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BAR INTEGRATION IN THE STATE OF MICHIGAN

By GEORGE E. BRAND*

The fact that I have been invited to address you on "Bar Integration" indicates timely interest in a movement of vital importance not only to the bar, but also to the courts and the public.

The term "integration" was adopted for want of a more definite one. Even in states having "integrated" bars, the implicit vagueness of the term makes it more or less a conundrum to the public. In fact, no uniformity of definition is produced by individual lawyers. However, during the past eighteen years, the term has acquired a secondary meaning—as representing a new plan of bar organization.

Prolonged, active, and intensive experience with bar problems confirms the conviction that solution lies not in integration merely in a mechanical sense, but in the integrated development and exhibition by the legal profession of class consciousness in the exercise of its privileges and the discharge of its resultant obligations.

I shall, therefore, first discuss Bar Integration in that fundamental and broad sense, before referring to it as a new form of bar organization.

It is generally recognized that there are, and must necessarily be, fundamental distinctions between businesses and professions. I say this, not in disparagement of businesses nor in eulogy of professions. I have a most wholesome respect for business and business men. I feel nothing less than admiration for the ability of a business man or business group who, by vision, industry, financial investment or hazard, conceives of a business enterprise and projects it into successful and profitable operation—whether it involves a factory, an utility, an apartment or other real estate project, or a service.

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In general it can be said that business is open to the competition of all, is entered into primarily for profit, and is governed by the law of supply and demand. In contrast are the professions, the right to engage in which is a privilege or franchise granted by the state only to those who, by long study, character, and demonstrated fitness, have earned it.

Inherent in the granted privilege is the obligation of commensurate public service, insured by required observance of a code of professional ethics, in which profit and gain are recognized as but subordinate factors.

As important as it is to maintain business as such, it is not, and can not be, less in the public interest to preserve the professions as professions.

There are, however, fundamental differences in the professions. It shocks you to know that the practice of medicine and surgery is solely a matter of legislative license, regulation and control—so much so that the legislature could, if it desired, provide for the granting of medical or surgical licenses to persons (or for that matter to corporations) without making any technical study prerequisite.

The thoughts just expressed as to the medical profession were framed many years ago. They are accentuated by a current national movement which may fundamentally change, if not practically destroy, the existing concepts of that great profession.

On the other hand, the legal profession, because of its intimate relationship to the administration of justice (and the constitutional division of governmental powers) is primarily subject to regulation and control by the judiciary. This does not mean that the legislature has no power over the bar. It has certain power but only that which is sustainable perforce the "police power" to which everyone is subject. For example, the state legislature may, under the police power, provide that *no* person who *can not* read or write the English language may practice law—but the legislature may not say that *any* person who *can* read and write the English language may practice law. In other words, legislative police power regulations pertaining to the bar

are valid only as *minimum* requirements. The legislature only to that extent can regulate. It can not impose *maximum* requirements; it can not control. To do that is an inherent judicial function, the discharge of which almost all courts recognize as necessarily involving the broad subject of practice of the law in and out of court.

The foundation upon which any profession must rest, and upon which its continued existence must depend, is the service rendered by it to the public. When it can truthfully be said that such service can be more adequately and better furnished non-professionally, the profession will cease to exist. I do not except the legal profession.

In stressing "service to the public," I experience a feeling that too many will believe I am resorting to hackneyed or hypocritical expression that "sounds good" but is otherwise, or to a very great extent, without justification. Some undoubtedly will regard it as a fine theory which was long ago, fortunately or unfortunately, dissipated by practicality.

But let us with open minds think the matter out with a view to ascertaining whether service to the public does not, after all, encompass all the desirable and requisite phases of service to ourselves, individually and collectively, as members of the bar. If it does, and we are not rendering, or are not capable of rendering, such service, we are inevitably jeopardizing the future of our profession.

I give you the picture as I see it.

Under a government of laws, judicial tribunals are a necessity—but no more so than are members of the bar who advise the people of their rights and duties and shape their engagements under the laws, and present their legal controversies for proper judicial determination.

Primarily, the function of the bar is to serve. That the public believes such service can best be rendered by those especially qualified, is shown by legislation in practically all of the states requiring certain educational qualifications for admission to the bar, and *entrusting* to bar members a *monopoly* of the right to practice law.

Relatively few, but fundamentally important, duties of the bar result from the creation of that trust. Can anyone deny that primarily they are:

First—to guard against admission to the bar of those not possessing the requisite qualifications and to see that the requirements are such as will insure adequate protection of the public against incompetence.

Second—to see that members of the bar conduct themselves in a manner consistent with the importance and intimacy of the relationship necessarily created between attorney and client.

Third—to prevent the practice of law by those to whom the privilege has not been granted.

Fourth—to render service to the public *generally* in connection with the administration of justice, and to afford legal aid to those without financial means.

The first of these duties obviously involves the matter of general and legal education. prerequisite for admission to the bar, and bar examinations. The second includes the promulgation and enforcement of rules of professional conduct, and the discipline of unworthy members. The third relates to the suppression of the unauthorized practice of the law which practice, when fairly considered, is not only contrary to legislative and judicial mandate, but is inimical to the interests of the public. The fourth relates to the lawyer's duty to aid in improving the administration of justice—and to see that no indigent is denied appropriate legal aid.

I ask you, sincerely and frankly: How much longer can and should attempted fulfillment of these duties be permitted to depend upon the limited effort and funds voluntarily contributed by the minority or but few individual members of the bar?

In my opinion the faithful, persistent, and efficient discharge of these duties is the *trust* imposed upon the entire legal profession, and will measure its usefulness and existence.

The relatively few duties that I have mentioned constitute the bases of all organized bar-association effort. Assuming,

and I think rightly, that the bar desired to become "integrated" in the broad sense and is rapidly becoming so, the question is raised as to the best mechanical means of making that integration most effective. Twenty-one states, including Michigan, either perforce statute, court rule, or both, have adopted some form of all-inclusive or self-governing bar organization.*

The germ of bar integration was planted by Herbert Harley in 1919. Infection of a Michigan delegate to an American Bar Association meeting resulted in the introduction of a bar integration bill in the Michigan legislature in 1921—said to be the first bill of that kind ever introduced. It, and a revived effort in 1923, met with defeat. A similar attempt was made in 1935, with lessened opposition which was entirely eliminated by abandoning the comprehensive bill and substituting a short act enabling the Michigan Supreme Court, *by rule,* to provide for bar government. This the court promptly did and adopted the Canons of Ethics of the American Bar Association as the basis of professional conduct of the Michigan Bar.

These rules provide that all members of the bar are and shall be members of the State Bar of Michigan. Inactive members may register as such without payment of the annual dues of $5. The controlling body of the State Bar is the board of 21 commissioners of whom 17 are elected congressional district commissioners and 4 are appointed at large by the Supreme Court. Any active member may be nominated for district commissioner by obtaining five signatures of bar members of his district on his nominating petition. Vote is by mail. The term of district commissioner is three years. That of the commissioners at large is four years. The commissioners, all officers, and all members of committees,

* Those interested in the history of bar organization in the United States and of the background and development of the integration movement, will find a wealth of material in that outstandingly fine report on the subject by Carl V. Essery, appearing in the Michigan State Bar Journal, September 1931. A complete report on the progress and details of integration to date is that of the American Bar Association Committee on Integrated State Bar Administration contained in the 1938 programme of the American Bar Association Section on Bar Organization Activities.

serve without compensation. A full time paid executive secretary is employed. Office headquarters are maintained at Lansing and a branch at Detroit.

Too much can not be said for the advantages of flexible bar government under court rule as distinguished from the rigid prescription of legislative act. Missouri is to be congratulated in having what, in that respect, appears to be the *ultimate* in integration, namely, that under court rule perforce inherent judicial power. This is mentioned because we found that two very important factors were the known or *surmised* attitude of the bar, the judges, the legislature and the public toward integration, and the length that our courts had gone or *might* reasonably be expected to go in exercising their inherent power. It is apparent that the extent and influence of these factors differ materially in the various states, and consequently that which may be acceptable and appropriate in one state may not be in another or, at least, may not be expedient.

The influence of these factors was most pronounced in connection with the disciplinary phase of bar government. In fact the most difficult part of an integration plan is the grievance procedure.

Bar integration in Michigan would not have been possible except for the statewide lay and press demand for a form of bar organization that would invest the legal profession with power to render what the public properly had the right to expect from it. Inasmuch as this involved fundamental change with respect to the matter of discipline of unworthy members I shall refer briefly to that feature of the rules.

The aim was to formulate a procedure by which the bar assumed, and would discharge, the maximum of responsibility in connection with complaints and discipline—a natural concomitant of the bar's effort to become self-governing under court supervision. The idea was not only to invest bar committees with power to investigate complaints and petitions for reinstatement, but to take the proof constituting the sole record on the formal hearing hereof.

In each congressional district, outside of Wayne County, there is a grievance committee. In Wayne County there are five such committees. Standing counsel are designated to assist the committee and to represent the State Bar.

The committees are charged with the duty, with or without formal complaint, of investigating in a summary and informal manner, misconduct alleged to have been committed by members of the bar within the district or residing there.

If the preliminary investigation discloses reasonable cause to believe such misconduct has occurred, it is the duty of the committee to cause the complaint to be reduced to writing and to proceed to formal hearing thereon. The member is served with a copy of the complaint and has an opportunity to file response. He *must* appear at the hearing in person, with or without counsel. The committee has the power of subpoena. Testimony is taken under oath and reported stenographically.

If the committee finds that the charges do not merit discipline, it dismisses the complaint. If it decides that private reprimand is merited, it administers the reprimand. If more serious discipline is found to be desirable or necessary, the committee, with the aid of the designated counsel, files with the clerk of the Circuit Court a transcript of the testimony with its findings of fact and recommendations. An order to show cause is automatically issued by the court clerk requiring the respondent to show cause why the report should not be confirmed and disciplinary order entered. The hearing on the order to show cause is had before three "outside" circuit judges. The burden of showing cause is on the respondent. The record as made before the committee is the sole record to be considered by the court—except where special reasons are shown for the taking of additional proofs. In such cases (unless good reason to the contrary is shown) such additional proofs are taken before the committee, which files a supplemental report thereon.

Final orders entered by the three judges are subject to review by the Michigan Supreme Court, in its discretion, as to the law and facts. (This is a liberalization of the previous

practice under which the Supreme Court review in disbarment cases was limited to errors of law.)

Until the first court hearing, the proceedings are not public unless the respondent requests otherwise.

Substantially the same procedure is followed on petitions for reinstatement. The orthodox statutory disbarment procedure has not been superseded.

Three years' experience under the rules has justified the prediction that the public and the bar can be better served by investing the bar with adequate disciplinary power. As was predicted, there has been a decrease, rather than an increase, in complaints against bar members.

A noticeable development is that a growing number of those against whom the bar committee has concluded to file a report with recommendation of discipline, voluntarily petition the court for an order removing their names from the roll of attorneys—thus accomplishing the desired results without the attendant court hearing, further expense, and publicity which too frequently punishes an innocent family.

So that you may not conclude that our State Bar exists only for disciplinary purposes, I refer to some other phases of its activities.

Trained staffs are employed in the Lansing and Detroit offices. Because the state capitol is at Lansing, the State Bar office there has been made an adjunct of the law offices of all State Bar members. The office has established and maintains contact with all state departments, agencies, and officials; arranges conferences and hearings for bar members; attends to adjournments and numerous errands, including—for example—filing and service of documents, corrections of errors in records and briefs, conferences as to availability of new corporate names, arranging depositions, etc. Over 1,000 of our 6,300 members used the office one or more times during the past year. During the legislative year the State Bar supplied three independent legislative observers, attended public hearings on legislation, and on several occasions rendered advisory service to the Governor as to legislation presented to him for approval.

The rules provide for the making of investigations and reports by the State Bar as to any matter relating to the courts, practice and procedure or the administration of justice at the request of the Governor, the Supreme Court, the Legislature or the Judicial Council. This provision has already been availed of.

The State Bar Journal has rapidly evolved into a useful periodical—collecting and publishing information not otherwise available but currently required by bar members. Special articles on Michigan law and notes on Michigan cases regularly appear. It served as a stop-gap for the publication of the large number of "immediate effect" acts that were not officially published until months after the last legislature adjourned. It serves as a clearing house for suggestions to, and news of, local bar associations, and its roster number is an accurate listing of name, phone number, and address of every member of the bar with notation (if desired) of specialty. Advertising presently meets about one-third of the cost of publication.

Through the efforts of the State Bar, publication of our Supreme Court decisions has been greatly hastened. Elimination of the cost of furnishing statutes and supreme court reports in large numbers to state officials—at ultimate expense to members of the bar who purchase such publications—is a current objective.

Legal aid facilities have for years been maintained by the local bar associations of two of our most populous counties. The State Bar has extended legal aid in all other counties.

A State Bar committee has been actively assisting the Supreme Court in a revision of our court rules.

The rules also provide that the State Bar shall cooperate with the Board of Law Examiners in connection with character examination of applicants for admission to the bar and in such other respects as may be deemed desirable. Procedure is being perfected whereby character and background examinations of every bar applicant will be undertaken by or through the State Bar.

These are but some of the results of integration in Michigan.

Integration has not only been accepted with approval by the public, the press and the profession, but has refuted the early assertion that it would eliminate local associations, reduce general interest in bar problems and the State Bar to a mere police organization. Never in the history of Michigan has there been such a lively interest on the part of local associations. Instead of eliminating the local associations it has stimulated their activity and increased their number. They are actively "feeding-up" to the State Bar through the constructive work of their paralleling committees and sections. Instead of lessening interest in bar problems, such interest has been increased. While it has done splendidly as part of the disciplinary processes it is recognized, as it should be, as a service organization.

Our 1937 annual meeting attendance was the largest of any state bar meeting in the United States except California which has 12,000 bar members and is also integrated. That through integration the numerous and important state bar committees are also actively assisting in all phases of the administration of justice and the solution of problems of deep concern to the public, the courts, and the legal profession, is publicly recognized.

I sincerely believe that it will not be long before an unintegrated bar will be the exception.