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Whole Bar Organization - A Necessity

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Whole Bar Organization—A Necessity†

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In selecting the topic of this paper—"Whole Bar Organization—A Necessity"—it is realized that this Association is again having brought to its attention a controversial subject of many year's standing. However, when any proposal affecting the legal profession and the public seems so sound in theory and practice as whole bar organization, and has the support of eminent figures in the profession like those later mentioned, such a proposal should not be buried among our archives until we are sure that we thoroughly understand and evaluate the movement and then find it without sufficient merit to warrant our support. In the belief that there is still misunderstanding and underestimation of the subject in Maryland, and in the hope of contributing something more to its clarification, this paper has been undertaken.

By way of introduction it may be interesting to sketch briefly, first, the position occupied by the legal profession in early America, and then the conditions obtaining in the profession in Maryland which primarily motivated the committee of the Alleghany County Bar in issuing the call for this Association's formation. From that background the spirit and object of this paper may be more readily conveyed.

The late Colonial and the early American bar was an extraordinary one. It had its real roots in the English Inns of Court where, at one period shortly prior to the Revolution, as many as 115 young men from the American colonies were students and rubbed elbows with the future chief justices, Kenyon and Ellenborough, and the future chancellors, Thurlow, Eldon and Erskine. Among them were 16 Marylanders, including Daniel Dulany, the younger, Charles Carroll of Carrollton, and William Paca. The bar in consequence was steeped in all the traditions of the English barrister. Bench and bar were a unity. They controlled admissions and excluded the unfit and the unworthy. Their associations were constant and intimate. They rode circuit together. The bar participated in or listened to the trials of all cases. They attended opinion

*Mr. Webb is a member of the Salisbury, Md., bar. This was his presidential address at the annual meeting of the Maryland State Bar Association, Baltimore, June 29, 1945.

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days and heard opinions read and later discussed and criticized them, freely and frankly, most often upon adjournment to some nearby tavern. Bench and bar ate, drank and lived together more often than not. The legal profession—bench and bar—literally lived and had their being as a whole united in the law. They represented the intelligentsia—in the better sense of that word—of that day. They were looked to for leadership and guidance on most matters affecting the public. They occupied a position of power for good which perhaps no other group of citizens enjoyed or were privileged to fulfill, then or since.

Small wonder then that the bench and bar of our young republic furnished pre-eminent leadership in its formation and early development. Of the fifty-six signers of the Declaration of Independence, twenty-five were lawyers; of the fifty-five members of the Federal Constitutional Convention, thirty-one were lawyers, of whom four had studied in the Inner Temple, and one at Oxford, under Blackstone; and in the First Congress, ten of the twenty-nine senators and seventeen of the sixty-five representatives were lawyers. The early American bar was truly an aristocracy of character and capacity and well deserved the esteem in which it was and still is held.

In the nineteenth century, however, the legal profession collided, head on, among other things, with the concept of American government —that men should suffer as little restraint as possible in the enjoyment of their free and equal births. That concept, it was contended, should be no less applicable to the legal profession than to any other walk of life. The mass appeal of the argument had its effect. The result, in due time, was relaxation of the standards of bar fitness and worthiness until in some places they became virtually non-existent. Many were admitted to the bar lacking in tradition, training, capacity and character necessary to the bar's exalted position in our national and community life. Judges, to preserve their self respect, endeavored to level themselves on a stratum above much of the bar and thus the whole fraternity of bench and bar was sadly disrupted, and the bench became cloistered from the bar. The bar brought disrepute and discredit upon itself which goodly numbers of traditionally minded practitioners could not overcome. The postulate that authority to practice law was a property right, unfettered by any duty to society as an integral functionary in the administration of justice, rather than an exalted privilege, succeeded in dealing the legal profession a sad blow in the minds of the undiscriminating and uninformed public and gravely reduced its dignity and its mighty potentialities for the public weal.

STATE BAR ASSOCIATION ORGANIZED

To combat this "degradation of the bar," as some have called it, it is apparent that this Association was brought into being. That this deplorable condition existed in Maryland is shown by the address of our

first President—the Honorable James McSherry—then Chief Judge of the Court of Appeals of Maryland—delivered at this Association's Second Annual Convention, at Ocean City, Maryland, on July 27, 1897, when he said:

> "I confess I feel a deep humiliation in admitting before an audience of intelligent and honorable Maryland lawyers that there is need of drastic measures to protect the bar of our state from the contamination of incompetent and unworthy practitioners. But the fact that something must be done is conceded, or if not conceded, is obvious; and the duty to speak plainly on the subject and to squarely face the situation is imperative. There was a time when no occasion existed to discuss such a theme. No bar in the country has ever stood higher than the Maryland bar. The renown of its leaders and of many judges who have stepped from its ranks to the bench, stretches far beyond the borders of our chivalric commonwealth. * * * What Maryland has done in the past she is capable of doing again. My friends! Let us bring the whole Maryland bar back to the exalted standard of former days, and let us elevate it to the equally high position which its acknowledged leaders at this time occupy, and then the proudest and most distinguished encomium which can be spoken of each of its members will be to say of him, 'he is a Maryland lawyer'."

Under those circumstances it is easy to imagine the serious state of the minds of our founders, and their very definite purpose, in asserting, in Article II of our Constitution, that this Association was formed "to advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to uphold the standard of integrity, honor and courtesy in the legal profession, to encourage legal education, and to cultivate a spirit of cordiality and brotherhood among the members of the (Maryland) bar."

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TIME TO TAKE THE NEXT STEP

This paper is predicated on the assumption that if our profession's Golden Age is ever to be achieved again, consolidation of our first step has now proceeded sufficiently to justify another step as far reaching as the organization of this Association in 1896.

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One of the Association's first accomplishments was the creation, by legislative act in 1898, of the State Board of Law Examiners, and the elevation of the standards for bar admission, including in later years ever higher pre-legal and legal educational requirements. Simplification and expedition of pleading and practice, both at law and in equity, have also originated in this Association. The courts and their members have been the object of our eternal interest and vigilance, even to the weighty

extent of whether or not their Honors of the Court of Appeals should wear gowns. That grave question brought about in 1898 one of the most extensive and acrimonious debates ever to occur in this Association. The opposition prevailed by 32 votes to 28. We have not neglected the substantive law of our State. In fact, the forty-nine Association Annual Reports are so full of accomplishment, and disclose the origin of so much in Maryland law which we, from long use and acceptance today take for granted, that the reports are far along the road to a liberal education in themselves. Nor have we neglected legal ethics. There has always been a Grievance Committee as requird by our constitution and those committees have never failed to deal fairly and properly, so far as the records show, with every case presented to them, although, fortunately or unfortunately, cases presented apparently have been few and far between.

This Association truly has been an immeasurably constructive force for good in the State of Maryland for forty-nine years, and, in retrospect, its existence could not wisely have been spared by the public or the legal profession here. We have supplied many of the needs and eliminated not a few of the evils revealed by Judge McSherry.

But with all our good works, let us not forget that the task laid down for us by Judge McSherry when he admonished us to "bring the whole Maryland bar back to the exalted standard of former days" is far from accomplished. We have come a long way in many respects, but one hesitates to assert that the descriptive phrase, "He is a Maryland lawyer," has much, if any, weightier significance or distinction today than when Judge McSherry spoke forty-eight years ago. We will agree, however, that the ideal of Judge McSherry is today equally worthy of the whole profession's interest and efforts.

One of the many superb addresses recorded in the reports of this Association was delivered by Omer F. Hershey, Esq., of the Baltimore bar, at the 1925 Convention, on the subject, "The Passing of the Lawyer's Primacy." Conceding that the loss of primacy was due to causes beyond as well as within the control of our profession, Mr. Hershey said:

> "That our primacy has been affected by lack of professional solidarity and esprit de corps, I think is true. * * * Many new forms of professional activities have actually outclassed us in esprit and effective organization. The profession of medicine has almost had a new birth within our generation. Engineering, journalism and business are now organized as professions, have professional schools, professional ethics and professional solidarity. * * * It may be said that the legal profession has never been organized in any real sense. * * * Large numbers of persons are now in the profession in every large city who are wholly unknown to their fellow practitioners. * * * Large numbers have become specialists. * * * Many good lawyers are mere cogs and clerks in big legal machines;

and others evolve special bars of their own in collections, bankruptcy, Volsteadism, taxation and the like. * * * In our larger cities like New York and Chicago, one can distinguish a distinct stratification of the bar. At the top a well educated, well trained stratum, and an uneducated and untrained stratum at the bottom, with some groups often well advertised, who operate in the twilight zone of respectability. * * * This discordance of the profession and want of discriminating organization has not helped our primacy; for unfortunately, to the general public a lawyer is a lawyer, and the profession is really judged as much by its black sheep as by its white ones. * * * It should mean more than it does now to be called to the profession of the law and to be called a lawyer. * * * He should be seen and see himself as a member of a profession in whose keeping are all the covenants and safeguards of organized society. * * * Whatever the reason, there is a general feeling that the businessman handles his work and his institutions better than the lawyer, so that there is no public pride in either the courts or the profession. This is not so in England. There the man on the street is proud of English justice; and the credit for this must go to their better organized profession."

Mr. Hershey is quoted at such length because the conditions of twenty years ago that he so graphically described are with us today unsolved and magnified. We are still largely unorganized. We still have to regain our primacy.

THE TWO THOUSAND OUTSIDERS

Our Association far from embraces the whole profession in Maryland. There are only about 750 of us out of a total of approximately 2,750 Maryland lawyers. Those 2,000 missing brethren are not among us for one of two reasons. Either is deplorable. They are eligible by our standards but indifferent to our objects or our methods, or at least twenty per cent of our voting members do not think them worthy or want them as a part of us. Obviously, therefore, our Association either is lacking in that something necessary to arouse the whole bar of Maryland to its duties and responsibilities, or there are Maryland lawyers sorely wanting in the qualities of character and capacity essential to the lawyers of Judge McSherry's ideal. We must concede that there are among the 2,000 lawyers not in our membership hundreds who either need us or from want of whose interest and participation in our activities our tasks are less well done.

One group we actually legislate from our midst. Their exclusion from bar organization is impossible to justify today.

* * * * * *

Nor is there any other bar organization in Maryland embracing the local bars in any real sense. The Baltimore City Bar Association

lately had as members a scarce sixty per cent of the lawyers there. In the twenty-three counties there may be five active local associations and in a few others skeletal ones. In at least half the counties, there is no bar association whatsoever.

Thus if it is desirable to reestablish the primacy of our profession, and if no segment of the bar here can wisely be omitted in that process, we simply cannot say that our voluntary and exclusive association, or any other extant organization in Maryland, is the vehicle best constituted and fitted to achieve that end. On the contrary, we must admit from our experience that to accomplish fully the good of which our profession is capable, the bar must be wholly and not partially or selectively organized.

Dean Roscoe Pound, of the Harvard Law School, who, in his address to this Association, on June 26, 1943, included whole bar organization as one of the steps on his agenda for improving the administration of justice, in 1945 wrote this comment:

> "It is really important under the circumstances of today to have an organization which can speak authoritatively for the whole profession. Law is under attack throughout the world and the best energies of an organized profession in this country are called for if we are to preserve our Anglo-Saxon legal inheritance * * *. To have our practicing lawyers united in an association for the purposes for which voluntary bar associations now exist is a great gain for the profession and for the law. Originally a profession was a body of men living together and professing a common calling as a learned art in the spirit of a public service. We need to keep as much of this idea of the profession alive as we can, and an integrated bar seems to be the most likely way to achieve it in this country today. I earnestly hope that Maryland may adopt the integrated bar."

The record of whole bar organization in England and the many states of our Union where it prevails seems to prove that Dean Pound and Mr. Hershey have correctly evaluated that status. To say the least, the evidence is most persuasive that the subject merits the immediate, comprehensive and sympathetic consideration of the Maryland bar under the leadership of this Association—the only state-wide instrumentality available here to undertake the task.

EXISTING BAR ORGANIZATIONS NEEDED

* * * The essence of whole bar organization is compulsory membership of every practicing lawyer in a legislative incorporation or court ordered organization of the bar and the payment of annual dues, in most states from $5.00 to $10.00, as a condition to membership, original or continued. That is to say, bar association membership—not voluntary and exclusive as we are—but compulsory and all-inclusive—male and female—white, yellow and black. Our Association has no legal exist-

ence, and if it did, it does not possess the power of compulsion so essential to whole bar organization. * * * Experience has also proved that local bar associations seem to take on new life when buttressed by whole bar state associations.

The subject of whole bar organization also seems heretofore to have been considered by opponents or skeptics, here and elsewhere, with too little emphasis upon its broader and more elevated objective and its real basis—to re-establish the whole legal profession to its former high plane in the imperative public interest—and too often as a new-fangled attempt to regiment and discipline a group to whom such possibilities are thoroughly abhorrent. It is hoped that it may be now understood in Maryland, for once and all, that the principal object of whole bar organization, and the most impelling justification for its accomplishment, is not discipline. Nor is its effect offensive regimentation. Discipline is only one by-product. Regimentation has no real significance, historically or perspectively. The paramount justification and necessity for whole bar organization is the public welfare.

No debasing task and no difficult intellectual feat is imposed by the suggestion that the subject of whole bar organization should be considered from the broad vista of the public welfare, and that each of us in that consideration should submerge our individual inclinations and preferences.

Lord Buckmaster, former Lord Chancellor of England, in his address on "The Romance of the Law," had this to say of our profession:

> "What is the subject of a lawyer's work? * * * Whatever it is that men may do, their hopes, their fear, their anger, their pleasure, their vagaries, their delights, all of these things form the medley of our briefs. There is no learning that comes amiss to us. The most erudite scientific work is a matter with which we may have to deal. There is no phase in all the many mysteries of the human heart which may not be the subject of the case that we have to consider. There is no form of knowledge that is alien to our perfect equipment and the man who confines himself to a meaner view is debasing a great profession."

This versatility of the legal profession imposes a tremendous duty and burden upon us outside our technical functions as lawyers. It invests us with inherent power which no other group possesses or can so effectively wield. Improvement of the administration of justice, and increase in the public's pride in our courts and in their esteem for our profession, the usual reasons assigned for bar cohesion, are absolutely essential to the public's welfare, and, without other reasons, supply ample incentive for whole bar organization. But above and beyond those mighty objectives, it is literally true that creation and exercise of the beneficent power which will flow from unity in the legal profession are necessary if our historic

institutions are to be preserved. For the achievement of that end alone, whole bar organization is justified.

No group in American life today should more fully comprehend than lawyers generally all that is involved in what is called the "American Way of Life." No group in America equals us in opportunity to understand and fear the ever-accelerated pace at which individual liberty is day by day frittered away, directly or indirectly, by various pressure groups in the pursuit of their various selfish ends. None should recognize more clearly, and combat more vigorously, that monster of the Twentieth Century—totaliarianism—which spurns both the sanctity of the individual and the dignity of man. None possesses the power to expose and oppose, as we do, trends which lead ultimately to the destruction and chaos less trained minds cannot see or feel until too late. Management, labor, churchmen, medical men, educators, authors, engineers, accountants, artists, none of them are privileged as are we of the legal profession, by our training and in our daily tasks, to provide wise leadership to the public of today and tomorrow if democracy is to be maintained. We should possess and exert, individually and collectively, more influence than we do in a field more familiar to us than to any other group. We should become, in the abstract at all times, and very definitely and concretely when specific occasions demand, zealous advocates of all that is governmentally wise and good for all Americans.

Expression of these thoughts is not novel in this Association. In the President's address in 1914, the late Judge Walter I. Dawkins said:

> "When we stand on the mountain peaks of our civic life and consider the vast and constantly increasing and almost impossible questions that lie in the plains below, calling constantly for solution, questions involving the very life blood, well-being and peace of our people, we cannot fail to realize what part the *real* lawyer could and should take in the public life of our country."

SOME CONSEQUENCES OF OUR WEAKNESS

The lack of bar cohesion, and the consequent absence of our historic primacy, are largely responsible for the prevalence of most of the questionable theories and practices of government today. If we had asserted ourselves as a united whole, instead of complaining as individuals or minority groups, and if we had really informed and led the public, they would never have tolerated the steps by which our governmental system of checks and balances has become unbalanced; they would never have tolerated our present system whereby bureaucrats make whimsical laws, which our duly elected legislators never dreamed of, and deny our historic right of trial by jury in their enforcement. The public, under the leadership of the bar of the whole United States, aroused as a unit as it probably had not been for years on years, stopped in its tracks the vicious Supreme Court Packing Plan of 1937. The vital leadership our profes-

sion then provided can be repeated ad infinitum when the occasions arise, if we are really united. When we perceive and dwell upon our potentialities in moulding public opinion for good once we speak as a profession, to achieve those potentialities amounts to our most solemn duty.

Much more can be said in behalf of whole bar organization which will not be undertaken or repeated in this paper. Time prohibits an exhaustive discussion of its many merits. Here it is sufficient to observe that where the system has prevailed it has proved, in the words of Dean Pound, "a great gain for the profession and for the law." But great and far-reaching as are those gains, neither is paramount to the opportunity whole bar organization affords our profession to instill in the minds of the general public knowledge of and faith in our ideals of freedom and democracy, and neither is necessary to supplement the compelling virtue of that opportunity.

OBJECTIONS EXAMINED

Some concede that there will be gains from whole bar organization. But they say that there are inherent in the plan individual sacrifices and potential dangers far exceeding those gains. To explore some of those objections may not be amiss.

The chief objection usually advanced by those reluctant to espouse whole bar organization is that its adoption means the coercion of lawyers by law into a body they do not wish to join and the exaction of dues they do not want to pay. They regard those requirements as iniquitous. Some choose to call them regimentation.

Of course, our profession in Maryland has been regulated since 1898 against those incapable of passing our bar examinations, and for more than fifteen years against those disqualified by lack of character and fitness, regardless of their intellectual attainments. So that if whole bar organization is regimentation, our profession has known compulsion and restraint by law for quite a while. We have accepted that regulation as a matter of course. No principle is more firmly imbedded in the law of our land than that our liberties or licenses may be circumscribed for the common good. Therefore, if there is implicit in whole bar organization good comparable to that obtained from the prerequisites to bar admission, or good comparable to the motor vehicle speed laws or the saloon closing laws, for instance, whole bar organization is no more offensively compulsory and no more regimentation than those laws. Its object, in fact, is so much more deeply imbedded in the fundamentals of the public welfare that only the most superficial comparison with the motor vehicle and saloon laws dissipates the will-of-the-wisp or bugaboo substance of the catch word "regimentation" in the consideration of whole bar organization.

Naturally after whole bar organization some lawyers may not find themselves quite so comfortable while enjoying the luxury of closing

their eyes and their minds to the duties and responsibilities and traditions of our profession. Our awakening will no doubt arouse some from the inertia and lethargy in which, perhaps, they would prefer to remain. But if whole bar organization can accomplish that it is long overdue even though regimentation is the process of its achievement. Their recovery from those opiates, their response to a new incentive, will give the victims of inertia and lethargy at least the satisfaction of knowing that their new parts are likely to be effective.

That the cry of regimentation is more of a "bogeyman" than a reality is also profoundly illustrated by the example of the legal profession in England.

For centuries the bar of England has been a self-governing body to which members have been admitted only after legal education in one of the four Inns of Court, Inner Temple, Middle Temple, Lincoln's Inn and Gray's Inn. The Inns are composed of students, barristers and benchers. They are governed by elective benchers who regulate upon the fitness of all students and exercise disciplinary powers over students and barristers. The student must be vouched for by two barristers of his Inn as a fit and proper person. He must have had a university education. He needs about two hundred pounds for the payment of fees to his Inn. His legal education consists of twelve terms, covering three years, and after successful examination, and with the recommendation of two benchers of his Inn as to his fitness, he may be admitted to the bar. Without that recommendation all his previous efforts are unavailing. There is no appeal from the decision of the benchers. The courts have nothing to do with admissions or disbarments, except that disbarment decisions of the benchers are appealable to the Lord Chancellor and the judges of the High Court of Justice. After admission the practitioner, or barrister as he is then called, must maintain his membership and pay an annual fee to his Inn, the amount of which is fixed by the benchers. The young barrister usually attaches himself to an older barrister to acquire experience, and at times the senior barrister is paid a fee of as much as one thousand pounds for permission to use his chambers and assist in his work. The first court appearance of a barrister is as a "junior," but at forty years or over he may apply for permission to wear a silk gown instead of a stuff gown and attain the rank of King's Counsel, a necessary prerequisite to judicial office. A barrister has no inchoate right to be called to the bench, and if he is proposed by one bencher and seconded by another, the benchers may refuse to elect him and need assign no reason for their refusal. Barristers cannot have any dealings with private individuals. They may be employed only by solicitors. They cannot sue for fees. If their fees are not paid they have no remedy whatsoever—said to be a survival from the days of the Knights Templar, the original barristers. The solicitor pays the barrister's fee

and is entitled to charge it to his client and make recovery through a cost taxing master. To become a solicitor a barrister must be disbarred. Incidentally, the earliest known use of the term "barrister" is in the Black Books of Lincoln's Inn, in Trinity Term, 1455.

Solicitors in England, or attorneys as they are sometimes called, also have had their organization, known as "The Law Society," by royal charter since 1845. Applicants for admission as solicitors are made to the Master of the Rolls through the Law Society and all applicants must pass examinations under its management. Every solicitor is compelled to maintain membership in the Society and to procure from it an annual certificate at a fee of one pound. Solicitors are prohibited from appearance in the law courts and from holding judicial office. They enjoy the right to practice in certain other courts, and only the right of audience in open court or in chambers in still others. Their rights are severely circumscribed in many other respects by law and custom.

If the legal profession in England, possessing the admirable character, great capacity, wholesome dignity and public esteem which cannot be denied it, not only tolerates but flourishes under the restraints of the Inns of Court and the Law Society, nothing but good need be looked for from whole bar organization by Marylanders in Maryland, a people and a land as deeply rooted in England and English law and English professional traditions as any American state. In fact, it would be a hopeless task to maintain with intellectual conviction that whole bar organization in Maryland would be regimentation in the sense we detest the usual implications of that word, and especially so since the generally adopted scheme of whole bar organization in America falls far short of the English system.

MORE THAN DISCIPLINE PROPOSED

Others have opposed whole bar organization on the ground that its primary object is the discipline of recalcitrant lawyers by active measures unrelentingly applied, and that it is beneath the dignity and beyond the obligation of our profession and wholly unjustified to coerce all lawyers, reputable and disreputable, into one organization whose chief purpose is reformation of the disreputable. Even if discipline of the disreputable were the chief object of whole bar organization, which is, of course, far from true, many would still favor that organization. But discipline is not the chief objective of whole bar organization, nor have disciplinary measures constituted more than minor activities of those organizations. Of course, disciplinary activities have occurred many, many times, but in the vast majority of instances recalcitrants have mended their ways merely by the corrective influence of their bar organization membership with its varied reminders that disobedience to high professional standards is too hazardous to ignore. Thus professional ideals are achieved in the main, not by the application of sanctions, but

from a heart and mind self-disciplined by precept and consciousness of necessity, a by-product in itself worthy of whole bar organization.

Some have also objected to whole bar organization because they resent parity in such an association with those whom they consider unworthy of that status. The character and capacity of a lawyer are much more important to the public, his actual or prospective clients, than those qualities can possibly be to any association of lawyers. If he is unworthy of membership in an association of lawyers, it is imperative that he be prohibited from the practice of our profession. This objection is immaterial. Our duty is plain under any and all forms or types of bar organization.

Another objection to whole bar organization is the expressed fear that the admission of all lawyers to such a body would make it possible for control to be seized by a group unworthy to lead. Democracy, as we know it, invariably involves that risk, and when the more worthy and better equipped have shirked their duties and responsibilities the risk has materialized into deplorable reality. But when those duties and responsibilities have been met by the worthy and the equipped, peril and disaster have been avoided. That this risk of democracy has not proved harmful in places where whole bar organization prevails is the great assurance that it will not prove harmful here. As might be expected, it has been found that those who provided leadership in the voluntary and exclusive associations continued their activities in the greater organization. The only discernible difference has been the accession of recruits to that far-seeing and public-spirited group from the broader field of membership.

There are also misgivings that whole bar organization cannot be safely undertaken in Maryland because of the disparity in numbers of lawyers in Baltimore City and the counties. To that objection there can be no better answer than the experience of this Association. No county lawyer can possibly complain that you of Baltimore City have abused us or discriminated against us by your numerical preponderance or otherwise. It seems safe to assume that no less fair and reasonable recognition would be accorded county lawyers in a whole bar organization.

Dean Pound has said one could write a book on whole bar organization. He is right. But to avoid the paper assuming too nearly the proportion of a book, and to spare you a further endurance test, suffice it to say with respect to the other objections or misgivings on whole bar organization, that every possible argument against the plan that has been or could be made in Maryland has been made elsewhere and proved later, by actual experience, unreal and imaginary.

THREE POSSIBLE METHODS

There are three methods of accomplishing whole bar organization. (1) By order of the highest court of the state where, as in Massachusetts, regulation of the practice of law is recognized as within the domain of the courts and legislative intervention is unnecessary. (2) By legislative act incorporating the bar and prescribing in detail its every power and function. And (3) by legislative act incorporating the bar, prescribing that all practicing lawyers shall be members, fixing the maximum annual dues, and empowering the highest court in the state to determine and establish by rule or order all other powers and functions. The last method is the so-called "Kentucky Plan." It was first adopted in Kentucky and has been followed in Virginia and other states. The soundness of that plan is self-evident. Few lawyers would prefer to place our profession's destinies elsewhere than in the courts. That plan also permits greater flexibility for such adjustments as actual experience from time to time proves wise or necessary.

As to the success of whole bar organization in other American states little more need be related to this Association. No state where the step has been taken has later discarded it. Our reports are replete with favorable testimonials from the bench and the bar from the Atlantic to the Pacific. In the preparation of this paper some additional evidence on the subject has been sought from distinguished members of our profession, probably known to all of us, and intimately to some. The paper would be incomplete without reference to the views expressed by a few of them. None reported the slightest doubt or criticism.

Monte M. Lemmann, Esq., of the New Orleans bar, wrote this on April 26, 1945, about the Louisiana situation:

> "Our Incorporated Bar, as it now exists, has worked well. * * * It is the general opinion among leaders of the bar that the present setup is preferable to the pre-existing Association * * *."

Henry Upson Sims, Esq., of the Birmingham Bar, after explaining that compulsory Bar Association membership had prevailed in Alabama since 1923, and that his state was the first in America to achieve that result, on March 1, 1945, wrote:

> "The whole system works beautifully and nobody is dissatisfied as far as I know. I heartily recommend it to Maryland."

On February 3, 1945, our esteemed friend, Honorable John J. Parker, Chief Judge of the Fourth United States Circuit Court of Appeals, wrote:

> "I * * * hasten to say that the integration of the bar, both in Virginia and North Carolina, has been a great success and I do not think any thoughtful lawyer in either state would think for a moment of abandoning the steps * * *. The benefits from a thing of this sort are, of course, of an intangible nature, but I have a very

definite feeling that the atmosphere of the bar in both states has been greatly improved as a result of integration. I would not presume to speak of your local problems in Maryland, but I have no doubt that you would find integration beneficial there just as it has been found beneficial in other states. In the last several years I have been all over the United States a number of times; and wherever integration has been tried the members of the bar whose opinion is worth anything have unhesitatingly acclaimed it a success."

Judge L. R. Varser, of Lumberton, North Carolina, formerly a member of the North Carolina Supreme Court, on February 3, 1945, wrote in respect to the subject in his state:

"The State Bar has been very successful in North Carolina and has apparently passed through the experimental stage and is now accepted as a permanent part of the legal profession. It works well and efficiently and without fear or favor."

As to the success or failure of the movement in our neighboring State of Virginia, closely related to us, both in interests and in traditions, the opinions of several lawyers there were sought with the following results:

Andrew B. Christian, Esq., of the Richmond bar, on February 2, 1945, wrote:

"Our statute integrating the bar has been, I should say, an unqualified success in the opinion of ninety-five per cent of the lawyers and ninety-five per cent of the judges."

Thomas H. Willcox, Esq., of the Norfolk bar, on February 3, 1945, wrote:

"You will make no mistake in advocating the legal integration of your State Bar. If you can get a proper bill adopted and then get officers who are competent and energetic to administer the bar, you will find it very successful."

Frank W. Rogers, Esq., of the Roanoke bar, on February 5, 1945, wrote:

"The enabling act for our integrated bar was passed by the General Assembly in 1938 after a long, hard and bitter fight. The vote in the legislature was quite close and there was a considerable body of opposers among the lawyers. After the first year or two of operation, that opposition entirely disappeared. I am confident that there are not now five lawyers in Virginia who would advocate repeal."

Benjamin W. Mears, Esq., of the Eastville bar, in agricultural Northampton County on the Eastern Shore, on February 14, 1945, wrote:

"I am of the opinion that the present organization is quite an improvement over the old voluntary association. I think it has improved the spirit of cordiality among the members of the bar and this has had a tendency for the bar as a whole to work together as a unit in advancing the science of jurisprudence and in the reform of judicial procedure."

Those opinions from trustworthy sources, and based upon experience and observation in sections of the United States possessing nothing more or less than Maryland, need no comment. They speak volumes in themselves. They are commended to you.

We may also dismiss the possible thought that whole bar organization is no fit subject for adoption by such a conservative bar as that of Maryland, or that our profession here is being urged to a step which the profession in equally conservative states would not consider.

In his final address as President of the Massachusetts Bar Association on June 10, 1944, Mayo A. Shattuck, Esq., of the Boston bar, advocated what is here called "Whole Bar Organization," but what he called "Bar Unification," and said:

"It is time, in my opinion, that Massachusetts lawyers should make a final and vigorous effort to renounce their characteristic comfortable routine and to move ahead in triumphant unity to a leadership and service which has hardly been envisioned, let alone realized. It is time to stop inquiring in injured tones why lawyers are not regarded by the public in higher favor. It is time to stop asking a synthetic answer to all of the problems of the bar by attempting to enforce a legalistic rule of exclusion and by asserting a monopoly rooted in tradition regardless of merit. It is time, in brief, for lawyers to take a long step forward not only in their self-government and discipline and organization, but also in the service of our commonwealth."

As a result of Mr. Shattuck's address the Massachusetts Bar Association appointed a state-wide committee of 25 members to study the question of the advisability of unification in Massachusetts. The committee has reported favorably on the subject and the prospects are that bar unification will be an accomplished fact in Massachusetts by Supreme Judicial Court order before 1945 expires.

About two months ago the bar of our neighboring state of West Virginia, under the leadership of the voluntary and exclusive West Virginia Bar Association, after discussion and efforts over a period of at least eight years, finally became wholly organized.

Thus the bars in Massachusetts and West Virginia, and in other states, in ever-increasing tempo, are awakening to their traditional opportunities, duties and responsibilities. For that awakening the present

and future generations of America may be duly grateful. The defenders of their faith are arising and girding themselves for action.

It may be presumptious to bring again to the attention of this Association the subject of whole bar organization. The speaker hopes not. Convinced as he is that the unity of every Maryland lawyer in one organization is vital to the public welfare, with the greatest deference, he suggests the exhumation of this grave question from our archives and its reinstatement to the list of our other interests and activities.

When Maryland has taken its place in the ranks of the states where whole bar organization exists, then we will have made another step toward the realization of Judge McSherry's ideal, "the achievement of the most distinguished encomium which can be spoken of each member of our profession here—He is a Maryland lawyer." By deserving that encomium as a whole, the Maryland bar would make its greatest contribution to our state and nation in a century.

Let us, therefore, in the lately spoken words of Winston Churchill, cry: "Forward, unflinching, unswerving, indomitable, until the whole task is done.!"

Denver's Real Estate Boom

BY VAN HOLT GARRET*

Following is a summary of the remarks of Van Holt Garret at the February 4, 1946, meeting of the Denver Bar Association:

There is a critical need for housing in Denver. In considering why there is this shortage, it should be remembered that there has been no adequate building in Denver since 1929.

Among the things interfering with building are the restrictive labor practices of some labor unions, such as limiting the amount of work to be done by laborers. Some unions restrict members to a small percentage of what a skilled laborer could do. Not all of Denver's craft unions engage in such practices, but the few that do are hurting the others.

Another thing is the exportation of building materials. A large amount of building material was exported last year; 225 million feet of lumber is to be exported this quarter. At the same rate 150 million board feet more will be exported this year than was exported last year.

Price fixing is another hampering factor. Some price ceilings are necessary—some are not. Labor costs are up without a corresponding increase in building materials. It is proposed that the difference be made up by subsidies rather than by increasing the ceiling prices. Ceiling prices should be raised rather than subsidies granted, because all subsidies will have to be paid for some time.

Controls were lifted October 15th, but only the FHA has encour-

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