Accomplishments of the Missouri Bar Association in Improving Judicial and Governmental Administration, 1926-1936

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accomplishments of the Missouri Bar Association in improving judicial and governmental administration, 1926-1936*  

by Ralph F. Fuchs  

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It would not be possible for a member of the Missouri Bar Association to address his brethren in the terms employed at the 1926 annual meeting by one of the speakers drawn from the roster, who lamented truthfully that "somewhere amidst the animosities and failures of the hour there is lost the fellowship of the bar." Since that time, largely as a result of the initiative of the Association, the Missouri Supreme Court has adopted rules which elevate the standards for admission to the bar; 4 establish bar committees in each judicial circuit for the enforcement of these regulations; 5 and a State Advisory Committee to aid in their administration; 6 provide a judicial Council to report to the Court in regard to improvements in procedure; 7 and levy an annual license fee upon all practitioners in the state to finance the activities conducted under the authority of the Court. 8 In the meanwhile the Association itself has established the monthly Missouri Bar Journal; has adopted a new constitution which provides for the affiliation of local associations; and as a result has grown in membership from less than 1,400 in 1928 to more than 2,200 in 1935. 9 In the particulars mentioned and in collateral accomplishments during the same period the Association has established a brilliant record and generated spirit and power which are certain to carry its work still farther.

Shortcomings and warning signals there are, of course, whose presence raises questions as to the entire adequacy of the methods so far employed and gives ground for suggestive improvements in the Association's future program. The writer was commissioned to report upon "the actual accomplishments" of the Bar Association "in the matter of improving the administration of justice, either as to methods of procedure or personnel, and improving the administration of government, either state or local." The Missouri Bar Association has had virtually no program outside the sphere of strictly judicial administration. Its efforts to influence the passage of legislation by the Missouri General Assembly have resulted in practically complete failure, and there is no reason to expect greater success soon. These factors must appear in any calculation of the course to be followed in attaining the Bar's ultimate objectives.

Prior to the decade under review the Missouri Bar Association had instigated a movement of major proportions in the reform of the administration of criminal justice. By the authorization of its executive committee and as a result of the efforts of its president, Guy A. Thompson, and a special committee appointed by him, a meeting was summoned in 1924 which resulted in the formation of the Missouri Association for Criminal Justice by the representatives of numerous organizations throughout the State. This Association raised a large sum of money for the first statewide survey of the Administration of the criminal laws to be made in the United States. Its report, published in 1926, received wide attention and acclaim. It undoubtedly makes a permanent contribution to the national literature of the criminal law, largely limited, however, to the procedural aspects of it.

The Missouri Association for Criminal Justice nominated a grand jury which in due course returned a report upon "the actual accomplishments" of the Bar Association in improving the administration of justice, either as to methods of procedure or personnel, and improving the administration of government, either state or local.

*This paper was prepared at the request of the Association of American Law Schools for the President of the National Conference of Judicial Councils.

3. 5 Mo. Bar J. 71, 83, 98 (1924); 6 Mo. Bar J. 5 (1925).
4. The rules embodying this development and the others referred to, which became effective Nov. 1, 1924, are printed in vol. 326 of the Missouri Reports. Supplementary rules affecting disbarment proceedings were adopted Dec. 21, 1924, and April 13, 1925. 6 Mo. Bar J. 16 (1926).
5. Idem, 326.
8. 6 Mo. Bar J. 87 (1924).
9. 5 Mo. Bar J. No. 10, pp. 5, 18 (1931); Ibid. No. 12, p. 6.
12. The Association of American Law Schools was asked in May, 1925, by the Chairman of the National Conference of Judicial Councils to designate an individual in each state to report the desired information. The writer has been designated in Missouri.
13. Exceptions will be noted below.
14. "It is a regrettable, but nevertheless a historic truth that at no session of the Missouri legislature, at any time in a quarter of a century, has the Missouri Bar Association been able to make effective its convictions in legislation." Address of President Joseph W. Jamison, 6 Mo. Bar J. 320, p. 4 (1924). Except for the addition of five years to the time span, this statement can stand unmodified today.
15. See the account in the Introduction to the Missouri Crime Survey (1926), pp. 1-5.
Neither the Association for Criminal Justice nor the Bar Association continued its efforts for legislation. The Bar Association fell back upon authorizing investigation into the causation and treatment of crime, to be conducted by the members of a Committee on Legal Aspects of Criminology. Fragmentary reports of the studies of the Committee were followed by renewed recommendations for procedural reform through legislation. The failure of the legislature to heed the Committee's recommendations was duly reported after the close of the next legislative session. A minor reform reducing the time for perfecting criminal appeals from one year to six months, was, however, effected contemporaneously. The Committee had recommended a four months' period. Its last report dated advocates turning to the Supreme Court for relief, in order that it may "rewrite the code of contemporary remedies" seems not to have borne fruit. The Association is pointed out that the establishment of a State judicial council has, of course, been motivated largely by a desire for improved procedure in civil cases. The Association has not engaged in specific studies or directed toward specific changes. Upon the initiative of the Bar Association a joint committee, representative of the Association, the State Federation of Labor, and the Associated Industries of the State was appointed in 1924 to look into the matter and suggest improvements. It proved impossible to reconcile the views of the industries' representatives with those of the other committee members, and the legislative changes sponsored by the latter met with failure at the ensuing legislative session.

Similarly dismal is the record of the Bar Association in sponsoring the enactment of uniform legislation in Missouri during the decade now ending. At each session of the General Assembly from 1929 to date, its Committee on Uniform State Laws, pursuant to action by the Association, has sponsored the enactment of the Uniform Sales Act, without success. Occasionally other uniform acts, particularly the Conditional Sales Act, have shared the Association's endorsement; but as the work of the National Conference of Commissioners on Uniform State Laws has accumulated the Committee has...

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provides inadequate per diem compensation. The judicial procedure and control of the bar, the Missouri Bar Association has adopted three uniform acts during the period in question.\(^1\)

One other excursion by the Bar Association into the advocacy of substantive legislation during the period in question, this time in opposition to a uniform law provision, met with a rebuff. In 1930 a special Committee on Air Law reported that the General Assembly had enacted an inadequate aviation law and recommended various changes and additions. Prominent among these was the elimination of a declaration of the ownership of the air space over land, which had been recommended earlier by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association Committee on Air Law. The Association duly recommended the suggested changes.\(^2\) The following year the Committee reported the failure of its proposals and received a mandate to continue its efforts.\(^3\)

In the field of governmental administration, apart from judicial procedure and control of the bar, the Missouri Bar Association has persistently advocated a single reform—namely, the increase of official salaries, especially those of legislators and members of the judiciary. As regards the former, the State Constitution provides inadequate per diem compensation. The Association has advocated successively two proposed amendments, one of which would have established adequate biennial salaries for legislators and the other of which would have doubled the per diem pay. Both were rejected by the people after their submission by the General Assembly.\(^4\) It has been proposed to deal with the increase of judicial salaries by constitutional amendment also.\(^5\) Submission of the desired amendment to the people was refused by the legislature, but increases in the number of circuit judges in St. Louis City and St. Louis County were authorized.\(^6\) The following year it was pointed out that only as to the judges of the Courts of Appeals was a constitutional amendment necessary except as to incumbents.\(^7\) That year the Association's advocacy extended to increases in the salaries of Governor and Attorney General as well as for the supreme appellate, and circuit judges.\(^8\)

The framing of a proposal for a system of judicial retirement was also made the subject of attention at the hands of a special committee.\(^9\) In 1930 a constitutional amendment covering all points related to judicial salaries and retirement was reported to the Association.\(^10\) The legislature, however, declined at the next opportunity to submit such an amendment to the people.\(^11\)

The entire matter of the conduct of the judicial branch of the government was attacked by a committee of the Bar Association, whose appointment was authorized at the 1929 meeting. It was charged with the duty, in conjunction with a committee of the Judicial Conference of the State,\(^12\) of drafting a report upon the establishment of a State judicial council. The following year it presented the draft of a bill concerning power upon the Supreme Court to regulate procedure in all the courts, subject to possible

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**Order Increasing Enrollment Fee**

IT IS ORDERED that Section 1 of Rule 37 prescribing the annual enrollment fee for licensed attorneys in this state be amended by striking out the figures $3.00 appearing in the third line thereof, as publishing in the official reports of this court, and inserting in lieu thereof the figures $5.00; also by striking out the following sentence, beginning in the fourth line thereof:

"For the balance of the year in which these rules are adopted the enrollment fee shall be computed on the basis of twenty-five cents for each full month of the year remaining, and shall be paid on or before the 20th day of the next month after their adoption."

Said rule, as amended, shall read as follows:

"RULE 37—COSTS AND FEES. 1. For the purpose of making these rules effective, each person having a license to practice law in this State shall pay an annual enrollment fee of $5.00 on or before January 20th of each year. The enrollment fees shall be paid to the circuit clerk of the county wherein the lawyer maintains an office. The clerk shall give the lawyer a receipt for such fees which shall entitle him to practice in any place in the State."

Dated this November 10, 1936.

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30. 5 Mo. Bar J. 207 (1924).
33. 5 Mo. Bar J. No. 12, p. 5 (1925).
35. 2 Mo. Bar J. No. 12, p. 55 (1927); 4 ibid., 1929, p. 132.
36. Proc. Mo. Bar Assn., 1928, p. 47; advocating also the vesting of authority in the legislature to increase the number of appellate judges.
37. Ibid., 1929, p. 21-22.
39. Ibid., p. 134.
40. Ibid., 1929, pp. 135-138.
41. 2 Mo. Bar J. No. 10, p. 8 (1921).
44. 1 Mo. Bar J. No. 12, p. 67.
Missouri Association recommended the legislative enactment.

Vigorous efforts to obtain legislative authority for regulation by the Supreme Court of admission to practice, which were being put forth in the meanwhile by the Bar Association, met with a similar fate. A bill, conferring such authority, which the Association's committee sidetracked in 1931 in the interest of the judicial council measure, had met with defeat at the two previous sessions after its preparation and advocacy by the Committee on Legal Education and Admission to the Bar, acting for the Association. The prime object of this proposed legislation was the establishment in Missouri of the American Bar Association's minimum standards for admission to the bar, which the State Association persistently endorsed — refusing on one occasion to heed the suggestion of its committee that expediency dictated the temporary advocacy of somewhat easier requirements. It was suggested in 1930 that judicial action without legislative authorization might solve the problem.

The matter of bar discipline, however, proved to be the weight which tipped the judicial scales in the direction of an assertion of freedom from legislative shackles. Here again the Bar Association took the lead and, after a period of failure to secure legislative action, turned to the judiciary for relief. Many years of thankless and largely fruitless effort on the part of the grievance committee of the local and state voluntary bar associations produced a feeling of frustration in the presence of mounting public criticism of abuses within the profession. In 1926 a special committee of the Missouri Association recommended the legislative enactment of the American Bar Association's code of ethics. In 1928 the Committee on Grievances and Legal Ethics suggested legislation to cope with the growing evil of damage-suit runners on the highways. In 1929 the Committee asked that the Executive Committee be directed to formulate a more definite policy for it to follow. Its request was granted and specific authorization was given for carrying out the apparently unprecedented idea of the expenditure of money in the Committee's work. The following year the Association directed explicitly that its committee would entertain complaints against any lawyer in the state, whether a member of the Association or not. In 1931 the Association appropriated $2500 for the work of its Grievance Committee during the following year and, further, authorized the assumption of one-third the expenses of disbarment proceedings brought by local committees outside of St. Louis and Kansas City. The St. Louis Association's committee, in the meanwhile, had become extremely vigorous in proceeding against unethical practitioners. The Joplin and Jasper County Bar Associations voted to proceed in an important case. Clearly a new spirit was abroad in the organized profession.

It was strongly felt, however, that additional powers were needed in two directions. These were (1) the authoritative promulgation of a code of ethics and (2) effective procedure (compulsory testimony, etc.) in enforcing the rules against wayward practitioners. To consider the situation the President of the Missouri Bar Association issued a call for a conference of the presidents and grievance committee chairmen of all bar associations in the State, to be held at St. Louis in advance of the Association's 1931 annual meeting. The Conference submitted a resolution to the Association which the latter adopted, asserting the independent powers of the Judiciary and requesting the Supreme Court to promulgate a code of ethics and itself take cognizance of violations of the code.

The response of the Supreme Court was partially made in the now-famous case of In the Matter of Richards. In that proceeding the grievance committee of the St. Louis and Missouri Bar Associations united in filing a disbarment proceeding against the respondent, a practitioner who was alleged to have been guilty of "a misdemeanor and malpractice in his professional capacity" in acting as "go-between" for the family of a kidnapping victim and the kidnappers. The respondent had previously been acquitted of criminal charges growing out of the kidnaping. Requiring upon an earlier decision construing the disbarment statute, he pleaded his acquittal as a defense. Characterizing its earlier decision as a "judicial aberration" and holding that the statutes warranted disbarment upon the facts of the case, the Supreme Court said in addition that "Since the object sought is not naturally within the orbit of the legislative department the power to accomplish it is in its exercise judicial and not legislative, although in the harmonious co-ordination of powers necessary to effectuate the aim and end of government it may be regulated by statutes to aid in the accomplishment of the object but not to frustrate or destroy it." It stated further that "Any statutory enactment undertaking to make an acquittal in a criminal prosecution a bar to such an investigation would be, as heretofore suggested, an unconstitutional encroachment of the legislative upon the judicial department of government, and such is the weight of well reasoned authority." The Executive Committee of the Bar Association, seizing upon this judicial declaration of in—

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Accomplishments of Missouri Bar Association

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dependence, almost immediately requested the Court to appoint an advisory commission "with power to investigate the means of regulating professional matters and that said commission report to the Court . . . its findings and recommendations with respect to the regulation of the practice of law in this State." 42 The Court responded promptly by issuing an order appointing a commission of eleven lawyers to make the requested investigation "of the subject of regulation of the practice of law, particularly with a view of ascertaining its most practical and effective scope and administration in this state." 43 The Commission without monetary compensation or provision even for its expenses, finished its labors in less than six months and rendered a report embracing admission to the bar, regulation of the practice of law by non-lawyers, and the establishment of a judicial council, 44 whose adoption by the court 45 resulted in the developments which were noted at the outset of this paper. Thus in three years from the meeting of the conference of bar association officials which urged the use of judicial powers for the effective regulation of the bar of the state, there went into effect a thorough-going system of control of the practice of law to which all of the lawyers of the state are harnessed, at least financially, accompanied by machinery for suggesting improvements and by provision for continuous study of the larger problems of the judicial department. 46

In the regulation of the practice of law in Missouri, the problem of the encroachment of lay agencies has loomed large. Before the Supreme Court's Assumption of control and since that time the organized bar of Missouri has done battle with collection agencies, automobile associations, and trust companies—more particularly with the last-mentioned agency. The St. Louis Bar Association took the lead by procuring the filing of quo warranto warrants proceedings against certain trust companies, challenging their right to draft wills and trusts agreements...

42. 4 Mo. Bar J. 130 (1923).
43. 4 Mo. Bar J. 131 (1923).
44. 5 Mo. Bar J. 67 (1924).
45. Ibid. 82.
46. That the Court will not permit itself to be hampered in effecting procedural reform by legislation as to the incidents of trial is indicated in the opinion of Atwood, J. (who also wrote the opinion in the Richards case) in the case of Dorman v. East St. Louis R. Co., 256 Mo. 1982, 32 W. (2d) 144 (Oct. 15, 1934). There a statute authorizing instructions to juries in civil cases was held not to preclude a judicial holding requiring a rule which would be for the benefit of the parties of the action, whether of legislative or judicial origin, it will scarcely be said that a constitutional court of competent jurisdiction should omit or stay performance of any of its judicial functions because of prior legislative encroachment, or until the protective act has been repealed.
49. State ex rel Miller v. St. Louis Union Trust Co., 256 Mo. 233, 32 W. (2d) 694 (Oct. 15, 1934). A subsequent action to curb unauthorized practice, the abuses of law list publishers etc., had been carried on by the General Chairman of the Bar Committees, assisted by his Advisory Committee. 5 Mo. Bar J. 118, 125, 172 (1935).
50. The Missouri Bar Association lent its own support and sponsored an Inter-Bar Association Conference on the Unauthorized Practice which likewise rallied to the cause.
51. The result was a sweeping victory for the bar, announced in a decision which followed soon after the adoption of the report of the Supreme Court commission. The resulting sense of solidarity on the part of the bar has been invaluable in keeping alive its disposition to grapple aggressively with the problems still confronting it. Nor has its attitude, once whole, been regarded cynically by the public. The economic stake of the profession in limiting the unauthorized practice is undoubted. That there are factors of professional responsibility which bar genuinely bears in mind and which are entitled to protection against weakening from without, is a fact which has not been ignored by the press and other commentators.
52. An additional failure to procure desired legislation, which accompanied the development just outlined, remains to be recorded. Entirely independent action by the judiciary was not, prior to its accomplishment, the sole or even the principal reliance of the Bar Association for attaining its objectives. In 1930 the idea of a bar, incorporated by statute and given regulatory powers in accordance with California and Oklahoma precedents, was taken up. The Association in that year provided by resolution for the establishment of a committee of three to frame a bill for introduction into the legislature. The measure failed of passage at the next legislative session. Nothing daunted, the Association proceeded to draft a new proposal and to sponsor it at the 1933 session. After a determined fight, in which the Association mobilized all of its resources, this proposal also was lost.
53. By a narrow margin. Great was the disappointment of the failure, soon to be dispelled by the Richards decision.
54. In two important respects the present system of control differs from the proposed statutory integration of the bar. The latter would not only...
have taxed the practitioners of the State for the support of professional activity but would also have entitled them to participate in the selection of a Board of Governors for the Bar and in the deliberations of the annual meeting. It would also have swallowed up the voluntary State Bar Association. Now, there is judicial control by means of appointees from the profession, paralleled by an unofficial organization of less than half of active practitioners.

In view of the record, it is quite natural that large claims to judicial and professional independence of legislative control should be advanced by members of the Missouri Bar. Thus it has been asserted that "The Bar of the nation must be independent of everyone and everything except its own moral code." Moreover, "What is the practice of law is a matter entirely for the courts. This is not the subject of legislative fiat." Specifically, according to the Governor of the State, himself a former occupant of the bench, "The Supreme Court should not only regulate and superintend inferior courts and lawyers who practice in those courts, but also those who would practice the profession in and before the legislature." The Bar Association itself has endorsed the Wagoner bill to limit the practice before Federal boards and commissions to members of the bar.

These are large claims to autonomy for a profession to be advancing in a democracy. While accompanied by assertions of uncontrolled judicial power over procedure—subject, of course, to constitutional limitations as construed by the judiciary—they propose the segregation of a vast field of important governmental matters from the area of popular sovereignty, except where the election of the judiciary can be said to provide for responsibility to the people. Nor has the control thus far exercised in the name of the Court in Missouri been wholly free from an element of narrow dogmatism, accompanied to members of the bar.

The Bar in a Democracy

Also noted is the advisory committee to the General Chairman of the Bar Committee of Missouri reply by airing the elimination of the canon. Routine judicial surveillance of a particular type of fee, said the Committee, is "discriminatory." It does not relate to "substantive rights or duties of attorneys in their professional conduct, but . . . prescribes a remedy for judicial review of a particular type of conduct, a matter which in our opinion is beyond the scope of the governing power of the court in fixing rules of conduct." Thus the same judicial power which can prescribe the contents of the contracts of the publishers of legal directories with their subscribers, suddenly, by reason of a principle not even grounded in a specified constitutional text, becomes impotent to deal with the contracts between lawyers and clients except by way of punitive action after abuses have occurred! Should such an attitude become typical, public opinion would not be slow to discern the reasons.

Fortunately such sweeping claims to professional independence have not been made by all of the proponents of the new order of things in Missouri. The report of the Supreme Court Commission asserted that the ultimate power is vested in the electorate, the police power the people may legislate broadly and the bar. Thus it seems fair to say, must continue to live with the legislature and to depend upon it for much that needs to be done. The question should be raised of whether the limited professional pre-occupation of the organized bar of Missouri down to the present time does not account for some of the past failures to secure desired legislation and whether a broader attitude is not essential to future success. Heretofore the State Bar Association has manifested virtually no interest in even the technical aspects of the legislative process. And it must be evident that the character of the legislature itself and the nature of the influences brought to bear upon it are of even greater concern. There is more than the matter of legislative salaries involved here. The idea of a unicameral legislature needs to be considered; and back of the entire process of the functioning of the electorate in choosing its representatives lies the question of the short ballot, with all that it implies in the reorganization of state and local governments. Yet these issues have given rise to scarcely a whisper at Bar Association meetings. On the contrary, a recent
isolated attempt to stimulate an investigation of lobbying met with a prompt rebuff at the hands of the Association."

Now that the more mundane task of policing the profession has been taken over by the Supreme Court, the present seems to be an opportune time for the Bar Association to begin to concern itself with those broader problems of efficiency and responsibility in government upon whose wise solution the success of democratic government and of the bar's own enterprise so largely depends. It is not intended to suggest that the still wider field of economic and social questions be invaded. Manifestly the Bar, like other occupational groups, will divide upon these according to the varying human ideals to which its members adhere. But in the matter of securing legislative decisions honestly and decently and of providing for their fair, effective execution there would seem to be little room for division among sincere people, once the nature of the issues is understood. If the Bar Association should see fit to look into these issues and to employ its influence in their wise determination, its admirable success in setting its own house in order during the past ten years may well be matched by its accomplishments in the reform of state and local governments during the next decade."

85. 4 Mo. Bar J. 162 (1933).
86. For such purposes the voluntary Bar Association is, of course, the only possible vehicle. Neither legislature nor court could well undertake to compel the payment of dues to an organization whose purposes were other than professional in the limited sense.

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**Kansas City Bar Association Holds Annual Meeting**

On October 15, 1936, the Kansas City Bar Association elected Harold E. Neibling as its President for the ensuing year. Mr. Neibling is of the firm of Neibling & Lewis. William C. Lucas of Johnson, Lucas, Landon, Graves & Fane, was elected Vice President. Terence M. O'Brien, associate of James P. Ashward, was elected Secretary, and Eugene R. Brouse, associate of Fred Bellemere, was elected Treasurer.

Of Mr. Neibling, the Kansas City Bar Bulletin in its October issue, says:

"President Neibling came into prominence in bar activities in 1934 when he staged a one-man membership drive among the ranks of youthful lawyers who had not affiliated with the Kansas City Bar Association. So successful was he in his efforts that virtually all young lawyers in Kansas City today are enrolled on the membership lists. The results indicated the young lawyers realized the necessity of training for the cloak of leadership destined to fall on their shoulders as time made inroads in the ranks of veterans who fostered the Kansas City Bar Association and insured its progress in earlier and more hectic days.

"Neibling became known as a champion of the struggling, youthful attorneys, and a sympathetic interest in the young lawyer's problems and advancement became an official part of the progressive local bar's program. Official recognition of Neibling's service was given when he was elected vice-president in 1935.

"A former Washington newspaper man, the new president writes and speaks on his hobby, anthropology. He has made expeditions into the South American interior and has studied ancient ruins in conjunction with his field research in that science."