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AN INTEGRATED BAR*

WRIGHT HUGUS**

Whether the lawyers believe it or not, whether they have accepted the post or not, the public has put into their hands the administration of law. Our bar committees on grievances, state and local, know only too well that many lawyers have failed in their trusts. As individuals, we know of cases which have never reached such committees. The complaints made by individuals and the public include the following: we charge too large fees; we have not sufficiently speeded up the determination of trials; we countenance delays by opposing counsel at the sacrifice of our own client's interest; we want to be brilliant and clever and free a client whose guilt is beyond question; we bring suits against large corporations relying upon prejudice to secure a large judgment when our client is entitled to little or nothing; we settle a good case for less than it is worth to be rid of work and worry; we hesitate to prefer charges against a fellow practitioner and permit him to go on in the practice of the profession, endangering the life, liberty and property of other people who are not in the position to know the character of the lawyer they may select to represent them.[1] The public believes that we are guilty of imposing upon the poor, of soaking the rich, of taking advantage of technicalities to free the guilty, and generally failing to see that the law is properly administered.

Is this attitude of the public due to a misunderstanding of the lawyer's business? Can we by education or publicity free ourselves of these charges? Does the public merely imagine that we do not conduct ourselves as honest men because it does not understand our business or has the public seen enough of the lawyers' workings so that the result it has reached in its opinion is justified? I am quite convinced that the public does not understand the practice of law. I am convinced that from its nature the pub-

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* Address of the President of the West Virginia Bar Association, delivered at the fifty-second annual meeting of that Association in Wheeling, West Virginia, on October 8, 1936.

** President of the West Virginia Bar Association 1935-36; member of the bar of Wheeling, West Virginia.

[1] A not uncommon charge in this connection is that we collect moneys from clients and use them for our own purposes.

lic can never be completely and thoroughly educated so that it will not misinterpret what we do.

But many of the charges the public makes are true. Certainly, the charges are fairly made against a part of the members of the profession and, certainly, as to a part of the system which we permit to be maintained. It is not a sufficient answer to the charge that we are not honest, simply to say that there are some lawyers as there are bankers who are dishonest, but that the majority are men of integrity. It is not sufficient to excuse the law's delay by saying it is necessary in order that formalities may be observed in order to do justice in the larger number of cases. It is not sufficient to say the public does not understand the legal profession and pass it off at that. It is not sufficient to say that if the administration of law has failed, it is not our fault.

Many papers have been written on this subject. Many more, no doubt, will be written in the future. We have in our practice of law observed practices of which we do not approve, and we want to register our disapproval of them, hopeful that some seed might fall on fertile ground. Every one who sets forth his ideas on such a subject hopes that he may, perhaps, accomplish some little good in keeping his profession and his fellow lawyers along a road of honest dealings with clients, the public and fellow lawyers. It is so much more pleasant to have dealings with lawyers whom one can trust. There are many lawyers who cherish a high regard for their profession. To maintain that regard is an association duty. We have feared that the large commercial and industrial growth in this country has made and will continue to make a pronounced effect upon the character of the lawyers at the bar. We fear the profession has been turned into a business; professional attitude has ceased; payment for services is computed entirely in money and not in satisfaction; competition in securing business actually exists; crime goes unpunished. At present there are no real restraints upon the conduct of the lawyer outside of the court room. What changes in the practice of law have been made, are largely the result of bar association activities. But standards in the profession have been little affected by the activity of bar associations.

Let us look at the three types of bar associations in this country. There is first the American Bar Association. Of the approximately fifteen hundred lawyers in West Virginia, the last report shows but two hundred ninety-two belonging to that association.

Few of us have contact with the national association as such. Some few of us may have attended meetings in the past and been impressed with the dignity of them, the elaborateness of the entertainment, and the excellence of the addresses. As far, however, as affecting our individual practice and our attitude towards it, that association has failed, and must necessarily fail under the present system. With its limited membership, its inability by nature to reach the average lawyer, it is natural for us to feel that we are not parts of it, though we may be members. Control, year after year, is necessarily lodged in a small group. However, at the recent meeting of the American Bar Association, its constitution was amended, and a house of delegates created. This may help in democratizing control. I do not say that the American Bar Association is worthless, but I do say that without an integrated bar it can never be a great force for good in this country. It has had distinguished officers, busy men, standing at the height of the profession, but it is unable to affect the attitude of two-thirds of the lawyers of the country.

If, then, that is the situation, you may well ask why can not a voluntary local bar reach intimately the individual lawyer and furnish the force or power to root out the cankers in our profession. Theoretically one would think so, but practically it does not work that way. My observation has been that the local bar is largely a social organization of the lawyers. It has no general point of view as it has no effective tie-up with the state or American association. Men, meeting each other every day in court and out, who know each other intimately, are loathe to raise questions of methods and attitudes. These associations as a rule do little or nothing to discipline their members. If a complaint is made against a member by another member or by a layman, some extenuating circumstance is generally raised, often by a lawyer who disapproves heartily of the practice complained of, and would not himself engage in it. As in the administration of criminal law, a lawyer will too often rush to the defense of the guilty, hopeful that he may secure acquittal.

No doubt a great deal of good is done by local associations in bringing lawyers together socially. A review of the reports of the vice-presidents of this association, however, shows the activities of the local associations throughout the year and does not convince one that they do any real good for the profession. Now and then, of course, we find a local grievance committee which has

taken courageous action, but vigilance is not maintained throughout the years. Frequent regular meetings with a definite program can be of great value.

More good has been accomplished, I believe, by the state association than through the American bar or through the various local organizations. This has been done through years of effort and the constant devotion of a comparatively small proportion of the members of the bar. Legislative action affecting practice, almost without exception, has been initiated and put through the legislature by members of this association. Still only approximately one-third of the practicing lawyers of the state are members. Annual meetings are attended, on the average, by about one-fourth of the membership. Those attending meetings year after year are generally the same lawyers, and the same individuals take the prominent places in the meetings year after year. Some members tell me that they have taken no particular interest in the association because they constantly see the same faces and hear the same people talk meeting after meeting. To some extent this criticism is justified. The same complaints are made by members of the American Bar against that association. I have heard frequently that a small group of "high-hats" controls it. While not wearing high hats, it is true that under the present system, the same men continually lead in the discussions, write the papers, and hold the offices. It is bound to happen under the present set-up. I will admit that the state voluntary association to which only one-third of the lawyers belong, has done good work. Where the active membership and the number of members attending meetings are both small, the result, of course, is that the work of the association must be carried on and felt by comparatively few. Little effect will be made upon the professional attitude of the large number of lawyers by the papers read before and resolutions adopted at this meeting. Certain lawyers dislike any form of organization. They do not want to be limited by any rules of conduct. The practice of law to them is a business, the survival of the fittest. While all associations in one way or another express disapproval of unprofessional conduct and delay, yet actually we have been able to do little about it.

Many think the growth of law schools and the increase in the number of law degrees conferred each year are the powerfully contributing causes of the decline in the bar's professional attitude. The increase in the number of lawyers has increased the

competitive spirit. Lawyers, trying to make a living and keep body and soul together, feel that they are required, in order to live, to resort to practices which they would not think of employing if the question of their livelihood was not uppermost.

I can find no state which has actually attempted to limit the number of applicants to the bar. There is considerable agitation for legislation for some limitation, especially in New York City and other large centers of the country. What would such a limitation mean? First, it would meet with the criticism that we were trying to keep all the law business within a limited field in order to maintain fees; that we were setting up a closed shop and preventing young men and women with character and ability from entering their chosen profession; that no fair system of selection of applicants could be devised which would insure only the admission to practice of lawyers of absolute integrity and ability. Under the present system the only real test required is an educational one. There is no real test of character. It is doubtful if one can be put into effective operation. The present character test is pure hokum. While it is my belief that few young men entering the profession intend to be anything else than lawyers of high standing, numbers, because of circumstances appearing sufficiently urgent to them at the time, depart from the principles of the profession.

Poverty is a fierce monster. To say in advance that a particular young lawyer will eventually be faced with its terrible visage and not able to meet it without departing from his high standards is to take upon one's self the cloth of a prophet. While we may believe that the lawyer who departs from his profession's standards will never be a truly successful lawyer, as we define success, and will eventually fail, yet meanwhile through his failure, the public and the profession suffer.

I do not believe that limitation of the number admitted to practice each year is a solution. The most we can do along these lines is to make educational requirements high with intelligent and frank instruction about attitudes and obligations.

Few lawyers learn early to be crooked. If they fail it is generally induced by poverty or fear of poverty, or their downfall comes through observation of a few older lawyers who have built up a reputation for cleverness, and the young lawyer naturally believes that they are the successful ones. Limitation of number will not solve this problem. It may bring to those who are admitted a little more business and more income, but it will not

keep out the weak or keep the profession clean. Great good has been done, as I have said, by national, state and local associations, by statutory reform and through rules of procedure, but I believe that, generally speaking, associations have not and cannot, under their present form of operation, develop and maintain proper professional attitudes of lawyers toward their work and insure full faith in dealing with clients, courts and with other lawyers. Nor can the bar fulfill the obligations toward the administration of the law somehow or other placed upon it by the public or inherent in the profession. Upon what can we rely? There is, I believe, a solution.

In 1914 the American Judicature Society, incorporated in 1913 for the purpose as expressed "To Promote the Efficient Administration of Justice" fostered a movement to incorporate the bar in each state. The idea has developed into a movement generally known as "The Integrated Bar", not necessarily accomplished, however, by the incorporation of the state bar.

This association considered the subject of the integrated bar at its sessions in 1931, 1932, and 1933. No definite action was taken at any session. The late Thomas Coleman read an excellent paper on the subject at our meeting in 1931, treating the subject, however, mainly from a point of view of the improvement of the courts. At the 1932 session, the Committee on Judicial Administration and Legal Reform devoted its report to two subjects, the Judicial Council and the Integrated Bar. That part of the report dealing with integrated bar contained an excellent review of the then situation.

What is the integrated bar? It is the compulsory exclusive membership of every practicing lawyer of the state in a state bar, accomplished by statute incorporating the bar or by a rule of court authorized by statute, with equal liability for dues and equal participation in the control of all activities by duly elected representatives. At the time Mr. Coleman delivered his paper in 1931 there were seven states having integrated bars. To-day there are eighteen. In few states was the system established without a struggle similar to struggles which members of this association have had in securing legislation in our state legislature, but with the public taking a prominent part and showing great interest. Lawyers who have never before been active on any bar association matter, became rampant in their activity against the setting up of an integrated bar. The arguments used by the lawyers in opposition other

than ones going to the constitutionality of the proposal were briefly that such an organization would result in, (1) the control of the bar by a few; (2) no real assistance to the lawyers generally; (3) increased dues; (4) the forcing of a lawyer to join an organization to which he does not wish to belong; and (5) the setting up of a union with arbitrary powers to discipline and control its members, thereby preventing the exercise of free rights to engage in a business as one wishes. An account of the struggles carried on by lawyers of high standing in securing integrated bars gives thrilling reading. These struggles were not engaged without bitterness, with the majority of the lawyers themselves opposed to it in the first instance.

Such integration has been gained generally in two ways: first, by an act of the legislature creating a public corporation known as the state bar of the particular state involved. A typical act, and one which has been a model for several states, is that of the state of California. It provides, among other things, that the members of the state bar shall be all the persons entitled to practice law in the state; it provides for the regulation of the admission of persons desiring to practice law and for the control of that admission exclusively. No lawyer can practice unless he is a member of the state bar. It sets up a board of governors, which is composed of a member from each of the state bar districts, the districts being divided similarly to our circuit court districts. It provides for the election of officers by the board of governors. A member of the board of governors is elected from each district, each member of the bar having a right to vote. It provides for an examining committee, appointed by the board of governors, which passes on all applicants for admission, the actual admission being made by the supreme court of the state. The board is authorized to adopt rules of professional conduct which when approved by the supreme court shall be binding upon all members of the state bar, with the power to suspend or disbar for wilful breach of any such rules, after hearing, but with right of review. Local administrative committees may be set up by the board. Such local committees investigate complaints filed with the state bar and make a report thereon to the board of governors. They operate as a liaison with the state organization.

The other type of statute whereby integration of the bar is accomplished is best exemplified by the Michigan act, which reads as follows:

"Section 1. There is hereby created an association to be known as the State Bar of Michigan, the membership of which shall consist of all persons in the state now or hereafter regularly licensed to practice law in this state.

"Section 2. The supreme court is hereby authorized to provide for the organization and regulation of the State Bar of Michigan; to provide rules and regulations concerning the conduct and activities of the Association and its members; the schedule of membership dues therein, which dues shall not exceed five dollars per annum, nonpayment of which shall be ground for suspension, the ethical standards to be observed in the practice of law, and the discipline, suspension, or disbarment of Association members. Under such regulations and restrictions as the supreme court may prescribe, the power of subpoena may be conferred upon the Association or its officers and committees for the purpose of aiding in the cases of discipline, suspension, or disbarment."

Now just what happened in Michigan? The Michigan State Bar Association in 1935 made an effort to pass a bill modeled after the California act. By a close vote it was defeated. During the same session of the legislature, the association then determined to have introduced a very brief bill conferring on the supreme court authority to set up by rule a state bar. Kentucky had already done this. While the lower house had defeated the original bill by two votes, it voted for the passage of the shorter bill by the astonishing vote of 86 to 13. It seems that foes of the first bill had secured enough pledges of votes to defeat it, but once having fulfilled such pledges, the legislators felt they could vote for the shorter bill, having been convinced that it presented a solution for cleaning up the bar. This action in Michigan is particularly significant. It is the first state having a large metropolitan center such as Detroit, in which a fight for the integrated bar has been won, and it is in metropolitan centers that bar discipline finds its most difficult problems. While West Virginia does not have any large urban centers and our evils are not as great as those that existed in Detroit, yet we are in a position to mold into an association by compulsory act, every lawyer in the state.

The supreme court of Michigan, as well as that of Kentucky, immediately put the act into operation by adopting rules for the organization and regulation of the respective bars of those states. Those rules set up organizations similar to the California act. I favor the shorter form of act, placing the power in the supreme court. Most laymen have complete confidence in our courts. Legis-

lators will be apt to vote for a bill conferring power in that court. In fact, I know of no sound argument denying to the supreme court of a state the power to control, regulate and discipline the lawyers in the state. You may say, of course, that the courts now have such power and that we have a statute covering disbarment. We have a statute covering disbarment, but it is incomplete and practically ineffective, and the subject of disbarment is only one of the many affecting or involving the lawyer and his profession, the courts, and the administration of the law.

The constitutionality[2] of the Kentucky act is under attack at present before the supreme court of that state. This attack is being made upon a number of grounds under constitutional provisions very similar to our own. Is the question of constitutionality a serious one? Section 3 of Article VIII of our State Constitution sets forth the jurisdiction of our supreme court. It does not include in express words any power to organize or discipline lawyers. In support of the jurisdiction in the Kentucky supreme court to make rules, it is argued that the supreme court's power over attorneys is part and parcel of the judicial power itself. Express constitutional grant of this authority has never been deemed necessary under our form of government. The supreme court for its own protection and dignity must have the power to regulate its attorneys and, to accomplish that, must have the power to make rules for such regulation. For that purpose is set up a form of government by the lawyers themselves, subject to review in certain cases by the supreme court. The general power of the courts to regulate the practice of law without any specific authority in the constitution has been decided in favor of the courts in numerous decisions, including the supreme courts of Rhode Island, Missouri. Wisconsin and Virginia. Another attack was made upon the ground that it created a corporation by special act. I doubt if this objection may be urged under any provision of our Constitution, although it is conceivable that Section 39, Article VI of the Constitution might be involved. If the supreme court has the inherent power to protect itself, this power may be reasonably exercised through a corporation in controlling and disciplining members of the bar. If the Michigan form be followed, this question is avoided.

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[2] Since the writing of this paper the Supreme Court of Kentucky has held the Act constitutional.

A third objection has generally been made on the ground that it deprives the lawyer of a constitutional right by granting to a board of governors or other administering agency, judicial power to pass upon admissions and disbarment. The acts do not make any such board a court. They do create an administrative agency of the court, but with no judicial power. The court itself makes the findings and enters the appropriate decree. Such a proceeding would seem to be due process under the authority of *Ex parte Wall.*[3]

I know of a number of lawyers who have a sneering attitude towards the bar association, who believe in no discipline, no rules of ethics, who will countenance no theory that they belong to a profession which is different from business generally; who believe that the public goes to a lawyer with a problem involving life, liberty or property, simply to buy advice and services as a commodity and if he does not secure honest advice or services, he has simply made a bad bargain.

I know that any effort on the part of this association to integrate will arouse an opposition greater than this association has ever met in promoting or advocating any piece of legislation. We will be accused of attempting to set up a political power, of placing control in a few lawyers, wielding a domination inimicable to the best interests of the state. We shall be faced with the claim that it will involve too great an expense for some lawyers. My examination of the various integrated bar acts and the rules and regulations laid down by the supreme courts, indicate that dues are fixed generally at five dollars per year. I can find none over ten dollars. This will mean some additional expense to a number of lawyers. They will be receiving, however, something worth while and of much greater value than the benefits now offered by a voluntary association. We shall be met with the claim that if local bar associations fail now to prosecute unprofessional conduct, local committees of an incorported state bar will likewise fail and that in this respect there will be no change. As I see it, the evils incident to the practice of law are due to the failure of lawyers to have a professional attitude towards their work. I am sure members of this association who have served from time to time upon our Committee on Grievances will bear me out when I assert that most of the claims presented to that committee through the years have been claims

[3] 107 U. S. 265, 2 S. Ct. 569 (1882).

against lawyers who are not members of the association. The prosecution of a grievance by an integrated bar becomes a state matter, not a local one. It involves the existence of a cancer eating into the heart of the whole profession. Will not inclusive membership make and keep lawyers professional men, keenly alive to their obligations?

Local associations will be a part of the larger state association. All members will belong to the state association, all will participate without dictation or control in the selection of a board of governors or commissioners.

What may we eventually expect if an integrated bar is established in this state? I base my hopes upon results actually accomplished in other states. First of all, a bar, all inclusive, will give every lawyer in the state opportunity to express himself. It will bring into the association lawyers who, by reason of extensive practice and business have heretofore been indifferent, and lawyers in outlying communities who have felt the association belonged to a small group and offered them nothing; it will increase the attendance at annual meetings from two to five times the previous average attendance. One of the states with an integrated bar of approximately one thousand members had present at its last annual meeting approximately seven hundred and fifty lawyers. It will increase the revenue of the association, giving to it necessary funds for the work of the Judicial Council, and for research and study by the bar's committees. It will create an *esprit de corps* which will unite the bar in spirit as well as in form. It will eliminate very promptly from prominent places in the association, lawyers who are politically minded, desiring such positions for personal advantage and advertisement. It will awaken the secluded lawyer whose work has confined him to the office so that he has had little contact with that element of the profession which abuses professional privileges and seeks to benefit itself personally by preying upon the helpless. It will arouse in the lawyer an interest in the administration of justice by courts. It will drive from small and large communities some lawyers now practicing who have been able to conceal from the public the duties of a lawyer. Lawyers anywhere who are now inclined to step beyond the high standards of their profession to the realm of questionable practice, will be forced to fall in with the spirit of the association. It will restore to the profession the leadership it once had when its membership swayed the destinies of the state.

The association will be more influential with the legislature for it will represent the sentiment of all the lawyers instead of a small voluntary group. The experience of our legislative committee has been to find its recommendations to the legislature opposed by members of that body who were lawyers not belonging to the association. Laymen in the legislature want to follow the advice of lawyers upon matters affecting the administration of justice, but they have found great difficulty to know what to do when the lawyers themselves are divided. A unified bar will ordinarily mean a unified stand.

Action taken by the bar itself or by its board of governors will be the result of careful study and thought. The effect of such action will be more far-reaching and subject to more public scrutiny. The public will have a greater respect for the bar.

This action will give the people of the state a greater respect for courts and judges, who for practical purposes will be selected by the lawyers. When such selection is left to the lawyers, it will ordinarily guarantee the highest type of judges. A better understanding and coöperation between our University Law School and lawyers of the state will follow. The public will have a tribunal to which it may go for its complaints, serious or petty. This tribunal will be a legally constituted one. Grievances and unprofessional conduct, in my opinion, will gradually disappear with a unified and enlightened bar. Lawyers lose their effectiveness as servants of the people when they lose the confidence of the public. We are in that situation to-day. While the lawyer is best equipped from an all around point of view to lead in times of crises, when fundamental principles of our government and systems are attacked, the views of lawyers have yielded to or been lost in political chatter. Without public confidence, we cannot lead. To restore this confidence is to restore a great profession to its rightful position. Lawyers will have a pride in themselves, a pride in doing things honestly and well; few will have the temerity to stand out against the whole bar; and dealings with each other will be pleasant and professional. Local bar groups will be a part of the larger group, with the same attitudes, the same standards and the same purposes. We have taken little or no part in the administration of criminal law. We have felt no obligations in this respect.

It offers an opportunity for a different method of selecting judges, a complete removal of their selection from politics and the

undignified spectacle of forcing a candidate for the judiciary to campaign.

I can see a tremendous change in the administration of law generally. If the job of enforcing the law is primarily ours and not that of police officers alone, and the public believes it is, let us accept it. It does not mean that we thereafter are not to give a client the representation to which he is entitled. It means a change of attitude toward crime and criminals. By unity in the methods of representation, the guilty will be punished, and law enforced. Greater coöperation can be had with our penal and corrective institutions.

Professional attitude will be recaptured. With such attitude must necessarily come honest dealings by all lawyers, a return of public respect and confidence.

I make no claim that the mere organization of a state bar will automatically accomplish great things. They will come only through hard work, sincere and persistent efforts by a united bar.

The theory of a state bar is that the admission to practice law is the appointment to and the acceptance of a public office and that from that time on a lawyer has assumed a large part of the responsibility for the administration of justice. I repeat, the public believes in this theory; it holds us responsible. In late years we have avoided this responsibility. I recommend to the association, for its preservation, for the good of the profession and the public, that it now take up arms for a bar of all lawyers in the state, and carry on, not stopping with the enactment of an enabling statute but fighting on until the efficient administration of justice in all respects is firmly and securely established in this state.