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Does Indiana Need an Integrated Bar?

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DOES INDIANA NEED AN INTEGRATED BAR?

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The lower house of the Indiana Legislature of 1939 said, "No." That body was composed of 27 farmers, 23 lawyers, 27 merchants and 23 of other callings. If its defeat of the Integrated Bar bill were the result of careful and dispassionate considerations, with public hearings before House committees, with thorough and enlightened debate on the floor, the legal profession might well conclude that the House, in its wisdom, had given the last word on the subject and that all the advocates of Integration were mistaken. But when it appears that there was the most superficial legislative examination of the measure, opposed by appeals to passion, with epithets taking the place of argument, and vituperation overshadowing facts; when it is recalled that there was no public hearing before any committee, and that deliberate efforts were made to defeat the bill before it had a chance to be considered on the floor; then we may well doubt whether the outcome was the resultant of wisdom and statesmanship, and not of misinformation and prejudice.

The experience of other states on this subject cannot be ignored. If 20 of those states have adopted the plan, as they have, and have held to it against attacks of those who "ne'er felt the halter draw, with good opinion of this law;" if 50,000 American lawyers are now organized under Integration, and are well satisfied with it as they are; and if 15 State Bar Associations have investigated it and have voted in its favor as they have done; then we have reason again to doubt the wisdom of the Indiana House and ask ourselves: Why should Indiana lag behind the states which have adopted the measure, and yield itself to an outmoded and unsatisfactory system which is the target of lay criticism and the source of professional shame?

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What were the adverse arguments which satisfied a majority of the members of the House? The one most vehemently advanced was, that bar integration is "regimentation," "Fascism," and "Communism." Stripped of its emotionalism, this argument means that the opponents of integration do not wish their practice of law to be controlled in any respect. But do these objectors find no coercion in the regulations by the police power of the state, or no compulsion in the taxing statutes? Control is the price we pay for living in a civilized society. Call it by what name you will, the fact remains that *all of us* are, in many situations, more important than *any of us*. The few must surrender some of their license to do as they please, for the benefit of the whole. That is what an integrated bar effects. It contemplates the good of all. It takes the legal profession as it finds it,—a branch of the judicial system,—and gives it a form and substance. Integrating statutes do not arbitrarily create a body politic, call it a State Bar and scourge lawyers into it. They find the body politic, the bar, already at hand, and give it a habitation and a name, enabling it to function more freely than it could when composed of isolated units, and enabling each member to practice his profession more satisfactorily to himself and to the public than when he attempted to "go it alone." Integration takes an inarticulate bar, and provides it adequate utterance, meaning and power.

A consolidated bar is not a coerced bar. When each member joined his profession he assumed a relationship to the public, the courts and to his fellow members which he knew might require regulation. He realized that bar members, even without organization, have similar interests, are under similar duties, are subject to similar temptations, are liable to assaults of like kind, and are part of the same judicial machinery. He joined a fraternity, a brotherhood. He could not, at the time of his admission, foresee the exact *form* which future regulation of that brotherhood might take, but he realized it must take some form. If it were reasonable, he consented to it in advance. Experience in the states which enjoy it has proved that integration is logical and reasonable and

necessary for proper functioning of the profession. While it was not specifically agreed to by name, the principle by which it operates was accepted, and therefore the application of that principle in the shape of integration cannot now be challenged as coercive.

Nor is it correct to assume that compulsion always means loss of liberty. The lawyer who finds he has become, by operation of law, a member of an all-inclusive legal organization, has left an inadequate and disorganized group, or, at best, a handicapped organization, local or state, which is raked by the fire of public criticism and sometimes sapped from within by unethical practitioners, and has advanced to membership in a strong, self-respecting, high-standard body, capable of accomplishing desirable reforms and benefiting the public as well as the individual lawyer, and opening up to him new avenues of self-expression and usefulness. Such compulsion is the equivalent of freedom. It spells enfranchisement, not servitude.

But the objector who talks of "regimentation" and "coercion" as incident to the Integration of the Bar, forgets that from the day he brought his first suit until he retires from court room practice, he is "regimented" at every step he takes; and he likes it. He must file his suit according to rules. The summons must be served and returned accoring to law. His complaint must follow the rules of pleading. He is "ruled" to reply to his adversary's answer. He demurs to that answer according to statutory regulations. He must conduct the trial, offer or object to evidence according to legal formulae, keep within recognized bounds in his argument to the jury, take his exceptions, file his motions and take his appeal according to prescribed methods. If he asserted his "freedom" at every step, insisted that he would not be regimented by any rules of practice or pleading, or of substantive law, but would practice as he pleased, his career as a lawyer would soon end. While an opponent of integration willingly accepts these multitudes of regulations governing the way he shall conduct his case in Court, and is content to come under the domination of those rules the moment he files his suit, yet he becomes en-

raged at the suggestion that his method of transacting legal business *before suit filed* shall be restricted by ethical standards, and he inconsistently demands that no one shall give him directions against ambulance-chasing, soliciting business, representing both opposing litigants or indulging freely in any other unprofessional practices.

In a further sense, no undesirable compulsion is imposed by integration statutes, for, whether the individual lawyer admits it or not, the public integrates the bar and always has, irrespective of statute or court regulation. It groups all attorneys, attributes to each the failings and delinquencies of the worst, assumes all are stained with the baseness of a few, and condemns the whole. This form of *de facto* integration by a misinformed public, every lawyer must face. No matter how much he resents it, he cannot escape it while he acts alone. Liberation comes through integration by law instead of by popular prejudice, thereby demonstrating to the laity the real character of the profession and its desire and capacity for public usefulness.

But the conclusive argument against the alarmists who cry "Fascism—Communism—Regimentation!" is that there is no such feeling among the bars as a whole in the twenty states which have integration, and no tendency on the part of the courts of those states to denounce it as destructive of individual liberty or professional rights. California is typical. There, in the ten years it has enjoyed this form of organization, twenty assaults have been launched against the Integrated Bar Act on constitutional grounds, and twenty times the Supreme Court of California has upheld it. With the exception of an insignificant number of die-hards, the 10,000 lawyers of that state are unqualifiedly in favor of the retention of the law.

What is true of California is likewise true in Michigan, Kentucky, Alabama, Wisconsin, and the numerous other states which have adopted integration. And the significant fact is, that in each of those jurisdictions adopting it, its installation has been a triumph over opposition of exactly the same character as developed in the recent session of the Indiana Legislature. The arguments of "Regimentation" and "Coercion"

are worn threadbare by use elsewhere; they were not brilliant discoveries made by the opponents of the Indiana bill. They have recurred with monotonous repetition in the state where integration has won over opposition. Those states were not moved by any sudden impulse, nor by a Quixotic desire to reform everything in sight. They were inspired by a thoughtful, deliberate purpose entertained by those who sought to serve not only the people but their own profession by improving its public relations, raising its standards, untrammeling it from unjust handicaps imposed by an uninformed laity, and by disclosing new sources of usefulness and power for good which long lay dormant and needed only the touch of intelligent, all-inclusive organization to galvanize them into activity. In other words, Integration has not been a mushroom growth, springing up over night, but a sturdy oak, slowly wrestling its way to strength and popularity, against narrowness, selfishness, suspicion and ignorance.

Another criticism leveled at the integration idea, which apparently had weight with the legislators, was, that the all-inclusive bar would not be representative; that the movement was sponsored by "silk stocking lawyers" of a certain city, who had their own interests in view and were hypocritically posing as advocates of an improved profession. The argument, coolly considered, dissolves in its own weakness. What adequate professional representation have the 4,000 lawyers of Indiana today? If they belong to the State Bar Association, they may express themselves through its activities, serve on its committees, vote at its elections, and join in its semi-annual meetings. But only 1,600, or 40% of the 4,000 attorneys in this state, belong to the state organization. The other 60%, therefore, have no representatives authorized to voice their sentiments or champion their causes. Still less have the members of the local bars any state-wide spokesmanship. The most they enjoy is, membership in a county body whose principal function is social, and which is not implemented to unite with other like bodies in improving the professional situation, or advancing the administration of justices.

If representation is essential in order for the bar to fulfill its mission to the public and to itself, it must be confessed the present equipment in Indiana has failed. The State Bar Association has done yeoman's service in advocating the passage of such enactments as the Judicial Council Act, the Supreme Court Rule Act, and others. But it is hindered by lack of members and the resulting lack of revenues from undertaking valuable work not only among legislators, but with respect to the courts in non-partisan selection of judges; in legal research; in legal clinics for indigent litigants; in disciplinary proceedings against unworthy members; in coordination of bar activities with those of the laity in strengthening the criminal law; in protecting the public against legal racketeers; and in bringing together, from over the state, for mutual helpfulness and united effort, lawyers interested in some particular department of the law which stands in need of careful reexamination and intelligent improvement. All of this requires money, and for this the modest membership fee charged by the State Bar Association is inadequate.

But with an all-inclusive bar, contributing as little as $5.00 per year license fee, there will be a fund of at least $20,000.00 annually available for this forward work of an active, progressive bar. With every lawyer represented, there is ample opportunity for the representative principle to work; for the organization would be administered, under supervision of the Supreme Court, by a Board of Managers, each elected by *all the lawyers* in his managerial district; and any member would have an equal right to secure election to that board. The funds for administering the law would be under the control of this representative directorate, with ultimate superintendence by the Supreme Court. Nor would there be any likelihood that cliques or factions would control the Board of Managers or the funds, since the incumbents would be elected for short terms, and would serve without pay. At any time opposing candidates could be brought out in the electoral district and aid in frustrating any attempt at factional control.

When, in 1941, some bill is introduced in the General Assembly at the instance of a lawyer from South Bend or at

the insistance of the entire St. Joseph County Bar, relating to some matter of general importance to the profession, what reaction do the lawyers from Evansville or Seymour experience? Probably none. Why? Because, not being in touch with St. Joseph County practitioners, or their local association, they do not know what is back of the bill and suspect the presence of individual or local self-interest. Or if the State Bar Association introduces a bill, wise and desirable, for the improvement of our legal system, what interest is thereby aroused in the minds of the 2,400 Indiana lawyers who do not belong to that Association? None. And when the South Bend lawyer, or the St. Joseph Bar Association or those of the State Bar Association appear before a legislative committee to advocate the passage of their bill, what is the first and most natural question which will confront them? It will be, "For whom do you speak"? The individual answers, "For myself." The St. Joseph Bar Association responds, "For most of the lawyers in St. Joseph County." The State Bar Association replies, "For sixteen hundred Indiana practitioners and judges." And to each of these the legislators will reply, "Where are the rest of the 4,000 lawyers and judges of Indiana: who speaks for them"? And the chances are the bill is lost, *for want of adequate representative authority on the part of the proponents.*

But with an all-inclusive bar, voicing its will through duly elected managers, and speaking in no uncertain tones for 4,000 thinking men in favor of legislation, that legislator would be case-hardened who failed to give such a bill, coming from such a source, full and impartial examination.

Furthermore, the representative idea, crystallized by the Integrated Bar, goes farther than affording four thousand lawyers and judges a voice in advocating needed legislation. Behind each of those lawyers stands a clientele; a dozen, a score, a hundred clients. They take their cue in matters of legal reform from him, and what he advocates, they are likely to approve. When, therefore, advocates of a bill considered and proposed by the Integrated Bar after careful investigation, appear before the committee, the legislators see behind

those sponsors not only the 4,000, but also the tens of thousands of clients whose views probably accord with, and are derived from, the opinions of their attorneys. Thus, the Integrated Bar affords a cogent method for giving effect to the representative principle, recognized as essential in labor organizations, fraternal bodies, manufacturers' associations, chambers of commerce, churches, clubs and political parties. If they need it, no reason exists why the Indiana bar as a whole should lack it, as it does under the present system.

As to the charge that the Integrated Bar is the child of a few "silk-stocking lawyers" of a certain city, seeking to further their own professional interests, the best answer would possibly be, contemptuous silence which it richly deserves. At not less than four of its annual sessions, the State Bar Association put itself on record as favoring Bar Integration. Twice has that Association stood behind bills seeking for integration by statute. It has taken steps to present the idea to the Supreme Court, with the view of securing integration by Court rule. Its Young Lawyers' Committee, a vigorous, active group of young lawyers with representation in every county of the state, has spent time and effort unstintingly in taking a survey of the bar of the state, to ascertain if there is a demand for integration among the bar members. No "silk stocking group" was urging on that capable and virile body of younger men, nor would they be made "cat's paws" for any such supposed cabal. Furthermore, for sixteen months preceding the last session of the legislature a voluntary group of lawyers, known as the "Committee of Thirty" which included former presidents of the State Bar Association, prominent local lawyers from every part of the state, able legal educators, and judges of the higher and lower courts, some of them not affiliated with the State Bar Association, unselfishly gave of their time and means to carry on, independently of any other organization, a campaign of education locally and throughout the state, for the purpose of familiarizing the bar and the laity with the character of Bar Integration and to demonstrate its advantages. County and district bar associations, in many sections of Indiana, during those sixteen months,

willingly offered places upon their programs for speakers who discussed this vital subject. Yet the opponents of integration are credulous, or blind, enough to believe that all these lawyers and judges, coming from every quarter of Indiana, and all these committees and bar associations, are but the automatons of a clique of "silk stockings" who have deluded their hundreds of brethren into advocating something of only local and personal interest to the deluders. These reactionary critics must entertain a low estimate of the intelligence of the bar, if they expect its members to accept their transparent appeal to prejudice.

Answering the question which is the title to this article, we unhesitatingly say, "Indiana *does* need an Integrated Bar." It not only *needs* it, but *wants* it. The State Bar Association wants it. So do those many local associations which have given it careful and unbiased examination. Judges want it, for they see in it the means for an improved legal system and a better bar. Legal educators want it, for they realize their work becomes more effective when intellectual and moral standards of the bar are raised. The press wants it, as witnessed by the hearty response of newspaper editors throughout the state in publicizing the educational program recently promoted by the "Committee of Thirty." The instructed laity wants it, for laymen see in it their safeguard against the professional racketeer, the ambulance-chaser and those pariahs of the profession who, though inconsequential in number, bring obloquy and unpopularity on the profession as a whole.

Notable progress has been made in Indiana toward integration in the past two years. All who have been in the thick of the battle are confident that in 1941 Indiana will cease to be reactionary, but will show her good sense by joining the galaxy of Integrated Bar states.

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