

February 2017

## The Unified Bar: Will a Closed Shop Serve the Lawyer and the Public

Harold Brown

Follow this and additional works at: <http://scholarship.law.stjohns.edu/tcl>

 Part of the [Legal Ethics and Professional Responsibility Commons](#), and the [Legal Profession Commons](#)

---

### Recommended Citation

Harold Brown (2017) "The Unified Bar: Will a Closed Shop Serve the Lawyer and the Public," *The Catholic Lawyer*: Vol. 17 : No. 1 , Article 5.

Available at: <http://scholarship.law.stjohns.edu/tcl/vol17/iss1/5>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [cerjanm@stjohns.edu](mailto:cerjanm@stjohns.edu).

# THE UNIFIED BAR: WILL A CLOSED SHOP SERVE THE LAWYER AND THE PUBLIC?†

HAROLD BROWN

Now pending before the Supreme Judicial Court is a petition by the Massachusetts Bar Association for adoption by Rule of Court of the so-called “unified bar,”<sup>1</sup> simply defined as a rule which would prohibit the practice of law by an attorney who fails to join and maintain his membership in good standing in the newly-to-be formed Bar of Massachusetts (Petition of M.B.A., S.J.C. Eq. 69780). In its earlier form as the “integrated” bar, substantially the same proposal was rejected by the S.J.C. almost a generation ago. (in re *Integrated Bar*, 321 Mass. 747, 74 N.E. 2d 140 (1947)). The question is whether the establishment of a unified bar would now be “in the interest of the public and the administration of justice.”

The petition must be considered in the light of the pending petition of the Boston Bar Association for adoption of the A.B.A. Code of Professional Responsibility (Petition of B.B.A., S.J.C. Eq. No. 69760).<sup>2</sup> It may be noted that with certain proposed amendments, both the M.B.A. and B.B.A. are in substantial agreement in their support for the adoption of a Code of Professional Responsibility. But while the M.B.A. is a

---

† This article is reprinted from the February 1971 issue of the Boston Bar Journal.

<sup>1</sup> Of the 31 states which have adopted an integrated or unified bar, the most recent are Wis. (1956), Ga. (1964), S.C. (1967), and N.H. (1968), the remainder having generally acted from the late 1920's through W.W. II. Since a new effort is apparently being made to bring the remainder of the states into the fold, perhaps half of the attorneys in the country are now obligated to examine their response to such a drive, lest it turn into a stampede. For that reason, the Massachusetts controversy may be regarded as generic.

<sup>2</sup> According to the latest figures, the A.B.A. Code has been adopted in more than half of the states as well as in some special cases such as in the U.S. Patent Office.

strong advocate of the unified bar, a poll of the membership of the B.B.A. showed two to one in opposition and its Council voted unanimously against adoption. As may be inferred, this writer is strongly in opposition to both petitions.

It is unfortunate that the pressures for earning a living, keeping up with the deluge of legal literature, or simple apathy, have blocked the examination of these vital and detailed proposals by more than a handful of attorneys, though it must be conceded that, in the words of Professor Andrew L. Kaufman of Harvard Law School, the proposed Canons of Ethics, Code of Professional Responsibility, Ethical Considerations, and footnotes present a serious challenge to anyone who would attempt merely to read them once from beginning to end (22 *Harvard L.S. Bulletin*, October, 1970, at p. 19). The "unified" bar proposal was set forth in a recent issue of the *Boston Bar Journal*, the entire content of which was devoted to a discussion of the pro's and con's (B.B.J., May, 1970). While the unified bar petition is far more brief than the proposed Code of Professional Ethics, since it consists primarily of a set of proposed by-laws, only a few of the basic problems can be discerned from a reading of the proposal. Even the *Boston Bar Journal* discussion of the issues raised by the unified bar proposal, fails to disclose the fundamental objections, principally because the B.B.A. has vigorously supported the closely related proposal for adoption of the Code of Professional Responsibility.

In this setting, it is evident that both petitions are now reaching a crucial stage, possibly with inadequate time for discussion and to stir those who may wish to per-

form an active role in the deliberations which would give both proposals the statutory effect owed to Rules of Court. As with other pervasive legislation, it may be found that lethargy will evoke disaster and that woeful cries may follow the event.

The proposed by-laws would grant total authority to the Bar of Massachusetts to regulate the practice of law within the Commonwealth, the constituency of its governing board to be allotted on a theoretically proportional representation among the several counties, with a slight weighting against Suffolk County, since full respect for the one man-one vote rule would have given Boston a majority in the Council. Such avoidance of purely democratic principles undoubtedly reflects the historical resentments engendered by the strength of the Boston Bar Association, not only as a matter of membership and financial income, but also its resultant vitality in such matters as a permanent physical plant, a full-time paid staff, and vigorous administrative and committee activity. Of the seventy or more city, county, and special bar associations within the Commonwealth, it must be conceded that few have such advantages and several are little more than social clubs with emphasis on local prestige rather than a record of performance. So viewed, the petition for a unified bar may appear to be a struggle for power between the two dominant bar associations, with little hope for resolution of their conflicting interests, ultimate authority in a statewide association necessarily being consigned to the new Bar of Massachusetts, with the B.B.A. aspiring, at best, to a role of veto power. As for other county or city bar associations, while their independence would be sublimated,

such diminution of their power might not seem as crucial. As will be seen, however, such a simplified version of the purpose behind the unified bar and the organizational struggle it has created,<sup>3</sup> completely misses the true import of the proposal.

The proponents of the unified bar lay emphasis on the need for universal support of bar association activities, not merely for the financial power emanating from the enforced membership dues of all lawyers practicing in the state, but even more so for the programs which such funding would support, as well as the presumed power which such a monolithic force could exercise in such matters as legislation, enforcement of minimum fee schedules, sponsoring the so-called Clients Security Fund, and other matters of general interest such as the appointment of judges, the restructuring of the judicial branch, and serving the public through the proper administration of justice.

It must be conceded that the closed union visualized in the unified bar would, indeed, acquire all such attributes of power and efficiency. But quoting *Knickerbocker Holiday*, "while democracy is far less efficient than dictatorship, that very inefficiency makes life tolerable." The attributes of a police-state hardly need to be explained to attorneys. The inherent objections to com-

pulsion are not idly to be overlooked. Nor is there any social or economic need of a "closed-shop" for attorneys, there being no employer whose bargaining power needs to be counter-balanced by collective activity. To the contrary, there are many basic issues in which the public interest may be in direct conflict with the so-called "guild" interest of lawyers. The power of a unified bar would undoubtedly jeopardize such interests and effectively diminish the power of dissenters. For if the republican form of government is nourished by the existence of two vigorous political parties, certainly the monopoly power of a unified bar cannot be justified. The very efficiency and power claimed by proponents of the unified bar, would effectively smother all opposition, regardless of the public will or interest.

Just recently, it was demonstrated that the public demanded "no fault" insurance as an answer to soaring insurance costs, interminable delays in court determinations, and the conviction that attorneys were unnecessary obstacles to a solution.<sup>4</sup> Although such a noble experiment may ultimately prove illusory, it can hardly be assumed that the monolithic opposition of the organized bar would have been beneficial to the public interest. Perhaps the concept will fail, if it at least does not obtain the support of the bar in perfecting its operation. Yet there is much substance to the argument that the opposition of the bar may have had a strong flavor of self-preference rather than noble motivation.

With regard to the maintenance of minimum fee schedules, offered by the M.B.A.

---

<sup>3</sup> The M.B.A. and B.B.A. recently consolidated their programs for continuing legal education, but anomalies still exist. Given the vigorous handling of grievance matters by the B.B.A. and the historic weakness of many local groups, it would seem that the principal problem is outside of the urban area. (See LaBelle, "New Disciplinary Rules for Michigan Attorneys," 54 *Judicature* 154 (Nov., 1970)).

---

<sup>4</sup> Ch. 670 of Mass. Acts of 1970.

as one of the principal arguments for the unified bar, there seems not to be the slightest predilection for the public interest even though that paramount concern has been codified in the very heart of the Antitrust Laws by their prohibition of any combination to fix prices, including both minimum and maximum rates (15 U.S.C. § 1; *U.S. v. Parke, Davis & Co.*, 362 U.S. 29 (1960); *Albrecht v. Herald Co.*, 390 U.S. 145 (1968)). Even the A.B.A. has given its support to such minimum fee schedules by its latest ruling that consistent violation may be "evidence of unethical conduct." (A.B.A. Formal Opinion 323). Completely unimpressed by any guild-type protective justification, the Government has instituted four suits against real estate associations and their members, the first of which has just culminated in a final consent decree barring the board from fixing commission rates, publishing commission fee schedules, recommending that its members adhere to any suggested fee schedule, or taking any punitive action against a member who refuses to adhere to any such recommendation concerning fees. (*U.S. v. Prince George's County Board of Realtors, Inc.* (D.C. Md. 1971) 70 T.C. 73,393). Clearly there is a paramount public interest in obtaining services at the market price, without interference by any combination of persons. Yet though this charge was raised over a year ago (B.B.J. Nov. , 1969) and has been vigorously urged upon the S.J.C. in the pending petition for adoption of the A.B.A. Code of Professional Responsibility, not a single bar association has even deigned to take notice of the problem. While the proposed Canons would proscribe even the "appearance of unprofessional conduct" (Canon 9), the M.B.A. urges the

maintenance of such minimum fee schedules as a prime reason for adoption of the unified bar.

Another major argument has been the need for support of the so-called "Clients' Security Fund" designed to provide restitution to any client who has been defrauded by any practicing attorney. It is suggested that all attorneys should be required to support such a necessary project, such an argument having been the probable instigator for the rebirth of the unified bar concept. Again, the premise may be unsound in view of the prevalent opinion that such a solution for fraud on clients is wholly ineffective for lack of sufficient publicity to the general public, the deficiencies resulting from administration of the program by those who have to pay the bill, and the gross inadequacy of the fund to cover actual losses. For example, as against the \$10,000. annually contributed by the M.B.A., it is estimated that full coverage would require an annual contribution of close to \$200. by every practicing attorney. Certainly the public needs protection, but the solution offered by the Clients' Security Fund is apparently quite inferior to other methods (See Brown, "*Some Observations on Legal Fees*," 24 Southwestern L.J. 565 (1970)). In other professions, such as that of the real estate broker, a surety bond must be obtained as a condition of each license renewal.

Perhaps the greatest need of the public is to open the avenues of judicial relief to the tens of millions in the middle income brackets, potential clients who may never see an attorney in their lifetime. Aside from several proposals for overcoming the fee obstacle through insurance or extended pay-

ment plans, perhaps the most fruitful may lie in so-called "group legal services." (See B.F. Christensen, "*Lawyers for People of Moderate Means*" (1970 Amer. Bar Found.) including a full discussion of the series of recent U.S. Supreme Court rulings giving constitutional sanction to such programs). In spite of the unanimous opinion of the A.B.A. Special Committee on Availability of Legal Services, its proposal was summarily discussed by the A.B.A. with the comment "that the lawyers of America are not now prepared to have group legal services extended" (See Nahstoll, 48 Tex. L.R. 348, n. 35). Based on that public-bedaigned attitude, there was instead adopted a restriction that would prohibit such group legal services "unless constitutionally required at the time of the rendition of the services" (A.B.A. Code of Prof. Resp. DR2-103 (D)), characterized by Professor Nahstoll as "unrealistic, inadequate, irresponsible, and unprofessional. It disserves both the public and the bar." (Id., at p. 350). That very provision is now contained in the Code offered in the pending B.B.A. petition, to which not one word of dissent has been offered by the M.B.A. It may well be asked whether the concentrated legislative power sought through the unified bar would constitute an effort to emulate the well-financed ten year campaign by the A.M.A. to resist all efforts designed to make medical services more readily available to the entire population. Although beneficent paternalism may accomplish results, perhaps it were better to heed the words of John Adams, "Power always thinks it has a great soul and vast views beyond the comprehension of the weak."

It is not here in issue whether any partic-

ular version of these programs will prevail. The significant matter is the gross error in the assumption that the monolithic power of the unified bar will serve the public interest rather than its own. To the contrary, the reports from unified bar jurisdictions extolling the results of such a statutory rule of court,<sup>5</sup> may merely signify that self-preference now has no countervailing force sufficient to sustain the hopeless task of effective opposition.

Even more basic is the question of the means through which such power would be obtained and the standards which govern its exercise. For while there is hardly anyone who would object to the need for encouraging all attorneys to join and participate actively in bar association programs, it is undemocratic to prescribe that such membership in non-governmental associations be enforced by Rule of Court with statutory effect. Even more fundamental is the objection to making the continued exercise of the privilege of practicing law subject to the control of a private organization.

Aside from such social injustice, it is pertinent to examine the rules by which all attorneys would be governed in the exercise of that privilege. For it is gross error to assume that all one need do is present his certificate of admission to the bar and pay his annual dues in order to maintain his membership in the bar association. To the contrary, the by-laws submitted for adoption through Court Rule, would expressly incorporate by reference the newly proposed

---

<sup>5</sup> See *In re Integration of the Bar*, 5 Wis. 2d 618, 621, 93 N.W. 2d 601, 602; see similar comment on the integrated bar of California in *Petition of Florida State Bar Assn.*, 40 So. 2d 902, 905.

A.B.A. Canons of Ethics as implemented by the Code of Professional Responsibility and the general sense of approval proposed for the Ethical Considerations (Article 18), all of which are now before the Supreme Judicial Court for enactment. Although this writer has strenuously opposed the approval of that Code, perhaps even worse would be the adoption of the unified bar without specific rules, thus granting to the bar association a blank check for the standards of its governing the profession. Such pervasive power would not only be abhorrent to the constitutional objections to the delegation of authority without adequate standards (*A.L.A. Schechter Poultry Corp. v. U.S.*, 295 U.S. 495 (1935)), but would also consign the legal profession to the status of a veritable police state. If it be suggested that the silence of the proposed by-laws means that no attorney may be expelled from the Bar of Massachusetts except through disbarment or censure by the court, then at the very least, the by-laws should so state. But even then, the B.B.A. and M.B.A. are chargeable with circuitry since the serious objections to the Code of Professional Responsibility have been met with their express statement that the bar association can be expected to use discretion in the enforcement of standards which are too harsh or too vague.

It is thus necessary to examine the proposed A.B.A. Code in order to see what the unified bar really offers as the rules under which all practicing attorneys must live. Aside from the serious ethical and legal objections to the proposed Code, it may also be noted that no less than eight of its provisions have been challenged under the Declaration of Rights of the Massachusetts

Constitution and under the due process, equal protection, and free speech clauses of the United States Constitution. General literature has been critical of the Code (See "American Bar Association Code of Professional Responsibility: A Symposium" 48 Texas L.R. 255 (1970) and particularly P. Shuchman, "Ethics and Legal Ethics: The Propriety of the Canons as a Group Moral Code," 37 Geo. Wash. L.R. 244 (1968)) cogently demonstrating that the canons are primarily directed at "the solo practitioner and the small firms, to those called the little lawyers" (at p. 245)), and this writer has strenuously opposed its adoption. (See Brown "A.B.A. Code of Professional Responsibility: In Defense of Mediocrity" 7 Trial 29 (Aug.-Sept., 1970), republished in revised form in 5 Valp. L.R. 95 (1970) and being republished in The Catholic Lawyer and Boston College Law School Annual Survey of Massachusetts Law (1971 edition)).

While extensive exposition is not here feasible, consider the following highlights of what the Code would make unethical:

1. The negligent handling of any legal matter (not persistent or gross negligence) (DR6-101(A)(1));
2. The handling of any matter which the lawyer knows or should know he is not competent to handle, unless he associates himself with one who is competent (competence being used in the sense of specialization and assuring the dominance of major law firms) (DR6-101(A)(3));
3. Illegal conduct involving moral turpitude; any dishonesty, deceit or misrepresentation; prejudicial conduct; or

any conduct that adversely reflects on an attorney's fitness to practice law (none of which standards are amenable to definition) (DR1-102(A)(1)-(6));

4. Failure to report any Code violation by another attorney (the infamous "guilt by association" now to be superseded by "guilt by accidental observation and failure to report" (DRI-103(A));
5. Any referral fees, except that partners and associates would be excepted (designed to discriminate against the single practitioner and small law firm) (DR2-107(A)(2)); and
6. Failure to report a client's fraud to the offended person, if the client refuses or fails to make restitution (the client-attorney privilege being amended to require such disclosure) (DR7-102(B)(1) and (2) and DR4-(C)(2)).

As previously stated, adoption of the unified bar without a Code would appear to be an unconstitutional delegation of authority. But to adopt the Code and delegate its implementation to a private group, would be even worse, the prescribed standards of conduct being contrary both to ethical and legal principles.

When the proponents of the unified bar rely on its adoption by 31 states and the fact that once adopted, there has never been a repeal, they have really said very little. Almost without exception, such states do not include the states with strong commercial and industrial economies, principally in the northeast quadrant of the

Nation<sup>6</sup> (Me., Mass., R.I., Conn., N.Y., N.J., Pa., Del., Md., Ohio, Ind., Ill., Ia., Minn., Mont., Col., Kan., Tenn.) and Hawaii. The absence of repeal is consonant with the power of dictatorial control to demoralize dissent.

Proponents of the unified bar make only passing reference to the supposed sustaining of its constitutionality in *Lathrop v. Donohue*, 367 U.S. 820 (1961), although the numerous opinions in that 65 page report disclose sharply divided views as well as veritable indecision in the opinion of the plurality (*Id.*, at 865). In order to comprehend whatever that case may have held, it is necessary to note that after twice rejecting the integrated bar (244 Wis. 8, 11 N.W. 2d 604, 249 Wis. 523, 25 N.W. 2d 500) in spite of its direct authorization by statute (Wis. Rev. Stat. sec. 256.31), the Wisconsin Supreme Court first approved it on two year probation (273 Wis. 281, 77 N.W. 2d 602) and then indefinitely (5 Wis. 2d 618, 93 N.W. 2d 601). With such birth pains, it is not surprising that the approved plan contained severe limitations

---

<sup>6</sup> In many states which have adopted the integrated or unified bar, sparse population or great distances may well have contributed to the lack of cohesion and support for voluntary associations. For example, the \$50.00 maximum dues prescribed by the New Hampshire Supreme Court for the state's 750 attorneys, would produce a paltry annual budget of \$35,000, perhaps indicating the need for governmental assistance for effective programs, including grievance procedures. By contrast, Manhattan alone has three very strong bar associations and in Massachusetts, both the M.B.A. (\$35. annual dues) and the B.B.A. (\$65. annual dues) have approximately 4,000 members on whom each may rely, with over two-thirds of the state's 13,000 lawyers belonging to one or more associations.



such as the sole requirement of membership being the payment of annual dues not to exceed \$20., representation on a strict "one man-one vote" basis whereby the City of Milwaukee retained its majority voice, the retention by the Supreme Court of "all of the traditional powers of a court to supervise the activities of practicing lawyers . . . none of (which were) delegated to the Integrated Bar" (367 U.S. 820, 854, emphasis the Court's), and the strict limitation of its legislative activity to matters involving the "administration of justice, court reform, and legal practice," the Wisconsin Supreme Court having specifically held, "If the lawyers of this state wish by group action to engage in legislative activities not so authorized, they will have to do so within the framework of some voluntary association, and not the State Bar." (10 Wis. 2d 230, 239-240, 102 N.W. 2d 404; 409-410). With such severe limitations, the Supreme Court was constrained to comment (at p. 828), "We are, therefore, confronted . . . only with a question of compelled financial support of group activities, not with involuntary membership in any other aspect." As pointed out by three of the Justices (Harlan, Frankfurter, and Black), the particular version involved no self-policing through delegated authority which would have been violative of *Schechter* (supra) (Id., at pp. 854 and 878).

The only federal constitutional attack thus available to the individual objector was based on alleged intrusion of his freedom of association and freedom of speech, based on the compulsory financial contribution to an association which could use the funds to sponsor legislation offensive to the objector. The plurality opinion of Justice Harlan

(joined by Warren, Clark, and Stewart) held the record insufficient to lay the basis for a ruling on the free speech issue, without returning the case for further proceedings; Justice Harlan (with Frankfurter) felt that the severe limitations on possible legislative activity were sufficient to preclude such constitutional objection; and Justice Whittaker separately assented, thus supposedly constituting a seven-man decision. Lengthy dissents by Justices Black and Douglas leave much doubt as to whether the case decided anything, Black expressly stating that no one knew what had been decided, especially himself (Id., at 865), since two Justices had voted to strike on the First and Fourteenth Amendments and four Justices had affirmed solely because the constitutional issue was not before the Court on a sufficient record (Id., pp. 848 and 866).

Since the Supreme Judicial Court has yet to approve any form of the unified bar, objectors are not limited to the possible constitutional objections which its "legislative" action might raise (*Lathrop, supra*, at 826). It may thus accord close attention to "legislative" arguments against the unified bar contained in the bitter dissents of both Justices Black and Douglas. For example, it may note the comments that "A medical association that fights socialized medicine protects the fees of that association" (Id., at p. 879) and ". . . the (Bar) association has been active in exploiting the monopoly position given by the licensed character of the profession. Thus, the Bar has compiled and published a schedule of recommended minimum fees." (Id., at 880), respectively pertinent to the previously discussed issues of group legal services and anti-trust vio-

lations. Even more cogent, however, was the Douglas conclusion that approval of such legislative power would constitute "carte blanche to put professional people into goose-stepping brigades" (*Lathrop, supra*, at 884) and that "the First Amendment applies strictures designed to keep our society becoming moulded into patterns of conformity which satisfy the majority" (*Id.*, at 885).

Although it might be constitutional and even ethically compatible to require a reasonable annual license fee either specifically directed toward the funding of a Clients Security Fund (in re *Matter of a Member of the Bar of the Supreme Court of Delaware*, 257 A.2d 384 (1969)) or as a general contribution to the sustenance of numerous bar association activities, particularly including post-graduate educational programs, the unwillingness of the proponents to accept such a tax arrangement would appear to offer proof that much more is intended. That proposition was part of the underlying basis for the strong and rational dissent of Justices Duncan and Grimes to the 1968 adoption of the unified bar by New Hampshire on a three-year probationary basis (In re *Unification of the N.H. Bar*, 109 N.H. 262, 248 A.2d 711 (1968)). At least the majority avoided equivocation in its unfounded conclusion that "under the voluntary association, discipline and requiring observance of ethical standards is ineffective" and its pure speculation that "imposition of ethical standards . . . and an effective means of enforcing their observance" would facilitate the court's task to protect the public against unethical activities (*Id.*, at 713). In fact, with its finding that 706 out of the 750 at-

torneys in the state already belonged to the voluntary association, there may be reason to doubt its emphasis on the need for additional funds to support bar programs.

Aside from the grave constitutional question in such delegated disciplinary powers, it is perfectly clear that regimentation lies at the root of the unified bar proposal. For example, given the financial as well as highly emotional bias of many attorneys to such a program as "no fault" auto insurance, is there any doubt that an aroused bar would have little difficulty in accusing a champion of that program, of "prejudicial conduct" or "any conduct that adversely reflects on an attorney's fitness to practice law"? (See DR 1-102(A)(1)-(6)). The mere threat of such a charge, would effectively smother the action of any individual attorney who would question the views of the Establishment. With Lincolnian clarity, Justice Grimes was thus impelled to dissent in the New Hampshire proceedings (*supra*, at p. 715):

"By decreeing unification for three years, presumably the court intends to take another look at the problem in 1972; but what can be seen then? If there has been improvement, this will not prove that satisfactory gains could not have been made by means less injurious to personal liberty because such means will not have been tried. *Against what then will we measure the loss in personal freedom to determine if it has been worth the price.* We have the obligation I think to try the less onerous means first before embarking upon this plan" (Underscoring supplied).

If "discipline and requiring observance of ethical standards" be the heart of the

problem,<sup>7</sup> perhaps the courts have overlooked their responsibilities in the assumption that grievance committees of bar associations are the effective means of investigation and enforcement. None could quarrel with the court's establishment of a grievance board, with members (not necessarily all lawyers) appointed by and serving at the pleasure of the court, with full power to conduct hearings, subpoena powers, and an adequate staff, all to be funded as part of the judicial budget.<sup>8</sup> In spite of Michigan's adoption of the integrated bar and a strict code of ethics, the recent scandal in that state disclosed the gross inadequacy of existing procedures for the handling of legitimate complaints, particularly in the non-urban areas where friendship and other ties made a mockery of enforcement.<sup>9</sup> Confronted with that realization, the Michigan Supreme Court did establish effective procedures with remarkable results, not the least of which was the discipline of seven attorneys in the particular locality where public outrage had reached extreme limits. To forestall such a crisis and to provide a genuine foundation for public confidence, this writer has requested the S.J.C. to establish such procedures in Massachusetts as an alternative to the adoption of the A.B.A. Code of Professional Responsibility. Lest it be thought that the unified bar would accomplish that

purpose, it should be stressed that the proposal involves the creation of a quasi-judicial body with power comparable to that of a master in equity, which should be wholly independent of an organization whose individual members might be party to proceedings before it.

It is questionable whether the proponents of the unified bar would be satisfied with the severe limitations imposed by the Wisconsin Supreme Court, without which the plan would clearly face grave constitutional challenges. There are two ready alternatives to the unified bar, namely, the annual assessment of a reasonable fee for the license to practice, the proceeds of which would be allocated by court order, and the establishment of an independent, quasi-judicial body to investigate and process grievance complaints, funded in part from such assessments or through the judicial budget. As indicated by both of the dissenting justices in the New Hampshire proceedings, such alternatives should be exhausted before extreme measures be approved, particularly when there is substantial doubt that such measures will provide a workable remedy for the most serious problem. Not only is it impossible for the proponents to show that such alternatives would not suffice, but it is even more doubtful that they can satisfy the burden of proving that the requested dictatorial control is in the public interest or conducive to the administration of justice. Ultimately, it is for the Supreme Judicial Court to decide whether it will permit a popularity contest to supplant its historical reliance on principle and the protection of the cherished rights of the individual, be he a single attorney or just an ordinary man.

<sup>7</sup> See A.B.A. report of retired Supreme Court Justice Tom Clark, including charges of laxity, lack of cooperation, and ineffective procedures to process legitimate complaints.

<sup>8</sup> See Editorial, "Fiscal Independence of the Judiciary," 54 *Judicature* 138 (Nov., 1970).

<sup>9</sup> See LaBelle, *supra*, n.3, at p. 154.