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Why Lawyers Should Oppose Bar Integration

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A bill, sponsored not by the members of the bar association, but by the board of governors of the Colorado Bar Association, has been introduced into the 34th General Assembly. The purpose of this bill is to provide for what is usually termed "An Integrated Bar" for the State of Colorado. The bill authorizes the Supreme Court to "create an association * * * which shall consist of all persons in the state now or hereafter regularly licensed to practice law in Colorado." The Supreme Court is authorized to provide rules and regulations for the association; rules and regulations concerning the conduct of the association and of its members; to provide a schedule of annual fees "to be paid by each member *to the Treasurer of the Colorado State Bar*"[1] (note the fees are not to be paid to the Supreme Court or to the Treasurer of the state of Colorado but are to be paid to this association). For active members of the Bar this fee, which of course is an excise tax, is to be not less than five nor more than ten dollars *per annum, "nonpayment of which shall be ground for suspension"* of the right to practice law in the state of Colorado. The Supreme Court is authorized to provide ethical standards to be observed in the practice of law, and to provide for discipline, suspension or disbarment of association members; the Supreme Court may confer the power of subpoena upon the association or its officers and committees for the purpose of aiding in cases of discipline, suspension or disbarment and may provide for the publication of the proceedings and records of the association in the Colorado reports.

The foregoing is a fair and complete summary of the provisions of the bill.

It will be noticed that the only powers which this bill confers upon the association is to collect an annual excise tax of $5.00 to $10.00—the exact amount to be fixed by the Supreme Court—and authority to aid the Supreme Court in disciplinary, suspension or disbarment proceedings under regulations and restrictions to be prescribed by the Supreme Court. The bill says nothing as to how the proceeds of this excise tax are to be expended, does not require the treasurer of the association to account for these proceeds to any public authority, and the only power specifically given the Supreme Court in regard to this excise tax is to fix the amount thereof between five and ten dollars per annum.

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[1]Italics throughout are ours.

Upon consideration of this proposal certain questions immediately suggest themselves. Why was this particular time selected for the introduction of this measure? Was it because so many of the active lawyers are now in service and it was thought that their absence would decrease the opposition to this measure? Whether this was the reason or not, it is evidently unjust to those absent for the cause mentioned, to take advantage of their absence to make such a radical change in the privileges afforded by their license to practice law previously conferred on them.

Why was this matter rushed through in this unseemly haste without taking an official canvass of the present members of the Bar, after reasonable time for discussion, to determine the wishes of the Bar? The president of the Colorado Bar Association stated publicly at a Denver luncheon that an informal canvass had been made and that the county Bars were, with one exception, strongly in favor of it. Now we learn that an actual canvass of one county seat, not the exception previously referred to, resulted in substantially a two-to-one vote against it, and we know that not even an informal canvass was taken in Denver.

When the Supreme Court in its letter of January 4, 1943, used the phrase, "a short statute * * * fixing the *maximum* annual fee," why did the sponsors of this bill fix a *minimum* as well as a maximum fee? Were they unwilling to trust the Supreme Court in this matter?

What real changes are provided for in this proposed bill? The Supreme Court now has the power to provide ethical standards to be observed in the practice of law, and has already published a code of such ethics; the Supreme Court now has the power to provide for disciplinary action against members of the Bar and also has the power, and is now exercising it, to call to its aid members of the Bar or committees of members to aid it in disciplinary as well as in other matters. These powers have never been doubted. In these matters, therefore, the proposed bill adds nothing to the powers already exercised by the Supreme Court. The innovations which the bill does provide for are, the establishment by rule of court of a state bar association with compulsory membership therein and an annual excise tax payable to this association as a prerequisite of the right to continue in the practice of law.

One of the outstanding problems of our present governmental situation arises from excessive taxation for the maintenance of wasteful and unnecessary bureaus and waste within the necessary bureaus; this integration proposal would add one new bureau and one new tax. It is both unpatriotic or inexpedient to experiment with a new civil bureau and a new tax for its support in these times when we are being urged to put all spare funds into war bonds. An amusing, incidental sidelight to this factor is that this tax would be deductible for income tax purposes, so, assuming the average lawyer now pays 20% of net income as

federal and state income taxes, 20% of the aggregate of these association dues will be deducted from income taxes and to that extent further complicate the general state and federal revenue situation. Let no one imagine that this measure will unite the Bar; on the contrary it will divide it between the tax-gatherer and the taxpayer; whoever heard of a popular revenue agent? The officers of this new bar association may anticipate being as popular as is the "Revenoor" in the South.

Why do these people who are urging Bar integration desire this taxing power? They have answered that question in this language: "It would be possible to maintain a central office supervised by a full-time secretary." In other words, it will create another job for a job hunter. What we need today is fewer "full-time secretaries," fewer "central offices," and to substitute encouragement of American individual initiative in lieu of strangulation by bureaucratic regimentation.

The pamphlet issued by these "integrators" states: "One of the truly difficult problems of the Supreme Court is the handling of disciplinary matters." The Constitution of Colorado provides that the judges of the Supreme Court shall, on or before the first of December of each year, report to the governor in writing, such defects and omissions in the Constitution and laws as they may find to exist. It is strange that the Supreme Court seems unaware of this, its "truly difficult problem," and has failed to follow the constitutional method of suggesting the remedy. If this "truly difficult problem" is so acute, the remedy would seem to be an appropriation by the legislature for the use of the Supreme Court sufficient to enable it to engage such clerical and other help as it may need for that purpose, not the creation of a new bureau, with ill-defined authority, with tax-collecting powers but with no legislative direction how the revenue so extorted shall be expended. We can assume that when the Supreme Court needs the aid of an integrated Bar it will ask for it in the manner prescribed by the Constitution of Colorado. Until the Supreme Court does ask for it in the manner so prescribed we can logically conclude that such help is not needed by our Supreme Court.

Throughout the pamphlet issued by these "integrators" there are frequent references to improved standards of ethics which will result from this integrated Bar. One wonders who are these self-anointed superior beings who are going to work these wonders of ethical culture in the Bar; and, if these improvements in the standards are so necessary, why are these "integrators" not more specific, why don't they tell us just what they propose to do to us of the rank and file, why don't they point out specifically the character of unethical practice they propose to eliminate? Certainly, this business of broadcasting these vague charges against the Bar is itself unethical and even the hope of sufficient funds

to create a new bureau with a central office and a full-time secretary is no justification for defaming the Bar in this manner.

It is extremely doubtful whether the so-called integrated Bar could undertake many of the activities these "integrators" mention in their pamphlet. The proposed bill specifically mentions certain powers which the Supreme Court may confer upon the integrated association, but many of the activities which these "integrators" propose to undertake are certainly beyond the powers so conferred. As this new bureau is to be supported by taxation, legislative authority for the use of the proceeds of the tax must exist. The use of this tax money for many of the suggested activities is very questionable.

Congress passed certain laws which, it was assumed, authorized labor unions to negotiate "closed shop" agreements. Because of the abuses which have resulted therefrom, Congress is now seriously considering amending those laws, at least insofar as closed shop agreements relate to work in government employment or on government projects or defense work. These "integrators" propose a "closed shop union" for the Bar, and no lawyer may perform his duties as an officer of the courts unless he carries his union card. Until we solve the present evils resulting from "closed shop" unions it would be unwise to create a new closed shop union. The suggestion that such a union will create a "closer relationship with the judiciary of the state," if not sinister, is at least absurd and wishful thinking. Are the members of the present bar associations in any "closer relationship with the judiciary" than non-members? I hope not, and I am confident that the fact that the non-members are compelled to join the union by act of the legislature will not affect their relationship to the judiciary.

These "integrators" place much reliance on the fact that twenty-three states have adopted "integration." Among those absent from the roll call are such important states as New York, New Jersey, Illinois, Ohio, Pennsylvania and Indiana; in fact, except for three southern states and Michigan, no state east of the Mississippi River has adopted this plan. One of the integrated states is California, so we may assume the recent Flynn trial is a sample of the showmanship of an integrated Bar.

Let me direct the attention of these "integrators" to the following from the opinion of Mr. Justice Sutherland in the *Carter Coal* case: "* * * in the very nature of things, one person may not be entrusted with the power to regulate the business of another, *and especially of a competitor*. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to deci-

sions of this Court which foreclose the question."[2] An integrated Bar gives to a group of lawyers regulatory powers over other lawyers, with whom the members of the regulating group may be in competition. Unless it does this it accomplishes nothing, and if it does this it is unconstitutional. Then why tax lawyers to maintain such an organization?

This scheme is the outgrowth of the epidemic for regimentation which has afflicted this generation. Self-constituted supermen, confident in their ability to regulate everybody in every activity of life, if they can be assured of ample financial support from taxes, are attempting to create innumerable bureaus, each with a central office and a full-time secretary bent on exterminating individual initiative. Let the Bar of Colorado be on its guard before it finds itself subjected to this strangulation process.

[2]Carter v. Carter Coal Co., 298 U. S. 238, 311, 56 S. Ct. 855, 80 L. ed. 1160 (1936).

Assistant United States Attorney General Berge Discusses Responsibility of Prosecutors

The responsibility of prosecutors to see that defendants in criminal cases, even in the trial of war crimes, are not prejudiced by newspaper publicity is discussed by Assistant United States Attorney General Wendell Berge in an article, *The Prosecutor and Crime Publicity*, in the February issue of the AMERICAN BAR ASSOCIATION JOURNAL.

Mr. Berge first discusses the responsibility of prosecutors generally in criminal trials, declaring that "usually the prosecutor should share the blame with the newspapers when they turn a criminal trial into a Roman holiday."

In referring to trials of war crimes, he says:

> "A state of war naturally and inevitably must create an intense public feeling. Anyone accused or even suspected of assisting the enemy is at once covered with infamy in the public mind. Treason, for example, has always been regarded as the highest of crimes, and properly so, but that is not to say that anyone accused of this crime should be deemed to be convicted, or that lynch law is justified in regard to those suspected of treason. The same is true of those accused of other war crimes.
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> "It is so easy in time of war for a prosecutor to bolster a weak case by appealing to the natural sentiments of the community. Witch-hunting can be made very popular and a public official can build for himself a tremendous reputation, at least of a temporary nature, by an over-zealous drive against all those who do not see

eye to eye with him or with the prevailing majority in regard to the conduct of the war. Such a course of action is at least misguided patriotism, and may well amount to a perversion of the essential features of the democracy and its judicial system, for the continuation of which the war is being waged.

"The prosecutor must, of course, be ever on the alert to safeguard the national security and to make the processes of the criminal law reach down and punish all attempts to endanger the state by the commission of any war crime. But in doing so the prosecutor must make sure that he is in fact serving the state, and that he is not whipping up public hysteria to such an extent that a criminal trial would be a farce. When justified by the facts, martial law may be invoked to deal with threats against the safety of the state. But as long as the civil courts are functioning, the prosecutor's responsibility continues to make sure that they function according to law, that persons accused of heinous crimes against the state are tried according to the law of the state and not according to the misguided and uninformed emotions and prejudices that are on the loose in the community.

"In trying war crimes the prosecutor must, above all, maintain balance and endeavor to see that news of such crimes is properly presented to the people and that they are told all the facts, unless military necessity requires in a particular case that secrecy be maintained. But he should use his best endeavor to make sure that they are told facts and that they are not fed suspicion and unfounded rumor, which might so easily prevent a defendant from being given a fair trial to determine his actual guilt."

Pointing out that "certain kinds of crime publicity sometimes pervert the course of criminal justice," Mr. Berge asks what can be done about it.

"We have a free press and we must preserve it. Repressive legislation or administrative censorship over crime news would not work. Nor do we want them. The evils attendant upon government control of crime news would undoubtedly outweigh the disadvantages of the present manner of handling such news. Education of public taste may to some extent raise the tone of reporting, but there will always be that element of the reading public that wants to eat its crime news raw, even without any seasoning. Part of the press, at least, will always pander to this morbid interest. To attempt the shortcut of forbidding or censoring crime news would be a shallow and unrealistic approach to the problem. On the other hand, it does not seem that we should give up in despair and concede that nothing at all can be done to improve the character and quality of crime publicity.

"Too often the sole responsibility for sensational handling is laid at the door of the press. Although the press could no doubt assume a greater responsibility for leadership in setting and maintaining higher standards, yet we must recognize frankly that newspapers and magazines must live in a competitive world; that they must maintain circulation and sell advertising and that business success depends upon printing what they can get and doing it in the way in which the public wants it.

"Rather than unduly to criticize the press, lawyers should examine their own professional standards and conduct to ascertain whether they are not themselves largely to blame for the overemphasis of the sordid aspects of crime news. Particularly should public prosecutors apply the searching light of critical examination to their own actions.

"A realization of the high nature of his office will go a long way toward helping a prosecutor keep a criminal trial as free as possible of the evil influence of yellow journalism. The prosecutor who scrupulously practices law instead of attempting to play politics, will not be tempted to shape up his case for newspaper headlines first and for justice afterward.

"Many criminal trials are dramatic, and legitimately so. There is enough life in them without the artificial respiration that is sometimes applied through the printing press, and the prosecutor loses nothing by avoiding artificiality.

"In maintaining balance, the prosecutor must also be careful to avoid the mistake of becoming secretive about matters which a free press is entitled to know. When people have no information, they proceed to create their own. Only recently, during the hearings held by a military commission trying eight Nazi saboteurs in Washington, a rather rigid secrecy was maintained over a period of days. This was not an ordinary criminal trial, and the military authorities were entirely within their rights in doing whatever they saw fit about the matter of publicity. Nevertheless, the question of whether the public should have been given a certain minimum of information instead of none at all was considered at least an arguable point, and some concession was finally made, but in the meantime, lacking news, one or two reporters did create their own. Their information was not wholly correct, but that did not prevent them from giving it to the public.

"In the usual criminal case, reporters and the public do have a right to learn the facts of the trial. Reporters feel that they have a right to all the facts they can get, and if they are subjected to a restraint that is unreasonable, they are likely to resent it and to tackle the problem through other channels. The result may be an embarrassment to the prosecutor, sometimes not undeserved."