

June 2021

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Recommended Citation

Albert Edward Sherlock, What Price Justice, 24 Dicta 23 (1947).

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DICTA

VOL. XXIV

FEBRUARY, 1947

No. 2

Calendar

February 3—Denver Bar Association regular monthly meeting, 12:15 P. M., Chamber of Commerce dining room, Hon. J. W. Delehant, United States District Judge, District of Nebraska, speaker.

March 3—Denver Bar Association regular monthly meeting, 12:15 P. M., Chamber of Commerce dining room. The speaker will be William W. Crowds, of St. Louis, Mo., one of the leaders in the adoption in Missouri of the non-partisan judicial selection plan in effect there.

What Price Justice

By ALBERT EDWARD SHERLOCK *

The writer has just been appointed chairman of the Justice Court Committee of the Judiciary Committee of the Colorado Bar Association. That committee is studying the court systems in all the 48 states and British commonwealths, and securing all possible data on all Colorado courts for the past ten years. In the course of its work it will print in DICTA and mail to the bar of Colorado, information about its work and findings, so that, aided by suggestions from the bar, the best non-partisan judiciary can be secured for Colorado.

Prior to that appointment, however, the writer commenced an investigation, on his own initiative, of the Colorado justice courts, and presents it to the bar for its suggestions relative to justice courts.

Should they be:

1. Abolished?
2. Consolidated?
3. Made a part of the County courts?
4. Become separate magistrate courts?
5. Retained without change?

Let us hear from you.

This article is an attempt to enlighten the voters for suggestive remedial procedure. The justice of the peace in America arrived with the Mayflower and has not been improved since that day. Our modes of transportation, both on highways and in the air, have progressed while the office of the justice of the peace remains as staid as on the day of its creation.

* Of the Denver bar.

The institution of justice of the peace may be said to date from the year 1360, when the statute 34 Edw. III, c. 1, appointed "one lord, and with him three or four of the most worthy in the county, with some learned in the law" to keep the peace and try felonies and trespasses at the king's suit. But this authority obtained only when two or more of these officials acted together. From then on they became known as justices and very soon thereafter reference was made to them as "justices of the peace," in the statute 36 Edw. III, c. 12 (1362).

The justices of the peace in Colorado are constitutional officers and derive their authority from Article VI, Section 25 of the Colorado Constitution, and are qualified as county officers. (*Thrush vs. The People*, 53 Colo. 544-547, 127 Pac. 937). Both the constitution of Colorado and the statutes enacted subsequent to the adoption of the constitution are silent as to any qualification a justice of the peace in Colorado must possess. The only statutory requirements enumerated are that he or she must be a qualified voter and a resident of the particular precinct in which he or she may have been elected or appointed by the county commissioners of that county.

Under date of January 6, 1946, there were 260 justices of the peace in Colorado.¹ Under date of September 28, 1946, 258 questionnaires were mailed to the list as supplied to the writer by the Secretary of State, and returns from 131 of said justices of the peace who answered the questionnaire above referred to reveals some very interesting facts and supports my argument for a reform or abolition of the present system. There were:

- 12 Farmers
- 10 Federal or local government employees
- 3 Housewives
- 11 Laborers
- 13 Merchants
- 5 Office Workers
- 7 Professional
- 12 Real estate and insurance
- 22 Trades
- 7 Retired
- 9 Returned unclaimed—address unknown
- 8 Deceased
- 6 Resigned
- 6 Not qualified
- 127 No reply

258

Of the above replies received by the writer, 34 held a notary public com-

¹ Letter from the Secretary of State to the writer dated January 9, 1946.

mission, 17 were licensed real estate brokers and 22 sold various forms of insurance.

The charter amendment of the City and County of Denver provides for the appointment of justices of the peace by the mayor and their qualifications are set forth in the charter; therefore no questionnaire was mailed to the justices of the peace or police judge of the City and County of Denver and nothing that I have said is to be construed as a reflection upon any of those gentlemen.

From the above statistics can be made a comparative analysis as to the qualifications of the various justices of the peace. The answers to the writer were courteous, in most instances prompt, and in many cases very humorous, and advocated a reform from their viewpoint. I communicated with those who suggested a change in procedure and with their permission I quote some of the replies received, not revealing their identity. The purpose of the quotations is to inform the voters that the people they elected to satisfy their petty quarrels are really permanent members of an inferior court. From Mr. ——— I quote:

“One ‘true fact’ as it is now is that justice fees are the same as they were when common labor was \$1.00 per day. The boy who mows my lawn gets more than I do for messing with other people’s troubles.

“I will quote from a letter that I wrote to a member of the committee that was asking me for a statement of my income from justice fees: ‘If your committee will see to it that justices get more Greek weddings, with sizable fees and twelve hours of refreshments both liquid and solid, and less request for the collection of whiskered accounts by way of the small claims court, you will have done us a good turn.’”

From Mr. ———, ex-justice of the peace, I quote:

“I was nominated in 1942 much against my desire and only on the last day filed an acceptance, then qualified against my better judgment. Ditto 1944, and got all I could stand and resigned June 1st, 1945, and if the good Lord keeps me in my normal senses, never again will I be caught in such a position.”

From Mr. ———, I quote:

“I am heartily in favor of establishing some method or methods by which a justice of the peace might have to qualify himself as to his ability to sit on this bench and in this, I fully realize that I, myself would probably be disqualified. Even so, I do not believe that the bar association should be permitted by the legislature to make as one of these qualifications, membership within that group. I do not believe, either that these members should be restricted from sitting as justices of the peace, with the limitations as now set forth in the state statutes. I do believe that there are many people living in this state who are intellectually qualified to sit on these benches who have never attended law school or perhaps a university. I believe that an education

is obtainable on our streets and in our books, papers and magazines that come to us after our school days are over. I believe that there are graduates from other walks of life who would make admirable justices. I do not believe that the state would be unreasonable in requiring that a justice be compelled to pass a fair intelligence test, designed not to see how much law the person already knew but to see how much law the individual might be able to absorb, with the job to be held as the sole objective.

"Insofar as I am personally concerned, it makes little difference. I do not seek to earn a livelihood by this means and I very frequently find these duties seriously interfering with those in which I am more vitally interested. No doubt, before any legislation whatsoever becomes law in this matter, I will have turned my docket over to someone else. I realize, however, in this matter, there is danger in going too far in attempting to improve a condition that is not nearly so serious as some of our state laws which are going unheeded."

The office of the justice of the peace has been criticized throughout the press for many years mainly on the system of fee collection basis which dates back to colonial days. "The justices, being subject to no supervision, and depending so much on their fees that J. P. came to mean 'Judgment for the Plaintiff,' formed unholy alliances with collection agencies, installment houses, and the like, and very generally became actually corrupt."² "The idea is that every such district will have men of substantial worth who will willingly accept a place in a responsible judicial system. Their local standing and practical judgment, assisted by expert direction, will permit just that flexible, informal, and decentralized procedure which has always been aimed at in this country, and which seems to exemplify the American instinct for local government. The type would be that of the local Solomon, whereas the J. P. too often suggests Dogberry."³

This is well illustrated in the following example from our sister state, New Mexico:

"The Village of Ruidoso, New Mexico, County of Lincoln

RESOLUTION NO. 1.

"BE it resolved by the Board of Trustees of the Village of Ruidoso, New Mexico,

"That there shall be appointed a village police judge who shall be the present justice of the peace George H. Seele. The court over which said police judge shall preside shall be known as the Municipal or Police Court of the Village of Ruidoso and such court shall have sole and exclusive jurisdiction

²"Justice and the Poor" by Reginald Heber Smith, p. 42.

³"Ultimate Types of Inferior Courts and Judges" by Herbert Harley of the Chicago Bar, Secretary of the American Judicature Society, Case and Comment, V. 22, No. 1, June, 1915, p. 8.

of the violation of any and all ordinances of the Village of Ruidoso.

"Be is further resolved that, the said Police Judge of the Village of Ruidoso shall be paid a salary set on a fee basis and that the maximum of (\$1.00) one dollar per conviction on each and every conviction be paid said Police Judge.

Passed and approved this 11th day of January, 1946.

Approved

O. W. McElhaney, Mayor.

Attest:

L. F. Dryden, Clerk.

"TO WHOM IT MAY CONCERN: This is certified to be a true copy of Resolution number 1 passed and approved by the Board of Trustees of the Village of Ruidoso, New Mexico the 11th day of January, 1946. Subsequent to passage of this resolution it was found to be unconstitutional in this state and another resolution has been passed voiding this resolution and placing said Police Judge on monthly salary basis regardless of convictions or acquittals or number of cases before him.

(SEAL)

Attest:

L. F. Dryden, Clerk"

The late Chief Justice William Howard Taft of the United States Supreme Court in a learned and celebrated opinion reversed a justice of the peace decision on the sole propriety of the pernicious fee system and I quote from pages 437 and 442 of Vol. 47, Supreme Court Reporter:

"It is a denial of due process of law, in violation of Const. U. S. amend. 14, to subject the liberty and property of a defendant to the judgment of a court, the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case."

"There was at the common law the greatest sensitiveness over the existence of any pecuniary interest however small or infinitesimal in the justices of the peace. In Hawkins, 2 Pleas of the Crown, Bk. 2, ch. 8, ss 68, 69 we find the following: 'The general rule of law certainly is that justices of the peace ought not to execute their office in their own case (citing 1 Salk. 396);'"⁴

The General Assembly of the State of Iowa said in a resolution passed, and I quote:

"HOUSE CONCURRENT RESOLUTION NO. 11

"Whereas, justice of peace courts were provided under the law some 75 or 80 years ago when townships were important governmental units and courts

⁴ Tumey v. State of Ohio, Supreme Court Reporter 272-274 U. S. Vol. 47, pp. 437 and 442.

of that type were necessary in the administration of civil and criminal procedure; and

“Whereas, The law still provides for the election of two justices and two constables in each township, making a total of 32 justices of peace and 32 constables in the average 16 township county; and

“Whereas, the nomination and election of said justices and constables add to the length of the ballot and time of counting boards at each biennial election; and,

“Whereas, that type of court is no longer necessary and has been superseded in some instances by superior and municipal courts; and,

“Whereas, in some localities adjacent to larger towns and cities said justice courts have been misused; and,

“Whereas, justice of peace courts and procedure are entirely outmoded and of no further practical benefit to the public;

“BE IT THEREFORE RESOLVED BY THE HOUSE, THE SENATE CONCURRING: That a committee of six be appointed, three by the President of the Senate from the Senate, and three by the Speaker of the House from the House, said committee to investigate said situation and report to this General Assembly, or the one following, making recommendations for the improvement and betterment of said conditions and making proposals to change, amend or substitute laws or procedure so as to attain practical efficiency and satisfactory administration of the law.”⁵

So the move is on in various parts of the country, particularly in the Rocky Mountain region for a uniform system relative to the administration of justice in the inferior courts, more particularly the justice court, and the time is now ripe for that procedure. Most of this has been brought about by the long years of following a tradition and not realizing the importance of the impression made on the litigant whose first and sometimes only experience is that of the justice court. Chief Justice Charles Evans Hughes of the United States Supreme Court has said:

“That upon the minor courts rests the burden of all our legal institutions. Approximately seven million persons are haled annually as defendants into these lower courts of the United States. The most cautious and law-abiding citizen is likely at any time to be summoned before a magistrate or police judge to explain some petty infraction of our complex laws.”⁶

And this is again illustrated in the following:

“The little old fashioned solicitor in a small country town who is called upon at intervals to advise the squire, the merchants, the trades union official and the lady J. P. on the trial of the village undesirable, does not always, as my experience goes, know too much of either law or evidence, but some times

⁵ Letter from Chief Clerk, House of Representatives, State of Iowa, dated October 5, 1946.

⁶ “Befuddled Justice” by Thomas Compere, *Forum* 84, July-Dec. 1930, p. 34-43.

more about the defendant's private life or reputation than is or could be admissible in evidence in the case."⁷

And again from a very learned article by Mitchell Dawson I quote:

"The state sets the squire up in the business of dispensing justice by the peace. He parcels it out at fixed prices, quaintly known as costs, which go into the pockets of the justice and the constable. In most states it is the only way these worthies have of getting paid.

"In criminal cases under this system, it is always better business for the squire to find the defendant guilty and squeeze the costs out of him than to let him go and try to collect from the county. Everything is arranged so that the expense of administering justice will fall on the defendants instead of the public. Some states offer a bonus of higher costs for convictions than for acquittals; others go farther and say that a magistrate is not entitled to any costs unless he convicts the defendant, though the Supreme Court held this unconstitutional."⁸

And a further quotation by A. J. Walling:

"Lord Coke said: 'The whole Christian world hath not the like office as justice of the peace, if duly executed.'"

"The stress, it will be noted, lies on the office and not upon the person of the justice, which has not escaped criticism either anciently or recently. If there is less humor there is even more pungency in the ironies the modern journalist applies to the Great Unpaid than in Shakespeare's portrait of Mr. Justice Shallow."⁹

For a recent discussion on the national justice of the peace system, I refer you to *Coronet Magazine*, January 1947, entitled, "Highway Robbery Coast to Coast," by Norman Carlisle.

Now that we have introduced Mr. Justice Shallow on the scene, I quote:

"No appearance for defendant.

"This case was tried in a justice's court on appeal before a jury, the Honorable R. G. Riggins, justice of the peace, presiding. His Honor charged the jury as follows: 'Gentlemen, this is a case which has been tried by me before, and I decided in favor of defendant; I further charge you, gentlemen, that if you find that any settlement has been made, you find for defendant; retire and make up your verdict.'

"The law does not require a justice of the peace to charge the jury at all; his ignorance of the law, as well as propriety, would seem to demand

⁷"The Justice of the Peace," *The Spectator* (London) V. 150, Jan.-June, 1933, p. 44.

⁸"The Justice of the Peace Racket," by Mitchell Dawson, *American Mercury*, V. 46-48, p. 310-313, 1939.

⁹"The Justice of the Peace," by R. A. J. Walling, *Spectator* (London) V. 149, July-Dec. 1932 p. 885.

that he should not, but if he undertakes to instruct the jury, he must do it correctly and in accordance with law. A justice of the peace is generally a man of consequence in his neighborhood; he writes the wills, draws the deeds and pulls the teeth of the people; also he performs divers surgical operations on the animals of his neighbors. The justice has played his part on the busy stage of life from the time of Mr. Justice Shallow down to the time of Mr. Justice Riggins. Who has not seen the gaping listening crowd assembled around his honor, the justice, on tiptoe to catch the words of wisdom as they fell from his venerated lips?

“ ‘And still they gazed,
And still the wonder grew,
That one small head
Could carry all he knew!’ ”¹⁰

And to throw certain enlightenment on the political effect of that decision, I quote:

“The legend around here is that Judge Blandford was defeated on account of this opinion—the J. P.’s got him. Be that as it may, I know of only three members of this Court in 100 years who have been defeated, and he was one. My grandfather served on this court with him, and had a high regard for him, I think. The memorial sketch of him in 120 Ga. 1085, may interest you.”¹¹

“Aside from this aspect of the question, it is the duty of the state to afford every litigant, without regard to the amount involved in his controversy, the opportunity to secure a determination thereof according to the highest conception of justice. In this day and generation, when the poor man is receiving a degree of attention never before accorded him—when the politician and law maker are especially solicitous of his welfare, and when even the church opens its door unto him and accords him welcome—we may well pause to inquire whether the inferior court, presided over by a layman, is adequately equipped to deal out substantial justice in a summary manner. It is no answer to say that a retrial may be had on appeal, for this will afford but little satisfaction to the poor litigant who is unable to furnish bond, ‘with satisfactory surety’, to abide by and perform the judgment of the appellate court.”¹²

The number of cases arising in inferior tribunals, and the justice court, that have eventually found their way to the Supreme Court of the United States, substantiates the importance of the issues submitted for the determination by justices of the peace. It is interesting to note how many celebrated cases have reached that august tribunal, all of which had their origin in the

¹⁰ Bendheim Bros. & Co. vs. Baldwin (1884) 73 Ga. 594.

¹¹ Letter from K. C. Bleckley, Clerk of Supreme Court, State of Georgia, dated April 5, 1946, to the writer.

¹² “A Plea for the Reform of the Inferior Court,” by Hon. Milton Strasburger, Case and Comment, Vol. 22, No. 1, p. 22, June, 1915.

justice of the peace court in various jurisdictions since the founding of the republic.¹³

The celebrated case of *Marbury v. Madison* where the Supreme Court of the United States for the first time declared an act of Congress unconstitutional, arose out of the appointment of the midnight judges as justices of the peace, appointed by John Adams prior to his departure from office on the midnight of March 3, 1801, commonly known in the parlance of that day as the "Midnight Judges."¹⁴

The justices of the peace of Colorado have, among themselves, formed what they call "Colorado Justices—Federated"? In that bulletin they realize and emphasize the necessity for reform within their own fields and place part of the blame upon the Colorado legislature and I quote various excerpts from said bulletin:

"Organization is not a sentiment—it is an economic necessity. No Colorado legislature ever did anything for us. Every one of them has done something to us.

"The Colorado justice of the peace has been scolded and exhorted so long that he would feel neglected if his critics should cease. But nobody has ever suggested the practical steps to be taken to enable him to work out his own salvation. The time has come to quit moralizing and 'bellyaching' and devise a definite means for integrating Colorado justices so they can realize their highest hopes.

"A simple, elastic and yet adequate set of rules of JP procedure cannot be formed in Colorado except by experienced JP's and not until they are mobilized to act as 'Colorado Justices, Federated.'

"By common assent, the need exists for legislation to reform the justice of the peace courts in Colorado—their proceedings and machinery—and has existed for over ten years.

"Ephphatha! 'Since the memory of man runneth not to the contrary,' Colorado justices of the peace have been dropping buckets into legislative wells, and growing old drawing nothing up."¹⁵

With the above quotations as prepared by some of the justices of the peace of Colorado and their willingness to reform and amend the courts, rules and procedures as they now exist, it becomes the duty of the Colorado bar to aid and assist in that worthy cause. This article is prepared as a fore-

¹³ *Thompson v. Whitman*, 18 Wall. 457, 21 L. ed. 897; *Ferris v. Higley*, 20 Wall. 375, 22 L. ed. 383; *Harris v. Barber*, 129 U. S. 366, 32 L. ed. 697, 9 Sup. Ct. Rep. 314; *Willis v. Eastern Trust & Bkg. Co.* 169 U. S. 295, 42 L. ed. 752, 18 Sup. Ct. Rep. 347; *Capital Traction Co. v. Hof.* 174 U. S. 1, 43 L. ed. 873, 19 Sup. Ct. Rep. 580; *Alexander v. Crollott*, 199 U. S. 580, 50 L. ed. 317, 26 Sup. Ct. Rep. 161; *Heyman v. Southern R. Co.* 203, U. S. 270, 51 L. ed. 178, 27 Sup. Ct. Rep. 104, 7 Ann Cas. 1130; *Kann v. King*, 204 U. S. 43, 51 L. ed. 360, 27 Sup. Ct. Rep. 213; *Phillips v. Mobile*, 208 U. S. 472, 52 L. ed. 578, 28 Sup. Ct. Rep. 370.

¹⁴ *Marbury v. Madison*, 1 Cranch, 137, 2 L. ed. 60.

¹⁵ Vol. 1, No. 1, December JP News Bulletin, Larimer County Justices.

runner for others which will subsequently follow as sponsored by the Colorado Bar Association.

"There is no profession or class so habitually trusted with so large a measure of public confidence as lawyers. They handle a large amount of business and have a direct influence on the thoughts of about 140 million people."¹⁶

New Members of the Denver Bar Association

The following persons were admitted to membership in the Denver Bar Association at the December 9, 1946, meeting:

Richard L. Banta, Jr.	James J. Johnston
Raymond J. Gengler	Fred L. Schwartz
Philip F. Icke	William F. Stevens
Thomas M. Tierney	

The following persons were admitted to membership in the Denver Bar Association at the January 6, 1947, meeting:

William Bodan, Jr.	Richard G. Luxford
Duncan J. Cameron	Roscoe Walker, Jr.
Stanford L. Hyman	William G. Wright, III

Personals

EDWARD L. WOOD has moved his offices from 812 to 200 Equitable Bldg., Denver. Associated with him is Burton Crager, formerly of the Michigan bar. Mr. Wood is a former president of the Colorado Bar Association.

Admitted to a Higher Court

ADDISON B. MANNING, Denver, died in Santa Catalina Hospital, Avalon, Calif., at the age of 52 years. He became ill while in California on vacation. In addition to practising in Denver, he also maintained an office in Colorado Springs where he was counsel for Aircraft Mechanics, Inc. He was a Mason, in which order he has held several high offices. He was educated in the Denver schools, Colo. Univ., and Denver Univ., from which he graduated in law, cum laude.

CLARENCE E. WAMPLER, Denver, well-known attorney and active in many organizations, died quite suddenly at his home. He has been practising in Denver thirty years after graduating from Michigan U. in law.

¹⁶ Vital Speeches V. 6, Oct. 15, 1939—Oct. 1, 1940, "The Relationship of the Laymen and the Members of the Bar," by Orel Busby, Justice of the Supreme Court of Oklahoma, delivered at the Chamber of Commerce Public Forum Luncheon, Ada, Oklahoma, Dec. 29, 1939.