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Affiliated Plan Proposed for National Bar

BY WILBUR F. DENIOUS*

A famous philosopher (Mr. Dooley) once said: If the Christian Scientist had a little more science, and the doctor had a little more Christianity, it wouldn't make much difference which treated the patient, provided he had a good nurse.

The integrated plan of bar organization has its faults and virtues; the voluntary plan has a variety of forms, some faults and some merit. But it really doesn't make so much difference which plan is used, provided the organization has an enthusiastic, united bar behind it.

BAR ORGANIZATION IN GENERAL

The first bar organization in this country, the Association of the Bar of the City of New York, was formed in 1870. It still exists and has made a notable record as a voluntary organization.

The American Bar Association was formed as a voluntary organization in 1878. At that time there were fifteen known state and local bar associations in the country. By 1900 this number had increased to about 300, and now there are over 1,500 bar organizations, their combined memberships embracing more than seventy per cent of the practicing lawyers of the country. All bar organizations were formed on the voluntary plan until 1919, when the integrated plan was first introduced.

THE VOLUNTARY PLAN

The successful record many state organizations have made under the integrated plan demonstrates that it has many outstanding virtues. But, in the opinion of a majority of the bar in many states, the integrated plan does not best fit their conditions. It is well known that different forms of government fit different stages of civilization, and it may well be that one plan of bar organization does not best meet the conditions in each and every state. No aspersions are intended by this comparison, for we cannot now be sure that government recently has been improving or civilization recently advancing.

It is not my purpose to attack the integrated plan or to make a comparison of its faults and virtues with those of any other plan, but rather to point out the advantages of the voluntary plan.

*Of the Denver bar. This paper was given by Mr. Denious at the recent meeting of the American Bar Association in Indianapolis and was carried in part in the December, 1941, issue of the JOURNAL OF THE AMERICAN JUDICATURE SOCIETY. After the editor of the JOURNAL had given us permission for a reprint, Mr. Denious furnished us his entire manuscript. We liked it so much that we decided to print it in full. While the address was delivered to the national association, its contents are of equal, perhaps even greater, interest to members of the state and local associations.

One of its advantages is universality, another mobility, but perhaps its greatest virtue is its voluntary characteristic. It has such a variety of forms as to make its application universal. It has no fixed, rigid requirements which cannot be moulded to fit any circumstance. These with its voluntary character give it a strong appeal to the lawyer who has a passion for freedom of action, and loathes to find himself driven to any position or condition in which he must remain or to which he must conform. This is distasteful not only to the lawyer but to everyone who prefers to volunteer rather than be drafted.

But perhaps the greatest weaknesses of the voluntary plan are that it hasn't the power to draft and that all the members of the bar do not volunteer. These disadvantages can be more than overcome if the members of the bar can be induced to volunteer. Volunteers make better members of bar organizations just as volunteers make better soldiers.

MEMBERSHIP REDUCED BY RESTRICTIONS

Almost seventy per cent of the members of the bar are members of local bar associations. Only about seventeen per cent are members of the American Bar Association, and a somewhat larger percentage are members of the state associations. Practically every local association prescribes several qualifications for membership, in addition to being a member of the bar. The state associations generally demand more qualifications for membership than the local, and the national organizations' requirements are more inconvenient to comply with than those of the state. In other words, it is made comparatively easy and convenient to become a member of the local organization, harder and less convenient to become a member of the state association, and least convenient to become a member of the national organization. The result is the local associations have the largest membership, the state associations next largest, and the national smallest. Isn't it apparent that the voluntary associations have not tried to organize the bar; they have attempted to organize merely a portion of it, that portion only which comes within their prescribed qualifications for membership? For reasons which have disappeared, voluntary bar associations still seek to restrict their membership, and they suffer from lack of membership more than from any other one cause. Under the integrated plan, every member of the bar is compelled to become a member of the state organization, and this gives the plan its greatest strength. Under the voluntary plan, membership has been discouraged by requirements and restrictions which make it difficult to induce membership. If a bar association pretends to represent the bar, then every member of the bar in good standing should be eligible to membership. Every lawyer is either fit for membership or should be disbarred. If he should be disbarred, proceedings have been instituted against him or the bar association is derelict in its duty. If bar associa-

tions will do their duty, they can safely make only one qualification for membership, namely, membership of the bar in good standing. If that were done, membership would increase, financial problems would be relieved, the organization would become representative of the bar and its influence greatly increased.

Affiliation Plan

Some of our most successful state associations have clung to the strictly voluntary plan. Others have followed a modified plan, such as the federation or affiliation plan.

The affiliation plan is the one used in Colorado. Under this plan any local bar association of the state may upon application become affiliated with the state association. The local associations admit to membership, and a member of a local association is *ipso facto* a member of the state association. The dues of the state association are added to those of the local, collected by the local and remitted to the state. The foregoing are the essential features of the plan, and these with certain minor features, not necessarily distinctive, such as provisions to insure that each section of the state has representation on the governing board, a fair chance in the election of officers, etc., constitute the plan. A minor feature and yet one worth mentioning is a provision for the election each year of a president-elect who is *ex-officio* a member of the governing board and a member of the executive committee. After an experience of one year with the association's affairs and an opportunity to formulate a plan for his own administration, the president-elect automatically one year after his election becomes president, fully equipped to assume his duties without delay.

Results Under Affiliated Plan

The results which such a plan is likely to effect are:

1. A comprehensive membership in the state association, selected by those who are best acquainted with the applicants.
2. Adequate financial resources, sufficient funds to support an active program.
3. An organization which is in fact representative of the state bar, with sufficient strength and influence to perform its functions and to compel adoption of any sound propositions which it develops and proves.

Such a plan was adopted in Colorado in 1938 and the results are:

1. The membership of the state association has increased over five hundred per cent.
2. The dues have been decreased fifty per cent and the income increased nearly three hundred per cent.
3. The state association is recognized as a strong, active, influen-

tial body. Its members are united and enthusiastic. It is undertaking and doing well the work which a state bar should do. For instance, the state Supreme Court adopted last January and put into effect on April 6, 1941, a revised Code of Procedure which was the result of three years of sustained and diligent effort of the Colorado Bar Association. That work required talent and funds as well as effort, and all three were furnished by the state association. It has many other valuable accomplishments accredited to it for its work during the past three years and has a worthwhile program ahead. Its programs at annual meetings have so improved that the attendance has increased about five hundred per cent.

There have been too many demonstrations of success under the integrated plan as well as under the voluntary plan to attempt an argument against either as a plan. One or the other may be more suitable for a given set of circumstances, and when a plan is to be adopted, both should be given careful consideration.

The American Bar Association has been zealous in disseminating information and in building up a literature on the subject of bar organization. But its precepts might have been more effective if it had set a better example. To many the plan of organization and accomplishments of the American Bar Association are not in keeping with the field it occupies. After all, the effectiveness of an organization should be measured by its responsibilities and the opportunities available to it.

WHAT'S THE MATTER WITH THE A. B. A.?

The obvious defects of the American Bar Association are these:

1. A small membership. It has never had as members more than twenty per cent of the profession. The organization of a profession must have a majority of its members or it will not adequately represent the profession; it cannot speak effectively for the profession. The American Bar Association is therefore not the organization of the legal profession; it is an organization of only a small minority of the legal profession.

2. Insufficient funds to carry on an active constructive program. An increase in individual membership dues would probably not increase the association's gross income, which is only about one-sixth of that of the American Medical Association, although the number of doctors in the country is considerably less than that of lawyers.

3. Want of influence. It cannot perform the functions of a national organization, and lacks the strength to compel adoption of the measures which it recommends and the merits of which it attempts to prove. These weaknesses largely flow from the fact that it is not representative of the profession and that it lacks strong and effective affiliation and connection with the other bar organizations of the country.

WHAT ARE THE REMEDIES?

The remedies are not always as apparent as the defects, but in this case some are quite obvious.

1. Membership of the bar in good standing, or at most, membership in the local or state association of applicant's residence, should be the only qualification for membership in the American Bar Association.
2. A plan should be adopted providing for federation or affiliation of the local and state associations with the national, with concurrent membership, one charge to cover all dues, and the work and functions of these organizations should be planned and coordinated.

Such an attractive offer of affiliation could be made to the state associations, to those integrated as well as to those under the voluntary plan, mutually advantageous to both the state and national organizations, that acceptance would follow from the point of self interest alone, without consideration of the other important values which would be sure to follow.

The American Bar Association membership has not even kept pace with the growth of the profession. It has never had in its membership more than one-fifth of the lawyers, and now has about one-sixth. It has made sporadic efforts to place individuals on its membership rolls, but without even the hope, much less assurance, of reaching a majority of the profession. That method has been defeated in part by restrictive qualifications for membership instead of urging membership upon every lawyer who is a member in good standing of the bar of his state, or of his state or local bar association.

But that method has failed and now has no chance to succeed. If it is desirable to keep the membership comparatively small and restricted, not representative of the profession, then the present method should be continued; otherwise, some other method should be tried.

Other groups have flourished under the federation or affiliation plan. The medical profession is comparable to the legal profession, and it is therefore fair to compare the American Medical Association with the American Bar Association.

The American Medical Association is a federation of forty-eight state associations, and each state association has as its affiliates the local medical association of the state. The members of each local association are members of the state association and likewise members of the national association with one membership fee for all three. This places on the membership roll of the American Medical Association about sixty-seven per cent of the whole profession.

Action taken by the American Medical Association is the action of a two-thirds majority of the profession; standards fixed by it are the standards of the profession. Requirements for medical instruction and

preliminary education are readily complied with by the medical schools. Its income, about six times that of our national organization, enables it to do extensive work in research, gather valuable data and obtain the best expert advice before taking action affecting the public or the work of the profession. Its record shows astounding results.

An editorial appearing in the JOURNAL of the national organization, nine years after the federation plan was adopted, summed up progress at that time as follows:

“During the past nine years the American Medical Association has accomplished more for improvement of conditions in the profession, and for the good of the public, than during all the previous years of its existence. (It was organized sixty-three years before.) This is a strong statement, but a true one. What has been accomplished was made possible by the reorganization of the Association and its various branches.”

The medical profession has in a substantial way realized the advantages of the voluntary plan of organization. The plan used by the doctors was worked out by members of the legal profession. Lawyers are supposed to have special ability and originality in formulating and executing organization plans. The American Bar Association is thus another case of the shoemaker's children going without shoes.

If the national association would devote to an improvement of its own organization a small fraction of the effort that it has given to the better organization of state associations, it would be doing a most valuable and a much needed service for the legal profession. Of course, only the voluntary plan of organization is available to the American Bar Association.

Our profession is capable of producing an effective plan of organization. Such a plan is not only desirable—it is imperative. These two statements being all but universally accepted, it behooves us to fashion the plan and put it into operation.

President Appoints Committee on Constitutional Rights

Due to the war the executive committee of the Denver Bar Association deemed it advisable to create a committee on constitutional rights. The president has accordingly appointed the following committee, to whom all such matters should be referred:

W. W. Grant, chairman,

Peter H. Holme,
W. E. Hutton,

S. M. January,
Samuel D. Menin.