1931

Disbarment of Judge Lindsey

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DIVERSITIES

DISBARMENT OF JUDGE LINDSEY.—About a year ago, i. e., in December, 1929, the well known Ben B. Lindsey was disbarred by the Supreme Court of Colorado. In an article which appeared in *The Nation*[1] on April 9, 1930, the proceeding was denounced by Harry McGuire. This article constitutes a challenge to the correctness of the decision of the Supreme Court of Colorado. Indeed, the effect of the article is that Judge Lindsey was disbarred contrary to the law and the facts for the purpose of satisfying his personal and political enemies. Such a challenge should be accepted. Lawyers are too prone to permit charges against the profession and against the judiciary to remain unanswered. The profession is not particularly loved by those outside of it. The only proper way to accept such a challenge is to examine the proceeding that is questioned, and if an error has been made by a court to admit it and condemn it as in fairness it deserves to be condemned. On the other hand, if there has been no error, this should be asserted boldly in order that loose charges against the profession and the judiciary may be exposed.

Before examining the proceeding that has been challenged, it is desirable to analyze and summarize the article by Mr. McGuire. After stating that Judge Lindsey was disbarred because he practiced law and accepted compensation for his services in a particular instance while he was a judge, Mr. McGuire proceeds to assert that the condemned conduct of Judge Lindsey was either: (1) merely clerical; or (2) that of a mediator or arbitrator.[2] These assertions lie at the basis of an analysis of the decision of the Supreme Court of Colorado, and further consideration of them will be postponed. Mr. McGuire belittled the alleged charge of practicing law while a judge as the real reason for the disbarment. The significant feature of his article was that Judge Lindsey was disbarred because "they were out to get him." Then he proceeded to inform the readers of *The Nation* of the meaning of "they." "They" constituted the following: (1) public utility officials and their lawyers who are presented as enemies of the public generally; (2) most of the big politicians; (3) the Ku Klux Klan; (4) the Supreme Court itself; (5) the church members and women who formerly had been supporters of Judge Lindsey, but recently had been placed in a doubtful position because of his advocacy of companionate marriage; (6) the legal profession because of his in-

1. 130 The Nation No. 3379, p. 420.

2. It is stated in the article by Mr. McGuire that: "Under the laws of New York Judge Lindsey could not have qualified to practice law if he had tried to." No authority is cited for this statement and we are not inclined to believe that it is necessary in New York to obtain a license before a non-citizen lawyer may appear in behalf of a particular client in the settlement of a threatened law suit.

formal methods and, also, because of his advocacy of a house of human welfare which would ignore normal court procedure in order to serve the poor people.

It might seem at this distance that if a man had been unfortunate enough to alienate so many elements of society, he could not well charge that any small coterie of persons "had gotten him." On the other hand, Judge Lindsey recently has taken the position that his disbarment was exceedingly unpopular with the voters in Colorado.[3] At the election in November, 1930, Judge Greeley W. Whitford who wrote the opinion in this case was defeated by a small majority,[4] but how far the disbarment of Judge Lindsey affected the result is not known.

Supreme Court Opinion. The facts as stated in the opinion of the Supreme Court and in reality not disputed are as follows: Judge Lindsey as a judge of the juvenile court in Denver on February 3, 1920, in cause numbered 14279, appointed Mrs. Helen Elwood Stokes as guardian of her two children, and provided in the appointment that the children should remain within the jurisdiction of the court, and then continued the cause from term to term pending final orders. On May 19, 1926, W. E. D. Stokes, the father of these children, died in the City of New York. On the same day, Judge Lindsey entered a further order that the two children should remain under the jurisdiction of his court in the custody of their mother. Mr. Stokes had devised all of his property to W. E. D. Stokes, Jr., a child by another marriage, and had entirely omitted to provide for the two children above mentioned. Mrs. Stokes consulted with Judge Lindsey concerning this fact, and at her request he made a trip to New York in June, 1926. In that city he engaged the services of Samuel Untermyer for the purpose of contesting the will of the father. Upon this trip to New York, Judge Lindsey participated in negotiations toward a settlement of the matter in dispute. Upon his return to Denver, Judge Lindsey entered an order as judge of the juvenile court in the cause numbered 14279 wherein he directed Mrs. Stokes to file a petition in the county court asking that she be appointed guardian of the estates of the two minor children. Judge Lindsey had already prepared this petition. The petition was filed as ordered, and Mrs. Stokes was appointed guardian as contemplated. This order of appointment was prepared by Judge Lindsey. Pursuant to the order and in accordance with its terms Mrs. Stokes was authorized with the approval of the county court to employ counsel for the purpose of contesting the will with power to make agreements for the compensation of the attorneys.

After these matters of procedure had been accomplished, Judge Lindsey returned to New York with Mrs. Stokes and engaged at

3. In a letter from Judge Lindsey to one of the authors dated November 8, 1930.

4. The first report was that Judge Whitford had been defeated by a majority of 2,140, with 126 precincts missing. Since then the writers have been informed that Judge Whitford has been defeated by a smaller majority.

her request in further negotiations for a settlement of the threatened contest. An agreement was effected whereby the two children of Mrs. Stokes were awarded property of a very substantial amount. Later a petition was filed in the county court at Denver, and it was therein recited that a settlement had been effected, and the terms of it were stated. It was also averred that Mrs. Stokes was entitled to a statutory allowance as guardian in the sum of $43,500 and that she was also entitled to remuneration on account of the services of New York counsel and of "certain local parties." It was stated that Mrs. Stokes was under obligation as guardian to pay for the services of "certain local parties" a sum in excess of $40,000. Accordingly an order was entered in the county court whereby property of the par value of $113,500 was transferred to Mrs. Stokes. Mrs. Stokes pledged this as collateral and borrowed the sum of $37,500, which she paid to Judge Lindsey, who admitted that he was the "certain local parties." Thereafter in December, 1926, Judge Lindsey received from Samuel Untermyer, the New York counsel, the sum of $10,000, making a total of $47,500 which was received and kept by Judge Lindsey because of his efforts in the Stokes case as set forth.

The Colorado statute provided as follows: "The judge of the juvenile court hereby created . . . shall receive no other compensation whatever for his services as such judge save the salary herein provided; nor shall he act as attorney or counselor at law." In addition to this particular statute, relating to the juvenile court, there was a general statute in Colorado which provided that: "A judge of a court of record shall not act as attorney, or counsel, in any court or any cause." The act creating the juvenile court provided that it should be a court of record.

The question before the court in the proceeding to disbar Judge Lindsey was, therefore, a very simple one, i. e., did Judge Lindsey violate either one of the statutes or both of them? Since he admitted that he received the compensation, his explanation necessarily became that he did not receive it for his services as a judge, and that in the Stokes affair that he did not act as an attorney or counselor at law. Affirmatively, the position of Judge Lindsey was that he acted throughout merely as a friend, mediator and arbitrator, and not as a lawyer or a judge.[5] The Supreme Court of Colorado considered each one of these allegations and denied the adequacy of the explanation. It stated, first, that Mrs. Stokes sought and used Judge Lindsey not merely as a friend but as her legal adviser; that she was greatly in need of legal advice and that

5. Bouvier defines arbitrator as "A private extraordinary judge to whose decision matters in controversy are referred by the consent of the parties." Black's Law Dictionary (2d ed.) defines mediator very generally as "One who interposes between parties at variance for the purpose of reconciling them." Bouvier does not define mediator. Bouvier defines a lawyer as any person "Who for fee or reward prosecutes or defends causes in courts of record or other judicial tribunals of the United States or of any of the states, or whose business it is to give legal advice in relation to any cause or matter whatever." The opinion will be found in 283 Pac. 539.

that was the particular reason why she consulted with him. Likewise the court stated that Judge Lindsey was not a mediator in the sense of the word that he was merely one who was indifferent as to the claims of the litigating parties and merely offered his services in an attempt to effect a reconciliation. On the contrary, the court found that in the report which had been filed in the county court, Judge Lindsey had taken credit for being instrumental in obtaining such a large sum of money for the two children of Mrs. Stokes. Likewise with reference to his claim that he was only an arbitrator the court denied that he was an arbitrator in the sense of one who is selected by both parties to settle some dispute.

While recognizing the difficulty of defining "legal services" in any wholly satisfactory manner, nevertheless we are forced to the conclusion that by virtue of the ordinary acceptation of the meaning of the words Judge Lindsey was acting as a legal adviser in the Stokes matter. We do not believe that he was acting in a manner different from that of the ordinary lawyer, particularly the lawyer engaged in office practice. It seems that it can hardly be denied that he was a lawyer in the same sense as Mr. Untermyer. If Mr. Untermyer was not a lawyer in this affair, then we fail to comprehend how most of the important affairs of a legal nature outside of a court room can be fairly called the rendition of legal services. So, therefore, we are of the opinion that the Supreme Court of Colorado was correct in its conclusion that Judge Lindsey violated the statute in acting as attorney and counselor at law. Did he also violate the statute in receiving compensation for his services as judge of the juvenile court other than the salary provided by statute? Apparently the court did not consider this as a separate matter, and it seems that on the whole it cannot be said that he received the sum of $47,500 as compensation for judicial services.

Judge Lindsey's explanation of the receipt of these sums was that they were mere gifts by individuals who were grateful to him for what he had done. The Supreme Court, however, pointed out that Judge Lindsey had given a receipt to Mrs. Stokes for the sum of $37,500, and that he had stated in that receipt that the sum was in full payment and satisfaction of all claims.[6] Furthermore, the court made use of the fact that Judge Lindsey in his income tax return for the particular year admitted receiving this particular sum and had paid an income tax upon the same. The opinion does

6. In a letter dated October 17, 1930, from Judge Lindsey to one of the authors he gave the following explanation of this receipt.

"Mrs. Stokes' attorneys said 'It is true Judge Lindsey you have never charged or asked anything, but if you died your estate might justly make a claim for compensation against Mrs. Stokes or the estate in New York—and to guard against such a contingency we want you to give a receipt for any such possible contingency—even though we voluntarily insist on what we are doing for you.'"

It would seem that this statement of Judge Lindsey is not altogether consistent with his claim that he was donating his services as an arbitrator or mediator.

not disclose that he made a return of the $10,000 sent by Mr. Untermyer. The court also stated that by Section 22 of the United States Revenue Act gifts were exempt from income tax. Accordingly, the Supreme Court of Colorado found that Judge Lindsey had been false to his oath as a judicial officer and as an attorney had proven himself unworthy of the trust imposed in him by that court, "and withal wanting in that indispensable moral character which the administration of justice demands of an attorney and counselor at law." Therefore, his license was revoked, his name was stricken from the roll of attorneys and counselors at law, and the costs were taxed against him. The opinion was unanimous except for Butler, J., who did not participate.[7]

The Penalty. The question now arises as to whether the extreme penalty above indicated was justified by the conclusion that Judge Lindsey violated the Colorado statutes in practicing law while a judge of the juvenile court. We are of the opinion that the penalty was too severe. It seems to be admitted that the negotiations in which Judge Lindsey took part brought about a settlement that was highly advantageous to the two children involved. There seems to be no suggestion, and we believe there can be none, that the compensation which was received by Judge Lindsey was excessive. Certainly this is not a case that can be compared with such conduct as embezzling a client's funds, or deceiving a court, or prosecuting a false claim, or suborning perjury. Looking at the particular matter involved, it is difficult to state that the conduct that was condemned was immoral in and of itself. It would follow then that the only reason for condemning the action of Judge Lindsey was that he violated the statutes, and we assume that a violation of the statutes was not proper conduct in a judicial officer regardless of the question as to the merit of the statutes. In the second place, we believe that the statutes do express a proper policy as a general rule of conduct for judges. We believe that as a rule for general observance, judges should not practice law. It is too

7. Counsel for Judge Lindsey in their brief filed in the Supreme Court of Colorado suggested that the proper procedure in case of misconduct of a judge was impeachment and not disbarment, citing *People* v. *Goddard* (1888) 11 Colo. 259, 18 Pac. 338. They did not press the point because they were persuaded that a "technical" argument was out of place. Had it been pressed the Supreme Court could have cited *People* v. *Class* (1921) 70 Colo. 381, 201 Pac. 883, where the defendant was a judge and yet the disbarment proceeding was considered on its merits. No mention was made of the proposition that impeachment was the only proper remedy.

Furthermore, Judge Lindsey ceased to be a judge in July, 1927, and he was disbarred in December, 1929. It is not apparent how he could have been impeached after he ceased to be a judge.

It has been asserted by Judge Lindsey and his California attorneys that the Supreme Court of Colorado in *Graham* v. *Lindsey* (1929) 86 Colo. 240, 280 Pac. 884, decided that Judge Lindsey at the time of the death of Mr. Stokes and thereafter was not even a de facto judge but only an usurper; and that the Supreme Court in the case under review contradicted itself in holding that Judge Lindsey improperly practiced law while he was a judge. A fair reading of the opinion in *Graham* v. *Lindsey*, supra, makes it clear that this assertion is unfounded.

apt to lead to abuses. If these observations are true, then it follows that Judge Lindsey was open to censure and perhaps a suspension from practice for a short time. Disbarment, however, is an extreme penalty and in our opinion was not warranted by the facts in this case.

A review of the disbarment cases in Colorado seems to indicate very clearly that this is not a situation normally resulting in disbarment. The following is a summary of Colorado cases on disbarment, the attorney's conduct, and the result.

The following cases resulted in disbarment:

People v. *Campbell* (1899) 26 Colo. 483, 58 Pac. 591
misappropriated clients' funds

People v. *Walkey* (1899) 26 Colo. 483, 58 Pac. 591
guilty of forgery

People v. *Adams* (1899) 26 Colo. 412, 58 Pac. 603
guilty of felony

People v. *Betts* (1899) 26 Colo. 521, 58 Pac. 1091
wrongfully withheld client's funds

People v. *Manus* (1900) 28 Colo. 83, 62 Pac. 840
guilty of larceny

People v. *Hayes* (1900) 28 Colo. 82, 62 Pac. 832
misappropriated clients' funds

People v. *Varnum* (1901) 28 Colo. 349, 64 Pac. 202
guilty of attempted blackmail

People v. *Sindlinger* (1901) 28 Colo. 258, 64 Pac. 191
guilty of forgery and misappropriation of client's funds

People v. *Waldron* (1901) 28 Colo. 249, 64 Pac. 186
misappropriated client's funds

People v. *Mead* (1902) 29 Colo. 344, 68 Pac. 241
wrongfully withheld client's funds

People v. *Koegan* (1902) 30 Colo. 271, 69 Pac. 524
wrongfully withheld client's funds

People v. *Webster* (1903) 31 Colo. 43, 71 Pac. 1116
wrongfully withheld client's funds

People v. *Kelsey* (1903) 32 Colo. 1, 75 Pac. 390
misappropriated client's funds

People v. *Taylor* (1904) 32 Colo. 250, 75 Pac. 914
guilty of reprehensible and libellous advertising

People v. *Anglun* (1904) 33 Colo. 40, 78 Pac. 687
guilty of receiving bribes as district attorney

People v. *Nicholas* (1906) 36 Colo. 42, 84 Pac. 67
wrongfully withheld clients' funds

People v. *Bryce* (1906) 36 Colo. 125, 84 Pac. 816
guilty of embezzlement

People v. *Patterson* (1914) 56 Colo. 296, 138 Pac. 30
obtained money from client under false pretenses

People v. *Kohn* (1915) 59 Colo. 353, 149 Pac. 249
neglected client's interests and wrongfully withheld his money

People v. *Humbert* (1920) 69 Colo. 188, 194 Pac. 612
misappropriated clients' funds and guilty of perjury

People v. *Furman* (1923) 72 Colo. 549, 212 Pac. 825
wrongfully withheld clients' funds

People v. *Cary* (1926) 80 Colo. 443, 251 Pac. 597
wantonly neglected clients' business; misappropriated their funds

People v. *McCann* (1926) 80 Colo. 220, 249 Pac. 1093
guilty of bribery

People v. *Green* (1884) 7 Colo. 244, 3 Pac. 374
assaulted judge; assumed belligerent attitude in disbarment proceeding

People v. *Ryalls* (1885) 8 Colo. 332, 7 Pac. 290
wrongfully withheld clients' funds

In the following cases the court found the respondent guilty of punishable conduct but refused to disbar him:

People v. *Newton* (1887) 9 Colo. 506, 13 Pac. 514 negligently signed bill drafted by his partner charging judge with bribery	suspended two months
People v. *Brown* (1892) 17 Colo. 431, 30 Pac. 338 placed matter in brief denouncing judge and judicial system	suspended six months
People v. *McCabe* (1893) 18 Colo. 186, 32 Pac. 280 advertised as divorce lawyer	suspended six months
People v. *Essington* (1904) 32 Colo. 168, 75 Pac. 394 guilty of misappropriation of clients' funds, but had unusually fine record previously	disbarred and immediately reinstated
People v. *Irwin* (1915) 60 Colo. 177, 152 Pac. 905 grossly negligent in caring for client's business	suspended six months
In re *Nikkel* (1929) 86 Colo. 189, 279 Pac. 565 set up usury as defense to note executed and drafted by himself	publicly reprimanded
People v. *Ginsburg* (1930) 285 Pac. 758. misused knowledge gained as attorney for receiver; abused opposing attorney	suspended six months
People v. *Kelley* (1930) 285 Pac. 767 used "strong arm" methods instead of legal process to secure possession of property in controversy	suspended indefinitely

In the following cases the petition for disbarment was denied because the facts were held not to furnish sufficient grounds for punishment:

People v. *Goddard* (1888) 11 Colo. 259, 18 Pac. 338 while running for judge, executed written promise to politician promising to make him clerk of court if elected	Petition denied
People v. *Johnson* (1907) 40 Colo. 460, 90 Pac. 1038 represented party in criminal case against whom he had drawn information while district attorney	Petition denied
People v. *Humbert* (1911) 51 Colo. 60, 117 Pac. 139 by negligently depositing money of client in his own name, allowed the money to be attached	Petition denied
People v. *Class* (1921) 70 Colo. 381, 201 Pac. 883 represented party in election contest before legislature while he was a judge	Demurrer to information sustained

In the following cases the facts alleged in the information were not proved sufficiently to warrant a finding against the respondent:

People v. *Pendelton* (1892) 17 Colo. 544, 30 Pac. 1041
People v. *Anderson* (1895) 21 Colo. 271, 40 Pac. 568
People v. *Benson* (1897) 24 Colo. 358, 51 Pac. 481
People v. *Robinson* (1904) 32 Colo. 241, 75 Pac. 922
People v. *Tanquay* (1910) 48 Colo. 122, 109 Pac. 260

In the following cases the only questions considered were purely procedural:

People v. *Thomas* (1906) 36 Colo. 126, 91 Pac. 36
In re *Walkey* (1899) 26 Colo. 161, 56 Pac. 576
People v. *Burton* (1906) 39 Colo. 164, 88 Pac. 1063

It is rather unusual to object to the severity of a judgment of a court in a disbarment case. It has been observed before that some courts have been notoriously lenient with reference to attorneys.[8] Accordingly, it does not seem possible to deny that the severe penalty imposed against Judge Lindsey gives an *appearance* that there was an unfortunate sort of animus against him. Such animus at least is his claim, and it is to be supposed that his friends think the same.

Reinstatement. Should Judge Lindsey be reinstated? He has already indicated that he expects to apply for reinstatement. We have already expressed our opinion that the penalty was too severe and that a suspension was the most that was justified. It would follow that he is entitled to reinstatement. However, we do not overlook the fact that Judge Lindsey seems to be a somewhat complex character. In the first place, he presents himself from time to time as a very righteous individual who is forced to fight a Supreme Court which is controlled to some extent by unworthy principles. He has referred to the Supreme Court of Colorado as corporation controlled. We have seen no satisfactory evidence of this, although we have examined his well known book "The Beast." In this book, he has a chapter on the Supreme Court. We are of the belief that Judge Lindsey could do a great deal to help himself and clear up the situation if he would adopt a more respectful and less antagonistic attitude toward the Supreme Court of Colorado. This suggestion is made with hesitancy because the writers do not pretend to know the local situation in Colorado. That, of course, is a disadvantage from one point of view. From another point of view, we at least feel that we are entirely free from any prejudice that seems to be difficult to separate from a too close acquaintance with the persons involved.

A more serious problem presents itself with reference to a signed statement issued by Judge Lindsey concerning the action of the California Bar. Before the disbarment proceeding in Colorado was decided, Judge Lindsey had applied for the privilege of practicing in California. He was granted that privilege and thereafter

8. See an article by *Edson R. Sunderland,* 5 The American Law School Review, 73, 83.

he was disbarred in Colorado. The question then arose as to whether Judge Lindsey had fairly notified the California Bar of the pendency of the proceedings against him in Colorado. He was given a hearing upon this proposition, and he was represented by counsel. After a hearing, the California Bar decided that Judge Lindsey had given fair notice of the disbarment proceedings in Colorado and that, therefore, he had not imposed upon the California Bar. That was all that was decided.

In a printed statement, a copy of which was sent to us by Judge Lindsey, the following appears:

CALIFORNIA BAR GIVES JUDGE LINDSEY JUSTICE

"On Monday, March 3rd, after his return from the victorious hearing of his disbarment case before the board of governors of the California Bar, Ben B. Lindsey gave out the following statement:

" 'Our victory before the California Bar in the Colorado Supreme Court disbarment case against me is profoundly significant. As a result of that victory I know that my friends will rejoice that in spite of the Colorado Supreme Court disbarment decision against me I now am an honored member of the California Bar. On the strength of that victory I have the right to appear as a lawyer in any state in the United States, except of course in my own beloved State of Colorado, where I have chosen to live and labor, and provoke bitter enmities, for over forty years. This life work was made possible through my friends, without whom I could have done nothing.

" 'Almost immediately after the judgment of the Colorado Supreme Court the complete record of the case used by my enemies in the Colorado Supreme Court, including Judge Whitford's opinion against me, was sent to the board of governors of the California Bar. This was done with the expectation that the unjust disbarment by the Colorado Supreme Court would be repeated in California, where I was also a member of the bar.

" 'After a thorough hearing before the disciplinary committee of the board of governors of the California Bar, the board of governors, representing the California Bar, refused to file any complaint or to take any action against me. This result speaks for itself.

" 'The Denver Post, of February 23, 1930, in carrying press reports from Los Angeles, of this victory said: 'The report of the board of governors of the California Bar, made public by its president, Charles A. Beardsley, was a complete vindication for the former Denver judge'."

We believe that the above statement is misleading. It certainly gave us the impression that the California Bar had considered the record in the disbarment case in Colorado and the opinion rendered by the Colorado Supreme Court, and had determined that the Colorado Supreme Court entered a wrong judgment on the basis of that record.[9] That is not true as is well shown by the following

9. The editors of *The Nation* were misled because in an editorial note to Mr. McGuire's article the following appears. "On February 21, Judge Lindsey was completely exonerated by the California Bar when the board of governors of the state association, after consideration of the charges on

communication from Mr. Charles A. Beardsley, Central Bank Building, Oakland, California, who was the president of the California Bar. In his letter of October 28, to one of the writers, he stated:

"I have your letter of the 23rd inst. in reference to the disbarment proceedings against Ben B. Lindsey of Colorado. The proceedings taken in California were as follows:

"Upon the announcement of the decision of the Supreme Court of Colorado, the board of governors of the State Bar of California took note of the fact that Judge Lindsey had been admitted to the bar of California on motion based upon his Colorado certificate after the filing of charges against him before a local bar association The question was raised as to whether or not he imposed upon the Supreme Court of California either by misrepresentation in reference to the Colorado proceedings or by failing to make a full disclosure of the pendency of such proceedings. The matter was referred to the disciplinary committee of the board, of which Alfred L. Bartlett of Los Angeles was chairman. The disciplinary committee held a hearing or hearings in Los Angeles before which Judge Lindsey appeared with his attorney; at the meeting of the board of governors held in Los Angeles on February 21, 1930, the disciplinary committee made its report to the board. The minutes of the meeting dealing with this matter read as follows:

" 'Mr. Bartlett, Chairman of the disciplinary committee, reported that a hearing in the matter of Ben B. Lindsey had been held by the disciplinary committee and the finding of the committee was that there had been a disclosure by Mr. Lindsey of the pending disbarment proceedings in Colorado prior to his admission by the California courts, and that he had not been guilty of committing a fraud on the committee of bar examiners nor on the courts of California. A discussion by the board followed.

" 'On motion duly seconded it was

" 'Resolved that no action be taken by the board to have the order admitting Mr. Lindsey to practice law in California set aside.'

"As you will note from the foregoing, the board of governors made no investigation for the purpose of determining the presence or absence of merit in the charges filed in Colorado; it simply investigated the question as to whether there was any irregularity in connection with Judge Lindsey's admission to the bar of California, and it came to the conclusion that there was no such irregularity.

"I note that you ask for a copy of the report of the board of governors which is said to have been made public by me and to constitute a complete vindication of Judge Lindsey. The board made no written or other report; I made a statement for publication, and which was widely published, stating briefly the determination of the board to take no proceedings in the matter for the reason that the board's investigation had indicated that there was no irregularity in connection with Judge Lindsey's admission to the bar of California."

We feel that Judge Lindsey has unnecessarily complicated his proposed application for reinstatement by giving forth a statement

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which the Colorado decision was based, announced that no irregularity on the part of Judge Lindsey had been disclosed by its investigation and that no action would be taken against him."

that seems to be misleading and more worthy of a politician than of a judge. Nevertheless, we do not think that this statement of itself is sufficient reason to deny him reinstatement although it might well be regarded as affording a justification of further censure.

In conclusion, we believe that the facts and analysis which have been presented show that the article in *The Nation* considerably overstates the case for Judge Lindsey in that it presents him as an individual who is a leader in civic virtue, and who has been unjustly persecuted.

We believe that Judge Lindsey plainly violated statutes which have a proper basis for existence. We also believe that his punishment was too severe. We feel that a large part of his trouble has been caused by a deep conviction of his self-righteousness and of the venal nature of those who oppose him. If he had not followed his political bent, but had been judicious in his utterance with reference to the action of the California Bar his right to reinstatement should be clear. And finally, we believe that the good qualities of Judge Lindsey are sufficiently meritorious to warrant his reinstatement by the Supreme Court of Colorado despite his defects.

KENNETH C. SEARS.
BEN E. GOLDMAN.

THE OBITER DICTUM.—[The editors of this Review are indebted to Judge Evan Evans of the United States Circuit Court of Appeals for calling to their attention the following description of an obiter dictum, as it appeared in a brief submitted to that court and written by Charles E. Kremer, of the Chicago bar:]

"It is like the illegitimate offspring, conceived in mistake and born in error, with no parent but the one that gave it birth, and the fair name of that blighted by the birth of it. Brought into the family of the good and proper, it is disowned by those who stand its sponsors, whenever it seeks to take its proper place among them. It is cast out by reason because it is without right.

"Tolerated, but not adopted, found but not followed, fit for space, but not for place, writing without right, print without principle, done but to be undone. It is far-fetched and unfair, it is not wicked but worse. It flatters the fools and fights the fair. It is words without wisdom. More than nothing, yet less than something. To follow it is to go from error to wrong, and the perversion of right, placing with the things that are, the things that seem to be.

"Usually bad reason, always bad taste and never good law. It is fiction and a failure. Ill-conceived, ill-considered and ill-born. Like the hanging culprit, it stands on nothing and kicks at law.

"CHARLES E. KREMER."

THE CASE-STUDY SYSTEM IN CONTINENTAL LAW SCHOOLS.—American professors of law, and the thousands of practitioners who have been trained under the case-study system, will be interested