

# The Last Stage in Reprofessionalizing the Bar: The Wisconsin Bar Integration Movement, 1934-1956

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### Repository Citation

Terry Radtke, *The Last Stage in Reprofessionalizing the Bar: The Wisconsin Bar Integration Movement, 1934-1956*, 81 Marq. L. Rev. 1001 (1998).

Available at: <http://scholarship.law.marquette.edu/mulr/vol81/iss4/6>

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# THE LAST STAGE IN REPROFESSIONALIZING THE BAR: THE WISCONSIN BAR INTEGRATION MOVEMENT, 1934-1956

TERRY RADTKE\*

## I. INTRODUCTION

The integrated bar is a system in which lawyers must enroll in a state bar association before receiving a license to practice law. This is a precondition that is unique to the legal profession.<sup>1</sup> An integrated or mandatory bar exists today in a number of states. At present, integrated or mandatory bars exist in thirty-six states and territories as well as the District of Columbia.<sup>2</sup>

Throughout this century, a conflict over this exceptional institution has existed—a conflict that has been especially intense and enduring in Wisconsin. This article examines the conflict over bar integration both inside and outside Wisconsin's legal profession between 1934 and 1956.<sup>3</sup> Part II discusses the origins and the early years of the bar integration movement. Part III details the legislative history of the issue in Wisconsin between 1934 and 1943. Part IV examines the ultimate success of the

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1. I will use the term "integrated bar" to refer to membership in the state bar as a precondition for being a licensed attorney. There are a number of examinations of the "unified" or integrated bar movement. Two recent examples include Bradley A. Smith, *The Limits of Compulsory Professionalism: How the Unified Bar Harms The Legal Profession*, 22 FLA. ST. L. REV. 35 (1994) and Charles W. Sorenson, Jr., *The Integrated Bar and the Freedom of Non-association—Continuing Siege*, 63 NEB. L. REV. 30 (1984). The only book-length treatment of the subject is presented in DAVID DAYTON MCKEAN, *THE INTEGRATED BAR* (1963).

2. This number was compiled in Ralph H. Brock, *Giving Texas Lawyers Their Dues: The State Bar's Liability Under Hudson and Keller For Political and Ideological Activities*, 28 ST. MARY'S L. J. 47, 48 n.3 (1996).

3. A basic introduction to the subject of the integrated bar in Wisconsin is presented in PHILIP S. HABERMANN, *A HISTORY OF THE ORGANIZED BAR IN WISCONSIN* 38-52 (1986). See also Theodore J. Schneyer, *The Incoherence of the Unified Bar Concept: Generalizing from the Wisconsin Case*, 1983 AM. B. FOUND. RES. J 1 (1983) [hereinafter, *The Incoherence of the Unified Bar Concept*]. See also, Sheldon W. Hoenig, *Politics Of Bar Integration* (unpublished M.S. thesis, 1962). This article provides a useful account of relevant events and interviews with a number of the participants.

bar integration movement in the courts between 1943 and 1956. Finally, Part V examines the role played by the new leadership of the state bar in the eventual success of the bar integration movement in Wisconsin.

## II. THE ORIGINS OF THE BAR INTEGRATION MOVEMENT

During the late 19th and early 20th centuries, most occupations formed some type of a professional organization. These organizations influenced, in varying degrees, the development of American social and economic policy. It was during this time that powerful professional groups such as the American Medical Association ("AMA") emerged. Organizations such as these shaped the role of their professions in a modern society and in the evolving administrative state.<sup>4</sup>

The organization of the legal profession occurred slowly. To be sure, the process of licensing and regulation of the profession was "friendly" in that lawyers themselves were usually consulted in the making of legislation related to their business. Organized groups of attorneys, however, did not play a significant role in this process. The AMA, by contrast, grew in numbers and influence; by 1929, nearly sixty-five percent of America's physicians were members of the AMA. By contrast, only eighteen percent of the nation's lawyers were members of the American Bar Association in 1930. State bar associations also had low membership rates during these years.<sup>5</sup> These so-called "voluntary bars" were plagued by limited finances and limited influence at this time. Even in large urban areas, bar associations functioned mainly as social clubs and had little or no impact on policies or politics.<sup>6</sup>

The lack of an organized lobby for attorneys compounded another problem. In the first decades of the twentieth century, many members of the legal community thought that the profession was in the midst of a "crisis," which was caused by declining ethical standards and a surplus of attorneys. The bar integration movement was an answer to this crisis. The compulsory or integrated bar association movement sought to raise

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4. There is a sizable amount of literature on the Progressive Era. See generally RICHARD HOFSTADTER, *THE AGE OF REFORM FROM BRYAN TO F.D.R.* (1955); ROBERT H. WIEBE, *THE SEARCH FOR ORDER, 1877-1920* (1967). For the interaction between economic change and reform, see JOHN W. CHAMBERS III, *THE TYRANNY OF CHANGE: AMERICA IN THE PROGRESSIVE ERA, 1900-1917* (1980).

5. The concept of "friendly reform" is discussed in Lawrence Friedman, *Law Reform in Historical Perspective*, 13 ST. LOUIS U. L.J. 351 (1969). For an analysis of the impact of the American Medical Association, see PAUL STARR, *THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE* (1982), 235-89. For the membership problems of voluntary bar associations, see, Schneyer, *supra* note 3, at 8-9.

6. Schneyer, *supra* note 3, at 8-9.

the standards of the profession and speak as a unified voice for the interests of attorneys as a class.<sup>7</sup> The American Judicature Society ("AJS") made bar integration part of its law reform agenda in 1913. Based in Chicago, the AJS drafted a model bar integration statute in 1918.<sup>8</sup> The *Journal of the American Judicature Society* [hereinafter, the *Journal*] served as a source for information and publicity on the subject.<sup>9</sup>

Herbert Harley, the executive secretary of the AJS, was one of the leading spokesmen of the bar integration movement. Harley outlined the basic principles of the reform movement in a speech that he gave to the Lancaster County Bar Association of Lincoln, Nebraska on December 28, 1914. According to Harley, the impact of specialization, the growth of large law firms, and the adversary system itself fragmented any degree of professional consciousness among lawyers. Rather, these trends reinforced the traditional sense of individualism among lawyers. Strong state bar organizations could counter these trends and assist lawyers in bolstering their status and promote professional standards and discipline.<sup>10</sup> Harley praised the Law Society of Upper Canada and its role in the Canadian legal system. The unified bar in Canada administered lawyer discipline and controlled the bar admissions process.

In an American version of a unified bar, all practicing attorneys would be required to be members, pay dues, abide by its rules, and adhere to a code of ethics. Attorneys who violated the bar's rules and code would be subject to expulsion. Proponents of bar integration claimed that it was only fair and equitable that all lawyers bear the costs of an association that promoted the interests and ideals of the profession as a whole.<sup>11</sup> Such a renowned legal scholar as Roscoe Pound described the bar integration movement as "the last stage in reprofessionalizing the Bar."<sup>12</sup>

Professional regulation has traditionally been a state concern. Consequently, voluntary state bars had to lobby their legislatures for action. Three basic bar integration strategies emerged in the early twentieth century.<sup>13</sup> The first plan, often referred to as the "California Plan,"

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7. See LAWRENCE FRIEDMAN, *A HISTORY OF AMERICAN LAW* 648-652 (1985). An analysis of the "crisis" is presented in Rayman L. Solomon, *Five Crises or One: The Concept of Legal Professionalism*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES* 144-73 (Robert L. Nelson, et al. eds., 1992).

8. Schneyer, *supra* note 3, at 9. See also MCKEAN, *supra* note 1, at 30-37.

9. Herbert Harley, *A Lawyer's Trust*, 29 J. AM. JUDICATURE SOC'Y 50 (1945); Smith *supra* note 1, at 38-39.

10. See SORENSON, *supra* note 1, at 30-37.

11. See Annotation, *Integrated State Bar*, 114 A.L.R. 161, 161-62 (1938).

12. ROSCOE POUND, *THE LAWYER IN ANTIQUITY TO MODERN TIMES* 349 (1953).

13. Clarence F. Giles, *An Analysis of the Integrated Bar*, 17 ALB. L. REV. 231, 233-34

gave state legislatures the ultimate control over attorneys. This was common in states where the power to control or regulate attorneys was not delegated by the constitution. Many of these same legislatures eventually revised their statutes to give the judiciary more of a role.

The second plan, the "Kentucky Plan," involved the passage of a statute that established a "broad outline of organization" to be refined by subsequent court rules. This method was used in states where strong opposition to close legislative control existed. This scheme put lawyers under the more direct supervision of the courts. The third plan relied almost exclusively on the court's inherent powers to control the bar. It was often implemented where the legislature failed to approve bar integration or where political conflicts in the legislature overturned it. In Oklahoma, for example, the state legislature integrated the state bar in 1929. The act, however, was repealed ten years later. The Oklahoma Supreme Court quickly exercised its power by combining rival bar organizations within the state and creating a unified Oklahoma Bar Association.<sup>14</sup>

A slightly different sequence of events occurred in Wisconsin. Although the legislature passed a statute in 1943 to permit the Supreme Court to integrate the bar, the Court declared that it did not need the legislature's permission and could constitutionally integrate the bar under its own authority.

### III. THE WISCONSIN CAMPAIGN FOR BAR INTEGRATION, 1934-1956

In 1878, the Wisconsin Bar Association was founded as a voluntary association. At its first convention, Chief Justice Ryan called on the state's attorneys to work together on legislative issues and to eliminate the unethical members of the legal profession in Wisconsin.<sup>15</sup> There was no actual recommendation, however, to match this rhetoric. The first recorded discussion of bar integration in Wisconsin occurred during the 1914 convention. President Claire B. Bird portrayed an integrated bar as a fundamental and radical reform that was the "only remedy" for the profession's ills. Bird maintained:

Any action taken would be representative of the whole bar;  
there would be no need of spasmodic effort, as now to keep up

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(1953).

14. Maynard E. Pirsig, *Integration of the Bar and Judicial Responsibility*, 32 MINN. L. REV. 1, 16-19 (1947). Another account of their tangled process is presented in *In re Integration and the State Bar of Oklahoma*, 95 P.2d 113 (Okla. 1939).

15. Ryan's statement is discussed in Edmund B. Shea, *The President's Annual Address*, 35 REP. ST. B. ASS'N WIS. 4, 7 (1945). See also Schneyer, *supra* note 3, at 15 n.78.

its work and sustain interest in it; there would be sufficient funds and authority to investigate infractions and enforce standards of conduct, which would include and permit discipline in cases of minor shortcomings that do not merit the severe action of suspension or disbarment; lawyers would come to realize that they are more officers of the Court and less the agents of selfish individuals or interests; and the responsibility imposed would result unconsciously in the recognition of higher standards and more disinterested services.<sup>16</sup>

The first campaign to persuade the Wisconsin legislature to integrate the bar began in 1933. Officers of the Wisconsin Bar Association had long complained of their lack of significance in "the affairs of the State."<sup>17</sup> Unlike the State Medical Society or the Teachers' Association, most bills sponsored by the Wisconsin Bar had met defeat. Lloyd K. Garrison, who had recently been appointed Dean of the University of Wisconsin Law School, spoke directly to the issue in that year at the state bar convention. Garrison described the weaknesses of the voluntary organization and contrasted it with the positive experience of the integrated bar in other states. He then suggested that the state bar present a plan for an integrated bar to the Wisconsin legislature.<sup>18</sup> Garrison emphasized the value of being able "to go to the legislature with well thought out programs" that would improve the image of lawyers.<sup>19</sup>

Several developments may have contributed to this decision. The Wisconsin Bar Association was successful during the 1920s in shaping legal policy. The legislature had given the Wisconsin Supreme Court the authority to change court practice. The court created a committee—with the active assistance of the Wisconsin Bar Association—to study the situation and recommend changes. In 1927, the role of the Board of Bar Commissioners was expanded to include investigation and prosecution of grievances against individual attorneys.<sup>20</sup> Earlier, in a 1925 ruling, the Supreme Court accepted the ABA Canons as guidelines for the conduct of

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16. Claire B. Bird, *This Association: What Can It Be and Do?* 10 REP. ST. B. ASS'N WIS. 193, 203-04 (1914).

17. *Report of Committee Appointed in 1917 to Consider and Report on the Address of President Goggins*, 13 REP. ST. B. ASS'N WIS. 332, 338-39 (1920). See also Schneyer, *supra* note 3, at 8-9.

18. Lloyd K. Garrison, *Experience of Other States With Incorporated Bars*, PROCEEDINGS ST. B. WIS. 41-42 (1933).

19. *Report of the Committee on Qualifications to the Wisconsin State Bar Association of Wisconsin*, 23 REP. ST. B. ASS'N WIS. 79, 84-85 (1933).

20. See *Wisconsin Takes a Long Step Forward*, 13 J. AM. JUDICATURE SOC'Y 71 (1929); Horace Wilkie, *The Role of the Supreme Court in Regulating the Ethics of Lawyers and Judges*, 49 WIS. B. BULL. 23, 25 (Feb. 1976).

Wisconsin lawyers.<sup>21</sup> The impact of these reforms, as Theodore Schneyer suggests, may have lessened the perceived need for bar integration.<sup>22</sup> By 1935, Garrison admitted “[there was] no great disciplinary problem in Wisconsin,” but he continued to argue the merits of bar integration.<sup>23</sup>

The Wisconsin bar formally made bar integration a legislative issue nearly 20 years after Bird’s first statement. The severe problems of the voluntary bar in retaining members during the Great Depression probably contributed to this decision.<sup>24</sup> Fittingly, Bird was named as the chair of the new Bar Integration Committee. During the winter of 1933-34, the new Bar Integration Committee examined the integration statutes of other states, analyzed newspaper articles on the subject from across the state, and conducted “voluminous correspondence” with individuals who had conducted successful bar integration campaigns. The deans of the law schools at both the University of Wisconsin and Marquette University endorsed the plan. The Bird Committee proclaimed that “bar integration everywhere has received the overwhelming endorsement of lawyers and the public.”<sup>25</sup>

Bird reiterated the message of 1914: bar integration was an overdue reform that would change the legal profession and its image among the general public. “In permitting our profession to degenerate into a private commercial business,” Bird stated in 1934, “we have well nigh forgotten our public responsibility as court officers.” The state should demand more of lawyers than other occupations and compulsory membership in a professional organization would be “good for the public.” Wisconsin proponents also stressed that attorneys were educated and empowered to serve the general public. Lawyers, unlike businessmen, were able to see beyond their “selfish interests” and work solely for the public good. Earlier in the century, Bird noted that personal injury lawyers and defense lawyers put together a comprehensive plan for workmen’s compensation in Wisconsin, even at the cost of their own income. Since attorneys were “officers of the court,” they approached political issues—in Bird’s mind at least—with the level of civic-mindedness expected of statesmen and public officials.<sup>26</sup>

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21. See *Heppe v. Petrie*, 200 N.W. 857 (Wis. 1924).

22. Schneyer *supra* note 3, at 23-26.

23. Garrison, *Remarks*, 24 REP. ST. B. ASS’N OF WIS. 140 (June 1934).

24. See Schneyer, *supra* note 3, at 12 n.61.

25. *The Integrated Bar Bill*, 8 B. ST. B. ASS’N WIS. 5-6 (Supp. 1935).

26. Claire Bird, *Reporting for the Committee on The Unified Bar*, 24 REP. WIS. ST. B. ASS’N. 116, 117-18 (1934). See also *Bar Integration Acts in the Making*, 18 J. AM. JUDICATURE SOC’Y 25 (1934).

It would take more than a declaration of public service, however, to convince Wisconsin attorneys of the necessity of an integrated bar. Earlier in the century, Harley and the AJS emphasized the tangible economic benefits that bar integration would bring. Voluntary bars were unable to protect the economic interests of lawyers. By contrast, an integrated bar could fix prices through a minimum fee schedule and “[allow] tongue and buckle to meet.”<sup>27</sup> The AJS amplified on this theme during the Great Depression. The *Journal* often reported on the plight of lawyers in other countries during the 1930s. For example, in 1935 the German bar advocated a “complete closure” of admissions to the bar for three years” and a more restrictive policy after that. The *Journal* reported with approval the comments of the president of the German Bar Association that the “proletarianization” of the bar must be forestalled by controls on the supply of future lawyers.<sup>28</sup> The American bar integration movement certainly intensified during the Great Depression. In the 1930s, the bar was unified in 15 states—more than any other decade since the movement began.<sup>29</sup>

In Wisconsin, an income-oriented approach clearly had appeal. Some public statements suggest that bar integration was presented as a panacea for all economic ills. “The existence of an absolute oversupply of lawyers,” stated Garrison in 1935, “seems to have been seriously asserted [in the state of Wisconsin] only within the last six years.”<sup>30</sup> The Depression apparently cut into the incomes of lawyers, even though the volume of business grew due to increased bankruptcies and debt collections.<sup>31</sup> Advocates of bar integration maintained that its passage would aid in the fight against the unauthorized practice of law by collection agencies.<sup>32</sup> A committee report from the State Bar noted that an influx of dues from new members would create a “war chest” that could be used to finance investigations of the unauthorized practice of law.<sup>33</sup> In 1937 President Graves told the State Bar that bar integration would “protect the bread

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27. This statement is recounted in Herbert Harley, *A Lawyer's Trust*, 29 J. AM. JUDICATURE SOC'Y 50 (1945).

28. *German Lawyers in Desperate Plight*, 17 J. AM. JUDICATURE SOC'Y 60 (1933).

29. JEFFREY A. PARNES, CITATIONS AND BIBLIOGRAPHY ON THE UNIFIED BAR IN THE UNITED STATES 3-5 (1973 & Supp.).

30. Lloyd K. Garrison, *A Survey of the Wisconsin Bar*, 10 WIS. L. REV. 131, 133 (1935).

31. *Claims State Lawyers Make Good Incomes*, CAP. TIMES, May 6, 1935.

32. *Integrated Bar Bill Argued*, MILWAUKEE J., Apr. 7, 1937. The problem of non-lawyers performing legal work is discussed in Warren Resh, *The Unauthorized Practice of Law-Activities of the State Bar Association*, 1945 WIS. L. REV. 163 (1945).

33. *Report of the Committee on the Unauthorized Practice of Law*, 26 REP. ST. B. ASS'N 86, 90 (1936).



and butter of its members.” Graves stated that lawyers deserved “practical results of direct and visible benefit to them.” These goals included eliminating the unauthorized practice of law or punishing those attorneys who charged below the proposed fee schedule. There were simply “too many lawyers . . . law schools, students,” and “if the bar [would] be integrated, . . . all such problems may be . . . solved.”<sup>34</sup>

The first significant bar integration bill was introduced in 1935. At the time, only about half of the state’s approximately 3,000 lawyers were members of the State Bar Association. The bill sought to create a bar association comprised of “every lawyer who practiced in the state.” All members would elect a president and a vice-president. A board of governors would be elected for three-year terms from each of the state’s judicial circuits. The bill outlined specific powers of the board of governors. The board was to set up rules for elections, determine annual dues, provide for an annual meeting of the general membership, and define “unprofessional conduct.” The board was also given broad powers to “investigate complaints of unauthorized practice of law,” as well as any misconduct among its own members. A referee would conduct a hearing and an internal committee would review the transcript, receive comments from interested parties, and ultimately make a decision on the matter. The affected party would then have thirty days to ask the Supreme Court for review. The proposed statute would not eliminate the power of the state bar commissioners or deprive citizens of the state from starting disciplinary proceedings on their own. The courts could still “censure, suspend or disbar, or prescribe qualifications for practice in addition to the minimum qualifications” already provided.<sup>35</sup>

Wisconsin party politics, however, complicated this situation. The Republican Party dominated the state legislature in the 1930s.<sup>36</sup> The Republicans were divided into the conservatives or “Stalwarts” and the “Progressives.” In state government, the Progressives championed the interests of “the people” by creating a state income tax and establishing several regulatory agencies. In 1934, the Progressive faction formed an independent political organization. Progressives and radicals often characterized lawyers as tools of “big business” and “foreign corporations.” The judiciary was also considered to be an obstacle to reform. The Pro-

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34. Garrison, *supra* note 30, at 165-66; R.B. Graves, *Address of the President*, 27 REP. ST. B. ASS’N WIS. 11, 20 (1937).

35. STATE OF WIS. LEGISLATURE, ASSEMBLY, COMM. ON THE JUDICIARY, A BILL . . . TO CREATE SECTION 256.31 PROVIDING FOR THE ORGANIZATION . . . OF THE WIS. STATE BAR ASS’N 573 (March, 1935).

36. LEON D. EPSTEIN, *POLITICS IN WISCONSIN* 35-46 (1958).

gressives advocated the popular recall of judges and the curbing of judicial discretion by constitutional amendment.<sup>37</sup> While Wisconsin courts were malleable to social and political reform, Progressives were skeptical of any reform that might insulate the legal profession from public scrutiny. The bar integration bill would have to garner enough support from the Progressive Party to succeed in the state legislature.

Supporters and opponents alike viewed the reform in the larger context of conflicts over government regulation of the economy and individual activity. Some Wisconsin Progressives, for example, maintained that a unified bar would function much as a "lawyers' trust." An integrated bar would be dominated by the "big corporation attorneys that always grab off the boss jobs in such organizations" and quash the "small-time liberal lawyer" with threats of discipline."<sup>38</sup> A Wisconsin state senator argued that any "organizations of lawyers provide a dangerous combination . . . in which one lawyer is in cahoots with another on the opposite side."<sup>39</sup>

The attitudes of William T. Evjue typified the position of many of the state's Progressives on the issue. Evjue was the editor of Madison's principal newspaper, the *Madison Capital Times* [hereinafter, the *Capital Times*].<sup>40</sup> Evjue often stated that "corporation" lawyers controlled the voluntary bar association in Wisconsin. These lawyers would use the disciplinary powers of the integrated bar to manipulate yet another American institution in favor of trusts and corporations. The *Capital Times* painted "integration-oriented lawyers" as pawns of "the rich and powerful" in these years. Evjue noted that Bird was a "corporation lawyer" and that his Wausau-based law firm "represented the interests of corporate wealth." Evjue and other opponents also mentioned that the membership problems within the State Bar meant that Wisconsin's lawyers had already "voted" against bar membership with their pocketbook.<sup>41</sup>

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37. The most succinct explanation of the origins of the Wisconsin Progressive movement is ROBERT MAXWELL, *LAFOLLETTE AND THE RISE OF THE PROGRESSIVES IN WISCONSIN* (1956). The Wisconsin Progressive Party during the 1930s is discussed in JOHN F. MILLER, *GOVERNOR PHILIP LAFOLLETTE, THE WISCONSIN PROGRESSIVE PARTY, AND THE NEW DEAL* (1982).

38. *Editorial*, *MADISON CAP. TIMES*, June 30, 1935, at 22.

39. Gabriel J. Tolan, *Hunt Pours Fire on State Bar Measures*, *MADISON CAP. TIMES*, May 7, 1935, at 2.

40. See WILLIAM T. EVJUE, *A FIGHTING EDITOR* (1968). See Charles H. Backstrom, *The Progressive Party of Wisconsin, 1934-1946* (1956) (unpublished Ph.D. dissertation, University of Wisconsin) (discussing Evjue and the Progressive Party.)

41. *Editorial*, *MADISON CAP. TIMES*, Dec. 5, 1941; William T. Evjue, *The Integrated Bar Is Proposed Again*, *MADISON CAP. TIMES*, Mar. 3, 1937, at 2.

Public hearings on the issue of bar integration revealed that opposition or support of the bill often transcended ideology. Joseph Padway, a Milwaukee labor attorney, declared that he supported the bill because "it has in it one of the most sacred principles of labor." Padway hoped that lawyers and judges would learn that workers had the same right to a union shop when labor cases came up for consideration. At the same hearing, however, a self-described "liberal lawyer" stated that the bill was a "real menace" to the public. He remarked that, "in Alabama, where a unified bar is in operation, the bar refused to furnish an attorney to defend the Scottsboro negroes."<sup>42</sup> Others saw a more sinister plan afoot. For example, a Madison attorney viewed this as but the first phase of a secret campaign by the ABA to force Wisconsin's lawyers into the conservative national organization.<sup>43</sup>

Wisconsin critics of bar integration also pointed to the dangers of mixing politics and the bar. Huey P. Long's "unfriendly" unification of the Louisiana bar was a case in point: Only pro-Long individuals were selected to be members of the governing board and only lawyers employed by the State actively participated in the organization.<sup>44</sup> Many Wisconsin lawyers were also alarmed by events in nearby Illinois. In 1933, the Illinois Supreme Court delegated extraordinary authority to two private bar associations to investigate and prosecute grievances against members and non-members for ethical violations.<sup>45</sup> State-dictated bar membership reminded many of the controversies surrounding government planning and the New Deal. One Wisconsin politician stated that he opposed the bar integration bill because government lawyers were "already telling farmers where to plant their corn."<sup>46</sup> Others feared that, if bar integration succeeded, people could no longer represent themselves pro se in small claims courts but have to employ lawyers whose fees and costs were immune from competition. As the President of the Vernon County Bar Association noted:

Every argument and point made in the decisions of the supreme court of the United States in the N.R.A. and the N.I.R.A. cases against the constitutionality of "force" legislation . . . applies

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42. *50 Attorneys Argue Over 'Closed Shop' for Lawyers*, MADISON CAP. TIMES, Apr. 4, 1935.

43. *Integrated Bar Bill Fund Raising, Wall Street Measure, U.S. Court Official Claims*, MADISON CAP. TIMES, Apr. 23, 1937.

44. *See Statutory Organization for Louisiana Bar*, 18 J. AM. JUDICATURE SOC'Y 110 (1934).

45. *See Illinois Bar on Integration Route*, 17 J. AM. JUDICATURE SOC'Y 21 (June 1933). *See also* Schneyer, *supra* note 3, at 23.

46. *Hunt Pours Fire on State Bar Measure*, MADISON CAP. TIMES, May 7, 1935.

here to bar integration. Of course, those who sponsored this law were probably among those who still think the N.R.A. and N.I.R.A cases were wrongly decided, and that a little thing like the constitution is of no moment.<sup>47</sup>

Finally, many Progressives were opposed to the Wisconsin Bar's support for the elimination of the popular election of judges. In 1934, the Judicial Selection Committee of the State Bar endorsed the "Missouri Plan." This scheme called for the replacement of regular elections with periodic referenda on sitting judges. Judges would be chosen by the governor from a list of jurists compiled by the State Bar's Judicial Council. Not surprisingly, the plan met with a good deal of opposition in Wisconsin.<sup>48</sup> Evjue and the *Capital Times* campaigned against both bar integration and court reform because these reforms would lead to the erosion of popular democracy.<sup>49</sup>

The bill thus went through significant changes while in committee. An amendment was introduced by David Sigman, a Progressive assemblyman from Two Rivers, which declared that: "Political economic or religious views in any manner shall not be used as grounds for admission or disbarment in the practice of the law." Sigman introduced this measure to alleviate the concern of those who championed the interests of "little" lawyers. Even with these amendments, however, the bill failed to garner enough support within the Progressive Party.<sup>50</sup>

The struggle in the legislature was conducted from May through August in 1935. The Bar Integration bill passed the Assembly by a vote of 51 to 38 and in the Senate by 17 to 14. The configuration of the vote can be attributed to the fact that Progressives made up less than half of the membership in the assembly. With one exception, the Assembly voted against the bill. The bar integration measure was essentially passed by a coalition of Stalwart Republicans and Democrats who combined to constitute a slight majority. The final draft of the bill contained an amendment on admissions and disbarments, along with another section added by the Senate, which provided that the unified bar could not "endorse, oppose, or contribute to any political party or candidate for

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47. *From the President of the Vernon County Bar Ass'n*, MADISON CAP. TIMES May 11, 1943.

48. See Joseph A. Ranney, *Practicing Law in the 20th Century: The Courts and the Bar Grapple with Growth, Part 1*, 70 WIS. LAWYER 14, 19 (March 1997).

49. See *Green Lake Convention of Wisconsin Bar Association*, MADISON CAP. TIMES, June 29, 1937.

50. STATE OF WIS. LEGISLATURE, ASSEMBLY, AMENDMENT TO A BILL . . . TO PROVIDE FOR THE ORGANIZATION . . . OF THE WIS. BAR ASS'N, AMENDMENT n.1A to Bill n.573A (July 11, 1935).

public office.”<sup>51</sup>

When the bill passed, Governor Philip LaFollette was in Washington, D.C.<sup>52</sup> In LaFollette's absence, acting Governor O'Malley, a onetime railroad conductor, vetoed the bill. O'Malley reiterated the sentiment of many laypersons on bar integration. The veto message stated that bar integration “would destroy [the] local bar associations which had recently developed and could better serve the needs of the individual lawyers than could individuals at a central office far away.” The trend, if encouraged, would “destroy the last remaining particle of home rule in the profession.” An attempt to override the acting governor's veto failed in the Senate by a vote of 13 to 19.<sup>53</sup>

A subsequent bill was introduced in the 1937 legislative session. This bill was shorter and much less detailed than the version introduced only two years earlier. Instead of an elaborate description of the integrated bar's structure and powers, the bill simply provided that the Supreme Court should organize the state bar as a “representative, self-governing body,” and should prescribe the group's disciplinary powers. This bill eventually died in committee with the closing of the session.<sup>54</sup> Two similar bills—containing the language of the 1937 bill—met a similar fate in the 1939 and 1941 sessions.<sup>55</sup>

Finally, in 1943, the political logjam broke. The Wisconsin bar was integrated when the Assembly and the Senate passed a bill by votes of 60 to 31 and 24 to 9, respectively. The bill was subsequently vetoed because bar integration would “encroach unduly” on the freedom of the individual lawyer.<sup>56</sup> The bill, however, was enacted over the governor's veto. The integration statute was short and broadly worded. It established membership in the “State Bar of Wisconsin” as a “condition precedent to the right to practice law in Wisconsin.” The Supreme Court of Wisconsin

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51. STATE OF WIS. LEGISLATURE, SENATE, COMM. ON LEGISLATIVE PROCEDURE, A BILL . . . TO PROVIDE FOR THE ORGANIZATION . . . OF THE WIS. BAR ASS'N, Bill n.119S (Feb. 13, 1935).

52. According to Philip Habermann, Governor LaFollette had originally supported bar integration, but may have changed his mind when many Progressives publicly opposed it. See HABERMANN, *supra* note 3, at 40.

53. *O'Malley Vetoes Bar Bill, Says It Hurts Home Rule*, MILWAUKEE J., Aug. 1, 1935, at 1; STATE OF WISCONSIN, LEGISLATIVE JOURNALS, 62d SESS. 73 (1935).

54. STATE OF WIS. LEGISLATURE, ASSEMBLY, COMM. ON PUBLIC WELFARE, A BILL . . . TO PROVIDE FOR THE ORGANIZATION . . . OF THE WIS. BAR ASS'N, Bill n.24A (Mar. 4, 1937).

55. STATE OF WISCONSIN, LEGISLATIVE JOURNALS, 63rd SESS. 600 (1937).

56. Orville Loomis was elected governor in 1942. He died, however, before his inauguration. Under these circumstances, the lieutenant governor became the acting governor for the rest of the term. See Hoenig, *supra* note 3, at 68.

was given the authority to define the rights of its members and supervise the integrated bar "in the efficient administration of justice."<sup>57</sup>

The story behind the eventual passage of this bill over the acting governor's veto is a complicated one. The *Capital Times* described the entire process as "smelly and raw."<sup>58</sup> This controversy and acrimony provided the basis for the first legal challenge to bar integration that reached the Wisconsin Supreme Court.

The bill returned to the Senate after its veto, where it was overridden by a little more than the required two-thirds majority—22 to 8. In the Assembly, anti-integration Assemblyman Michael O'Connell, a Milwaukee Democrat and attorney, raised a point of order that the "use of pairs" was invalid on a vote to override a veto. The pair was a parliamentary device created to give a legislator who was legitimately sick or absent the chance to have his or her vote recorded.<sup>59</sup> Republican Speaker Thomson ruled that pairs was appropriate "under these conditions." When the Assembly eventually voted on the bill, 51 members voted *for* the integration bill and 25 voted *no*. In this vote, 8 members were absent and 25 voted *no*. Based on this count, the speaker declared that the Assembly had passed the bill over the acting Governor's veto. This announcement "caused an uproar in the Assembly." The 51-25 vote overturned the veto only if the paired votes were *not counted*. Had the pairs been counted, the governor's veto would have been sustained by a vote of 59-33, one vote short of the required two-thirds majority.<sup>60</sup>

O'Connell immediately wanted to know why pairs had not been counted under the provisions of the decision earlier in the day. Thomson replied that "pairs were a courtesy extended to absent members" so that they might record their vote on a bill, "but that paired votes did not count in the total vote." The Assembly's journal read that Thomson had answered O'Connell's original question on pairs by stating that "it was proper to pair on all questions" of this kind. Progressive assemblyman Lyall Beggs of Madison later maintained that this and other possible alterations of the record were "added after the journal went to the printer."<sup>61</sup> The disputed vote was only one of several peculiarities during

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57. 1943 WIS. LAWS 315, 497.

58. Editorial, *Smelly and Raw*, MADISON CAP. TIMES, May 6, 1943.

59. ROBERT LUCE, LEGISLATIVE PROCEDURE: PARLIAMENTARY PRACTICE AND THE COURSE OF BUSINESS IN THE FRAMING OF STATUTES 379-80 (1922).

60. STATE OF WISCONSIN, LEGISLATIVE JOURNALS, 66th SESS. 42-44 (1943). For an analysis of this voting procedure, see *Integration of the Bar Case*, 11 N.W.2d 604 607-17 (Wis. 1943).

61. See Hoenig, *supra* note 3, at 70-72 (interviewing Michael O'Connell and Lyall T.

the Assembly's reexamination of the integrated bar. Ernest Heden, a longtime opponent of bar integration in the Assembly, told the press that "he wanted to vote to sustain the veto but forgot to act because he was watching the role call." Other assemblymen either unexpectedly changed their vote or lost the opportunity through various procedural maneuvers. Whatever the motivation, each individual legislator's action had a cumulative impact: they made possible the 51-vote majority needed by the pro-integration forces to sustain the veto.<sup>62</sup>

A bar integration statute was thus enacted after nearly an eight-year struggle in the legislature. Charges of constitutional violations and the nature of the vote nonetheless tainted the victory. Public statements that the veto was overridden purely on the merits of the issue were inconsistent with the record. At a Republican caucus before the vote on the veto, it appeared that the party's leadership lacked support to repass the bill. According to an interview given by one Republican assemblyman, the leadership tried to build unity by telling the caucus "that the Governor was vetoing too many bills" and asked party members to override the veto "to prevent the Assembly from losing face." One story circulated that a Republican opponent of the bill was asked by a colleague to help override the veto because the Governor's action during the session had created a "rise in public esteem" for him while that of the legislature had declined.<sup>63</sup> Immediately after the roll call vote on May 5, 1941, the *Wisconsin State Journal* queried Republican Mark Catlin, Jr. about the voting peculiarities. Catlin declared that "the bill had been vetoed by two acting governors and he thought that it deserved a fair trial." When a journalist countered that it was the procedure by which the bill was passed that created the controversy, Catlin simply remarked: "I think the end justifies the means."<sup>64</sup>

#### IV. POLITICS BY OTHER MEANS: THE SUPREME COURT AND BAR INTEGRATION, 1943-1946

The judiciary now became the battleground in the campaign for bar integration. The loss in the legislature simply changed tactics for the anti-integration camp. Opponents of bar integration challenged both the validity of the vote to override the governor's veto and the legislature's

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Beggs).

62. *I Vote Margin is Scored By Rule Flouting*, MADISON CAP. TIMES, May 5, 1943, at 3. See also *Solons Quizzed For Ducking on Bar Bill Vote*, MADISON CAP. TIMES, May 6, 1943, at 1.

63. *Integrated Bar Becomes Law*, MILWAUKEE J., May 6, 1943, at 2.

64. *Bar Bill and House Kill Goodland's Veto*, WIS. ST. J., May 5, 1943, at 3.

authority to order the Supreme Court to act in this fashion.

Only a few days after the Assembly overrode the veto, Acting Governor Goodland brought suit against Secretary of State Fred Zimmermann to enjoin him from publishing the statute. Wisconsin's Constitution provided that a law could not be enforced until it was published in the state's official record. Goodland cited the procedural irregularities and maintained that the bill would not have been passed except for the disputed actions. In addition, Goodland's suit also declared that the bill amounted to an unconstitutional delegation of legislative power to the Supreme Court. A circuit judge from Dane County granted the injunction.<sup>65</sup>

When the case first reached the Supreme Court, the injunction was vacated because there could be no judicial interference with a procedure involving an "authentic legislative act." The Court further declared that it could not deal with the constitutionality of a law until the law was enacted and that someone had been deprived of his rights because of it. The court agreed with the governor, however, that after official publication it could determine the validity of the bill on its own.<sup>66</sup>

The Supreme Court eventually ruled on the legality of the integration statute in 1943. With respect to the legality of the Assembly's vote to override the veto, the court declared that it could look no further than the Assembly journal. If the journal's "plain language" showed that the Constitution's rule for passing legislation had been observed, the court's examination ceased. The Assembly had a long-standing rule not to count paired voter as present. Accordingly, the bill was enacted.<sup>67</sup>

The court next addressed the question of whether the statute was constitutional because one branch ordered another branch of government to act. The court declared that, while the legislature could not compel action, it could act upon issues involving the "general welfare," which included the supervision and licensing of trades and professions. The court even suggested that it would adopt the legislature's suggestion so long as the plan did not "embarrass the court or impair justice." The court, nonetheless declined to rule on the subject until the end of World War II "because a large number of the lawyers [were] in the military."<sup>68</sup>

Before the Supreme Court had a chance to decide this issue, an at-

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65. *Goodland v. Zimmerman*, 1 N.W.2d 180 (1943); *See Injunction Granted in Bar Issue*, MILWAUKEE J., May 30, 1943, at 2.

66. *See Edmund Shea, Wisconsin's Successful Bar Integration Campaign*, 27 J. AM. JUDICATURE SOC'Y 13 (1943).

67. *Integration of the Bar Case*, 11 N.W.2d 604, 616-17 (Wis. 1943).

68. *Id.* at 624-25. This seems to have been a widespread sentiment. *See Hold Up Unified Bar Bill Until Lawyers in Service Return, Is Plea*, MADISON CAP. TIMES, Feb. 11, 1943.



tempt was made in the legislature to repeal the integration statute. In 1945, a bill introduced by O'Connell was defeated in the Assembly when a "motion to advance the matter by engrossment" failed by a 47 to 47 vote. The Assembly showed a majority in favor of the measure when it voted against a motion by Thomson, now the Republican floor leader, "to kill the bill." Some Progressives later commented that they eventually opposed the measure because the bill was now meaningless in light of the Supreme Court's declaration that they might integrate the bar in the absence of legislative authorization.<sup>69</sup>

More alarming to the State Bar was the controversy surrounding the spring 1945 election. Justice Barlow of the Supreme Court ran for re-election against the Secretary of State, Fred R. Zimmerman. A former governor, Zimmerman had wide name recognition and had been elected by wide margins to previous offices in Wisconsin. The most striking aspect of his candidacy was that he was not an attorney. This was not required under the constitution and the laws of Wisconsin. Indeed, Zimmerman ran against the judiciary and blasted the "corporation lawyer crowd" that sponsored judicial reform and bar integration. Zimmerman condemned both proposals as "un-American, undemocratic importations from Europe . . . . The insurgent candidate proclaimed that his decisions as a Supreme Court justice would be based upon "common sense," not the common law.<sup>70</sup> This time, both the bar and most of the state press—Progressive and otherwise—united in opposition to Zimmerman. Barlow was subsequently re-elected after capturing 60% of the popular vote.<sup>71</sup>

The Zimmerman candidacy, however, seemed to scare both the legislature and the judiciary away from the issue. The next attempt to induce the Supreme Court to integrate the bar occurred in 1946. Quincy H. Hale, then President of the Wisconsin Bar Association, filed a petition on the matter with the court. The court rather surprisingly reversed itself on the matter.<sup>72</sup>

The court's analysis in 1946 focused on the tension between state

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69. *Unified Bar Bill Repealer Voted Down*, MADISON CAP. TIMES, May 8, 1945, at 2; *Pending Legislation*, 18 B. ST. BAR ASS'N OF WIS. 92, 95 (1945); *Defunct Progressives*, MADISON CAP. TIMES, May 6, 1945.

70. For a personal—and biased—account of Zimmerman and his career, see PHILIP LA FOLLETTE, *ADVENTURES IN POLITICS: THE MEMOIRS OF PHILIP LAFOLLETTE* 124-27 (Donald Young, ed.: 1970). See also *Bid for Bench Tops Interest in Spring Vote*, MILWAUKEE J., Apr. 1, 1945.

71. See *Barlow Beats Zimmerman by Big Margin*, MILWAUKEE J., Apr. 14, 1945; The MADISON CAP. TIMES was the only newspaper in the state to endorse Zimmerman's candidacy. See *Echoes From the Press*, 18 B. ST. BAR ASS'N WIS. 53 (1945).

72. In re *Integration of the Bar*, 25 N.W.2d 500 (Wis. 1946).

regulation and professional autonomy. In a *per curiam* opinion, the court noted that both sides of the issue had the same set of assumptions as to the role of the judiciary. This consensus included the following assumption:

that the court will fully exhaust its function by setting up the organization and requiring dues to be paid and that from there on the court will leave the organized bar to operate in a completely democratic and voluntary manner, dealing with such problems . . . and expending its moneys for these democratically elected purposes.<sup>73</sup>

Although it had the authority to do so, the court considered state-ordered bar membership to be "unwise." The court reasoned that it would compel attorneys to be agents of the judiciary and "impose upon the Court [the] embarrassing duties of censorship and audit which might lead to unfortunate misunderstandings." The original goals of bar integration—particularly improving the morale and expertise of lawyers—could still be attained by a voluntary organization.<sup>74</sup>

The 1946 *Integration Opinion* was condemned by proponents of bar integration as an "eccentric" holding. The editors of the *Journal* were quick to point out that, except in matters of bar admission and attorney discipline, courts and legislatures left the integrated state bars to themselves. By 1946, however, the politics of bar integration in Wisconsin probably had more influence on judicial opinion than anything else.<sup>75</sup> The bar thus turned to other devices in an effort to rekindle support for the reform effort.

Advocates of bar integration turned to another tactic as a means to achieve their goal. Demands for a referendum among attorneys on the issue of bar integration were expressed as early as 1937. The Wisconsin State Bar Association was informed in 1941 that its integration bill failed in the legislature because it "desired to give us what we want but could not be convinced that we all wanted it."<sup>76</sup>

The desire for a referendum was also expressed by the *Capital Times*, legislators, and individual attorneys. Evjue criticized the State Bar on a number of occasions because there was no attempt to obtain a response from the average state lawyer on the subject. Some lawyers in the state

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73. *Id.* at 502.

74. *Id.* at 503. See also *Justices Fear Censor Duties Under New Plan*, WIS. ST. J., Dec. 18, 1946.

75. See AUTHOR, *The Wisconsin Integration Opinion*, 30 AM. JUDICATURE SOC'Y 147 (1947); Carl B. Dix, *Integrated Bar Decision Flayed*, CHI. DAILY TRIB., Jan. 9, 1947.

76. James M. Murray, *Remarks*, 31 REP. ST. B. ASS'N WIS. 1, 11 (1941).

felt the same way. In 1937, a Madison attorney testified before an Assembly hearing that "he was a member of a state bar association which sponsored the proposed statute yet no one asked his opinion about it." In 1946 an *amicus curiae* brief complained in 1946 that no "bona fide attempt [was] . . . made to get the views of *all lawyers in Wisconsin* who care to express an opinion."<sup>77</sup> The referendum issue also appeared during the legislative conflict over the issue. Various unsuccessful attempts were made in both houses of the legislature to amend the integration bill to include a court-administered referendum.<sup>78</sup>

The leadership of the bar was certainly sensitive about the topic. In an effort to build a consensus on the issue among state attorneys and perhaps the judiciary, the state bar attempted to conduct a referendum on the subject in 1942. Tellingly, the bar never requested the Wisconsin supreme court to conduct a referendum. This method had been used in other States. In 1945, the Missouri Supreme Court conducted its own poll of the bar prior to ordering integration in the state.<sup>79</sup>

The Integration Committee divided Wisconsin into 22 districts (based upon the state's judicial districts) with one member assigned to each area. Each individual was responsible for canvassing his area "through such assistants and by such methods as he might select." The recommended technique included an interview "with every lawyer-member—and non-member—in the state." The goal of the interview was to try to obtain a "written endorsement of integration." If favorable, the respondent's endorsement was to be included on what amounted to a petition. Some supporters of an integrated bar were opposed to the referendum because critics of the proposal were denied a voice. The petition basically stated that the signers approved of the concept of bar integration as expressed in the bill passed by the legislature in 1941. The survey was to record only "yes" votes. Evjue and the *Capital Times* were quick to point out that the ballot did not permit a "no" answer.<sup>80</sup>

The eventual "referendum" was not a plebiscite; it was a mechanism to sell Wisconsin's lawyers on bar integration. William Doll, a former president of the bar association, declared that the "purpose of the canvass is to sell lawyers on the idea that the majority of the bar is for it." An-

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77. *Lawyers' Own Report Shows Lawyers Are Not For Bar*, MADISON CAP. TIMES, Apr. 27, 1943, at 5; *Madison Attorneys Hit "Regimenting" in Bar Bill*, MADISON CAP. TIMES, Apr. 9, 1937, at 2.

78. STATE OF WISCONSIN, LEGISLATIVE JOURNAL, 65 SESS. 463 (1939).

79. See Pirsig, *supra* note 14, at 21-23.

80. PROCEEDINGS, ST. B. OF WIS. 204-06 (1942); Editorial, MADISON CAP. TIMES, July 18, 1942, at 2.

other supporter stated on the floor of the 1942 convention that “the canvassing committee should not count noses but should try to convince lawyers . . . [that] the bar would benefit from integration.”<sup>81</sup>

The full results of the poll were never published. The partial results were published at the 1942 convention and included incomplete or final returns from 39 counties. The remaining 32 counties failed to return any information in response to the poll. Of the estimated 3,000 lawyers in Wisconsin at that time, 867 declared their support for an integrated bar. These figures included “only 204 of Milwaukee County’s estimated 1,500 lawyers and no returns from Dane County” whose lawyer population was thought to be at least 10% of the attorneys in the state.<sup>82</sup>

The next attempt at a referendum occurred in the spring of 1946. The leadership of the State Bar declared that, if successful, the poll would be a prelude to filing a formal petition for integration with the Supreme Court. The form of the referendum once again favored bar integration. In contrast to the 1943 referendum, there was no vote recorded by county; a report of this referendum was scarcely mentioned in president’s address at the 1946 convention. President Hale almost reported the referendum as a “work in progress” to the convention:

This canvass has been completed and I believe that 95% of the lawyers in the State have been personally contacted. . . . This canvass is now complete through the State, except for Milwaukee County. I believe that it is running about 70% for Integration, although the count from Milwaukee County may materially change that as about 40% of the lawyers in the state are in the state are in Milwaukee and there is considerable opposition to integration there.<sup>83</sup>

The referendum was never published. When asked about the final results in 1948, the new Executive Secretary Philip Haberman stated that he was “certain the results favored integration.” The data and other material collected for the referendum “was destroyed sometime around 1953,” according to Haberman, “because it was no longer needed.”<sup>84</sup>

The concept of a referendum was dropped—for all intents and purposes—in the 1950s. No poll was held in 1956 although opponents once again requested one. President LaFrance, the head of the State Bar at this time, maintained that such another referendum “would be too expensive.” When pressed about the issue after bar integration had been

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81. PROCEEDINGS, ST. B. OF WIS. 206, 214-15 (1942).

82. *Id.* at 25.

83. PROCEEDINGS, ST B. WIS. 58-59 (1946).

84. Interview with Philip S. Habermann, May 4, 1961, in Hoenig, *supra* note 3, at 178.

achieved, LaFrance replied that the Supreme Court was just not interested in the opinion of Wisconsin lawyers on the issue. Ironically, at least some opponents of bar integration may have secretly felt the same way. One reporter from the *Capital Times* later stated that his newspaper would not have softened its attitude on the subject of bar integration had the Supreme Court or "some impartial body" conducted a poll on its own.<sup>85</sup> By the mid-1950s, the leadership of the state bar had focused their energy on persuading the opinion of those who now mattered most—the justices on the Supreme Court.

#### V. A NEW STATE BAR LEADERSHIP AND A SUCCESSFUL CAMPAIGN, 1955-1956

Bar integration was a "dead issue" for nearly a decade after the 1946 ruling. The Wisconsin Bar Association was reorganized in 1948. The revamped organization hired a full-time executive director whose goal was to enhance the association's image among attorneys and the public at large.<sup>86</sup> One man, Alfred E. LaFrance of Racine, is usually credited with reviving the bar integration movement in Wisconsin. LaFrance had served in a number of official roles for the state bar and was characterized as a man with "a great deal of drive and a strong personality." One of LaFrance's first acts as President of the Wisconsin Bar Association was to put together a new bar integration committee.<sup>87</sup> Thereafter, LaFrance, Edmund Shea, and a small circle of perhaps ten other attorneys revived a campaign that had begun decades earlier.<sup>88</sup>

In the "President's Page" of the *Wisconsin Bar Bulletin*, LaFrance outlined a "four-point" program for his first year of office. LaFrance wanted to integrate the bar, build a headquarters building in Madison, reorganize the state courts, and restructure the judicial selection system during his term. Regarding bar integration, the new President stated that:

Times may have changed, circumstances may have become altered in Wisconsin since this problem was last given consideration by our Supreme Court. Considering the progress that has been made in this integration movement throughout the United States, giving consideration to some of the problems that the

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85. Interview with Miles McMillan, May 10, 1961, in Hoenig, *supra* note 3, at 168. McMillan was a colleague of Evjue and became editor of the *Capital Times* in 1955.

86. See Philip S. Habermann, *Proposed Expansion of Bar Association Activities*, 21 WIS. B. BULL. 228 (1948); Schneyer, *supra* note 3, at 12 n.58.

87. *Another Move for Integrated Bar in Wisconsin Forecast*, GREEN BAY PRESS GAZETTE, Nov. 28, 1955.

88. Interview with Haberman, in Hoenig, *supra* note 3, at 168.

members of the Wisconsin bar are today faced with and realizing the limitations of a voluntary association, it seems to me that it is timely that this matter again have the earnest consideration of all of the lawyers in Wisconsin . . . . Many, many lawyers throughout Wisconsin have suggested that something should be done on this subject.<sup>89</sup>

LaFrance also suggested to Wisconsin attorneys that "integration unquestionably will result in increased recompense to the practising lawyers individually, through expanded public relations . . . and through the promulgation of information advising of the value of legal services in given situations."<sup>90</sup> Even before LaFrance assumed the presidency, the State Bar expanded efforts to improve its image among Wisconsin attorneys. The *Wisconsin Bar Bulletin*, which was established only in 1927, was improved and expanded in the years after World War II. The magazine was changed from a quarterly to a bi-monthly magazine. More importantly, the tone and content of the magazine underwent a transformation. The new *Bar Bulletin* was designed to present articles and assistance to the average lawyer engaged in a general practice.<sup>91</sup> In addition sections were created to educate state lawyers on various aspects of the law. Membership benefits were expanded to include new insurance programs and a placement service, and dues were increased from \$2 to \$12 a year in order to finance these efforts. Membership in the voluntary bar soon increased to nearly 66% of the total number of attorneys in the state.<sup>92</sup> The tone of the message of bar integration, however, had changed from vague notions of "law reform" to one of professional interest. LaFrance quoted the address of a Florida judge in support of bar integration. The statement read:

We do not think bar integration would be worth the candle as a specific for unethical conduct, but as a means of giving the bar a new and enlarged concept of its place in our social and economic pattern it has amply proved its value.<sup>93</sup>

The idea of bypassing the legislature to appeal to the Supreme Court for the integration of the State Bar was discussed by proponents of bar integration in Wisconsin as early as 1937. At the bar association convention

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89. Alfred E. LaFrance, *The President's Page*, WIS. B. BULL. 5-6 (Aug. 1955).

90. Alfred E. LaFrance, *The President's Page*, WIS. B. BULL. 5,7 (Oct. 1955)

91. See Philip S. Habermann, *Public Relations Begin with You*, WIS. B. BULL. 11-16 (Feb. 1956). See also Interview with Habermann in Hoening, *supra* note 3, at 114.

92. Oscar T. Toebaas, *The President's Report*, WIS. B. BULL. 11-12 (Aug. 1953); Schneyer, *supra* note 3, at 12 n.58; Interview with Haberman in Hoening, *supra* note 3, at 178.

93. Alfred E. LaFrance, *The President's Page*, WIS. B. BULL. 66 (Oct. 1955).

in that year, President Ray B. Graves declared that the cause should be taken directly to the bench if the politicians were reluctant to deal with it.<sup>94</sup> In 1941, Edmund Shea proposed this tactic after the Supreme Court had failed to rule on the matter.<sup>95</sup> This strategy eventually eclipsed a commitment to the legislative process. James Willard Hurst suggested that the earlier leadership of the Wisconsin bar may have felt "that a court with little control over lawyers would be unlikely to integrate the bar without legislative consent."<sup>96</sup>

Bar integration by judicial order was also a relatively new technique in this era before the 1940s. In 1937, Nebraska became the first state to integrate its bar by court order. After 1945, only one state—Alaska—was integrated through legislative measures.<sup>97</sup> It is probable that the leaders of the bar integration movement felt that requesting judicial intervention from the highest court in the state would be fruitless due to public controversy.

Petitioning the highest court in the state, however, soon became the "preferred method" for bar associations seeking a unified bar. The strategy avoided "politics" altogether and involved appeals to members of the bench—the kind of individuals who would be receptive to the goals of bar integration. More significantly, the Supreme Court had suggested in 1943 that it was able to consider the matter on its own. The leadership of the State Bar in Wisconsin would fully exploit this suggestion in 1956.

In 1956, the Supreme Court ordered integration of the bar on an interim basis. After a two-year trial period, the Court permanently integrated the bar. Several factors probably explain this reversal. Between 1946 and 1955, every member of the Supreme Court was replaced, with the exception of Justice Fairchild. The retirement of Chester A. Fowler, who served from 1929 to 1948, removed the most determined opponent of bar integration from the court. Those justices appointed after 1946 were more receptive to bar integration and willing to look more favorably on the issue.<sup>98</sup> In 1946, the Court had declared that the objectives sought by integration could be achieved through an adequately supported voluntary association. The Court simply encouraged the state's lawyers to give their

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94. PROCEEDINGS, ST. B. ASS'N OF WIS. 13 (1937).

95. PROCEEDINGS, ST. B. ASS'N WIS. 9 (1941).

96. Interview with James Willard Hurst, May 3, 1961, in Hoenig, *supra* note 3, at 133.

97. See Schneyer, *supra* note 3, at 43 n.246. See also PARNES, *supra* note 29, at 3-5 n.4. The story of the integration of the bar in Alaska is chronicled in Pamela Cravez, *A Revolt In the Ranks: The Great Alaska Court-Bar Fight*, 13 ALASKA L. REV. 1 (1996).

98. Interview with Robert M. Rieser, May 22, 1961, in Hoenig, *supra* note 3, at 132. Rieser helped to argue the case on behalf of the state bar in 1956.

“complete support” to the State Bar.<sup>99</sup> In 1956, the court revised its position once again:

Many individual members of the bar did respond to that suggestion that they actively support the voluntary association, but it is now reported that *too many lawyers have refrained or refused to join* (emphasis added), that membership in the voluntary association has become static, and that a substantial minority of the lawyers in the State are not associated with the State Bar Association.<sup>100</sup>

The lack of support for the voluntary bar in Wisconsin was characterized as a “big-city problem.” Madison and Milwaukee lawyers had different reasons to oppose or simply not join the state bar association. Class and ethnicity may have played a part. In 1943, the *Capital Times* claimed that the more established Wisconsin lawyers advocated an integrated bar in the hopes of curbing the impact of “ambulance chasing” Jewish lawyers in the Milwaukee area.<sup>101</sup> In a 1961 interview on the subject, Professor Hurst noted that lawyers in urban areas were hostile towards integration because their local organizations usually thrived.<sup>102</sup> Lawrence Hart, a member of the subcommittee, that drafted the 1955 petition, as well as former president of the Dane County Bar Association, confirmed this. Hart stated on several occasions that lawyers in these counties “had an active local bar association of their own and did not believe that there was a real need for a strong, quasi-official state organization.” The president of the Milwaukee County Bar Association, according to Hart, “had as much work to do” as the chief executive of the state organization. The Milwaukee County Bar “lobbied extensively” in the state legislature. They were often successful in obtaining the passage of many special laws that applied only to lawyers who resided in Milwaukee County.” For example, the legislature permitted the Milwaukee group to institute malpractice suits against “errant Milwaukee lawyers.” This authority rested in all other counties with the district attorney.<sup>103</sup> As early as 1934, the Milwaukee Lawyers Club had opposed bar integration on the grounds that the city’s attorneys would cede their autonomy to Madison.<sup>104</sup>

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99. See *In re Integration of the Bar*, 25 N.W.2d 500, 503 (Wis. 1946).

100. In the matter of the Integration of the Bar, 77 N.W.2d 602, 603 (Wis. 1956).

101. *Editorial*, MADISON CAP. TIMES, March 16, 1943, at 16; *Editorial*, MADISON CAP. TIMES, May 11, 1943, at 20. Garrison testified before the legislature that the “controlling influence” in an integrated bar would come from the “. . . smaller towns and rural areas of the state.” MADISON CAP. TIMES, May 2, 1935.

102. Interview with Hurst, *in* Hoenig, *supra* note 3, at 119-20.

103. Interview with Lawrence E. Hart, May 24, 1961, *in* Hoenig, *supra* note 3, at 119.

104. *The Integrated Bar Bill Enters the Last Phase*, MILWAUKEE SENTINEL, Dec. 9,



The publicity surrounding the bar integration issue seemed to affect bar membership. From 1935 to 1956 the state association's membership always remained at about 45%. However, during the intense debate between 1943 and 1946, the membership figures reached nearly 50%. By 1950, membership in the state bar association reached 68%, where it remained until integration was endorsed by the Supreme Court.<sup>105</sup> Despite the higher membership figures, both the pro and anti-integration forces—as well as the Supreme Court—made an issue of membership during the next debate on the issue. The State Bar leadership appealed for integration in order to eliminate the recurring problems of recruitment and retention of membership. Those opposed, to integration however, saw no problem at all: the enrollment of nearly two thirds of lawyers in a voluntary bar seemed to solve the bar's earlier membership woes. The Supreme Court however, cited the estimated low membership figures over the decades as one of the primary reasons for integrating the bar.

Of equal significance, LaFrance and Shea discussed bar integration on an informal basis with several judges on the bench. The first of two recorded contacts between members of the bar association and Supreme Court justices occurred in October, 1955. At that time, a Supreme Court justice informed Haberman, the bar association's Executive Secretary, that he favored bar integration. The conversation was recorded in a letter from Haberman to La France:

Justice X, a member of the Wisconsin Supreme Court stopped at my table at lunch Friday and said: "I'm glad to see you are working on integration. I'm all for it." He further stated that he had *not* discussed it with any other member of the Court, and had no idea how they stand.<sup>106</sup>

This informal contact was just the first step in a rather extended series of discussions between the bar leadership and members of the Supreme Court. This contact consisted of a meeting between a committee of the state bar headed by La France and members of the Wisconsin Supreme Court. The purpose of another meeting, as mentioned in a letter by LaFrance to Chief Justice Fairchild, was to "discuss procedural problems concerned with the filing of an integration petition. "This can be an informal conference, where we will not discuss the merits of the problem,

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1934.

105. See *In re Integration of the Bar*, Original Proceedings for the Integration of the Bar, Supplemental Report of the Drafting Committee, Analysis of the Membership, Schedule C, Exhibit D (January 1956), reprinted in Hoenig, *supra* note 3, at 116.

106. Letter from Haberman to LaFrance, stamped "Received 25 Oct. 55 LaFrance . . . and Zahn, Attorneys at Law," in Hoenig, *supra* note 3, at 188.

but will seek the counsel and advise (sic) of your court as to how you prefer to have the matter subsequently presented to the Court."<sup>107</sup>

This meeting was criticized by some "as an example of a policy making body legitimizing a predetermined policy instead of authorizing one."<sup>108</sup> Although this informal discussion might be considered *ex parte* in some situations, both the leaders of the State Bar and the Supreme Court seemed to consider it ethical. A report of the meeting by LaFrance in his column in the *Wisconsin Bar Bulletin* exclaimed: "Your President, with members of the Executive Committee and others, were privileged to have an audience with the members of the Wisconsin Supreme Court where procedural problems were discussed and considered."<sup>109</sup>

The Supreme Court held public hearings on the subject throughout much of 1955. Many of the same arguments heard before World War II were made at this time.<sup>110</sup> However, the intensity and extent of the opposition seemed to have lessened in the decade after the first ruling. The Progressive Party had disappeared as an organized force; the more "liberal" elements moved to the Democratic Party, while others remained aligned with the Republicans. Evjue, for example, remained an opponent of bar integration, but he was caught up in the politics of McCarthyism. Regardless of party affiliation, bar integration ceased to be a convenient political target in the era of the Cold War and mass prosperity.<sup>111</sup>

The more entrenched opponents of bar integration had also departed from the ranks of the state's attorneys. One example illustrates this change. The leadership in the twelve-member Vernon County Bar Association, which—along with the bars of Madison and Milwaukee opposed bar integration in the 1940s—was in the hands of J. Henry Bennett. Bennett was a vigorous opponent of bar integration. Contemporaries characterized Bennett as an "old-time backwoods lawyer" who thought an attorney should "act as an individual" and "not be regimented" in any way. He had by all accounts "an extremely strong personality," and thus he dominated the County Bar Association. Not surprisingly, he was able to convince the other lawyers in the county of the correctness of his views on bar integration. Bennett died on April 29, 1956, about twenty days before his scheduled appearance at a hearing before the Supreme Court on the

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107. Letter from LaFrance to Fairchild, Nov. 30, 1955, Hoenig, *supra* note 3, at 191.

108. See comments by Hoenig, *supra* note 3, at 193-94.

109. Alfred LaFrance, *The President's Page*, WIS. B. BULL. 5 (Feb. 1956).

110. See, e.g., *Labor Attorney for Integrated Bar; Aberg Opposes It*, MADISON CAP. TIMES, Apr. 14, 1956; *Spohn Leads Fight in Supreme Court Against Integration*, MADISON CAP. TIMES, May 9, 1956.

111. See MILLER, *supra* note 37, at 181-82.

subject. Someone far less interested in the issue and more malleable to persuasion replaced him.<sup>112</sup>

After the successful effort, LaFrance became an active spokesman for bar integration in other states. He noted that one of the advantages of an integrated bar was that, as a state agency, the Wisconsin Bar "is entitled to the advice and representation of the attorney-general. . . . For example, the [Wisconsin] attorney general rendered an opinion to the State Bar to the effect that its property is exempt from taxation and then sustained that opinion in the courts, *all without expense to the bar*" (emphasis added).<sup>113</sup> In over 40 years, Claire Bird's message about bar integration and law reform had been significantly altered in scope and purpose.

## VII. CONCLUSION

The 1956 decision seemingly settled the debate over the integrated bar in Wisconsin. By the mid-1950s, determined opposition had largely disappeared and—just as significantly—the promotional strategy had changed. The tactics of legislative lobbying and referendum gave way to direct lobbying with the Supreme Court. LaFrance's campaign, in contrast to previous efforts, linked the reform to a strategy more suitable to bench and bar. The content of the reform, however, had shifted from the uplifting of professional standards and public service to an emphasis on self-interest.

Even after 1956, political and legal controversy has characterized the integrated bar in Wisconsin. The constitutionality of the integrated bar was affirmed in 1961 by the United States Supreme Court in *Lathrop v. Donohue*.<sup>114</sup> Nevertheless, the integrated bar has been intermittently challenged and discussed over the last three decades.<sup>115</sup> The contours of the debate have not changed much. Opponents continue to argue that the integrated bar is an infringement on the individual right of association and incidental to professional standards and the image of the bar; supporters still maintain that such association is a good in itself. The most recent Supreme Court decision is typical in this regard.<sup>116</sup> The majority opinion upheld bar integration as a legitimate concern for state regula-

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112. Interview with Philip S. Habermann, May 14, 1961 in Hoenig, *supra* note 3, at 117.

113. LaFrance's statement is quoted in Philip Haberman, *Advantages of the Unified Bar*, 10 N.H. B.J. 36, 38 (1967).

114. *Lathrop v. Donohue*, 367 U.S. 820 (1961).

115. There is a sizable amount Wisconsin case law of the subject since 1956. For a useful synthesis, see Peter A. Martin, Comment, *A Reassessment of Mandatory Bar Membership In Light of Levine v. Heffernan*, 73 MARQ. L. REV. 144 (1989).

116. See *Matter of State Bar*, 485 N.W.2d 225 (Wis. 1992).

tion. Without it, programs such as the Lawyer Referral Service or various *pro bono* activities would be scrapped due to inadequate funding. In effect, the integrated bar—echoing in part the message of Claire Bird—properly mandates that lawyers “support the professional functions and activities directed to the interests of the public.”<sup>117</sup> Although the bar in Wisconsin has remained unified for all but four years since 1956, the subject remains an almost continual source of contention in state and federal court.<sup>118</sup>

Since 1914, the integrated bar has been as much about conflicts within and about the legal profession as anything else. The period between 1934 and 1956 demonstrates how both politics and timing can play role in the decisionmaking process of the legislature and the courts. While the legality of the integrated bar in Wisconsin is a settled issue, it is doubtful that its effectiveness or desirability will ever be a moot point for attorneys in the state.

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117. *Id.* at 228-29.

118. The latest federal cases are *Crosetto v. State Bar of Wisconsin*, 12 F.3d 1396 (7th Cir. 1993) and *Thiel v. State Bar of Wisconsin*, 94 F.3d 399 (7th Cir. 1996). A contemporary summary of both sides of the issue is presented in Debate, *Voluntary Bar v. Mandatory Bar: The Debate Heats Up*, 64 WIS. LAWYER 10 (Feb. 1991).

