

BERNARD RODEY AND THE JOINTURE MOVEMENT IN THE U.S. CONGRESS

by Mark Thompson

Real Property lawyers are probably wondering why the Congress of the United States would be interested in the ancient, common law, and marital property doctrine of “jointure.” Ah yes, but they forget that in politics words may often be used to hide or soften the real intent. In this case, “jointure” was the term describing the proposed admission of two or more territories as one state, the political goal being a limitation on the number of U.S. senators representing the wide open spaces of the American West.

By the time of the 58th Congress (1903-05) the focus was on the jointure of Arizona and New Mexico territories as well as jointure of the Oklahoma and Indian territories. The Indian Territory had only been divided since May 2, 1890, when Congress created the Territory of Oklahoma with its capital at Guthrie. The eastern portion was left as an “unorganized” territory which stretched from the 96th meridian at the Kansas border southwest, more or less, to where the 98th meridian crossed the Red River border with Texas. The unorganized territory, consisting of five Indian nations, was eventually proposed for admission as the State of Sequoyah. It is likely that jointure was favored by many of the inhabitants of both territories, which ultimately happened in 1907 with the admission of the state of Oklahoma.

Arizona and New Mexico had been divided since 1863, and in both territories jointure was controversial. As the elected (non-voting) delegate of the New Mexico territory in Congress, Bernard Rodey had decided jointure represented the best chance for statehood and that eventually the two geographic areas could divide again and be admitted as separate states. Unfortunately for Rodey, his willingness to compromise conflicted with the New Mexico Republican establishment position. His support of jointure was undoubtedly a factor in his being denied the party nomination for re-election in 1904, perhaps changing the direction of Rodey’s career.

Bernard Shandon Rodey was born March 1, 1856, in County Mayo, Ireland, and emigrated with his parents in 1862, first to Canada and then to Vermont. He arrived in New Mexico in 1881 as an employee of the railroad and was admitted to the bar in 1883. As a first-term Bernalillo County councilor (senator) in the territorial legislature (1889-90), he played a major role, along with Speaker of the House Albert J. Fountain of Doña Ana County, in securing the passage of the act creating the first public colleges in New Mexico. He was elected as a delegate to the 1889 Constitutional Convention. As one of 18 lawyers, including Fountain, T.B. Catron, J. Francisco Chaves, Frank Springer and L. S. Trimble, to name just a few, he played a major role in producing the ill-fated proposed constitution of 1890. In 1900, he



was elected as the Republican candidate for congressional delegate and then re-elected in 1902. As a non-voting territorial delegate, his main job was to lobby for statehood for New Mexico.

Jointure may not have risen to the level of a “litmus test” by 1904, but the relative newcomer who defeated Rodey at the September GOP convention believed it necessary to immediately announce his opposition.¹ Rodey’s other problem was his close ties with sometimes Bernalillo County sheriff and full time political boss Frank A. Hubbell. If you just count newspaper stories, you could conclude that it was the effort to get Hubbell that propelled William Andrews to the nomination over Rodey. The banner headline following Rodey’s defeat at the convention was “Overwhelming Defeat For the Boss,” not, for example, “Andrews beats Rodey.” Governor Otero admitted in October that punishing Hubbell was a factor in the nomination fight, while expressing his “personal admiration for Delegate Rodey.”²

As his later statements show, Rodey undoubtedly thought he was right about jointure and so, perhaps ignoring political advice, he ran for delegate as an independent. His friends and supporters thought it was bad idea, one likely conceived by Democrats.³ He carried Bernalillo County but did not take enough votes to prevent Andrews from defeating the Democrat, G.P. Money. Election loss notwithstanding, Rodey was not finished as delegate because the “lame duck” session of Congress kept him in office until March 3, 1905. Rodey went back to work “with a firm determination to pass the joint statehood bill.”⁴ He was confident that his friend, Indiana senator and historian Albert J. Beveridge, could engineer a victory for joint statehood with Arizona but the session and the 58th Congress ended without passage of a bill. As a private citizen, Rodey then continued the fight into 1906 when the Non-Partisan Joint Statehood League, headed by Carlsbad lawyer A.A. Freeman, raised money to send him to Washington as a lobbyist.⁵

Theodore Roosevelt was inaugurated for his first full term on March 4, 1905, and it was widely anticipated that he would replace Governor Miquel Otero, first appointed by William McKinley in 1897. Rodey wanted the job and suggested to his friend Senator Beveridge that he, Rodey, was a good choice because he, unlike Otero, would support jointure, thought to be favored by Roosevelt.⁶ Beveridge followed through with a recommendation of Rodey for governor but the President appointed Rodey to a territorial judgeship in Puerto Rico. In 1910, President Taft appointed him as U.S. attorney for the second district of Alaska, and in 1912 he accepted a special assistant U.S. attorney position in the western district of Washington in order to prosecute a major coal fraud case.

The judgeship and prosecutor appointments obviously brought Rodey back to something more like the practice of law, but apparently he had not let go of his political ambition. In 1908 he showed up at the Republican National Convention in Chicago as a self-appointed lobbyist for admission of New Mexico and Arizona as separate states.⁷ (Apparently territorial judges did not worry about avoiding all political activities.) When statehood was on the horizon, he made a trip to New Mexico in 1911 to lobby for appointment by the legislature as one of the first two U.S. senators, but it was not to be.⁸

Bernard Rodey returned to Albuquerque in December 1913 and opened a law office at 317 West Central in the appropriately named "Law Library Building." In 1915, his son Pearce graduated from law school and joined him in the practice. From 1913 through his death in 1927, Bernard Rodey was a lawyer's lawyer; but based on this history, it is not difficult to believe that he was disappointed with how his political career ended.

If life gave Rodey "political" lemons, he made lemonade. His enduring legacy was the building of a foundation for the development of one of the premier New Mexico law firms.

Endnotes

¹ "Andrews Accepts Nomination; Will Work For Passage of Single Statehood Bill," *Albuquerque Morning Journal* (September 25, 1904), p. 2. William Henry Andrews, a Sierra County miner, had only lived in New Mexico since 1900. He was a first term State Councilor (Senator) and had served in the legislature in Pennsylvania.

² "Overwhelming Defeat For The Boss," *Albuquerque Morning Journal* (September 13, 1904), p. 1; "Otero Talks of Andrews' Nomination," *Albuquerque Morning Journal* (October 5, 1904), p. 1.

³ "Rodey Would Sign His Political Death Warrant," *Albuquerque Morning Journal* (September 28, 1904), p. 1.

⁴ "Goes Back To Renew Fight For Statehood," *Albuquerque Morning Journal* (November 29, 1904), p. 5.

⁵ "Rodey Will Leave To Get In The Game," *Albuquerque Morning Journal* (January 12, 1906), p. 7.

⁶ Robert W. Larson, *New Mexico's Quest for Statehood, 1846-1912* (U. of New Mexico Press: 1968), p. 232.

⁷ "Rodey Arrives To Work For Statehood," *Albuquerque Morning Journal* (June 11, 1908), p. 1.

⁸ "Rodey Announces His Candidacy For Senate," *Albuquerque Morning Journal* (September 28, 1911), p.8. "Judge Rodey Does Not Enthuse," *Albuquerque Morning Journal* (October 5, 1911), p. 8. Statehood was not officially realized until January 6, 1912, but conventions were held to pick candidates for the special election of 1911. The Republican Convention provided a chance for Rodey to press his candidacy with those who would control the first session of the legislature and its naming of the first U.S. senators after statehood. The 17th Amendment to the U.S. Constitution, providing for the direct election of U.S. senators, was ratified in 1913 and the first direct elections in New Mexico were in 1916 (Catron/Bingaman seat) and 1918 (Fall/Domenici seat).

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