

January 2021

## The Honorable John L. Kane, Jr., Federal District Court of Colorado

E. Michael Canges

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

E. Michael Canges, The Honorable John L. Kane, Jr., Federal District Court of Colorado, 71 Denv. U. L. Rev. 15 (1993).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

# THE HONORABLE JOHN L. KANE, JR., FEDERAL DISTRICT COURT OF COLORADO

E. MICHAEL CANGES\*

John L. Kane, Jr., has a fascinating background, indeed. He did not follow the customary route to the bench. His legal career includes a position as deputy district attorney, a stint as a real estate and farm lawyer in a semi-rural community, Colorado's first public defender, house counsel to a water company, partner in the largest law firm in the region, visiting lecturer at Trinity College, Dublin, and now a federal judge.

He has travelled to 37 countries, some as remote as Moldova and Mongolia. As a Peace Corps staff member in India, the young Kane showed a flair for public service, which is a continuing theme in his career. The United States Information Agency has dispatched him as a lecturer to all parts of the globe. The State Department has asked him to assist third world and formerly Soviet dominated countries in establishing viable legal systems which emphasize human rights.

His interests are diverse and eclectic. He has taught a myriad of subjects at the University of Denver College of Law, Denver University, Metropolitan State College, and Trinity College, Dublin. Author of numerous professional and secular articles, he is an accomplished cook, literary critic, operatic tenor, outdoorsman, historian, humorist and thespian. A devotee of baseball and football, by his own admission his interest far exceeds his ability.

As a new federal judge, he ordered the Colorado State Penitentiary closed for numerous federal constitutional violations.<sup>1</sup> When the state legislature threatened to ignore his order assessing attorney fees against the State, Judge Kane let it be known that he would consider a writ of execution against the gold dome of the state capitol. He sentenced a defendant to 325 years of confinement,<sup>2</sup> but granted probation to individuals in cases which outraged the government. He found the recently enacted federal sentencing guidelines unconstitutional,<sup>3</sup> but upheld the government's right to subpoena financial information from lawyers concerning payment

---

\* Mr. Canges is a practicing trial attorney and partner in Canges and Iwashko. He graduated from the University of Denver with a B.A. in 1962 and University of Denver College of Law with a J.D. in 1965. He has taught trial tactics at the University of Denver College of Law, and is presently active on the faculty of the National Institute of Trial Advocacy (NITA). He is an initial member of the William E. Doyle Inn of Court. He is a member of a variety of professional and bar organizations and has been selected as a member of the American Board of Trial Advocates.

1. Ramos v. Lamm, 485 F. Supp 122 (D. Colo. 1979), *aff'd in part, set aside in part*, 639 F.2d 559 (10th Cir. 1980).

2. United States v. O'Driscoll, 586 F. Supp 1486 (D. Colo. 1984), *aff'd*, 761 F.2d 589 (10th Cir. 1985).

3. United States v. Smith, 686 F. Supp 847 (D. Colo. 1988).

of cash fees.<sup>4</sup> He has decided a significant number of cases of first impression involving subjects as diverse as federally reserved water rights,<sup>5</sup> searches involving private air carriers<sup>6</sup> and competing forfeiture claims by diverse branches of federal and state governments.<sup>7</sup>

Neither conservative nor liberal, most assured not statist and sometimes a libertarian, he defies political labeling. He is devoted to traditional values. Judge Kane's judicial philosophy is profoundly simple: he believes that his primary obligation is, to keep government off the backs of the people. He is held in national esteem for his insightful opinions and his wit and his extensive contributions to profession and community.<sup>8</sup>

John L. Kane, Jr., was born in Tucumcari, New Mexico in 1937. His family moved back to Denver when he was two years old. His late father was a pharmacist and state legislator from Adams County. His mother was an accountant. He has worked since the age of nine when he set pins in a bowling alley. He has been a cady, a constructor and even a railroad gandy dancer. Judge Kane was educated in local parochial and public schools and graduated from the University of Colorado at Boulder. There he majored in philosophy and literature. He was active in the theater, a talent that he employed throughout his legal and judicial career.

After graduating from college in 1958, John Kane attended D.U. College of Law, then located in downtown Denver across from Sullivan's Bar on Court Street. He clerked for noted trial lawyer Walter Gerash. He distinguished himself academically as the Editor-in-Chief of the University of Denver Law Journal. He attained first place in both the Kingsley All-University Oratorical and Pattison Law Oratorical contests. His ambition was to become a good trial lawyer.

Kane was admitted to the Bar at the age of twenty-two. He joined the Brighton law firm of Gault, Byrne and Dirrim. There, his primary tasks were examining abstracts and rendering title opinions. He later became a deputy district attorney, then a part-time position which allowed a private practice.

Judge Kane has always had a love affair with the courtroom. As a young lawyer, he followed the great trial lawyers of Denver to watch them work their craft in court. Upon hearing that Fred Dickerson, Tony Zarlengo, Bob Kingsley, Fred Winner or Irving Andrews (his mentor and later his partner) were in trial, Judge Kane would watch and learn. His dedication to trial skills required him to fulfill his private practice tasks at night and on weekends.

The seduction of a full-time trial practice became irresistible when Irving Andrews suggested a partnership. The firm of Andrews and Kane

---

4. *United States v. Saint-Veltri*, unpublished opinion.

5. *Sierra Club v. Block*, 622 F. Supp 842 (D. Colo. 1985).

6. *United States v. Andrews*, 474 F. Supp 456 (D. Colo. 1979).

7. *Eggleston v. Colorado*, 636 F. Supp. 1312 (D. Colo. 1986).

8. Judge Kane has been featured or written of in publications as diverse as *The New Yorker*, *The Wall Street Journal*, *The New York Times*, *The National Law Journal*, *The Washington Post*, *The San Francisco Chronicle*, and *The Irish Times*.

(affectionately referred to as Sunshine and Soot and the first racially integrated law firm in Colorado) established offices at 2130 Downing Street near the heart of Denver's black community. The flavor of those days is best expressed in the following vignette. A gentlemen, having just robbed a bank, heard the sound of sirens approaching. He thereupon proceeded directly to the offices of Andrews and Kane. Upon arriving, and in justifiable haste, he blurted out to Irving Andrews that he has just robbed a bank. "Fool," retorted lawyer Andrews, "You don't even know the constituent elements of the crime. Until you do, you haven't robbed anything." The police arrived shortly thereafter. While being led off in handcuffs, he told the police, "Mr. Andrews thinks maybe I'm innocent."<sup>9</sup>

In 1964, Adams County established Colorado's first public defender office. John Kane was selected as the first Public Defender in the State of Colorado. His deputies included Phil Roan, now an Adams County District Judge, Morgan Smith, now Director of the Colorado International Trade Office, and noted defense attorney Mike Bender, then a student public defender intern.

Although the workload was enormous, to Public Defender Kane it was a labor of love. Then, as now, the office was underfunded and understaffed. Nevertheless, his office established a formidable presence and became the prototype for the state public defender system.

The caseload of serious felonies was formidable. The success rate was exemplary. However, the pressures of the office took their toll. Kane, having established the office and being pleased with its staff, decided to accept a different challenge.

Always mindful of the obligation of public service, he joined the Peace Corps. He became a deputy director and, with his family, went to Calcutta for two years. The poverty, inhumanity and suffering he observed left a lasting impression. The dignity and culture of the Indian people profoundly influenced his values and self-awareness.

After India, Kane returned to Denver. Unable to find work as a trial lawyer, he accepted a position as general counsel to a water company. In 1970, the late Pete Holme offered him a position with Holme Roberts & Owen, then, and now, one of the largest law firms in the region. There Kane distinguished himself as a consummate civil trial lawyer.

During his years with Holme Roberts & Owen, he was elected a fellow of the International Society of Barristers, the International Academy of Trial Lawyers, and numerous other prestigious organizations. As a lawyer he taught, authored and lectured extensively. His clients were as diverse as his interests; from the friendless indigent to the high public official—the obscure to the famous.

In the early 1970's, Kane's interests included the future of the legal profession. At a general meeting of the Board of Governors of the Colorado Bar Association, he spoke about a number of issues about the community and the future practice of law. He opined, to the unbridled

---

9. Discussion with Judge Kane many years ago in an unnamed saloon.

laughter and derision of his audience, that within the next ten to twenty years legal fees would exceed \$200 per hour, law firms would exceed one hundred lawyers, the sole practitioner would ultimately become virtually extinct, legal research would require a computer, gasoline would cost more than \$1.00 per gallon, industries would be deregulated, real property would increase five-fold due to inflation, and Colorado would have branch banking. In sum, he suggested, were a lawyer to travel twenty years ahead, he would recognize virtually no aspect of the practice of law.

In 1978, Senators Gary Hart and Floyd Haskell established a commission of distinguished lawyers and citizens to recommend to the President applicants for the opening on the federal bench for the District of Colorado occasioned by the retirement of Chief Judge Alfred A. Arraj. John Kane was appointed by President Carter on December 16, 1977. He became a Senior United States District Judge in 1988.

As a trial judge, he has authored more than 725 published opinions.<sup>10</sup> His cases range from significant constitutional issues to essays on the obscure. For example, he closed the prison at Canon City until the State of Colorado established that it met minimal constitutional standards.<sup>11</sup> He has dismissed cases when he is shown governmental overreaching or misconduct.<sup>12</sup> He does not abide any party or lawyer to take unfair advantage in his court. He recognizes that the majesty and responsibility of a federal judicial office require adherence to a standard. He abhors secret proceedings. When asked to review documents *in camera*, he stated: "Both the reliability of the information and the public acceptance . . . could be enhanced by subjecting the process to public scrutiny. Because an *in camera* investigation both demeans the judicial systems and distends an already cloyed review of an essentially meaningless document, I refuse to undertake it."<sup>13</sup>

He expends whatever time and effort he believes necessary to perform his duties. Upon passing sentence for a series of vicious crimes, he felt obliged to explain, in an extensive opinion, the necessity for imposing the harsh sentence. He said:

I know of no more excruciating decision for a judge to make than whether to confine and, if so, for how long and under what terms and conditions.

I am keenly aware of the imperfections of the judicial process and my own fallibility of perception when called upon to impose a final and awesome judgment. I can deal only with the defendant who stands before me and not with the society that helped to form and nurture him. . . . As best as I am able, I must

---

10. The second most prolific author in the District of Colorado was the late Chief Judge Alfred A. Arraj. He authored 379 written opinions between 1957 and 1992.

11. *Ramos v. Lamm*, 485 F. Supp. 122 (D. Colo. 1979).

12. *United States v. Kilpatrick*, 594 F. Supp. 1324 (D. Colo. 1984), *rev'd*, 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom. Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988); *United States v. Anderson*, 577 F. Supp. 223 (D. Wyo. 1983), *rev'd*, 778 F.2d 602 (10th Cir. 1983); *United States v. Haggerty*, 528 F. Supp. 1286 (D. Colo. 1981).

13. *Lorenz v. U.S. Nuclear Reg. Comm'n*, 516 F. Supp. 1151, 1155 (D. Colo. 1981).

purge myself of any inappropriate emotions or motivations. No sentence which is imposed for the purpose of vengeance or to satisfy a public demand for vengeance is worthy of respect.

Justice consists in meting out a sentence which is threatened by law and deserved by the guilt of one who voluntarily ran the risk of conviction. It is, therefore, the responsibility of a judge to sentence not for the sake of the individual, but for the sake of justice—to carry out the threat of the law and to deter others from committing the same or similar acts. . . . The law's warnings must be real. The grim consequence of imprisonment must be shown to be inevitable. To do otherwise is to trivialize the seriousness of crime and depreciate the humane principles by which integrity and dignity are recognized in all of us.<sup>14</sup>

A master at using the simple sentence and avoiding unnecessary prolixity, his writing is cogent and direct. It is understood by the public as well as the bar, although frequently sending anxious lawyers to their dictionaries. He believes that non-lawyers are entitled to understand the how and why of judicial decisions. He prefaced a lengthy decision with, "I apologize for [this opinion's] length. I simply didn't have the time to write a shorter one."<sup>15</sup> When the City of Denver refused a parade permit to a group who wished to celebrate a Mexican holiday, except after normal work hours, Judge Kane observed that:

To one not familiar with the Denver area, this regulation might appear as one which reasonably confines public processions to certain times and places, but, for better or worse, Denver's is one of those downtown areas where the workday population greatly exceeds the population which remains after 6:00 p.m. and on weekends. . . . Indeed, one could roll a bowling ball down 17th Street after 6:00 p.m. and not hit anyone.<sup>16</sup>

When angered, he is quick to let the offending party know. For example, when visited with a proposal by the government to accept a vehicle in exchange for a plea bargain, he said:

This is perhaps not the most appropriate case in which to analyze all of the outrages visited upon the criminal justice system by plea bargaining. Suffice it to say that the foregoing reference to an exchange of criminal charges for used cars is made without any accompanying sense of shame or embarrassment. Such insouciance suggests that we are fast approaching our own *gotterdammerung*.<sup>17</sup>

He is ever vigilant protecting the citizens from the government. He no longer hears criminal cases so long as he is bound by the sentencing guidelines. Because of the guidelines, Kane perceives that the role of the federal judge in criminal cases has become little more than a "clerical

---

14. *United States v. O'Driscoll*, 586 F. Supp 1486, 1486 (D. Colo. 1984).

15. *United States v. Price*, 448 F. Supp 503, 503 (D. Colo. 1978).

16. *Sixteenth of September Planning Committee v. City and County of Denver*, 474 F. Supp 1333 (D. Colo. 1979).

17. *United States v. One 1982 Audi*, 577 F. Supp 1004, 1005 (D. Colo. 1984).

function." He has publicly stated that he "will not be a conductor on a train to Auschwitz at the behest of the government."

While his decisions often contain weighty and serious legal discussions, they are not without wit and humor. His opinions include an analysis of ecdiasty (striptease,<sup>18</sup> if you please), baseball,<sup>19</sup> prison cuisine,<sup>20</sup> defamation (of sorts),<sup>21</sup> and intentional torts,<sup>22</sup> to name but a few. When a plaintiff sought payment from the defendant's homeowner's insurance policy by asserting negligence when his nose and ears were bitten off, Judge Kane observed: "After the fashion of William of Occam, preference should be given to a test of known quantities: three bites do not a negligence case make."<sup>23</sup> When a tax protester appeared as "counsel" for a fellow protestor, Judge Kane inquired if "counsel" were a member of the bar of the Court. "Counsel" replied that he was a member of the court of God. The Judge promptly replied that while he respected counsel's credentials, "the rules of our Court require local counsel."<sup>24</sup> When asked in a pre-trial motion to "not refer to the parties by their first names during trial," Judge Kane stated: "I so advise. I hope they don't because to do so is very tacky."<sup>25</sup>

Judge Kane has been honored by diverse groups for his contributions. He was the first Martin P. Miller Distinguished Visiting Professor at the College of Law; St. Thomas More Award, Outstanding Contributions to the Law, Religion and Country, Catholic Lawyers Guild; Evans Award to the Outstanding Alumnist, University of Denver; Lifetime Judicial Achievement Award, National Association of Criminal Defense Attorneys; Award of Merit, U. S. Information Agency; B'nai B'rith Annual Civil Rights Award; and Honorary Life Member, American Board of Trial Advocates, to name but a few.

He was a visiting Lecturer in Law, Trinity College, Dublin, Ireland, and is the first Harry Silverstein Adjunct Professor of Law, University of Denver, College of Law. At the request of the U.S.I.A. and the State Department, Judge Kane has taught and explained our system of law and government in many countries. He has assisted leaders of emerging countries in establishing and reforming judicial systems. He is regarded as one of the foremost authorities on comparative judicial and legal systems.

Judge Kane does all of us—the College of Law, the legal profession, and our system of justice—proud by his presence and contribution.

---

18. *Tavern Talent v. Charnes*, 607 F. Supp 1415 (D. Colo. 1985).

19. *King v. Burris*, 588 F. Supp 1152 (D. Colo. 1984).

20. *Tuggle v. Evans*, 457 F. Supp 1015 (D. Colo. 1978).

21. *Williams v. Burns*, 540 F. Supp 1234 (D. Colo. 1982).

22. *West Am. Ins. Co. v. Maestas*, 631 F. Supp 1565 (D. Colo. 1986).

23. *Id.* at 1566.

24. *United States v. Hudler*, unpublished decision (1978).

25. *Elliott v. The Aspen Brokers, Ltd.*, 811 F. Supp. 586, 590 (D. Colo. 1993).