SAINT LOUIS
LAWYER

October 2007 Vol. XLVIX, No. 3 ISSN #08935971

JAZZ MAN

Bar Foundation Honors Don Wolff

A Brief History of BAMSL's Creation of the Non-Partisan Court Plan

Thomas G. Glick [1]

In 1927 the St. Louis Bar Association had been firmly established for over 50 years, though, at that time, it was not yet the Bar Association of Metropolitan St. Louis (BAMSL)[2] we know today. The Association did not yet have a permanent home, a staff, or a club. However, the fundamental goals of BAMSL had been in place since the inception of the Association. Amongst these fundamental values was a belief that the Association should act to "maintain the honor and dignity of the profession of the law, ... promote legal science and the administration of justice, ... promote and maintain the efficiency and integrity of the judicial departments of the government."[3]

BAMSL's daily business in 1927 would have been foreign to even the most active of today's members. It prosecuted disciplinary cases[4], paid the Missouri Bar dues of its members, and devoted hundreds of hours of time to the debating, voting and endorsing of candidates for judicial office.[5] BAMSL felt an obligation to intercede in judicial elections because the people for whom democracy and justice were to be protected had little or no idea about the reputation or ability of most lawyers seeking judicial office or even of the incumbent judges.[6] The Association did not think the public was ignorant or stupid, but simply lacked information on most candidates. Moreover, the predominant sound-bite-style advertising available then did little to assist the people in discerning the qualifications or judicial philosophies of the candidates.[7]

Judicial elections were partisan.[8] The political bosses and their machines controlled the selection of candidates and the elections.[9] The person most qualified to serve as a judge in the politicians' eyes was the person who had done the most for their political machine or who had the potential to do the most once elected.[10]

The Bar Association's process of endorsing candidates was hopelessly complex, as if it had been designed by intelligent and well-meaning, but clearly overeager attorneys.[11] The process required several rounds of balloting and involved endorsement of judicial candidates in the primaries of both political parties.[12] The process was then repeated for the general election.[13] This meant that when both endorsed candidates prevailed in the primary elections, and only one was endorsed for the general election, it gave the public the impression that BAMSL had essentially withdrawn their endorsement of the other candidate.[14] The process was tremendously time consuming.[15] Some referenda on judicial nominations were marathon meetings that extended into the wee hours of the morning.[16]

Partisan election of judges had even more serious consequences than inconveniencing the Bar Association.[17] The biased administration of justice and the need to raise money are all well chronicled in other histories.[18] These problems were not unique to St. Louis, or even to Missouri.[19] Many other states had begun to bemoan similar problems.[20]

In this context in 1927, BAMSL began to wrestle with the inherent problems of partisan judicial elections.[21] The first efforts of the Association recognized the failings of partisan elections but sought to correct the problems by modifying its internal procedures for the referenda.[22] For example, it changed its procedure so that only one candidate per office received a Bar endorsement,[23] which came without regard to political party.[24] Another of the Association's early efforts at reform, this one involving the general election, was the relatively simple idea of a separate judicial ballot at the same election, that contained no indication of party affiliation.[25] Unfortunately, this proved untenable as it encouraged the tendency of voters to simply under-vote in the judicial elections.[26]

BAMSL continued to study and contemplate the problem.[27] In April 1936, the Committee on Judicial

Selection and Tenure was again charged with reviewing BAMSL internal procedures.[28] This Committee consisted of R. Walston Chubb, Roberts P. Elam, William F. Fahey, Luther Ely Smith, Elan A. Shepley, Israel Treiman, and Ronald J. Foulis.[29] Several members chaired the Committee but Luther Ely Smith emerged as the leader of the Committee, and subsequently the chair.[30] The Committee ultimately ignored its charge to modify the internal procedures of the Association and instead took the much bolder move of suggesting an untried, entirely new system of judicial selection and tenure now known as the Nonpartisan Court Plan. The rest of the country refers to this Plan simply as the Missouri Plan.[31] Although the Plan was well beyond the charge of the Committee, it does not appear to have been unexpected.[32] Local newspapers anticipated the release of the report, and it was professionally printed for the meeting.[33]

The new system was groundbreaking at that time because 37 of the 48 states used the system of party nomination and partisan election.[34] Although the system was widely used, the Committee unanimously concluded "the [partisan selection] system is inherently defective and presents a major obstacle in current efforts to improve the administration of justice."[35]

The Committee referred to its grievances with the partisan system as a "bill of particulars" much like a criminal indictment of the day.[36] It complained that the partisan system not only failed to encourage the best qualified candidates to seek office but, in fact, discouraged them.[37] Because judicial office was largely dependent upon the expenditure of time and money and the solicitation of political backing, the judicial candidates had a temperament far different from that of modern jurists.[38]

The Committee complained that even upon election, judges were not able to act strictly in accordance with their well-informed view of the law because of the continuing need to seek re-election.[39] The judges experienced tenures that, although relatively short, decimated their client relationships and in turn the private practices they abandoned for the bench.[40] The resulting personal financial pressure forced judges to focus on fundraising and political favoritism for re-election to satisfy their basic need for continued employment.[41]

The Committee on Judicial Selection concluded its condemnation of partisan judiciary election with its most compelling reason for change.[42] "The present system, while parading under the cloak of popular election is utterly undemocratic ... because the people do not in reality nominate the candidates for judicial office."[43] The report explained candidates are "usually hand picked by a small clique of party bosses who are not responsible to the people."[44] While the report left these bosses unnamed, historians have largely focused on the political machine of Thomas J. Pendergast as the political power of the time.[45]

Although to this point the report's "bill of particulars" focused its criticisms on the status quo partisan election in Missouri, the Committee was not ignorant of other possible methods of judicial selection, including nomination by the governor and confirmation by the legislature.[46] The Committee found this latter method, then in use in California, wanting because it similarly failed to promote the most qualified lawyers to the bench based on judicial temperament, but rather based largely on party loyalty[47]

Although composed of members of an urban bar association, the Committee acknowledged that the system's failings they recognized were absent from elections in rural communities, where the electorate was more likely to be personally familiar with the merits and demerits of local judicial candidates.[48] For this reason, the Committee limited their Plan to the appellate courts and urban areas only while allowing the more rural areas to opt-in to the Plan as the voters wished.[49]

After rejecting the judicial selection method then being used, the Committee crafted an entirely new form of judicial selection that would subsequently be adopted throughout the country as the "Missouri Plan."[50] The Committee's report initially described their radical new plan as "a system whereby judges are to be appointed by an official and responsible authority, whose power of appointment ... is ... guided by an intelligent opinion and subjected to final control by popular will effectively voiced through the ballot."[51]

This was not to be a report that gathered dust on a shelf without further action. BAMSL not only adopted the report after some minor tinkering, but committed the full force of the organization to passage of the constitutional amendments necessary to implement the Plan.[52] The membership of the Committee on Judicial Selection and Tenure was more than doubled in size to provide the labor necessary.[53] Members of the Committee were dispatched to Kansas City[54] and later Jefferson City,[55] partially at Association expense, to introduce the Plan to government and other bar associations.[56]

By October of 1938, the Committee had made little progress toward adoption of its Plan.[57] Unfortunately, but not unexpectedly, efforts to commit the partisans in the legislature to a non-partisan plan were frustrated.[58] The Committee realized that an amendment to the constitution without legislative approval remained a viable option, but would require a broader coalition than had been formed to date.[59] Although presentations had been made to potential coalition partners, the Plan had yet to garner the support or really even the attention of the younger, smaller Lawyer's Association of St. Louis or the Kansas City Bar Association.[60] Neither organization had even appointed a committee to study the Plan much less promote it in a coalition.[61]

However, by November of 1939, the Committee's campaign picked up steam.[62] The Committee had turned its focus to submission by initiative petition of the necessary constitutional amendments to the voters in the November 1940 general election.[63] The Committee also started building a broader coalition. This effort included the creation of an entity not entirely composed of lawyers to lead the coalition.[64] The Association provided the initial $1,000.00 financing that the Committee directed to the new coalition entity once it was formed.[65]

Within a month, the previously amorphous coalition entity had a name, the Missouri Institute for the Administration of Justice (M.I.A.J.), and a director, William W. Crowdus, secretary of BAMSL.[66] Mr. Crowdus suggested that his new duties with the M.I.A.J. might detract from his efforts as secretary of BAMSL. But in a show of support for both Mr. Crowdus and the M.I.A.J., the Association's executive committee appointed two assistant secretaries to help him maintain the minutes of the organization and rejected Mr. Crowdus' resignation or request for leave of absence.[67] Notwithstanding this appointment, primary responsibility within BAMSL for the efforts at passage of the Plan continued to rest with the Committee on Judicial Selection and Tenure and its Chairperson, Luther Ely Smith.[68] Mr. Smith was already receiving standing ovations at the Association's general meeting in January 1940, ten months before the constitutional referendum was put to the voters.[69]

BAMSL actively supported the efforts of the M.I.A.J. by recommending member John Marsalek be employed as counsel for the coalition.[70] He agreed to keep his fees to a minimum.[71] BAMSL also completed a general mailing to its members and all area lawyers regarding the Nonpartisan Court Plan, including a response card so that attorneys could be listed as endorsing the ballot initiatives.[72] More than 2,000 response cards were returned by attorneys indicating their support.[73] At the time, BAMSL membership was only just over 1,000 lawyers.[74]

Prior to BAMSL's annual elections in May 1940, many with contested races, the candidates all agreed that the membership of the Committee should remain unaltered regardless

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