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MORE EFFECTIVE BAR ORGANIZATION

By HON. CHARLES A. BEARDSLEY*

Quite naturally, I have chosen to talk about bar organization. I propose to talk to you this afternoon about effective bar organization.

About five years ago, in an article entitled "The Portrait of a Lawyer," Dr. James Grafton Rogers, then dean of the Law School of Colorado University, and now a member of the faculty of Yale Law School, wrote: "The profession (that is, the legal profession) always has been unpopular. The lawyers are, as a class, the most disliked and distrusted stratum of society."

That is from a leading member of the legal profession. One need not go outside of the Rogers family to find a similar appraisal, from a leading layman.

Some years ago we had, in this country, a Republican administration. There was a Republican President. His name was Hoover; and he appointed a Law Enforcement Commission, and when he appointed his Commission, Will Rogers wrote in his syndicated column: "Hoover appoints ten lawyers and one woman to see if anybody is drinking and why. Well, it's up to the lone woman to do something. I can think of nothing that the people would have less confidence in than ten lawyers put together. It looks like if he had just appointed one fellow with horse sense——"

That isn't a pleasing picture to us, as members of the legal profession. We smile about it, but it is not pleasing. What should we do about it? Should we accept it complacently, as Dr. Rogers apparently does, and adopt a sort of "nobody likes a fat man" attitude; or should we look at the matter objectively and try to find out the reason for the lack of respect for the legal profession, and having found the reason, adopt a remedy?

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A few years ago, in my state of California, the lawyers of that state were faced with this problem—the problem of trying to find out the way to gain for the members of the profession a maximum of public respect. I am going to ask your indulgence this afternoon while I tell you something: First, about how we found out just where we stood with the public; and, second, what we did about it.

Prior to 1927, California had a voluntary Bar Association. It was an active voluntary Bar Association. It had its officers and its committees and held its annual meeting. Its affairs were presided over by a group of earnest and faithful members of the bar. With one exception, to which I will presently refer, it created scarcely a ripple on the calm sea of professional inertia and indifference that characterized the rank and file of the profession.

In 1921, in one of the rare successes that the California Bar Association—that is, the voluntary association—had with the California Legislature, there was enacted a certain statute sponsored by the bar. The author was Senator Sample, and we called it the Sample Bill. That bill denied to laymen and to corporations the right to practice law. There was some uncertainty, or had been, as to who had the right, and that bill was introduced and passed. It said that no one but lawyers had the right. It had some saving clauses. It gave some automobile associations and escrow holders and title men a free hand and expressly allowed the bankers to do a lot of things that bordered on law. But the bankers didn't like it.

In California, we are a progressive state. We have the progressive referendum and recall. The bankers circulated a referendum petition and this Sample Bill went on the ballot in the general election of 1922. It was a clear-cut hard fight between the lawyers and the bankers—a bid for public favor between the bankers and the lawyers.

There was a lot of publicity about it. There were bill boards about it and orators for both sides went up and down the state, pleading their respective causes with the people of California. Then the vote was taken in November, 1922. And when the vote was counted, this is the way it stood:

In favor of the bankers..... 555,522
 In favor of the lawyers..... 197,905

There was a systematic sampling of public opinion; a scientific sampling of public opinion which indisputably confirmed the estimate made by Will Rogers and the estimate made by Jim Rogers, in reference to the attitude of the public toward the legal profession that is not organized in such a way as to be able to do the things that the people expect the legal profession to do.

Now, that vote of 555,522 to 197,905 against the lawyers made quite an impression upon the legal profession in my state of California. It was a shock and the result of that shock was the integration of the bar of California.

It didn't come immediately. It didn't come out of the first effort, but it came in 1927, with the adoption by the Legislature of what we call our State Bar Act, creating the State Bar of California.

It called it a public corporation. It didn't make any difference what it called it. It could have called it a Sunday school picnic as far as that is concerned; but it provided that everybody that wanted to practice law in California should be a member of that Association, that would be governed by a Board of Governors; that there should be dues paid to the Treasurer of the State Bar and used for the purpose of carrying out the purposes of the lawyers of California, and so on.

That Bar was organized and it went to work representing the lawyers of California in doing those things that the people expect lawyers to do.

As a result of the operation of that integrated bar—we had a membership, by the way, when we started, of 11,000—about 13,000 now—but as a result of this operation, with its effective organization, with its responsible Board, and of the membership with power to do the things about which voluntary associations can only agitate and resolve. In a period of about five years I think I can safely say that for every member of the profession who, at the time of the Sample Bill fight was thinking in terms of the profession as a group—was thinking in terms of the responsibility of the legal profession to the

public, in terms of the members of the profession, as members of society—for every one that we had at the time of the Sampe Bill fight, when our State Bar had been in operation for five years, we had at least ten, as a result of having a means to do the things that would need to be done.

Now, after we had been in operation for seven years, we got into another controversy with the California Bankers Association. That was when our State Bar was just seven years old. There had been some controversies, up to that time, between the California Bankers Association and the State Bar of California in reference to the practice of law, and there were some suits pending in the courts by the Bar against some of the bankers, and the bankers didn't like the attitude the Bar was taking and so they prepared an initiative measure—the one we had a few years before was a referendum measure. This was an initiative measure, and proposed an amendment to the California Constitution. This proposed amendment to the California Constitution provided that any corporation or any layman, as long as his services were gratuitous and not an incident to any court proceeding, could draft any kind of a legal document and give advice in reference thereto. It also provided that as long as the service rendered was an incident to the development of, or the carrying on of any service, any lawful relationship, fiduciary or otherwise, that a corporation or an individual who was a layman could draw legal documents and give advice and perform all other services of a legal nature incident thereto; and finally, it provided that if the organization was organized on a non-profit basis, like our Automobile Association, it could render legal services with or without compensation, in court or out of court.

Now, the California Bankers Association was the sponsor of this amendment—the same Association that got that vote that I told you about twelve years before.

Twelve years before, the California Bankers Association was alone, but this time it had six powerful allies. Allied with the California Bankers Association in this second controversy were the California Real Estate Association, the California

Merchants Association, the California Land Title Association, the California Life Underwriters Association, the California Building and Loan League, and the Automobile Club of Southern California. That last organization, by the way, had a membership of over 100,000.

Now, the campaign was elaborately organized for and against the adoption of this initiative measure. The bankers and their allies appropriated a war chest of \$200,000 as a preliminary war chest. They designated it as a "fund for the purpose of carrying on an educational campaign."

The lawyers, under the leadership of the President of the State Bar of California, organized for the defense. The State Bar of California also had its war chest. It appropriated, while not as large as the bankers, a war chest of only \$50,000, and it designated its war chest "a fund for the purpose of carrying on an educational campaign." When the campaign was fully organized, the funds were allocated and they were all ready to go back again in order to determine the standing of the lawyers of California with the people of California.

Then something happened. A truce was declared. There was an armistice. The \$200,000 and the \$50,000 found their way back for uses other than "education."

Two committees were appointed, one by the California Bankers Association and one by the State Bar of California. These committees were given full authority to sit around the table and work out the differences between the two groups. And in order to give them time to work out the problem, a two-year truce was declared, during which the lawyers agreed they wouldn't start any more test law suits against the banks and the bankers agreed they would not start any more elections to test the popularity of the lawyers with the people of California.

These two committees sat around the table. The lawyers dictated the terms of the agreement. It was signed by the representatives and it was ratified by both groups, settling the controversies upon the terms specified by the lawyers.

Now, why the change? Why was it that the California Bankers Association, backed by these six powerful allies—

the California Bankers Association that twelve years before, single-handed, had taken on the lawyers of California and gained a verdict of 555,522 as against 197,905 for the lawyers—why were they willing to make peace upon the terms dictated by the lawyers rather than to test the matter at the polls? The reason was that when the California Bankers and their six powerful allies came forth for battle, the David that went forth to meet that Goliath was a seven-year-old State Bar of California. Yes, he was armed with a war chest—not as big as that of Goliath—but he was armed with something else. He was armed with a weapon that had been suggested to the lawyers when they faced the problem twelve years before by their ignominious defeat at the hands of the bankers. It was a weapon that was suggested to them in the 16th Chapter of Proverbs, 7th verse: “When a man’s ways pleaseth the Lord, He maketh even his enemies to make peace with him.”

The lawyers of California, the State Bar of California—this seven-year-old David that went forth to meet this Goliath—had found the way to please their lord, the people of California; and they had secured the backing of the people of California. Armed with public support, they went forth to meet their Goliath and their Goliath surrendered.

Now, how was this? Why was this new attitude evident?

Well, as a matter of fact, during the last ten years, I have never seen anything in any California newspaper—any editorial comment—adverse to the legal profession. The attitude of the public toward the legal profession is just as much more favorable now as it was unfavorable at the time of the Sample Bill referendum. The attitude of the public is not the attitude expressed by Jim Rogers or Will Rogers. The attitude expressed in the lay press is typified by a paragraph I will quote from an editorial in the Sanford Daily Sentinel concerning the integrated bar:

“There are signs of a new life in the California bar. It appears that the law fraternity has gained a new vision of its responsibilities; new faith in its inherent goodness; renewed courage to attack its

problems. It is the most hopeful sign that has come into the life of the State in over half a century."

How was this change brought about? Well, it was brought about, in the first place, by effective bar organization—an organization that was able to speak for all the lawyers of California; a Board of Governors that had authority to represent the lawyers of California, very much as the Board of Directors of a private corporation represents the stockholders; by sufficient funds to enable the lawyers to maintain their staffs to publish their magazine, to have their offices. We have, by the way, two well-equipped offices—the main office in San Francisco and the branch office in Los Angeles—with a staff of over thirty full-time employees; almost as many full-time employees as has the American Bar Association.

This organization brought about this change by the exercise of its governmental power—the ability to do the things as to which voluntary organizations can only agitate and resolve. But in the main, this change in public attitude was brought about by going directly to the source of the trouble; by going directly to the source of public dissatisfaction that brought about this vote of 555,522 to 197,905. The State Bar of California dealt directly with the people that had grievances against the lawyers of California. They considered all their complaints and disposed of them. Perhaps I might tell you briefly in regard to the disciplinary procedure.

We have the Board of Governors. It meets every month—fifteen members—and the meetings are usually two or three, or sometimes four days.

We have, in every county of the state, local administrative committees. In the larger counties, we have several of these committees, each made up of three members of the bar appointed by the Board of Governors, and they take testimony in a preliminary way in hearings which they hold on all complaints against members of the bar. We report the result of the examination or investigations to the Board of Governors, and the Board of Governors acts upon them, subject to review by the courts in case discipline is recommended.

Now, we took an inventory of these sources of public dissatisfaction, and here is what we have found. During the first three years of the operation of the integrated bar—and I am speaking of those years because I was more familiar with it, I served on the Board of Governors during those years—we had an average of more than 1,200 complaints per year; more than 100 per month; more than 4 per day against the members of the legal profession.

Now, most of these complaints were due to misunderstanding. The vast majority of them did not call for any disciplinary action. About 94% of them were disposed of without any formal hearing, just as a result of talking with and advising with the complainant, usually women.

The remaining 6% went to formal hearings before the committees, and of this 6% some were dismissed after formal hearing. In some there were public or private reprovls, which were administered by the Board of Governors, and in less than 2% of all the complaints that we received there were disbarments or suspensions.

Now, just get that picture, if you please—less than one out of fifty of all the grievances against the members of the profession were sufficiently serious to justify either suspension or disbarment; but even with suspension and disbarment in less than 2% of the complaints, it might be interesting to compare the suspensions and disbarments with those we had before we had our integrated bar.

California was a state for seventy-seven years before we had the integrated bar, and during that seventy-seven years there were disciplinary proceedings resulting in disbarments or suspensions in the total number of 27—an average of one each three years.

During the first three years of the integrated bar the proceedings resulting in suspension or disbarment, taking 2% of the complaints, averaged 20 per year—an increase of 6,000%. And even though it takes only one out of fifty of the complaints in order to get that per cent, every one of these complaints—1,200 per year, 100 per month, 4 per working day—

was evidence of a grievance against a lawyer and nearly all against the legal profession.

In the mind of the person who had the grievance it was real. As far as the effect of the attitude of that person toward the legal profession it was just the same as if there had been a good foundation for that grievance. Every one of those 1,200 complaints per year was evidence of a block of votes that went to make up that vote of 555,522 to 197,905 against the lawyers; and it wasn't just one vote, because when a person has a grievance against the legal profession, all the members of his family share the grievance. All of his neighbors share the grievance and everybody he can button-hole on the street shares the grievance. So these complaints were evidence of 1,200 blocks of votes per year against the legal profession.

We went to the source of those grievances. We cleaned up those sore spots, and we made of those people who were the enemies of the lawyers and the judges and the administration of justice, and frequently of society—we made of them friends of the lawyers; friends of the judges; and friends of society.

Thus, after seven years, when the California Bankers Association and all of her powerful allies came forth to fight with the lawyers of California, there weren't any of these blocks of votes on which they could count and they knew it. That is the reason for the contrast between the outcome of those two controversies.

Oh, I know there are other ways of dealing with public distrust and criticism; of dealing with public dislike for lawyers. There are other methods that probably have been used a great deal more. Frequently we adopt the nobody-likes-the-fat-man attitude, like Dr. Rogers did. Frequently, we simply resent it, apparently upon the theory that if my neighbor doesn't like me, I'll make him like me better by getting sore about it.

But most frequently, we stand up in meetings of the bar associations and we make impassioned speeches, denouncing all of our detractors, including all the members of the Rogers

family. When I hear these speakers denouncing our detractors—they are usually the straight-from-the-shoulder variety—when I hear them, sometimes I am reminded of the editorial comment in the *San Francisco Daily News*.

The editor, commenting on the advertisement of a certain lecture in which it was claimed the lecturer talked straight from the shoulder, observed, "It's too bad some of these talks couldn't originate a little higher up."

During the last sixteen years, in twenty-three different states, there have been established integrated bars with governmental authority and power to do the things that people expect the lawyers to do. In fourteen other states, the lawyers are striving for the integration of the bar, having endorsed the proposals in their voluntary associations. This movement is based upon the theory that lawyers are state officers; that their admission to the bar constitutes an appointment to a public office; that together, they constitute a department of the state government, charged with the responsibility of providing legal services to the people of the state. The integration of the bar simply gives that department a more effective organization and makes it the better able to do the things that the people expect the lawyers to do.

The principal obstruction in the way of the integration of the bar is the habitual conservatism of the members of the legal profession. Sometimes I think that probably Douglas Jarrell had the members of the American legal profession in mind when he defined a conservative as "that man who refused to look at the new moon out of respect toward the old one." We do something because it's always been done before, regardless of the change in needs and conditions. When the past gets unbearable, we just get some more of it.

We're like the fellow who had a wart on the right side of his nose and he went to a surgeon, and the surgeon said, "Do you want to have the wart removed?" He said, "No, I want another grafted on the left side to balance it."

We eat our peas with honey—it makes the peas taste funny, but it keeps them on our knives. Gradually, in the last sixteen years, in one state or another, lawyers have been finding some

way—some better way—to eat their peas, even though it's conventional to eat them with honey.

I recommend to your consideration and to your vigorous, intelligent, and aggressive action the formation of a governmental bar organization with authority to do the things that society expects you to do. It is appropriate, at this time, that American lawyers and judges should be considering this subject of effective bar organization.

Effective bar organization is the method by which we improve the administration of justice. Of course, the administration of justice is just another name for the services that lawyers and judges render to the American people. We like to refer to it in the third person, as though, if it is related to us, it is just a distant relation; but it's just another name for what we do.

The administration of justice is one method of settling disputes. There is another method of settling disputes. It is being used at the present time on the other side of the Atlantic and on the other side of the Pacific.

Primitive man had but one method of settling disputes. He settled them by combat. When just two men or small groups were engaged in a dispute, they called it a fight. When large groups of men engaged in a dispute, they called it a war. It was a method that was calculated to bring victory to the side that had the most power and the least scruples on its side. Now, when man was emerging from barbarism, he devised a substitute method for settling disputes—a substitute for fights and for wars, and that substitute is the administration of justice. You and I are the ones that have the principal responsibility for making that substitute work. It doesn't work with hundreds of millions of people on the other side of the Atlantic and on the other side of the Pacific. The forces that are there in operation have brought about a condition where international morality and law is giving ground to international anarchy and lawlessness; where temples of justice are no longer honored or worthy of honor; and where the ministers of the legal profession in the temples of justice

are no longer the fearless champions of the rights of the people.

Now, the same forces that brought about those conditions in other lands can work in our own country. The least that we can do to counteract the effect of those forces is to make our substitute, the administration of justice, the most workable, the most effective, the biggest service to society it can possibly be. The only way we can do that effectively is through effective organization with power to do the things that need be done.

