has been advocated, to the end that the appointee be guaranteed a reasonable tenure of office, although removable for cause,¹⁶ assuring an administrative continuity of policy and purpose, and that talent and ability be encouraged with a hope of advancement without partisanship. It is also hoped that those with a mistaken view of government service be made to see their error. This is especially true of attorneys, many of whom have exhibited a false pride in refusing to occupy such a position or in taking competitive examinations, maintaining that there is no opportunity for individual effort or achievement. The quality of the Bar will be greatly improved by abolishing political appointments to the more important legal positions, stimulating a greater interest in law as a profession, and increasing legal study rather than political machine work. Public interest and not party loyalty should be the test in government service. Only thus will a fair and equal opportunity be given to qualified attorneys. When such reform is achieved by a well administered system, another American fallacy will be overthrown, *i.e.*, patronage is the price of democracy.¹⁷ As President Roosevelt said, ". . . we have been rather laggard in extending it [civil service] to those higher positions in the government which are especially dependent on initiative, imagination and flexibility. We ought now to appraise the qualities necessary for those who discharge those highest functions, as well as to achieve for them an independence and security which assure the conditions for the best governmental service. These are, after all, the underlying elements of the civil service ideals. . . . I

and hearing-examiner jobs in the I. C. C. and F. C. C. are filled through certification from registers made up after open competitive examinations, or reinstatement, promotion or transfer. The Farm Credit Administration and Federal Power Commission appoint attorneys after non-competitive examinations. All other attorneys are appointed without examination by each department head who determines their qualifications. The Treasury Department, by agreement with the United States Civil Service Commission, made standard qualifications for the several grades of attorneys. At the Senate Hearing on S. 1610, 76th Cong., 1st Sess. (1939), a statement by the President of the United States Civil Service Commission read, "There have been a very limited number of examinations held in the past for specialized types of legal work".

¹⁵ N. Y. Times, *supra* note 10.

¹⁶ N. Y. CIV. SERV. LAW § 22. The right to hold a public office is not guaranteed by the United States Constitution, nor is it a citizen's natural right. As he has no property in the office, there is no vested right against removal, and no permanency is attached to the position merely from the appointment according to Civil Service regulations. He may, therefore, be removed for cause, as dictated by the public welfare. 5 R. C. L. (1914) 608, § 1.

¹⁷ See note 1, *supra*.

have deemed it important to try to work out ways and means whereby the country would have the advantages that come from professional and permanent public service even in the most exacting positions of the National Administration."¹⁸ The competitive system has operated successfully in many of the states including New York, the larger cities, and certain branches of the Federal Government.¹⁹ The standard of this personnel has been highly satisfactory; and there is little reason against extending it to all attorney positions, as the President has recommended to Congress.

III

Second: Conditions have changed tremendously from the day when Andrew Jackson said that the duties of government employees are "so plain and simple that men of intelligence can readily qualify themselves for their performance."²⁰ It is a mistaken notion, even now, that anyone is qualified to occupy any position in the civil service. As in other walks of life, jobs as a rule have a close relation to the amount of the individual's education; and definite qualifications are necessary for appointment, promotion and transfer. The attorney, with his specialized knowledge of government and law, is especially suited to the public service, whose problems are unique, and require long continued experience and familiarity with national and state traditions and policies.²¹ He is the only one competent not only to give an unbiased, interpretative opinion on legislative and executive enactments, but also to prepare briefs, memoranda of law, and drafts of all

¹⁸ N. Y. Times, *supra* note 2, p. 14, col. 3. As illustrative of discrimination against classifying attorneys where they were expressly excluded from its provisions, the following are typical examples: The Social Security Act, the Guffey Coal Act, the National Labor Relations Act, and the United States Housing Authority. The Administrative Reorganization Bill, which provided for an extension of the merit system throughout the Federal Service was defeated by Congress. A list of all the federal legal positions, including those classified and unclassified, will be found at p. 296. (1938) 1 NAT. LAWYER'S GUILD Q. 294; (1939) 33 AM. POL. SCI. REV. 826.

¹⁹ N. Y. Times, *supra* note 2; (1935) 24 NAT. MUN. REV. 114; (1938) 1 NAT. LAWYER'S GUILD Q. 294; (1939) 5 LEGAL NOTES ON LOCAL GOV'T 16. As other illustrations of cases showing that the classification of attorneys has been found practicable, see Metropolitan Life Ins. Co. v. Boland, 281 N. Y. 357, 23 N. E. (2d) 532 (1939) (trial examiners appointed by the Labor Relations Board); Blatz v. Esser, 189 App. Div. 763, 179 N. Y. Supp. 143 (2d Dept. 1919) (attorney position in the tax department); Volgenau v. Finegan, 163 Misc. 554, 296 N. Y. Supp. 101, *aff'd*, 250 App. Div. 757, 295 N. Y. Supp. 758 (1st Dept. 1937), *motion granted*, 275 N. Y. 546, 11 N. E. (2d) 746 (1937) (position of Civil Service examiner where integrity, secrecy, broad knowledge, and ability to judge others' intelligence were essential).

²⁰ See note 1, *supra*.

²¹ See note 3, *supra*; (1939) 5 LEGAL NOTES ON LOCAL GOV'T 16; Cowen v. Reavy, 171 Misc. 266, 12 N. Y. S. (2d) 830, *aff'd*, 258 App. Div. 994, 17 N. Y. S. (2d) 519 (3d Dept. 1940), *mod'd*, 283 N. Y. 232, 28 N. E. (2d) 390 (1940).

types of legal instruments, and determine the legal accuracy and sufficiency of rules, regulations and reports, and try cases.

Justice Murphy, William McReynolds, the President's administrative assistant, Dr. Leonard White, former Civil Service Commissioner, and General Robert Wood, the other members of the President's Committee, *supra*, are of the opinion that a reasonable degree of flexibility is possible in appointing attorneys, by the use of presently established procedures, as for other professional groups, *i.e.*, physicians²² and engineers. They recommend a "complete application of the merit system by means of a register on which names appear in order of merit as tested by examination and from which certification is made in order of merit."²³ In answer to Justice Reed's proposal of a nonclassified, unranked register, Justice Murphy rightly said that it was contrary to the spirit of the Civil Service Act of 1883 (the same year that New York passed its first Civil Service Law²⁴) and would "open the door to every form of pressure and discrimination" and be "an administrative evil and impairment rather than a reinforcement of the merit system. . . . From the point of view of the general counsel, whose responsibility it is to make appointments, we believe that it is unwise to throw open the doors to several hundred eligibles, all equally qualified under the rules for immediate appointment. . . . From the point of view of orderly procedure, we think the plan is faulty. From the point of view of public confidence in its impartiality, we think the plan is weak. As a precedent, we think the plan is unfortunate."²⁵

IV

Third: Article V, Section 6 of the New York Constitution provides the general rule for the appointment and promotion in the state civil service. It shall be made according to merit and fitness, ascertained, so far as practicable, by a competitive examination. Civil Service Law Sections 14 and 16 attempt to effectuate this provision. *Matter of Andresen v. Rice*²⁶ emphasizes the fact that the competitive element should be employed as long as human experience demonstrates that it is practicable to get capable appointees by such method. Justice Cardozo wrote²⁷ that, "The Legislature retains the power of selection among means appropriate to the end, but choice must rest on

²² *Fink v. Finegan*, 270 N. Y. 356, 1 N. E. (2d) 462 (1936).

²³ N. Y. Times, *supra* note 2, p. 14, col. 1.

²⁴ N. Y. Laws 1883, c. 354; *Madden v. Reavy*, 284 N. Y. 418, 420, 31 N. E. (2d) 756, 757 (1940) ("It does not go beyond common knowledge to say that since 1883, when Civil Service reform became the subject of legislative action in this state . . . there has been consistent progress toward the ideal which became a constitutional objective. . . . Indeed it was the state of New York which first made the merit system a part of its fixed public policy . . .").

²⁵ N. Y. Times, *supra* note 2.

²⁶ 277 N. Y. 271, 14 N. E. (2d) 65 (1938).

²⁷ *Ottinger v. Civil Service Commission*, 240 N. Y. 435, 441, 148 N. E. 627, 628 (1925).

reason, and not upon caprice. To know the limit of the impracticable, we must give heed to the methods and institutions that are functioning in practice. To mark the frontier of the attainable we must find the line of the attained." Although to a certain extent it may not be possible to determine merit and fitness by competitive examination, it must be remembered that we are dealing with the human element, which is never infallible, especially in selecting attorneys whose functions are peculiarly and widely divergent from the average civil service worker's, and new examination techniques and devices are constantly being applied to reach a reasonable standard of objectivity.²⁸ The Constitutional phrase "so far as practicable" indicates that there are exceptions and that it will be impossible in all cases to apply the competitive principle.²⁹ The early leading case of *Chittenden v. Wurster*³⁰ held that Article V, Section 9 of the 1894 New York Constitution, the predecessor of the present provision, adopted the whole framework of the prior Civil Service Law except as it was modified by the Constitution. Confidential positions were exempted from the operation of that law, and so they continued thereafter.

The first thing that must be determined are the duties of the position involved. Very good reasons must exist to justify the term "confidential" being applied to any office, in that the nature of the duties require skill, integrity, and trust and confidence between the appointing officer and appointee.³¹ What seems to be overlooked, however, is the fact that a *personal* confidence is essential, and not merely any office involving trust and confidence, or the mere performance of official duties.³² It would seem that the test is whether

²⁸ *People v. Sweet*, 157 N. Y. 368, 52 N. E. 132 (1898); (1939) 28 NAT. MUN. REV. 9. See (1940) 15 ST. JOHN'S L. REV. 90 for a discussion of *Cowen v. Creary*, 283 N. Y. 232, 28 N. E. (2d) 390 (1940) which directed the cancellation of a Civil Service examination for attorneys for the position of unemployment insurance referee in the competitive class, and the revision of the minimum requirements which were held to be arbitrary, capricious, unreasonable and discriminatory against certain attorneys. The article discusses the general law on the subject of the necessity for a reasonable competitive examination and an objective standard to determine the applicant's merit and fitness, the courts refusing to interfere with the discretion of administrative bodies, such as the Civil Service Commission, unless their acts are palpably an abuse of discretion, illegal or arbitrary.

²⁹ N. Y. CIVIL SERVICE LAW § 13 ("The Exempt Class . . . and all other subordinate officers for the filling of which competitive or non-competitive examination may be found to be not practicable."); *Chittenden v. Wurster*, 152 N. Y. 345, 46 N. E. 85 (1897); *People v. Knox*, 166 N. Y. 444, 60 N. E. 17 (1901); *Fink v. Finegan*, 270 N. Y. 356, 1 N. E. (2d) 462 (1936); *Andresen v. Rice*, 277 N. Y. 271, 14 N. E. (2d) 165 (1938); *Matter of Ricketts*, 111 App. Div. 669, 98 N. Y. Supp. 502 (1st Dept. 1906); *Op. Atty. Gen.* (1897) 276.

³⁰ 152 N. Y. 345, 46 N. E. 85 (1897).

³¹ *People v. Palmer*, 152 N. Y. 217, 46 N. E. 328 (1897); *People v. Finegan*, 268 N. Y. 93, 196 N. E. 755 (1935).

³² N. Y. CIV. SERV. LAW § 2 ("The 'Civil Service' . . . include all officers and positions of trust or employment in the service of the state . . ."); *Volgenau v. Finegan*, 163 Misc. 554, 296 N. Y. Supp. 101, *aff'd*, 250 App. Div. 757, 295 N. Y. Supp. 758 (1st Dept. 1937), *motion granted*, 275 N. Y. 546, 11 N. E. (2d) 746 (1937); *People v. Sutton*, 88 Hun 173 (N. Y. 1895).

the best public interest, in the light of the constitutional mandate, would demand a personal selection in preference to a competitive examination. It has been held³³ that if duties of a confidential nature are involved, such should be the test to determine whether a competitive examination is impracticable to adjudge the appointee's merit and fitness, as a matter of law, and consequently the position should be within the exempt class. However, a better opinion³⁴ considered the confidential aspect as not inevitably conclusive, but only a mere circumstance, just another fact to determine whether a competitive examination supplies a practicable test. Its weight is to be examined in the light of all the incidents and functions relating to the position.

As was so ably said in *Barlow v. Berry*,³⁵ "Discretion there is in determining the limits of the impracticable. It is not, however, an uncontrolled discretion, but one subject to the teaching of experience and the supervision of the courts. The range of selection must be determined by a principle of general application unless the qualities to be preferred are so unique and extraordinary as to bid defiance to classification and call for treatment by themselves." It cannot be said, therefore, in the light of all the agitation and past experience, that attorneys possess such "unique and extraordinary" qualifications that selective certification will be impossible or ineffective. "In fact, *merit, fitness and character of all attorneys is ascertained by examination, and certificates to practice are only issued after such an examination is had.*" (Italics are the writer's.)³⁶ The basis for the attorney not being selected by competitive examination, by reason of the confidential nature of the position, would seem to be a mere pretext to continue the spoils system with all its evils. The only confidence involved would be that related to the particular cases he would be working on, and not the personal intimacy between the head of the department and the subordinate. The practice and the procedure used in selecting a private law firm assistant, and/or the method adopted to admit attorneys to the Bar would both seem to be readily adaptable in the public service.³⁷

Conclusion

As pointed out previously, there are instances where attorneys are included in the State and Federal Civil Service, and where well-known

³³ *Chittenden v. Wurster*, 152 N. Y. 345, 46 N. E. 85 (1897); *Simmons v. McGuire*, 145 App. Div. 471, 130 N. Y. Supp. 306, *rev'd on other grounds*, 204 N. Y. 253, 97 N. E. 526 (1912); 5 R. C. L. (1914) 608, § 1; 16 C. J. S. (1939) 334, § 131.

³⁴ *Ottinger v. Civil Service Commission*, 240 N. Y. 435, 148 N. E. 627 (1925); *Craig v. Bd. of Education*, 173 Misc. 969, 19 N. Y. S. (2d) 293 (1940).

³⁵ 245 N. Y. 500, 504, 157 N. E. 834, 835 (1927).

³⁶ See *Weeks v. Kraft*, 72 Misc. 134, 138, 129 N. Y. Supp. 690, 694, *aff'd*, 147 App. Div. 403, 132 N. Y. Supp. 228 (3d Dept. 1911), *motion denied*, 205 N. Y. 585, 98 N. E. 1118 (1911).

³⁷ (1939) 5 LEGAL NOTES ON LOCAL GOV'T 16.

authorities have advocated and found that they may well be an important and satisfactory part of the merit system, whose policy should be extended wherever possible.³⁸ Even now, Congress has before it President Roosevelt's message and a report of a committee, consisting of some of our most distinguished attorneys, jurists and administrators, recommending an extension of the public service all the way up to the policy-determining positions, and especially to include lawyers.³⁹ It would be well to abolish as quickly as possible the present system as typified by the answer sent to the United States Civil Service Commission's questionnaire by Indiana's Attorney General, "none of the positions [in the attorney general's office] are filled by competitive examination; all are political appointments."⁴⁰

BERNARD ROTHMAN.

THE PROBLEM OF JUDICIAL WEIGHT OF THE RESULTS OF BLOOD GROUPING

I

The Landsteiner-Levine blood-grouping test is now being used by New York and other courts in issues involving disputed paternity. In recent years, there have been several court decisions and such an abundance of matter thoroughly discussing the test that it is unnecessary to deal with the scientific and mechanical phases thereof.¹ It is

³⁸ *Fink v. Finegan*, 270 N. Y. 356, 11 N. E. (2d) 462 (1936).

³⁹ The President's Committee on Civil Service Improvement agrees that the Civil Service Commission should do the following: "(1) Undertake direct and personal recruiting of young lawyers for junior attorney positions, with such cooperation as the government law officers may furnish. (2) Hold nation-wide timely and annual examinations for the position of law clerk, appointees to become junior attorney upon admission to the bar. (3) Give special study to perfecting written and oral examination for junior and assistant attorney position. (4) Take full advantage of probationary period to terminate service of unsatisfactory selectees. (5) Hold competitive examinations for law apprentice if there is adequate demand by government law officers. (6) Train junior attorneys broadly within their major specializations, especially by a program of planned assignments. (7) Appoint to positions above grade P-2 (base salary of \$2600 annually) by promotion or transfer, using the committee type of examination of open competitive examinations. (8) Allow selective certification in appointments to higher attorney position when the interests of the public service require." N. Y. Times, *supra* note 2.

⁴⁰ (1939) 5 LEGAL NOTES ON LOCAL GOV'T 16.

¹ WIGMORE, EVIDENCE (3d ed. 1940) 165a, b, 2220; WIENER, BLOOD GROUPS AND BLOOD TRANSFUSIONS (1939); Britt, *Blood Grouping Tests and the Law: The Problem of "Cultural Lag"* (1937) 21 MINN. L. REV. 836; Wiener, *Genetics and the Law* (1933) 8 ST. JOHN'S L. REV. 70; Note (1934) 9 ST. JOHN'S L. REV. 102; *State v. Damm*, 64 S. D. 309, 266 N. W. 667 (1933); (1936) 104 A. L. R. 430, 441.