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THE INTEGRATED BAR IN ALABAMA*

By BORDEN H. BURR**

At the time your chairman extended to me his gracious invitation to appear before you, your program had not then been completed, and I was unaware that the report of the Reorganization Committee was to follow my address. Believing that a stranger should avoid all controversial matters, I am going to talk to you about my experience with, rather than in advocacy of incorporation of the bar.

I am not acquainted with the conditions in Indiana. Since coming here, however, I have learned of the unusual provision in your Constitution, and I am handicapped in not knowing how my subject will fit your situation in Indiana, even if your conditions fit the conditions in Alabama. You seem to be in that difficult situation, where, in order to do anything, you must treat your Constitution as a matter between friends.

It is impossible to tell you about the operation of this act in my state unless I speak briefly of the past laws and conditions as they existed in Alabama before we passed this statute.

Our State Bar Association in Alabama was organized in 1877. For many years, our annual meeting was a fine field day for the making of friendships, the building of political fences, the telling of stories, and the tabling of resolutions to be passed on at the next annual meeting.

As time passed, conditions changed. The days of the circuit rider and the general practitioner passed and we found that our profession was becoming a profession of specialists. We were being divided into corporation lawyers, bankruptcy lawyers, and lawyers of every class. Each class was gradually getting to the point where its paramount interest was in that field of law in which it was specializing. We were losing sight of the law as a profession as it had existed from time immemorial. The public was assuming a different attitude toward our profession. They were beginning to charge the whole profession

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**Of the Alabama Bar.

with the derelictions of the few and they no longer regarded the lawyer as the leader in public affairs. The Alabama State Bar Association, in an effort to meet these changing conditions, began to study the situation. It took some time to bring it to an issue within the Association.

In 1917, we first presented to the Association the question of incorporation of the state bar and of giving the state bar the power and authority necessary to meet the responsibility that the public was putting upon us.

From 1917 to 1923, we fought this out within the Association, and in 1923, by unanimous vote, a committee of twenty-five was appointed to present this bill to the legislature and request its enactment. We found that the Bar Association had little influence with the legislature. Even the lawyers in the legislature paid no attention to what the Bar Association said should be done. It took a session to convert them. Finally at a special session in 1923 we passed our first bar incorporation act, after much compromise with our original plan.

Now, I shall tell you the five fundamental principles involved in our act, and shall contrast the present with the past in our state.

First, we considered the question of membership. The membership of our Bar Association had been stationary since 1877, when the Bar was organized. Many other professional organizations had come into being and had grown. The doctors, the dentists, even the beauty parlor operators, had organized and gone forward. The bar had stood still.

We had had auxiliary organizations. We had imported famous orators. We had achieved little. The first principle of our bill, therefore, was to provide by law that every lawyer in Alabama should become a member of the incorporated state bar, entitled to its privileges, and coming under its authority.

Then we passed a request for administration. Our plan was to have each of the twenty-three judicial circuits in the state elect by ballot a representative to serve on the Board of Commissioners. Immediately, the lawyers of the larger cities protested. The lawyers of Birmingham, constituting a third of the lawyers in the state, did not believe it just that they should have the same representation as a circuit in the lower part of the state, which had only a few lawyers. We talked them out of that and it was good that we did. These rural representatives have displayed a hard common sense that comes from participation in community meetings, an experience which the city lawyers lack,

and we have always found them ready to help in solving the more intricate problems of the industrial centers.

Criticism was heaped on us. It was charged that the plan was aristocratic, autocratic, bolshevistic, that, inevitably, the unethical lawyers would control the association, and that the better element would decline to serve.

We have not found it that way. On the contrary, membership on the Board has become the highest honor that lawyers can confer upon a member of the bar of that circuit. The Board has been composed of the very best lawyers in our state. Thus we achieved an association composed of all the members of the state who were licensed to practice law. We had a method of administration that functioned not once a year at an annual meeting, but every day in the year.

Our next consideration was what authority we should ask the legislature to give that Board of Commissioners. We took up first the question of admission to the bar. While we had no constitutional provisions as you have in Indiana, we had a method which was equally effective to get a man into the practice of law.

To illustrate, when I returned home from Washington University, the circuit judge appointed a committee of three lawyers to examine me. At that time I had never seen an Alabama code. The circuit judge had served under my father during the war. The committee was composed of the man into whose office I was expected to go, a man who had been my teacher in high school, and the man who was the promised-to-be husband of my sister. Without the aid of a constitutional provision, I became an Alabama lawyer.

They tell a story of a likeable numskull who appeared before a similar committee. The chairman of the committee, fully aware of the circumstances, asked the candidate this question, "Sam, you don't know the rule in Shelley's Case, do you?"

Sam replied, truthfully and correctly, "No, sir."

The committee with great solemnity then certified that the candidate had passed a perfect examination.

Since the lawyers are charged with responsibility for the conduct of the members of the profession, we felt that they should have the privilege and responsibility of determining the qualifications for applicants seeking admission to the bar in Alabama.

Our present system requires an applicant to appear first and get the proper blanks on which he makes his application to be examined. These blanks have been drawn only after much care

and study have been expended on them. This application must be accompanied by an affidavit of good character, which goes into facts and details. The committee then determines whether or not the applicant shall be considered for examination. If the application is not sufficient to satisfy the committee, they investigate elsewhere. If the application is approved, the applicant appears before the examiners appointed by the Board. The chairman of the examining board is the Dean of the Law School of the University of Alabama. The examiners give a real examination. The papers are numbered; no one's name is known; no opportunity for favoritism is available. If the examination is passed, the applicant is admitted to the practice of law.

The result has been that less than 50% of the applicants are admitted, in comparison with 90% to 95% in former years. We believe in fewer and better lawyers.

The next question we considered was that of discipline. Our industrial sections had grown up overnight. The temptation for sudden wealth and the lack of control led lawyers to unethical practices. The ambulance chaser openly solicited cases; the adjuster imposed on the ignorant and weak in making settlement. We were also confronted with encroachments upon our profession. Commercial collection agencies openly advertised, and made unlimited promises. Trust companies were writing wills, by solicitation, and handling trust estates. We asked the legislature to put in our hands the power of discipline over the members of the profession. Prior to this, it took a jury trial to discipline an Alabama lawyer. The jury had but two choices. It could acquit him, or disbar him. I have never known but one case in all that time where a jury found an attorney guilty of unprofessional conduct.

This bill changed that. The Board of Commissioners, which has sole authority to admit to practice, also has sole authority to discipline. The Board can, by report of its grievance committee, or the grievance committee of any local association, city or circuit, try the lawyer against whom charges have been preferred; it can try other charges preferred by an individual providing the individual gives a bond covering the costs. The knowledge of the power of this Board discourages the lawyer who indulges in shady practices, because he knows that he can be reprimanded, or suspended, as well as disbarred.

All of our rules are subject to the approval of the Supreme Court. All of our actions are subject to direct appeal to the Supreme Court.

At first a committee from the Board took the testimony and reported to the Commission. The commission soon determined that this method was unsatisfactory. They wanted to sit in a body and face the accused. This method has proved more satisfactory than trying to glean the truth from a cold printed page, and no technicalities of the common law are allowed to hinder the finding of the facts.

Now we shall turn to a subject that is distasteful everyhere. That is the question of finances. In Alabama, we have had for many years an annual state license fee of twenty-five dollars which each lawyer must pay for the privilage of practicing. Inasmuch as the bar Association was going to pay the expenses of handling admissions and disbarments, we induced the legislature to pass a bill providing that ten dollars of that twenty-five dollars should be set aside to pay the expenses of the state bar. With that fund, we have enough to carry on our work.

Under the law that we now have, progress has been made. Attendance at our annual meetings has grown phenomenally. Mr. Thompson told me yesterday that the registration at our April meeting was greater than that of any association he had visited since he has been president of the American Bar Association.

The Alabama Legislature now recognizes the Association as the voice of the lawyers of Alabama, and when the Association proposes a law, it is passed in regulation time.

Since the law was enacted, we have had it amended time and again to remove the defects that we had to allow in order to get any law in the beginning. At first, we had no control of the educational qualifications. The last legislature gave it to us without question. Prior to that, it was not necessary that the applicant be able to read or write in order to stand for the examination.

When I went in as president of the Alabama Bar Association, I suggested that we have a high school education as the first step. I realized that education was not everything, and I did not want to antagonize the members of the Board from rural districts. To my surprise every member wanted to go further and adopt the educational prerequisites as laid down by the American Bar Association. I had some difficulty persuading them that we must not go too fast. We started with the high school education.

There is now in preparation a change in the rules to raise that standard. We anticipate no difficulty, because, while there

are exceptions, the educated lawyer is usually the best lawyer.

In its last session the legislature passed for us a law taking care of the encroachments upon our profession of commercial and kindred agencies.

We did not accomplish this all at once. We did it by a process of consultation with the officers of trust companies. As a result we have passed a law, which has been sustained by our Supreme Court, and which I believe to be the most advanced law in the United States. This law defines our profession, and protects it against all unmerited encroachments.

I shall mention briefly other plans upon which we are working. Along the same line as the research program of the American Bar Association, we are organizing sections to study various phases of our own law. At this time, a section is working on Equity and Equity Procedure. The Commission is preparing to sweep away the cobwebs of the antiquated theories which bind us. We have a section working on Criminal Law and Procedure. In this branch of the law in our state there is likewise a wide field for improvement. Another section is working on aeronautical law, about which some of the younger members are particularly interested.

What I have said here today, I want you to take as information. Perhaps I am too optimistic about our profession. However, I believe that the slogan we use of the law profession being the greatest in the world has caused us more trouble than anything else. We cannot live on the past. We must have the courage to recognize our deficiencies, and the courage and ability to improve our condition.

When we do that, the vision, the dream, and the hope are there for the profession that we love, not as a mere means of livelihood, but as an opportunity for service. Above all, when we think that, as we pass on, we are leaving that profession to our sons, then I have the courage to dream dreams and see visions, and I have the faith that in organization those dreams can come true.

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