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WHAT BAR ORGANIZATION MEANS TO MINNESOTA

BY MORRIS B. MITCHELL*

THERE is now pending in the 1923 legislature a bill, which, if passed, will mark a distinct epoch in the legal history of Minnesota. The bill was introduced in the House by the chairman of its judiciary committee, and is known as House File No. 465. Its short title is the "Bar Organization Bill," and what it does, generally speaking, is to recognize the bar of Minnesota as part of the state's judicial machinery, to organize it as a unit, and to grant to this organized bar certain powers of discipline over its members.

If the bill receives from the lawyers of the state the support which it merits, it will pass. Without this support, it will fail. This article is written in the belief that if the bar can be made to understand the bill and what it will accomplish, they will give it the support necessary to insure its passage.

SHORT STATEMENT OF PURPOSES

The proponents of the bill believe it will do the following:

First,—by giving the bar power to make rules of professional conduct for lawyers and to enforce these rules by disciplinary action, many petty acts of professional misconduct which now go unnoticed can be eliminated, and serious misconduct can be more effectively dealt with.

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Second,—by organizing the bar, a body of trained men will be created which will be working constantly towards the betterment of our courts and laws.

Third,—by bringing all the lawyers of the state into one organization, the friendships therein formed will not only be worth while to lawyers personally, but will facilitate settlement of cases outside of court.

HISTORY OF THE BAR ORGANIZATION IDEA

The idea of an organized state bar originated with the American Judicature Society, an organization composed of a number of men interested in promoting the efficient administration of justice, among the most active directors of which have been Chief Justice Harry Olson, of the municipal court of Chicago, Governor Woodbridge Ferris, of Michigan, the late Chief Justice John B. Winslow, of the Wisconsin supreme court, Dean Roscoe Pound, of the Harvard Law School, and Dean John H. Wigmore, of the Northwestern University Law School. The idea was suggested by the Judicature Society to the Conference of Bar Delegates, a section of the American Bar Association to which state and local bar associations send delegates. At the 1919 meeting of this Conference, a committee was appointed to work on the matter and report back the next year. This committee was headed by Judge Clarence N. Goodwin of Chicago, who, with other members of the committee, spent much time in considering the various angles of the proposal, and finally drafted a bill in about the form of the bill now before the Minnesota legislature.

In Minnesota, the question of bar organization was first considered at the 1920 and 1921 meetings of the State Bar Association, the idea being approved at both meetings, and a committee appointed to frame a suitable bill. The bill proposed by Judge Goodwin's committee put the control over *admission* to the bar, as well as bar discipline, into the hands of the organized bar. When the question was first discussed in Minnesota, some question was raised as to the advisability of placing the control over admissions in the hands of the bar, and inasmuch as the State Bar Association committee felt that this matter was being well handled by the Board of Law Examiners, it was decided to eliminate the control over admissions from the bill. At its 1922 meeting, the State Bar Association unanimously approved the bill in its present form.

CONSTITUTIONAL THEORY OF THE BILL

The Bar Organization Bill is drawn on the theory that the bar of the state constitutes an integral part of the judicial depart-

ment, and is, therefore, inherently a body politic; consequently, a provision for the organization and regulation of this branch of the judicial department is not special legislation nor the creation of a private incorporation by a special act.

GENERAL PROVISIONS

The provisions of the bill are simple. A board of nine commissioners is created, these to be elected by the entire bar of the state from its membership, in an election in which every member of the bar is entitled to vote by mail. Nominations are made in the same manner. The supreme court still retains final control of rules of conduct and disciplinary matters. Subject to such control and approval, the commissioners are given power, first, to make rules of conduct for the bar, and, second, to discipline attorneys guilty of professional misconduct, either by public or private censure, by suspension, or by disbarment. Committees may be appointed by the commissioners in the various local districts of the state, such committees to be the local representatives of the commissioners; but no action of such local committees involving suspension or disbarment would be effective until approved by the commissioners. In practice, the chairman of each local committee would probably be the commissioner from that section of the state, thus providing a connecting link between the local committee and the state-wide board.

Any action of the board of commissioners, or of any committee, may be appealed to the supreme court, in which case the supreme court is to consider the whole matter *de novo*, with power to take additional testimony if it so desires. There is a provision for reference of the hearing on any complaint, the referee to be appointed by the commissioners, with the provision that upon the filing of an affidavit of prejudice against the referee appointed by the commissioners, another referee shall be appointed by the supreme court. The power to subpoena witnesses is given both the commissioners and the accused, and a complete record is required in every case. An annual license fee of \$5.00 is provided for, to be paid by every member of the bar to the state treasurer, to be disbursed on order of the board of commissioners for the running expenses of the organized bar. A provision for an annual meeting of the entire state bar is also included.

WHY THE BILL IS NECESSARY

The natural remark for a lawyer to make upon hearing of this bill is this: "Why do we need such a bill? Aren't we getting

along well enough now without it? Why should we try something that we don't know anything about, and which may not prove at all satisfactory?" Such questions are reasonable, and, if they cannot be answered, the argument for the bill fails. But they can be answered.

CRITICISM OF THE BAR

There has become evident in the past few years a reaction on the part of the bar against the frequent unjust and unfounded criticism of the integrity of the profession. It is inevitable that such broadsides against lawyers as were referred to by Judge Edward Lees, of the Minnesota supreme court, in his address to the 1922 meeting of the State Bar Association, should arouse resentment on the part of every member of the bar. Judge Lees quotes from "Letters of an American Farmer," written in 1787, as follows:

"Lawyers are plants that grow in any soil that is cultivated by the hands of others... [They] promote litigiousness and amass more wealth than the most opulent farmer with all his toil... What a pity that our forefathers who expunged from their new government so many errors and abuses... did not also prevent the introduction of a set of men so dangerous."

He also quotes from the following article of John Adams, written before he was admitted to the bar:

"Let us look upon the lawyer. We see him fumbling and raking amidst the rubbish of writs, indictments, pleas—and a thousand other lignum vitae words which have neither harmony nor meaning. He often foments more quarrels than he composes, and enriches himself at the expense of impoverishing others more honest and deserving than himself."

Criticism and jibes such as these are continually heard from professional humorists, yellow journalists, soap-box demagogues, general-store philosophers, street-corner autocrats, chronic dyspeptics, and many others belonging to the same school of criticism. Such remarks naturally make any lawyer who takes them seriously "see red." But regardless of their lack of foundation, it cannot be gainsaid that this general attitude towards lawyers is that of an altogether too numerous portion of our population today.

GENERAL INTEGRITY OF THE BAR IS HIGH

Certainly no one can do other than sympathize with the lawyer who resents such attacks as this on his profession. The great majority of attorneys-at-law are men of absolute honesty

and high integrity. Most fair-minded laymen will admit that the standards and ethics of the legal profession are as high, if not higher, than those of any other profession, and certainly higher than those of business. Trickery and sharp dealing indulged in daily by business men without loss of caste would, if practiced by a lawyer, soon bring him into disrepute with all the reputable members of his profession. The critics of the legal profession lose sight of the fact that many of the sharp and dishonorable practices indulged in by certain disreputable members of the profession are directed and insisted upon by even more disreputable clients.

PECULIAR RELATIONS OF ATTORNEY AND CLIENT

But, just as in tort actions, a man who professes skill is held to a higher degree of care than is required of the "ordinary prudent man," so the lawyer, by virtue of his relation, is held to a higher degree of integrity and honesty than the layman. The relation of attorney and client is one of trust and confidence. When one man deals with another in business, he knows he is dealing at arm's length, and must be on his guard. But when he goes into a lawyer's office, he goes there with his defenses down, and his cards on the table. *Caveat emptor* should not apply to the buyer who is purchasing legal services.

Mr. Osborn, in his recent work on "The Problem of Proof," says in this connection:¹

"There is no other relation in human affairs exactly analogous to that of attorney and client. It is a relation that in its intimacy and responsibility is an example of supreme trust and confidence. By it we ask another for the time and the occasion to be ourselves. It is as if for the time being we transfer our individuality to another who then becomes our mind, our voice, and even in a degree, our conscience. It is not strange that this relation from the earliest times has been most closely guarded, and that there are inseparably connected with it certain rules of honor which to disregard puts the brand of infamy upon the transgressor. To violate this sacred trust and be disloyal to a client is deservedly the unpardonable sin of an attorney. By this betrayal he sinks lower than by any other act of dishonor.

In the early history of advocacy this relation of advocate and client was not one of ordinary humdrum affairs. It was a noble service of honor, and, if need be, of self-sacrifice of the strong for the weak, of the able for those who could not protect themselves."

¹Osborn, *The Problem of Proof*, 223.

Before the legal profession has any right to feel satisfied with itself so far as the integrity of its members is concerned, and before it can justly rest in its efforts to purify its ranks, it must bring the profession to such a state that any man can go into any lawyer's office and know that he is going to get a square deal. That desired condition does not exist today.

SPECIFIC INSTANCES OF CURRENT MISCONDUCT

In support of the last statement, let us cite two recent illustrations of its truth, one of which occurred in Minneapolis and the other in St. Paul. The one in Minneapolis came to the writer's personal attention within the past sixty days. An attorney of Minneapolis undertook the defense of a young man charged with embezzlement of funds, knowing at the time that he had no money for attorney's fees, but being promised compensation as soon as he or his wife could earn the money. While the accused was in jail, the attorney went to the wife, and demanded a definite sum of money, stating that if it was not forthcoming immediately he would undo all that he had done towards getting the prisoner freed of the charge. (It afterwards appeared that he had done nothing, so this threat was not as vicious as it sounded.) Upon the wife stating to this attorney that she had no money and no way of getting any immediately, the attorney demanded her engagement ring, and upon her refusal to surrender it, attempted to take it off her finger by force.

The St. Paul instance was learned of through one of the judges of the Ramsey County district court, and happened while this judge was handling the criminal calendar. A woman was brought in charged with making moonshine for the personal consumption of herself and her husband. She told the court that she had no money to hire an attorney, and was ready to plead guilty. The judge felt that she should consult with counsel before pleading guilty, and appointed an attorney, who was then in the court room, to act as her counsel, the assumption being, of course, that his fees would be those provided by statute in such cases, and would be paid by the county. After a few moments conference with the attorney, she plead guilty, and the judge thereupon ordered an investigation of the case by the probation officer, which investigation later resulted in probation for the accused. A few days later, the woman came into the judge's office, and asked what the attorney he appointed for her should have charged her for the services rendered. Upon being informed that

all fees of an attorney thus appointed were paid by the county, the woman told the judge that, upon leaving the court room with this attorney, following her plea of guilty, he had demanded \$100 as attorney's fees, had told her that he had a "stand-in" with the judge, that if she paid this she would be let out on probation, and if not that she would be sent "over the road." She managed to get the amount demanded from her friends and relatives, and made the payment. The judge called in the attorney, and ordered him to refund the money, which he immediately did.

These are only two of numerous similar instances which are happening daily in Minnesota. Most lawyers can cite instances which have come to their attention involving similar moral turpitude and lack of appreciation of the true nature of a lawyer's duties. The files of bar association grievance committees are replete with records of misconduct of this nature. Why then, some one asks, are not such men disbarred? There are several reasons. In the first place, where the misconduct relates to financial dealings with a client (as do a big majority of the complaints), after the client has made a complaint and the grievance committee has commenced an investigation, the attorney usually makes some sort of a financial adjustment with the client, and the client thereupon refuses further to prosecute the charges. Secondly (and this is the most important reason), many of the complaints relate to misconduct of such nature that, although reprehensible and deserving of censure, does not warrant disbarment proceedings.

It is such misconduct as this, however, that brings lawyers as a class into disrepute with certain members of the community. People who are the victims of this misconduct generally broadcast their tale of woe among those with whom they come in contact, and, inasmuch as it generally makes a pretty good subject of conversation, many of those who hear it take care to pass it on. There is thus created in the minds of a great many people a distrust and dislike of the entire legal profession. The honorable lawyers are made to suffer for the acts of the scalawag. Such an attitude of mind on part of the people referred to undoubtedly keeps many of them who are really in need of legal counsel from consulting a lawyer.

PREVENTIVE EFFECT OF THE BILL

The immediate danger to the legal profession arises from the fact that if some action is not taken to check this kind of petty dishonesty, trickery, chicanery, extortion, and other similar mis-

conduct, it is bound to increase. Some of these practices (such for instance as the splitting of fees in criminal cases between jail and police officials, on the one hand, and certain attorneys to whom they refer prisoners in search of counsel, on the other) are undoubtedly profitable and tempting to young men newly admitted to practice. These neophytes at the bar during their first years of practice, and while they are having a hard time making enough to live on, can scarcely be blamed for following in the steps of older lawyers, when they see these older men engaging in such questionable practices and "getting away with it" without even being censured. Thus the tendency, if such practices are not checked at the outset, is for them to spread like an epidemic until the whole moral structure of the profession has become infected with the virus.

It is to check such a moral disintegration of the bar, and to bring the standards of the entire profession up to the standards now maintained by the big majority of lawyers, that the proposed bill is aimed. The authors of the bill believe that if the profession were given the power to set its own standards of conduct, and require adherence to them, the mere announcement of the standards would in most cases check many of the questionable practices that are now indulged in by certain attorneys. Men of long experience in grievance committee work have told the State Bar Association committee that, in their opinion, under the proposed organization, the powers of suspension and disbarment would not need to be used to even as great an extent as they are at present. This is because many of the detours from the straight and narrow path are made by lawyers who do it because they see other lawyers doing similar things without being called to account. Once let it be known that certain acts are beyond the pale and would not be countenanced, and most of the present offenders would abide by the standards set by the rest of the profession. This would doubtless be particularly true after one or two inveterate offenders had been shown the efficiency of the fumigating provisions of the new system.

PROFESSIONAL ESPRIT DE CORPS

In other words, more can be accomplished towards raising professional standards by the building up of a strong esprit de corps among the legal fraternity than by coercive measures. Every member of the bar will feel himself a part of the organization—"one of the gang," so to speak—that makes the rules of conduct

and enforces them. The report of the Bar Organization Committee to the 1920 Conference of Delegates, speaking on this same point, says the following:

"In this connection we suggest that, as man is a social being, he is influenced largely by the general opinion of those with whom he is associated; consequently when he is made a part of an officially organized public body, in the government of which he has a share, he normally is affected by its esprit de corps, and as a part of it, feels an obligation to sustain its highest traditions.

"Within the last few years we have seen millions of young men give an inspiring example of the effect of membership in an organization having great purposes and traditions. The most potent cause of unethical conduct in our profession is that the young lawyer does not become a part of an officially organized bar, and in the ordinary case does not even become a part of a voluntary professional organization. He remains isolated without anything to make him conscious of his relation to the bar as a whole, without being brought in contact with its great traditions, and without anyone authorized by law to advise him with reference to his duties.

"Thus when green in judgment and often needy in circumstances, he is called on to decide the most delicate questions of professional conduct, and for the most part, is obliged to work them out alone. Is it any wonder that in such circumstances and being so isolated, he sometimes becomes an Ishmaelite, with his hand against every man and every man's hand against him? Is it not reasonable to argue that, if millions of young men of all sorts and conditions, when brought into our military organizations, responded with enthusiasm to their high traditions of conduct and took the keenest interest in upholding the reputation of the units to which they belonged, likewise if young lawyers, by the very fact of their admission to the bar, become a part of an officially organized Supreme Court bar and are given a voice in the selection of its governors and the establishment of its ethical code, they will support with enthusiasm the high tradition of their profession?

"We therefore submit that the real need is to bring the entire bar into one body, to make every lawyer feel the duty which he owes it, to give the members a source of authority in matters of ethical conduct and to authorize its governors, not merely to disbar, to punish, to discipline, and to censure, but in a most friendly and helpful way, to advise as officials having authority."

THE ORGANIZATION FEATURE CONSIDERED

Perhaps equally important with the disciplinary provisions of the bill is the organization of all the lawyers of the state into one unit. If the power to make rules and enforce them were entirely eliminated from the bill, this organization feature, standing alone, would seem to make the legislation worth while.

It is a matter of common observation that lawyers greatly outnumber any other profession or business in public office. The reason for this is obvious. By reason of their training, and of their daily work, lawyers acquire a knowledge of the structure of government and of public affairs in general that no other class of citizens possess.

What an opportunity the state is missing by not organizing this group of men and forming them into a body of trained helpers and advisors in the problems of government. At present, the bar in this respect may be likened to a group of trained soldiers without any officers or organization—as a fighting organization, nothing more than a mob. Organize these soldiers into a military unit, give them something definite to do, and you have an efficient fighting machine. Organize the bar in the same manner, direct their collective energies toward the improvement of the administration of justice and the judicial code of the state, and you will have developed an efficient and powerful force, working constantly toward the end of better government. Of late the state has been awakening to the possibilities of its unharnessed water-power. Here is an unharnessed man-power which, if put to work, will develop a tremendous force for good government in Minnesota.

Think what such an organized bar could do towards improving the administration of justice. Being daily in contact with the courts, lawyers know their defects better than any one else. Give them an organization through which they can act in remedying these defects,—a strong organization, the voice of which will carry some weight—which can speak as the bar of Minnesota, and can announce with authority “so saith the bar”—give them such an organization, one which is strong enough and influential enough to attract the best energies of capable lawyers, and you will have loosed a force which will eventually bring our court system close to that ideal which is the aim of all conscientious members of the bench and bar—namely, the equitable and perfect dispensation of justice between man and man.

EXPERIENCES IN HENNEPIN COUNTY

The above prediction is not mere groundless conjecture. It is based on what has actually happened in Hennepin County since the organization four years ago of a live local bar association. The founders of the association were told on all sides that the new association would never attract the interest of any substantial

number of lawyers. There was difficulty at first. But as the association grew in numbers and prestige, lawyers who had never before taken any visible interest in bar association work came forward voluntarily with numerous suggestions for improvement in the judicial machinery, and, when put on committees to bring about such improvements, rendered excellent and painstaking service.

WEAKNESS OF PRESENT STATE BAR ASSOCIATION

With all possible respect and praise for the unselfish and efficient service of the men who are and have been active in the affairs of the Minnesota State Bar Association, there is no denying the fact that, due to its relatively small numerical strength and to its lack of financial support, the State Bar Association is practically impotent, and does not attract the serious attention and services of more than a handful of lawyers. No one appreciates this fact better than the men who are active in the Association, particularly those who, as members of its committees, have approached legislative bodies or courts in behalf of proposals sponsored by the Association. The general attitude is that such representatives of the State Bar Association do not speak for more than a small proportion of the lawyers of the state, and are not entitled to extended consideration. This condition is due to no fault of the personnel or management of the Association, but is characteristic of all voluntary state bar associations. The remedy clearly is to create an organization which can voice the sentiments of the entire bar of the state, and which, by virtue of the increased strength and prestige thus acquired, could call for and would receive the serious attention and services of all the bar of the state.

SOCIAL FEATURES

Lastly, there is the social feature of the organized bar, i. e. the opportunity for getting better acquainted with one's brothers-at-the-bar, and of spending many profitable and pleasant hours together at the meetings of the state-wide bar, or at meetings of the local divisions of the bar, which divisions will undoubtedly be formed. Beyond the incidental personal pleasure of knowing better the men with whom one comes in contact in litigation, there is an undoubted advantage to the state in having the various members of the bar acquainted with one another. Many actions which would otherwise be tried are now settled out of court to the great advantage of attorneys, clients and the public treasury—settled mainly because counsel for the opposing parties are acquainted

and are able to get together in a friendly way and agree on terms fair to both parties. Nothing is more conducive to conciliation than a friendship between the attorney for the plaintiff and the attorney for the defendant. The friendships formed and strengthened at the meetings and in the work of the organized bar would be of great service in keeping unnecessary litigation out of the courts. Besides this, lawyers who have attended bar association meetings will need no argument to convince them of the pleasure and value of these meetings, and will certainly lend their hearty support to a movement which aims to extend the benefits to the entire bar of the state.

A VISION THAT CAN BE REALIZED

This article has merely attempted to suggest a few of the advantages to Minnesota, its people, its courts and its lawyers, which it is believed would follow the passage of the bill organizing the Minnesota bar. Perhaps the bill would not work out in every respect as suggested, but it is difficult to see what harm it could do. Certainly no reputable attorney who deals fairly with his clients need fear it, and any one of the suggested results of its passage would seem to make it worth while trying. If it should not work, it could be repealed in two years.

There will be those who will think that the change and improvement claimed as a result of the passage of this bill is visionary and chimerical—a mere dream. Perhaps it might prove to be a dream. But if the lawyers of Minnesota will see that their representatives in the legislature help pass the bill—and if they will then put their shoulders to the wheel and help work out the idea embodied in it, they can make this dream become a reality.