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# Courts -- Inherent Power of the Florida Supreme Court to Integrate the Bar

access to special information by virtue of their relationship with the issuer of the securities, shall inure to the corporation even though such person is not specified by the statute. The court dismissed this argument by stating that it was the intention of Congress to limit the applicability of the provisions of Section 16(b) to the persons specified in the section.

In the instant case Section 16(b) is construed as setting up an objective standard of liability which requires no showing of actual unfair use of inside information.[5] This is in conformity with previous decisions under the section which have enforced its provisions almost harshly,[6] yet have refused to extend its scope.[7] It might be contended that under this narrow interpretation of the scope of the statute, persons holding positions comparable to, but not corresponding with those of the designated officers of a corporation, would be enabled to make unfair use of inside information. But, it is equally true that a stenographer or file clerk in a key position in the company's employ could also be considered an "insider." Furthermore, an assistant secretary or treasurer might perform important executive functions and yet not have access to inside information. However, it cannot be denied that here the defendant's important position and access to inside information in the corporation, accentuates a great danger to outside stockholders. This danger should be dealt with by legislative action designed to clearly outline the status of all corporate employees and prevent a multiplicity of suits. A suggested legislative remedy for this dilemma would be inclusion of *all* corporate employees within such an act. The court appears to have followed the intent of the section in limiting liability to designated officers, since the strict and objective standards of the Act would create undue hardship upon anyone not manifestly within its scope.

## COURTS—INHERENT POWER OF THE FLORIDA SUPREME COURT TO INTEGRATE THE BAR

Petitioner, the Florida State Bar Association, prayed for a rule integrating the Florida Bar. This rule would require every practicing attorney in the State of Florida to belong to the integrated bar, pay a

5. *Accord*, Smolowe v. Delendo Corporation, *supra*.

6. Smolowe v. Delendo Corporation, *supra* (the court ruled that profits should be determined by the lowest-in, highest-out rule, rather than the first-in, first-out method used in tax computations). Similarly the courts have attempted to encourage the bringing of suits by minority stockholders, as in Park and Tilford v. Schulte, *supra;* Twentieth Century Fox-Film Corp. v. Jenkins, 7 F. R. D. 197 (S. D. N. Y. 1947) (these cases held that intervention by minority stockholders was allowable to offset possibility of collusion between an influential defendant and a plaintiff corporation); Smolowe v. Delendo Corporation, *supra* (where attorney's fees far in excess of plaintiff's actual interest were allowed).

7. Shaw v. Dreyfuss, *supra;* Truncale v. Blumberg, *supra* (in these cases the courts declined to call a bona fide gift a "sale" within the meaning of the statute). Section 3(a) of the Act reveals that it was within their discretion to do so, 48 STAT. 882 § 3(a) (14), 15 U. S. C. § 78(a) (14) (1934).

$5.00 annual fee, and agree to supervision of the bar's disciplinary action by direct review of the supreme court. *Held,* petition granted since integration would best serve the interest of the bar and public. *Petition of Florida State Bar Association,* 40 So.2d 902 (Fla. 1949).

Integration of the bar has been 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] Opponents of the measure assert that the court is without power to coerce attorneys into joining the integrated bar, and that the required fee is an unconstitutional usurpation of the legislature's taxing power by the judiciary.[2] The majority of decisions in the twenty-seven states that have integrated bars concede that the judiciary may, in the exercise of its inherent powers,[3] prescribe rules for the integration of the bar, while the legislature may, under its police powers, establish minimum requirements below which the courts cannot go in the regulation of the bar.[4] It has been held that minimum requirements set by the legislature for admission to the bar constitute a limitation, not on the power of the judiciary to integrate the bar, but only on the individual seeking admission to the practice of law.[5] These requirements, for the protection of the public, do not invade the sphere of the judicial department.[6]

The inherent power of the judiciary is created by the adoption of the constitution calling the judicial system into being, be that constitution state or federal. It has been invoked many times in the admissions, suspensions, discipline and disbarments of attorneys.[7] It has always been the duty of the court to guard its portals against intrusions by men and women who are mentally and morally dishonest, or unfit on account of bad character to participate in the administration of justice.[8] A department, without power to select and control those officers to whom it must entrust part of its essential duties, cannot be independent.[9] The courts carry with them such inherent powers as are required for the proper discharge of their duties. Since the bar as a whole is essential to the proper functioning of the courts, it follows

1. *In re* Nebraska State Bar Association, 133 Neb. 283, 275 N. W. 265 (1937).
2. See Justice Barns, dissenting in Petition of Florida State Bar Association, *supra* at 909; *cf.* Hill v. State Bar of California, 14 Cal.2d 732, 97 P.2d 236 (1927); *In re* Platz, 60 Nev. 296, 108 P.2d 858 (1941); *In re* Bledsoe, 186 Okla. 264, 97 P.2d 556 (1940).
3. *In re* Integration of State Bar of Oklahoma, 185 Okla. 505, 95 P.2d 113 (1939) (the term "inherent power of the judiciary" means that power which is essential to the existence, dignity and functions of the court).
4. *In re* Opinion of the Justices, 279 Mass. 607, 180 N. E. 725 (1932).
5. *Ibid.*
6. Clyatt v. Hocker, 29 Fla. 477, 22 So. 721 (1897).
7. *E.g., In re* Garner, 179 Cal. 413, 177 Pac. 162 (1932); *In re* Olmstead, 292 Pa. 96, 140 Atl. 634 (1928); Rosenthal v. State Bar Examining Committee, 116 Conn. 409, 165 Atl. 211 (1933); *In re* Nebraska State Bar Association, *supra.*
8. Gould v. State, 99 Fla. 662, 127 So. 309 (1930).
9. State v. Noble, 118 Ind. 350, 21 N. E. 224 (1945).

that the court, by the very act of setting up the judicial department, creates a state bar as an integrated whole. Such an integrated bar needs recognition only.[10]

If the supreme court has the power to integrate the bar, it also has, under the doctrine of implied powers, the right to do everything necessary to make integration effective.[11] A nominal fee, or suspension from practice on the failure to pay it, was held in *In re Gibson* as not denying equal protection and due process.[12] The court stated that a penalty designed solely to enforce payment of a bar integration fee was not void as arbitrary or unreasonable.[13]

The English bar was integrated early in its history, and during the past thirty-five years, some twenty-seven states have followed suit.[14] The discipline of unethical practitioners is only an incidental objective of the integrated bar. Rather, integration is designed to awaken an interest in the science of jurisprudence, improve the administration of justice, and to give the bar a true concept of its relation to the public and to the profession. Florida has stepped into line with the majority of states who view integration as a means of giving the bar this new and enlarged concept of its position in our social and economic pattern.

## FEDERAL PROCEDURE—DIVERSITY OF CITIZENSHIP AS APPLIED TO CITIZENS OF THE DISTRICT OF COLUMBIA

The plaintiff corporation, organized under the laws of the District of Columbia, brought a civil action against a Virginia corporation in the Federal District Court of Maryland, jurisdiction being predicated upon an allegation of diversity of citizenship under the 1940 amendment to the Judicial Code.[1] This amendment provided in effect that citizens of the District of Columbia would be considered citizens of a state for purpose of diversity of citizenship. Defendant contended the statute was unconstitutional in that it extended jurisdiction beyond the limits of Article III, § 2 of the Constitution.[2] The trial court held that while this diversity met requirements under the Act of Congress, it did not comply with diversity requirements of the Constitution as to federal jurisdiction. *Held,* on certiorari to the Supreme Court, extension

10. *In re* Nebraska State Bar Association, *supra; In re* Day, 181 Ill. 73, 54 N. E. 646 (1899); *see In re* Branch, 70 N. J. L. 537, 576, 57 Atl. 431 (1904).
11. *E.g.*, Goer v. Taylor, 57 N. D. 732, 22 N. W. 898 (1924); Jackson v. Gallett, 30 Iowa 382, 228 Pac. 1068 (1924); State *ex rel.* McCloskey v. Greathouse, 55 Nev. 409, 36 P.2d 357 (1934); Dreidel v. City of Louisville, 268 Ky. 659, 105 S. W.2d 807 (1937).
12. 35 N. M. 550, 4 P.2d 643 (1931).
13. *Id.* at 650.
14. Petition of Florida State Bar Association, *supra* at 905.

1. 54 STAT. 143 (1940), 28 U. S. C. § 41 (1) (1946).
2. U. S. CONST. Art. III, § 2. "The judicial power shall extend . . . to controversies . . . between citizens of different States. . . ."