

The Daily Reporter

October 29, 1996

Volume 98, Number 213

Milwaukee, Wisconsin

Who will choose the judges?

Another election is over and the clamor begins again to end popular elections of trial judges. The most touted substitute is the "Missouri Plan" where a local lawyer-citizen commission advertises for applicants, selects three, and submits them to the governor for appointment of one. It sounds good; it sounds non-political; but I'm not so sure. 27 states follow the Missouri Plan of non-elected judges at the trial level and 23 do not.

I remember Shep, president of the 10,000-member tenants association. Whenever I went to court to defend against an eviction, Shep showed up early and waltzed into the judge's chambers to remind him that the tenants supported his election and he should decide against the landlord. I won a lot of eviction cases that way. Strike one against popular election of judges — they are beholden to special interests.

I just read about an elected judge who sentenced a defendant to 60 days in jail for contempt for saving "bull" during his trial. Strike two for popular election of judges — egotistical eccentrics are more likely to be elected than appointed. Reporters, however, tend to forget the problems of appointed judges — two federal judges have been removed from office in recent years for soliciting bribes. Strike one for the Missouri Plan.

We must not forget the drawbacks of appointing judges and the fact that there are politics under the Missouri Plan. Politics is not absent just because the candidates names don't go on a ballot on election day; The Missouri Plan can be guilty of the worst kind of politics — Bar politics.

The public and press never know which lawyers and law firms lobbied for the nominees named by the commission, and so it may never know an opposing lawyer in a lawsuit has an inside track with the judge because of his or her firm's support of the judge before the nominating committee or the governor. Strike two against the Missouri Plan.

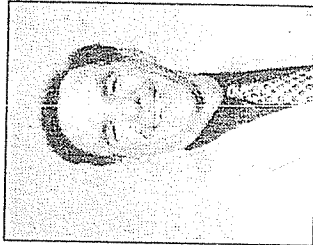
Under the elected trial judge system, lawyers face many litigants who believe they have an inside track to the judge because they or their lawyer supported him or her, but at least they can ask the judge to recuse himself; since the electoral process of endorsements is public, a judge normally will

agree. Under the Missouri Plan, however, a lawyer will rarely know when an opponent provided strong support for the judge. This does not mean that one system is superior to the other, it simply means that the better one is not as obvious as many current critics would like us to believe.

We are actually dealing with one of those ultimate questions posed by Plato in The Republic. How do we choose our guardians? In a society like the United States where virtually every social issue eventually becomes a legal one to be decided by a judge, the way we choose our judges is vital.

My personal preference is for the more democratic method of elected judges. Even with all its flaws, it limits the power of the aristocrats and busybodies who control Bar Associations. For my money, the 27 states with the Missouri Plan have adopted change for the sake of change. Sometimes there is a benefit to this in a democratic society, but in this case it is not the elimination of politics.

LAWYERS viewpoint



John Ritter



(John Ritter is a Miami, Florida attorney. He has served as City Attorney of Miami Beach and has taught at the University of Miami.)