Denver Law Review

Volume 13 | Issue 8 Article 5

July 2021

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THE BALANCE SHEET FOR COORDINATION: LIABILITIES

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CAN the American Bar Association become an organism which will respond to and reflect the mass opinion of approximately 170,000 lawyers? Can a nation-wide organization of lawyers be formulated from present raw materials so that it will be of real service to the public and to the profession?

These questions have possessed a peculiar significance ever since the American Bar Association under its present three-year campaign decided to devote $50,000 of its funds together with a like sum granted by the Carnegie Corporation. But the questions are neither new nor novel, for the spectre of coordination has jangled its chains at various meetings of the association ever since Simeon Baldwin issued the call for the organization in 1878.

Perhaps, like any practical business man, it is now time for the national association, as well as lawyers everywhere, to draw a balance sheet, to see whether the venture so far shows a loss or profit. There are certain factors which stand in the way of a structural and functional approach to the creation of a representative national organization. The individualistic attitude of the lawyer, first of all, has long hindered the growth of any plan which appears to him to be collectivism or regimentation. To a representative lawyer, the idea of cohesive and unified state and national organizations, responsible to the lawyer and to his benefit is an antipathy. This feeling so permeates his thoughts that he approaches plans for coordination (if he can be persuaded to study them at all) with an inborn sense of prejudice. As a result, probably not more than 25% of the 170,000 lawyers have any real conception of the coordination movement and its potential value to the lawyer and to the public.

This individualistic attitude is the first liability item on our balance sheet. The second, and perhaps a corollary of the first, is that few lawyers know anything about coordination as a result of an inadequate program of publicity. They confuse it with integration. They fail to see that the National Bar Program is a means to an end. Coordination, integration, National Bar Program are to many merely words. The American Bar Association has popularized the words, but the significance of these movements has not been made plain nor has it become known to the practicing lawyer. The national association has failed to realize that to accomplish ultimate coordination, an intense, active program of publicity reaching out to the public and the lawyer alike must be well planned and vigorously maintained.

There is a strong feeling among many of the lawyers of the national association, especially among those who are influential in its management, that a sustained, well-directed publicity campaign is to be avoided. As a result of this policy, a few innocuous announcements by committee chairmen, lengthy pamphlets, articles in the American Bar Association *Journal*, and speeches by officials of the association constitute the sole means of publicity.

It seems apparent that the success of the coordination movement rests on two broad bases. First, the great majority of the lawyers must be so interested that they will demand a national representative organization. Second, that the public must openly urge a better, more responsible organization of lawyers as a necessary element of the more efficient and just administration of the law. In other words, the public shall insist, and lawyers must desire, that a lawyer be what he by oath and tradition is supposed to be: An officer of the courts —a component part of the judicial branch of government.

At the present time, lawyers are largely apathetic, if not entirely adverse, to any plans in their own behalf, even though the public and the press are openly antagonistic to the lawyer.

As the experience of other national professional organizations has adequately proved, both of these conditions can, to a large extent, be eradicated by intelligent publicity. Dr. Baer and Dr. Fishbein, who are largely responsible for the present status of the American Medical Association, have had the vision to see that intelligent publicity and propaganda was necessary to build a cohesive national unit of medical men.

If the history of the development of the American Medical Association is traced, it will be noted that at the early part of the century the doctor was an individual regarded with some suspicion and hostility by the general public. The weak and unrepresentative national medical organization of that time was not strong or representative enough to combat this thoroughly adverse public opinion.

Then the association was radically reorganized, and by means of the new organization, the doctors as a unit started to charge the unfavorable attitude of the public. Today the medical man stands far above the lawyer and judge in the esteem of the public. It is striking that this publicity campaign, which has two phases; namely, education of the public, and creation of a desire on the part of the doctor for a national group, has resulted in tangible benefits for the doctor. It has created a public understanding of the problems of the doctor, and through such work as that done by the committees on foods, drugs, and public information of the American Medical Association, it has made the public suspicious of quacks and medical nostrums but favorable to licensed physicians. It has made available to the general practitioner and the specialist nearly every bit of published medical learning by means of a packet service which is sent on request to any A. M. A. member. It has created a hundred page weekly journal which is indispensable to the doctor. It has created professional credit organizations which have undertaken the collection of bills. It has built numerous other services so that now about 90% of doctors actively engaged in practice are members of the

national organization, which has an annual budget of over a million and a half dollars.

The American Dental Association since the World War has been following along this path, with results not as prolific, but nevertheless thoroughly worthwhile. Business groups, like the United Chamber of Commerce, have had similar experiences.

The American Bar Association, in contrast, has been actively engaged in the present coordination movement for the past several years. During the past two fiscal years $65,000 will have been spent to bring about a national representative organization of lawyers. Yet of this sum not more than $5,000 has actually been spent for constructive publicity; and unless there is a radical revision of policy, which at the present time seems impossible, less than seven per cent of the total budget of $100,000 will be devoted to these purposes. With such an inadequate sum as this, it seems improbable either that the public will understand or will be sympathetic to the lawyers' problems or that an intense desire can be created on the part of the lawyer for coordination.

To the liabilities of the individualistic attitude of the lawyer, and inadequate publicity, must be added another—the present type of bar organizations. There are in existence today approximately 1,450 bar groups, ranging from largely inactive and loosely organized societies through social organizations to efficient and aggressive associations. Few local associations have any organic or structural connection with the state organization and none has with the national. As a result each, for the most part, is a little empire attempting to be self-sufficient and jealously warding off alleged entangling alliances and usurpation of power. Of the forty-eight state bar associations only a dozen have any organic or structural connection with the local bar associations. In some states, such as New York and Massachusetts, local organizations have as much if not more prestige than the state associations. In others, especially the seventeen integrated bar states, the local associations are for the most part subservient to the state asso-

ciation. In several, notably Louisiana, two state bar associations exist.

This condition makes it exceedingly difficult at the present to create a national organization which will be representative of all of the various local and state associations, and thereby of the lawyer. What associations are entitled to representation? The state?

Our own local situation will illustrate the impossibility of using this base. The Denver Bar Association has 625 members. The Colorado Bar Association has only 510. Our state association cannot and does not pretend to answer for the 1,563 lawyers practicing in the state, nor does the Denver Bar Association. Furthermore, at the present time only forty-three per cent of the members of the Colorado Bar Association are members of the national association. In contrast, the integrated bars represent one hundred per cent of the lawyers practicing within the state. But in integrated bar states membership in the American Bar Association range from eleven per cent to thirty-two per cent of the total number of enrolled lawyers. From these statements it is apparent that the voluntary state associations have a low percentage of members in the national association and are unrepresentative of practicing lawyers and the integrated bar states have a small national membership.

Is, then, the proper basis for representation the local groups? But an affirmative answer to this question faces three serious obstacles. First, the local groups should logically be made an integral part of the state organization. Second, large numbers of attorneys and many geographical sections will be entirely without representation. Finally, the local associations vary greatly in prestige, influence, membership percentages, and type of organization and functions. It, therefore, seems utterly impossible to use the local associations on any broad basis of representation.

Any plan based on representation of lawyers through membership in state and local bar associations must find a satisfactory solution to these problems. No plan has yet been advanced which satisfactorily solves the general problem. Perhaps none ever will unless an effort is made to bring about

either integrated or federalized state bar associations and from this foundation to build a truly *American* Bar Association.

The fourth detriment to complete coordination is that the American Bar Association gives little direct and tangible return for the pecuniary and time investment of the lawyer. At the present time the 27,235 members of the American Bar Association belong to the association for any one of three reasons: (1) They enjoy bar association work; (2) they became members through the insistence of a friend; or (3) they believed that the association afforded a good opportunity for national contacts. The latter classification by far leads the list, but it cannot continue much longer as a reason, for its potentialities fade as membership increases and as competition thereby increases.

To attract new members in any large numbers, some return for dues must be offered, just as the American Medical Association gave increased service. The rapid growth of the American Medical Association is ample proof that the interest of a profession in an association is in proportion to the service the association is able to render its members. In 1901, the date of the radical revision of the American Medical Association, it had 10,600 members. In the next four years, membership had been increased by 75%, in ten years it gained 700%, and today it has an increase of 980% over the 1901 membership.

In contrast the American Bar Association has grown at the average rate of about 480 members a year and during the past three years, in spite of the emphasis of the National Bar Program, the growth has been less than 50% of the average increase. According to the 1934 Report, there were 27,036 members. This fiscal year the membership had actually increased by only 199, and much of this growth can be credited to the activity of the convention committee in Los Angeles, as is shown by the fact that California in 1934 had 1,659 members, while in 1935 it had 2,060.

Figures may be dry reading, but the proof they present is inescapable. Various conclusions may be drawn as to the cause of the proof, but this one thing seems to stand out: That from a strictly pecuniary point of view, membership in

the American Bar Association is a poor investment unless it is followed by personal contacts at annual conventions, sectional and committee meetings. For eight dollars a year the lawyer receives twelve copies of the *Journal* and an annual report, both of which he can easily be without and still be thoroughly informed upon legal questions and the current problems of the profession.

The proper course to be followed, it would seem, is to make membership in the national association an essential thing, something desired in itself by every lawyer. There are a wealth of opportunities now existing. To suggest a few:

1. Law lists—should not the national association set up rigid standards for acceptable lists so that lawyers will be protected from fakes and racketeers, as is being now accomplished in Missouri?

2. The national magazine—should not it be enlarged in size, scope, and outlook so that it approaches a needed national law journal instead of being merely a law magazine?

3. Law books—lawyers are flooded with legal literature, some of it good, most of it bad, why not have experts in particular fields approve or disapprove books in that field and that which is good bear the stamp of acceptance by the association?

4. Public relations—should not the public be informed of what the lawyer is really doing in the behalf of the public so that a better understanding may exist between it and the profession?

5. Fidelity and pension funds—how can the profession ignore these two important problems?

6. Specialized service such as packet libraries and information service.

7. Law directories—should not the national association publish an authentic directory of lawyers, showing their status in the legal profession, especially any disciplinary record? and

8. A weekly or biweekly newsletter or bulletin such as that published by the Onondaga Bar Association of New York, giving the profession the latest possible news on out-

standing decisions, administrative rulings, and events which affect the profession.

There are countless other ways in which a national association can be of distinct value to the individual lawyer, if the association will take the initiative. There is not space here to list them all, but the experiences of the Onondaga Bar Association demonstrate that membership in an association can be measurably increased if some value is given in exchange for dues. Mr. R. Allen Stephens, Secretary of the Illinois State Bar Association, who has been extremely successful in working out this problem within his state, recently pointed out that one reason that so many capable lawyers are not members of any association is because that the association performed little, if any, really effective service as an organization for lawyers.

To the individualistic attitude of the lawyers, inadequate association publicity, the present status of the various state and local associations, and the low return on dues to the lawyer must be added two other liabilities; namely, the present organization of the American Bar Association and the immense amount of duplication, friction, and waste of time and money resulting from various national legalistic organizations.

It might be well for several paragraphs to sketch briefly the present government of the American Bar Association. Theoretically, the governing body of this association is the annual assembly which theoretically represents the entire membership. Yet these conventions are not attended by more than 2,000 members; the 1934 registration, for example, being 1,773 or approximately 7% of the total membership. This 7%, moreover, has no representative capacity other than as individual members of the association. This percentage should be considerably reduced because the main business sessions of the convention are seldom attended by more than one-half of those registered.

Mr. Stephens, in speaking generally of conventions, points out the ineffectiveness of a convention as a governing body. "Each year the setting up of an attractive annual meeting has become more difficult until today it is recognized as the

one activity which produces the smallest return, in proportion as the amount of work necessary to put it on is to the number of members reached thereby, of any of the activities of any ordinary association."

No better illustration of the unrepresentative character convention as a governing body can be found than that of the 1935 meeting. It was Saturday, the day of the election of officers. "Breaking the precedents of long years, the contest for the presidency went on the floor of the house." The tellers began the count and then Chairman Martin reported as follows: "William L. Ranson 209; James M. Beck 178." These two sentences taken from Mr. Joseph Taylor's able account of the convention are one of the strongest indictments against the present government of the American Bar Association. They indicate either (1) a machine-controlled organization or (2) lack of interest in the association; for it is to be noted that only 387 members of the nearly two thousand registered voted in the election (or less than two per cent of the total membership) and further, that only the office of presidency was contested.

As to the first point, several items may be noted. There is a decided tendency for certain names to repeat themselves in committee appointments, section chairmen, and on the General Council and Executive Committee. There is also the report of certain state bar association delegates of which that contained in thirty-seventh report of the Colorado Bar Association at page 148 is an example. Speaking of the alleged impropriety of one of the elections, the delegate says: "Yet this meant nothing with that well-oiled machine that operates the policies of the American Bar Association."

As to the second point, its mere statement is a most adequate proof.

So, then, theoretically the assembly is the governing body of the association, but as a matter of practice the powers of the convention, save in the matter of elections and approval of a few reports, have been, to a large extent, delegated to the Executive Committee. This committee is composed of the president, retiring president, secretary, treasurer, editor of the *Journal,* and chairman of the General Council, who are its

ex-officio members, and nine members elected by the convention. Three of the nine are chosen yearly for a three year term, and they cannot succeed themselves in office. This committee is given full power and authority in the interval between meetings to do all acts and perform all functions of the association.

The nominating committee (except for state councils) is the General Council, composed of one representative from each state and territory. Nominations to the General Council result from caucuses, informal in nature and generally sparsely attended, held after the first meeting of the convention. Members in attendance at the convention from each state or territory gather to make the nomination for their respective state or territory. Nominations of these caucuses are presented by the secretary to the convention, which has always accepted them, no others coming from the floor.

The State Council, largely dormant, is the committee which fosters the work of the association in the state. It is composed of five members from each state selected annually by members residing in the state and its chairman is a member of the General Council.

It is evident from this sketchy review of the government of the national association that the association is unresponsive, unrepresentative, and has a tendency at least to internal politics and machine control. The present president in recognizing this situation in a recent speech said: "A useful service, to the profession and to the country, cannot effectively be rendered, unless the structure of organization is such as to elicit, in a fair and representative way, the judgment and the experience of more than half of the lawyers of the land. A minority opinion or recommendation, however wise and well-considered, does not carry great weight with those who are glad to find pretexts for disregarding it; and the further fact is that a genuine consensus of opinion that comes up, in a representative way, from the lawyers in all of the states, is much more significant and sound than the views of any group or leadership, however select and sagacious. The determinations made and the actions taken by and through the Ameri-

can Bar Association, in the name of the legal profession, need and should have the sanctions and support which can come only if they are the representative decisions of those freely chosen to act and speak in behalf of a majority of the lawyers of the whole country."

And again he has said: "In many respects it (the structure) has become antiquated, casual, unrepresentative and unsuitable for so large and important an organization."

At the present time plans have been submitted to and approved by the Executive Committee which will radically change the present government in an effort to make it responsive. A House of Delegates is proposed, and certain other reforms suggested which I will outline more fully in a subsequent article.

Finally, there is one other liability that must be considered. It may be only a minor one, yet nevertheless one that exists. There are several national organizations of lawyers: The American Law Institute, The American Judicature Society, The Association of American Law Schools, The National Bar Association, The National Conference of Bar Examiners, National Conference of Commissioners on Uniform State Laws, The Association of Attorney Generals, the women lawyers' national association, the Patent Bar, and other federal departmental bars—to mention a few of the most prominent. Each one of the associations and organizations, to a large extent, duplicates work done by the others. In addition to the waste of time and money, these associations engender cross-currents of conflicting loyalties and jealousies. There is no attempt at a coordination of their programs, no attempt to present a united front on vital problems of the profession, and no attempt to serve the lawyers as a class.

These, then, are the liabilities: (1) individualistic attitude of the lawyer; (2) inadequate and doubtful public relations; (3) the present status of bar associations; (4) low return for law dues; (5) the present organization of the American Bar Association, and (6) duplication among existing legal organizations. However, the balance sheet is not all a listing of liabilities. In a subsequent article I propose to deal with the assets.