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DICTA

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DENVER BAR ASSOCIATION JUDICIARY COMMITTEE REPORT CONCERNING BAR PRIMARY

May 7, 1930.

Mr. John H. Denison, President,
Denver Bar Association,
Denver, Colorado.

The Judiciary Committee, which has been directed by the Executive Committee and the Board of Trustees to arrange for the holding of a Bar Primary with reference to the selection of approved candidates for the District Bench at the forthcoming General Election, begs leave to submit the following report and recommendations:

The Committee has borne in mind that it is not a function of the lawyers of the community to dictate to the voting public who should be elected, or even who should be candidates for election, to the Bench. The proper function of the Bar we conceive to be merely to indicate what candidates are approved and recommended to the public by a majority of the Bar, and to urge their election.

The Committee has in mind also that the lawyers, representing as they do all of the public as they appear as litigants in court, and being acquainted with the requirements of the judicial office and acquainted also with the judicial qualifications of the lawyers, in a very true sense occupy a unique position qualifying them to give impartial and informed counsel to the voting public.

The Committee has received suggestions from a number of members of the Bar proposing plans for a bar primary.

One plan, strongly recommended, proposes an initial primary in which the candidates shall be confined to present judges of the District Bench, and a selection from among them

of such of the present judges as shall receive a majority vote of the members of the Bar voting, such judges as shall fail to receive a majority vote becoming ineligible as candidates in a further Bar Primary. It is contemplated that any vacancies resulting from this first primary shall be filled through a second general primary open to all members of the Bar of Denver who wish to be candidates.

The Committee is of the opinion that the qualification of any judge on the Bench is a relative matter and should be considered with reference to the qualification of every other candidate whether on or off the Bench. The Committee concedes that consideration should be given to the experience of and service rendered by any judge sitting, but is of the opinion that such consideration will be given its due weight by the members of the Bar in an open primary in which all available candidates are considered. The Committee is further of the opinion that this proposed plan would have a tendency to unduly inject a personal element in the selection of candidates and to incite controversy that should be avoided.

A second plan suggested to the Committee contemplates an open primary for all seeking to be candidates in which each candidate shall make known his party affiliation, and in which each member of the Bar shall be permitted to vote for not more than four of any one political party, all with the eventual purpose of selecting seven candidates, no more than four of whom shall belong to any one political party. This plan is thought by a majority of the Committee to be objectionable because it calls for discrimination and support on account of party affiliation and for the further reason that it is believed by the Committee that from the party standpoint it would not be satisfactory to either of the political parties and the plan would diffuse and weaken the influence of the members of the Bar and involve difficulties of a practical nature.

A third plan proposed contemplates the selection of two tickets of seven candidates each, one Republican and the other Democratic, these tickets to be submitted to the respective party assemblies for approval. As an adjunct to this plan it has further been proposed that after the party primaries have been held the Bar should have a further primary to choose from among the fourteen candidates of the two political

parties seven candidates who shall constitute the Bar ticket and receive the Bar support. This plan is thought by the Committee to be also objectionable for the reason that it requires discrimination and support on account of party affiliation and because of necessary practical difficulties in its operation and an excessive weakening and frittering away of the influence of the Bar.

A fourth plan has been proposed to the Committee, which after very careful consideration and notwithstanding some practical objections that may be made to it, is believed by your Committee to be more satisfactory than any other proposed plan.

The Committee recommends that a Bar Primary be held for the selection of seven approved candidates for the District Bench, wholly without reference to their party affiliations.

The Committee is convinced that the members of the Bar will give due consideration to the merits of every candidate without regard to his party politics and that every lawyer who aspires to the Bench may rely upon a fair consideration of his merits as a lawyer and candidate, whether he be a Republican or a Democrat. The Committee is further of the opinion that the selection of seven candidates on this plan will tend to integrate the influence of the Bar and at the same time create greater confidence in its judgments than can be possible under any other plan. It is the belief of the Committee that if lawyers aspire to places upon the Bench they should first look to the approval of their fellow members of the Bar, and that the good repute of judges at the Bar and the satisfaction that they create in the members of their own profession should be a chief criterion of their acceptability as candidates. It is believed that the time is now ripe for a vigorous stand by the members of the Bar upon the sound principle that takes account of the merit and fitness of candidates alone, and for a recognition of the duty of the Bar to render the aid it is capable of giving to the voters in the wise selection of judges. A due respect for the judicial office and of the relation of the Bar to that office calls for a united and courageous effort of the entire Bar toward this common end. If as a result of well considered and energetic effort on the part of the Bar the

election of its approved candidates can be assured, as the Committee believes possible, a long step will be taken to permanently strengthen the influence of the Bar and to make it a more effective instrument for the maintenance of a fearless, impartial and competent judiciary. A plan similar to that now proposed, although not completely successful, resulted in the most effective Bar Primary we have ever held, that of 1912.

The Committee, therefore, proposes that a Bar Primary be held for the approval of those seven candidates for the District Bench who shall receive the highest number of votes of the members of the Bar; that such selection be made without reference to the party affiliations of the candidates; that such seven approved candidates be known by an appropriate title to be selected by the Judiciary Committee; and that the hearty support of every member of the Bar be invoked in behalf of such approved candidates down to and including the election in November.

The Committee further proposes:

1. That every resident member of the Denver Bar be eligible as a possible candidate and as a voter in the primary.
2. That proper provision shall be made for the secrecy of the individual ballot.
3. That nominations of candidates shall be invited from all members of the Bar to be submitted within a period prescribed by the Committee.
4. That the names of all candidates so nominated shall be published and shall appear on the first ballot.
5. That on each ballot the voter must vote for seven candidates.
6. That after the first vote the names of not less than fifteen candidates receiving the highest number of votes shall be selected to appear on the second ballot.
7. That after the second vote the names of not less than ten candidates receiving the highest number of votes shall be selected to appear on the third ballot.
8. That on the third vote the seven candidates having the highest number of votes shall constitute the candidates approved and recommended by the Bar.

9. That the Judiciary Committee be vested with full power to make rules and regulations to govern, and to decide all questions relating to, the holding of the primary and to take such further steps, as in its judgment appear necessary, to consummate the final election of the seven candidates recommended by the Bar.

Respectfully submitted,

THE JUDICIARY COMMITTEE,
By D. W. Strickland, Chairman.

INTERSTATE COMMERCE COMMISSION BAR

By Albert L. Vogl of the Denver Bar

I judge from what happened at the recent hearing in Denver before an examiner of the Interstate Commerce Commission, that members of the Denver Bar are not advised of the fact that the Interstate Commerce Commission has established its own Bar.

In order to practice before that Commission, it is necessary that the practitioner be "admitted". The Commission's Bar is divided up into two classes, designated as "a" and "b"; class "a" consists of attorneys regularly admitted to practice before the highest court of any State, and class "b" consists of traffic men whose particular training or experience is calculated to qualify them to be of assistance to the Commission in matters which come before it.

In order for attorneys to be admitted, it is necessary to file an application on a form which is furnished by the Commission and attached thereto must be the certificate of the clerk of the highest court of the State, certifying that the applicant is admitted to practice in that court, and that the applicant is in good standing and has never been disbarred.

In view of the frequency with which controversies before the Commission become the subject of public interest in this State, the foregoing may be of interest to the Bar.