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Against Bar Integration

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AGAINST BAR INTEGRATION

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THE term "Integrated Bar" is generally used to designate bar associations established by legislative acts or judicial orders as distinguished from voluntary bar associations. Membership in integrated bars is compulsory.

The usual procedure to establish an "Integrated Bar" is to have the Legislature adopt a statute authorizing the incorporation of the bar, and vesting in this incorporated bar various powers, such as power to collect dues from all enrolled members of the bar to defray the expenses of carrying on the work of the corporation; power to appoint a governing board; power to hear complaints against members of the bar and to recommend to the Supreme Court action upon such complaints. Sometimes the procedure is varied and the Legislature authorizes the Supreme Court to prescribe rules and regulations for organizing and governing the bar association and to prescribe the powers thereof; again, in other cases the Supreme Court has provided for an integrated bar, without action by the Legislature.

The essential features of all bar integration plans are, first, that the bar organizations become officially a part of the State government; second, that membership therein is compulsory and every lawyer must pay an excise tax to support the integrated bar. The benefits generally claimed for this form of organization are: (1) That integrated bar associations are sufficiently financed to carry on the work of the association; (2) that since every lawyer must contribute to the funds of the association, a considerably larger percentage of lawyers actively participate in the work of integrated bars than participate in the activities of voluntary associations; (3) that because of (1) and (2) the integrated associations work more effectively, and particularly are more efficient in compelling observation of bar ethics.

Before considering these supposed benefits, it is appropriate that we should examine the underlying principles involved in bar integration. Legislation providing for bar integration has generally been sustained as an appropriate exercise of the police powers (In re Gibson, 4 Pac. 2d 643). Those, therefore, who advocate bar integration must contend

that the bar needs policing and then argue that the bar is the proper organization to appoint the police. If a trades union, let us say, the United Mine Workers, should propose a law providing that (1) no one could work in or about a coal mine in Colorado except he joins the union and continues his membership by regular payment of dues to be fixed by the union; (2) the union elects its own officers; (3) the union adopts its own rules and regulations defining what is ethical in coal mining and the union shall have full control of its funds, that union would be proposing nothing different, in principle, from the proposition of an integrated bar. In all other professions or trades which are regulated under the police powers, the appointment of the members of the regulating body is left to the governor, sometimes with the approval of the senate, or to some other governmental agency. Thus the governor appoints the medical board, the dental board and he appoints the public utilities board with the consent of the senate. The advocates of bar integration, however, propose to invoke the police powers of the State to create the integrated bar and give it powers to levy excise taxes, then they propose to vest in the bar—not representing the people or the State—the power to name the governing board of the bar, which will have wide powers, including those of disbursing the proceeds of this excise tax.

The bar is a part of the judicial branch of the government and, obviously, if under the police powers of the State there is to be a governing board appointed for it, the appointment should be with that body which the people have elected to have general superintending control over the judicial branch of the government, the Supreme Court. Any proposition of a governmental agency, not under the control of elected officials, being vested with police powers and taxing powers, and the power to spend the proceeds of taxes levied by itself, is so new and startling that it must come as a shock to those who still approve the general principles of democratic government.

The advocates of integration of the bar usually contrast the inefficiency of bar associations with the control of the medical profession by the American Medical Association and by the State and local medical associations. It should be noted

that these medical associations are not "integrated" associations—but are voluntary and selective. If these voluntary medical associations have elevated the standards of the medical profession above those of the legal profession (which, I submit, is open to very serious question), the alleged success in that regard is, therefore, no argument that by substituting compulsory bar associations for the voluntary associations, the standards of the bar will be raised to the standards supposed to be achieved by the medical profession, acting through voluntary associations.

Let us now examine some of the reasons urged for the establishment of an integrated bar. It is claimed that recent events have emphasized the necessity of curbing unethical activities of members of the bar; that the legal profession is losing the confidence of the public by reason of such unethical activities.

The unethical conduct of some members of the bar has been exaggerated by propaganda of the press and by bar association officials advocating bar integration. There has been an increase of criminal activities resulting from a World War, a major depression, sensational romanticizing of crime by press and movies, and this has centered public attention on "crime." The press has drawn attention to the lawyers—in order to divert attention of the public from the part the press has played in the increase in crime. So the lawyers have taken the blame and bar association officials interested in bar integration have joined in the propaganda against lawyers. The loss of public confidence is traceable to three main causes: (a) Present legal procedure is cumbersome and impracticable and the lawyers have not remedied these defects; (b) the 1929 economic breakdown was in many respects traceable to banking and corporate dishonesty and lawyers were the advisers of those responsible for those dishonesties, and bar associations are not actively denouncing such legal advisers; (c) excessive dramatic publicity and exaggeration of the activities of attorneys representing the underworld has resulted in the public blaming the bar not only for its share in the handling of the problem of the underworld, but also for the incompetencies of the police and other officials. No one disputes that the bar is vulnerable in the matter of the relation of some of its mem-

bers to the underworld, but those opposed to bar integration claim, as above stated, that this relationship has been exaggerated and sometimes used as a herring across the trail to divert attention from some equally sinister connections of members of the bar with the upperworld of high finance. The present methods of lawyers who represent defendants in criminal cases differ very little from the methods used in the nineteenth century. The outcry against the lawyers, therefore, is not due to a new technique in criminal defense, but is due to an aroused sentiment against crime increases.

It is next urged that if reforms are needed in the bar, lawyers, because of their training and experience, are best fitted to solve the problems involved.

The primary interest of lawyers as a class (though not always individually) is in the practice of law as their profession and therefore their self-interest will, in many cases, outweigh their judgment as to what is for the social good. In principle it is wrong for practicing lawyers to sit in judgment on their competitors, i. e., other practicing lawyers. The responsibility and function of disciplining recreant lawyers belongs in the courts and the courts can always call to their assistance in such matters such members of the bar as the courts may determine are best suited to be of assistance in such matters. The courts represent the public, in whose interest such reforms are to be made. Why divide the responsibility?

Next it is contended that an adequately financed bar association is necessary if it is to effectually enforce high standards of ethical conduct in the profession, and that adequate financing of bar associations can only be accomplished through integration of the bar. Obviously it is a confession of weakness when bar officials admit they are not able to get voluntary members into the association, and therefore ask for compulsory measures to increase membership.

What constitutes an adequately financed bar association is a matter of opinion; already we hear murmurs against high salaries paid by the American Bar Association and excessive expenditures for propaganda put out by that organization. An integrated bar is just another bureaucracy—an N. R. A. among lawyers—and will be in the control of not the best element of the bar, but of the professional bureaucrat or office-

seeker. Compulsory payment of bar association dues will be the inspiration for the establishment of a swarm of paid office holders in the associations.

The advocates of bar integration contend that every lawyer should be a member of his State bar association and should participate in the work of that association; that this can be brought about only when every lawyer is compelled to pay dues to the association.

Quality and not quantity is what is needed in bar association work; every lawyer who pays property and/or income taxes does not actively participate in political activities, and because every lawyer has to pay a membership fee in a bar association does not guarantee that every lawyer will participate in its work. Under voluntary associations less than half of those who pay dues, regularly attend bar meetings and are active in the work of the association; probably under an integrated bar the result will be the same. The official personnel will probably be about the same as under a voluntary association; if not—as you will force into the associations those whose unorthodox professional standards now prevent them from becoming members of voluntary associations—you may get a less desirable official personnel than you now have. The only thing that an integrated bar will assure in this regard will be increased funds for the association.

It is claimed that an integrated bar is more effectual in disciplinary activities than is a voluntary association.

In those states where in recent years an integrated bar has been established, there has been more disciplinary activity than was formerly manifested, probably because conditions made necessary increased activities along such lines. In Colorado—without an integrated bar—there has been more activity in this respect in the past five years than in the prior twenty-five years; which shows that an integrated bar is not the only way of arousing disciplinary activities when the same become necessary. Primarily the duty of maintaining ethical standards is one for the courts. The courts are elected by the people—or are appointed by those elected by the people—and are therefore the people's agency for administering disciplinary measures to unethical members of the bar. Bar association committees or governing boards are not elected by, or in any

manner responsible to the people, therefore they are not likely to have the confidence of the people. Give the Supreme Court the fullest powers in matters of discipline, with full authority to call to its assistance permanent committees appointed by it, or individuals selected by it from time to time. The results will be more satisfactory, there will be no division of responsibility, and the public will have more confidence in the administration of discipline by its own elected officials than it will have where the responsibility for the initial investigation is in the hands of a bar committee in no manner subject to the control of the people, and often elected or appointed by a small clique in the bar association itself.

It is generally conceded that judicial procedure needs amending, so that justice can be more certainly and speedily administered with less likelihood of such administration being frustrated by intricate technicalities. The advocates of bar integration claim that the lawyer's training adapts him to the formulation of such amendment. They claim that unless such amendments are made, the public confidence in our courts will be undermined, and that this work must have the united efforts of all lawyers, and that this united activity can only be secured by an integrated bar.

All will agree that a legal system where four to nine months can be used up in determining how properly to state a cause of action and a defense thereto, is inept and not a system to be proud of. However, the work of reforming judicial procedure is not one to be undertaken by mass attack; it requires the careful study of analytical minds peculiarly adapted to that kind of activity. Our present judicial procedure is almost entirely the product of legal minds, therefore many doubt whether the work of amending judicial procedure should be entrusted to lawyers alone; it is contended by many that this work can only be accomplished with any degree of success by groups composed of well-trained representatives of various phases of our industrial, financial and social life, in which groups lawyers should not be the controlling majority. Even if lawyers are to undertake this work, obviously they should be selected—not elected by majority vote of members of an integrated bar. Without an integrated bar, the Supreme Court of the United States found no difficulty in securing all

of the assistance it required among the highest types of lawyers to aid it in the work of preparing for submission to Congress new rules of procedure for the Federal courts. The Supreme Court of each State could secure similar cooperation within the State whenever it was desired. Of course the question of finance comes in. If the lawyers must finance either the work of disciplining the bar or of reforming judicial procedure—logically, the State should finance it—then lawyers could be required to pay to the Supreme Court an annual license fee which could constitute a separate fund solely for such purposes as enforcing disciplinary measures, studying and formulating improvements in the procedure, etc. This would not entail the setting up of an integrated bar organization with numerous petty secretaries, committees, officials, etc., with legalistic authority to regiment and dictate to the bar.

At least let us try this method before we submit to this process of compulsory bar organization and surrender the valuable social features of voluntary bar associations.

There are those advocates of bar integration who claim that these social features can be retained under an integrated bar. Obviously this claim is erroneous. The funds of an integrated bar are proceeds of an excise tax and cannot be expended for purposes other than public purposes.

Whatever may be the justification for integration of the bars in such states as New York and California, no condition exists in Colorado which calls for such drastic disciplining of the bar of this State. Unless more convincing reasons are presented than have been heretofore advanced, Colorado should hold on to its voluntary associations and refuse to be stampeded into compulsory associations by the paid advocates sent out by the American Bar Association.

Some of the best public services which lawyers have rendered to the American Commonwealth have resulted from the free individualistic habits of thought of the American lawyer. Regimentation of American lawyers in trade unions disguised as "integrated bars" may—without improving either the ethics of the bar or the efficiency of judicial procedure—stultify this freedom of thought and speech among lawyers subjected to this regimentation, and result in substituting Boeotian mediocrity for scintillating omnilucence.