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Attorney and Client - Bar Association - Constitutionality of the Integrated Bar

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RECENT CASES

ATTORNEY AND CLIENT—BAR ASSOCIATION—CONSTITUTIONALITY OF THE INTEGRATED BAR—Plaintiff, a Wisconsin lawyer, paying dues under protest to the treasurer of the State Bar brought an action alleging unconstitutional compulsion. It was argued that he could not be constitutionally compelled to join and give support to an organization using its funds and employees for purposes of influencing legislation and public opinion toward legislation. The United States Supreme Court, two justices dissenting, *held* that the Supreme Court of Wisconsin may constitutionally require a lawyer to share the costs of sustaining the legal profession even though the organization itself engages in some legislative activities. However the Court declined to rule on the question of whether the lawyer's constitutional rights of free speech are infringed if his dues are used to support financially the activities of an organization in support of views he opposes. *Lathrop v. Donohue,* 367 U. S. 820 (1961).

An integrated bar has been judicially defined as "the process by which every member of the bar is given an opportunity to do his part in performing the public service expected of him, and by which each member is obliged to bear his portion of the responsibility".[1] The integrated bar is independent and free to conduct its activities within the framework of its rules and bylaws subject to the supervisory rules of the court.[2] There are three methods by which a state may implement integration: statute;[3] statute plus court rule;[4] and court rule.[5] Courts in states not having an integrated bar have noted this

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1. Petition of Florida State Bar Ass'n, 40 So. 2d 902, 904 (Fla. 1949).

2. In re Intergration of the Bar, 5 Wis. 2d 618, 93 N.W.2d 601 (1958).

3. Code of Ala. Recomplied, Tit. 46 §21—§62 (1958); Alaskan Integrated Bar Act. 1955 Session Laws, ch. 196; Ark. Stat. Ann. Rule 28 (1946); Ann. Cal. Codes, Cal. Bus. & Prof. Code §6000 to §6154 (West 1956); Idaho Code §3-101 to §3-420 (1949); Miss. Code Ann. §8685 to §8724 (1942); Nev. Rev. Stat. §7.270 to §7.6000 (1957); N.M. Stat. Ann. §18-1-1 to §18-1-27 (1953); N.C. Gen. Stat. §84-15 to §84-37 (1943); N.D. Cent. Code ch. 27-12 (1961); Ore. Rev. Stat. §9.010 to §9.10 (1953); S.D. Code §32.1113 to §32.-1124 (1939); Utah Code Ann. §78-51-1 to §78-51-44 (1953); Rev. Code of Wash. §2.48.010 to §2.48.230.

4. Ky. Rev. Stat. §30.010 to §30.990 (1960); La. Rev. Stat. §37:211 to 37:218 (1950); Mich. Stat. §691.51 to §691.52 (1948); Tex. Stat. §320 Art. I to XII (Vernon 1948); Va. Code §54-48 to §54-52 (1950); W.Va. Code Ann. §5183 (1) (1955); Wis. Stat. Ann. §256.31 (1958); Sess Laws Wyo. Chapt. 97 (1939).

5. Petition of Florida State Bar Ass'n., 40 So. 2d 902, 904 (Fla. 1949); In re Nebraska State Bar Ass'n, 133 Neb. 283, 275 N.W. 265 (1937); In re Integration of State Bar of Oklahoma, 185 Okla. 505, 95 P.2d 113 (1939).

inherent power of the state's Supreme Court to integrate.[6] The United States Supreme Court has noted that a tax may be imposed on lawyers as a group.[7] The Federal District Court for the District of Columbia has upheld a local fee requirement established for the attorneys of that District.[8]

The major limitation upon the state's power to regulate the privilege to practice law is that the regulation must not contravene the Due Process or Equal Protection clauses of the Fourteenth Amendment.[9] To determine the constitutionality of compulsory membership the court must balance[10] the public interest in raising the quality of the legal profession against private interest of the lawyer in his individual liberty. The Wisconsin Supreme Court found the public interest to be controlling.[11]

Payment of compulsory bar dues is a condition as fully justified by state needs as the payment of compulsory dues to the union shop is justified by Federal needs.[12] This may be seen in the *Hanson* case,[13] requiring compulsory payment of union dues, which should lay aside all doubt that a state may condition the right to practice law upon membership in an integrated bar.[14]

North Dakota, the first state to integrate its bar,[15] has held that the legislature may compel a lawyer to contribute to the State Bar Fund.[16]

The rationale of these cases is that compulsory membership and financial support may be constitutionally imposed so long as the individual attorney retains freedom of expression and a right to dissent. Integration of the state bar will best serve the public interest by giving forceful expression to the major-

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6. In re Unification of Montana Bar Ass'n, 107 Mont. 599, 87 P.2d 172 (1939); In re Petition for Integration of the Bar of Minnesota, 216 Minn. 195, 12 N.W.2d 515 (1943); see Petition for Rule of Court Activating, Integration and Unifying the State Bar of Tennessee, 199 Tenn. 78, 282 S.W.2d 782 (1955).
7. Royall v. Virgina, 116 U.S. 572 (1886).
8. Laughlin v. Clephane, 77 F. Supp. 103 (1947).
9. See Schware v. Board of Bar Examiners, 353 U.S. 232 (1957).
10. See generally, as to the "balancing test": Barenblatt v. United States, 360 U.S. 109 (1958); Schneider v. State of New Jersey, 308 U.S. 147 (1939); National Ass'n for the Advancement of Colored People v. State of Alabama **ex rel.** Patterson, 357 U.S. 449 (1958).
11. Lathrop v. Donohue, 10 Wis. 2d 230, 102 N.W.2d 404 (1960).
12. See International Ass'n of Machinists v. Street, 367 U.S. 470 (1960).
13. Railway Employees Department v. Hanson, 351 U.S. 225 (1956).
14. **Id.** at 238. "On the present record there is no more an infringement or impairing of First Amendment Rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar."
15. Laws of N. Dak. 1921, ch. 25, § 1.
16. Goer v. Taylor, 51 N.D. 792, 200 N.W. 898 (1924).

ity view of the state's lawyers with respect to legislation affecting the administration of justice and the practice of law.

GEORGE R. LAWRENCE

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—RULES OF EVIDENCE—ADMISSIBILITY OF ILLEGALLY SEIZED EVIDENCE—Defendant's home was forcibly entered by several police officers who conducted a complete search of the home without a search warrant. The defendant was convicted of having in her possession obscene materials[1] which were discovered in the illegal search. The Supreme Court of Ohio upheld the validity of the conviction.[2] Upon appeal the United States Supreme Court *held,* three justices dissenting, that evidence obtained by unconstitutional search was inadmissible in state prosecution. Thus conviction was vitiated under the Fourteenth Amendment and the landmark case of *Wolf v. Colorado*[3] which had stood inviolate for 12 years was overruled.

The dissent maintained that the majority in overruling Wolf, instead of passing upon the constitutionality of section 2905.34 of the Ohio Revised Code, chose the more difficult and less appropriate of the two constitutional questions involved. *Mapp v. Ohio,* 367 U. S. 643 (1961).

Illegally seized evidence, formerly admissible in state courts, has now been declared inadmissible because of its unconstitutional nature. The first specific reference made to evidence as being unconstitutional arose in *Boyd v. United States in 1886.*[4] In 1914 the Supreme Court adopted the federal exclusionary rule[5] with respect to evidence illegally obtained. The Supreme Court in *Wolf v. Colorado*[6] 1949 declared that the right of privacy under the Fourth Amendment was enforceable against the states through the Due Process Clause of the Fourteenth Amendment. However the court decided that the Weeks exclusionary rule would not be imposed upon

1. Ohio Rev. Code § 2905.34 (1953) provides in part that "no person shall knowingly . . . have in his possession or under his control an obscene, lewd, or lascivious book . . . (or) picture. . ."

2. State v. Mapp. 170 Ohio St. 427, 430, 166 N.E.2d 387, 390 (1960). The Supreme Court of Ohio found that her conviction was valid though "based primarily upon the introduction in evidence of books and pictures unlawfully seized during an unlawful search of defendant's home."

3. 338 U.S. 25 (1949).

4. 116 U.S. 616 (1886). Claimant was compelled to produce an incriminatory invoice upon which conviction was based—held, unconstitutional as being within the prohibition of the Fifth Amendment.

5. Weeks v. United States, 232 U.S. 383 (1914). In a federal prosecution the fourth Amendment barred the use of evidence secured through an illegal search and seizure. The Weeks rule is codified in Fed. R. Crim. P. 41 (e).

6. 338 U.S. 25 (1949).