

Introduction

In the late 1980s, the Oregon State Bar sought to require the Bar-Press-Broadcasters Joint Committee (as it was then called) to have all of its positions reviewed and approved by the Bar Board of Governors before the Committee could express them.

The Committee asked me to review the history of this joint venture to see whether the Committee had ever yielded its autonomy to any of the constituent organizations. That history is expressed below.

After some negotiations with the Board of Governors, the three organizations (Bar, Press and Broadcasters) settled on Bar-Press-Broadcasters Council format under which it operates today. I believe the history is instructive. John Soennichsen was a Bar staff member at the time.

Judson Randall

TO: Bar, Press, Broadcasters Subcommittee
FROM: Judson Randall
DATE: January 1988
RE: Authority/Purpose of B/P/B Joint Committee

With the help of John Soennichsen, I have looked through what appear to be the relevant meeting minutes involving the formation and responsibility of the B/P/B Joint Committee. I have also had a conversation with James W. McClurg, a Portland lawyer who was the chairman of the Joint Committee around 1980, when this same issue also arose.

Some of this history may be repetitive to some of you, but it helps to put what follows in context:

In 1961, two sensational murders and subsequent trials pointed to the need for understanding and cooperation among the Bar, Press and Broadcasters to avoid free press/fair trial conflicts. The Bar appointed a committee in early 1962, and asked representatives of the Oregon Newspaper Publishers Association and the Oregon Association of Broadcasters to join the effort.

The original Bar, Press, Broadcasters committee appears to have been a subcommittee of the Bar's Committee on Public Service and Information. This subcommittee was chaired by then Justice Alfred T Goodwin of the Oregon Supreme Court, and it included as members: Arden X. Pangborn, editor, the Oregon Journal; Robert C. Notson, editor, The Oregonian; Karl J. Nestvold, executive secretary, Oregon Association of Broadcasters; Virgil Parker, radio station KORE, Eugene; Richard C. Ross, KGW-TV, Portland; J. Richard Eimers, Associated Press bureau chief, Portland; William D. Eberhart, United Press International bureau chief, Portland; Stanley R. Church, Oregon State Bar, Portland; and Shirley A. Field, Oregon State Bar, Portland.

In April 1962, this committee adopted the joint statement of principles on news coverage of criminal prosecutions, and determined that it would seek approval of the joint statement by each of the representative bodies, Bar, Press and Broadcasters.

In addition, Ross moved that the committee recommend that the three associations form a "permanent Press-Bar-Broadcasting Joint Committee," and his motion passed unanimously.

In his report of the subcommittee's actions, Justice Goodwin wrote that there was a desire for continued communication among the parties to the subcommittee.

"To that end," he wrote, "each group resolved to recommend to its parent organization that a standing committee be created, to consist of representatives to be chosen by the bar, publishers, broadcasters, press wire services and television industry. This committee would be asked to meet at least once each year, to consider such matters as may be referred to it by

any one or more of the groups represented. It was recognized that such a committee would have no binding authority, but could make suggestions to the respective parent organizations." (Emphasis added.)

Goodwin went on to recommend Bar approval of the statement of principles, "and action by the Board of Governors to implement the continued conversations between the interested groups."

The minutes of its April 11-12, 1962, meeting in Salem show that the Bar Board of Governors' told the Public Service and Information Committee that it had no objection to the statement of principles being presented to the Bar membership at the annual meeting for approval.

Among the Public Service and Information Committee's reports to the annual meeting in September 1962 were two recommendations:

"1. That the Oregon State Bar participate in the establishment of a permanent Press-Bar-Broadcasting Joint Committee, in cooperation with the Oregon Association of Broadcasters and Oregon Newspaper Publishers Association.

"2. That the statement of principles on the coverage of news of criminal prosecutions, heretofore approved by this Committee, be approved by the membership. The statement is appended hereto as Exhibit A." (Emphasis added.)

The minutes of the Bar's annual meeting show that a motion was made, seconded and approved to "file" the Committee report. There was no vote of approval on the Committee report.

The minutes of the Bar Board of Governors meeting in Portland on Nov. 2, 1962, show that the board ratified the President's appointment of "Oregon State Bar members and officers of this joint committee ..." The board did not assert control over the entire committee's actions, nor did it claim that the joint committee was a "Bar committee" beholden to the board.

In May 1968, the Bar published a brief history of the Joint Committee, and while it does not specifically address the question of Bar control over the committee's utterances, it does speak of the informal nature of the committee and the cooperation among the three participants.

Don Sterling, who as you know had been involved in this Joint Committee for many years, says that in the late 1970s or in 1980, the committee dealt with the question of its own authority. He says, "It was reported to the committee that the Bar — probably the Board of Bar Governors — had confirmed that the committee could act without referring each question to that board."

On Nov. 8, 1980, the "Bar Section" of the Joint Committee met at the Bar headquarters under the chairmanship of Jim McClurg, who was also the Joint Committee's chairman. The minutes of that meeting includes this paragraph:

"Chairman McClurg opened the meeting with an introduction of the Committee Members, an explanation of the Committee's three part structure and a review of the OSB directions to committees, particularly the necessity of compliance with the open meeting law, the necessity of Board approval before the incurring of any expenses and this Committee's exemption from the general policy that committees can make statements only through the Board of Governors and that this Committee can in fact speak as a committee without going through the Board." (Emphasis added.)

McClurg recalls that at about this time, the Joint Committee was pursuing an experiment with cameras in the courtroom, and the Bar Board of Governors was opposed to it. He said it left the Bar members of the Joint Committee in a dilemma because they would be speaking, through the Joint Committee, with a position in opposition to the Board of Governors.

He said he went to the Board of Governors meeting in Ashland on May 29-30, 1981, to

discuss the proposal for the experiment and that dilemma.

The minutes of that Board of Governors meeting show that McClurg appeared before it, that the Board was preparing to do a study of its own of cameras in the courtroom (which became the Stanton Long report in 1982) and that the proposal for the experiment was raised. On the issue of the Joint Committee's autonomy, the minutes include the following:

"After discussion, the consensus of the Board was that the Joint Bar, Press and Broadcasters Committee had the jurisdiction to act independently of the Bar, and to proceed with its proposal to the Oregon Supreme Court." (Emphasis added.)

In the Winter 1985 edition of the Oregon Publisher, Don Sterling wrote a history and explanation of the Joint Committee. In the article, he wrote, "It has been established that it (the committee) can adopt positions and take actions without referring them to the three parent organizations, the Bar, ONPA and OAB." He goes on to describe the rotating chairmanship and staffing.

Also in 1985, the Joint Committee published "Oregon's Legal System," the Bar/Press/Broadcasters Handbook. In Chapter 1, "Free Press and Fair Trial," the Joint Committee is described, including that "The committee is empowered to act on its own authority, without necessarily referring its actions to the parent organizations."

The material presented here is what I and others have been able to find on the subject. It seems abundantly clear that the Joint Committee's autonomy has evolved over the years without challenge from any quarter.

The committee has repeatedly expressed itself on issues, and pursued an active role on them without first seeking the ratification of the Bar, the Publishers or the Broadcasters.