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# DICTA

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VOLUME 23

1946

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The Denver Bar Association  
The Colorado Bar Association

1946

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# DICTA

VOL. XXIII

DECEMBER, 1946

No. 12

## Calendar

- December 9, 1946—Denver Bar Association regular monthly meeting, 12:15 P.M., Chamber of Commerce dining room.  
December 12, 13, 1946—Denver Bar Association Tax Institute, Capitol Life Auditorium, 16th and Sherman Sts., 1:15 P.M. and 7:30 P.M.  
January 6, 1947—Denver Bar Association regular monthly meeting, 12:15 P.M., Chamber of Commerce dining room.

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 (Names of members of Judiciary Committee and chairmen of its Sub-Committees were published in November, 1946 issue of DICTA, pages 237-242.)

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These officers were elected Oct. 1946. Next election will be Oct. 1947.

**County Judges' Association**

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These officers were elected Jan. 1946. Next election will be Jan. 1947.

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These officers were elected Jan. 1946. Next election will be Jan. 1947.

**Colorado Bar Association Meeting**

In one of the most significant meetings, and the largest meeting, ever held by the Colorado Bar Association, plans were this year outlined and implemented which, if carried to conclusion, will have far reaching effects in modernizing the judicial system of the state, and in improving bar activity and the administration of justice generally. The association decided to:

1. Carry thru a program designed to completely modernize courts and judicial procedure in the state.
2. Revamp criminal procedure in the state.

3. Prepare and sponsor legislation at the 1947 session of the legislature, to increase the pay of district judges to \$6000 a year, liberalize their expense accounts, and provide a retirement compensation for these judges.
4. Make the real estate standards have state-wide application.
5. Renew the fight for integration of the bar of the state.
6. Revive the traffic court conferences so successfully conducted before the war.
7. Expand the legal institutes.
8. Establish a joint committee with the Colorado Society of Certified Public Accountants with respect to unauthorized practice of the law.
9. Create a special committee to study low cost legal services.
10. Urge the American Bar Association to go on record in favor of federal legislation which would remove the abuses now being practiced under the Federal Employers Liability Act.
11. Encourage the activities of the Junior Bar Section.

A summary of the remarks of Judge Bolitha J. Laws and Attorney General Tom C. Clark will be found in this issue of DICTA, as are the addresses of retiring president Frank L. Moorhead, and Edwin J. Wittelshofer.

On Friday morning the Probate and Trust Law Section met with the County Judges' Association, with Floyd F. Walpole, Denver, Chairman of the Probate and Trust Law Section presiding. Royal C. Rubright, Denver, discussed procedure under amended section 253 of the probate law. He suggested that in order to eliminate any question of not having proceeded correctly under sub-section A and C, an order be obtained from the court to proceed under sub-section A. A nunc pro tunc order may be obtained if necessary.

Howard Parks, Denver, discussed some inconsistencies in present probate laws and their remedy. In section 40, revocation of a will by marriage is implied. There should be a specific provision that a will made in contemplation of a specific marriage be not revoked by the marriage. The one year period for contesting a will in section 65 should be reduced to six months. The two year period provided for in section 62(c) should be reduced to one year to harmonize with section 75 as amended in 1945. Section 162 should be amended to eliminate the reference to section 167, which has been repealed. Sections 195 and 201 might well be amended to provide that debts under \$25 can be paid by the personal representative without the filing of a claim. Section 227 says that a testamentary trustee shall have all the powers of an executor, and, if court order is waived, may exercise powers without court order. Section 147 now provides that an executor may sell securities without order of court if he has a power of sale. Are these two sections now consistent? If not, they should be made so. Sections 18 to 26 regarding determination of heirship should be repealed, as this procedure is little used and of doubtful validity and value.

T. Raber Taylor, Denver, discussed an improved method of making stock transfers thru an estate. There are several current methods in use for keeping securities in bearer or marketable form to avoid the complications of stock transfers in an estate. These methods are: use of a nominee, keeping them in street name, use of a custodian account. The Uniform Fiduciaries Act has been adopted in Colorado. Section 3 attempts to facilitate stock transfers. A transfer must comply with the law of Colorado, the market place and the state of incorporation. Our constitution requires the sale of securities in an estate, unless the will otherwise provides. It should not be necessary to appraise listed securities held by an estate. It is suggested that a standard printed order for sale, incorporating the letters, be adopted. It is also suggested that the clerk's certificate on a certified copy of a will embody a certificate that the will was duly admitted to probate. In lieu of a certified copy of the will, a certificate of the judge that the fiduciary is acting under a will or proper order of court, in making the transfer, might be accepted. If such forms are adopted, they should be submitted to the loose leaf services for the guidance of stock transfer agents' clerks.

Judge Hubert Glover, Pueblo, discussed the problems of a county judge. He gave six rules of conduct which he recommended be followed by attorneys and judges:

1. In construction of a statute or a will, good common sense should be used.
2. Every attorney and judge should obtain a copy of the new statutes as soon as possible after their enactment.
3. The new statutes should be read carefully.
4. The new statutes should be checked against the old statutes to see what changes had been made.
5. The matter should be studied carefully.
6. One should listen to the opinions on the subject of well informed persons.

Judge Glover further suggested that when a conclusion has been reached, it be announced as tactfully as possible.

Hubert D. Henry, Denver, reported that the Model Probate Code has been completed and distributed.

The section made three decisions:

1. That a committee be appointed to consider the subject presented by Mr. Taylor, and that the County Judges' Association be requested to appoint a similar committee to work with this committee.
2. That a committee be appointed to study the Model Probate Code and report its recommendations at the next meeting.
3. That the section recommend to the Colorado Bar Association that steps be taken to secure adequate salaries for county judges.

The Friday afternoon session was under the auspices of the Junior Bar

Section, with Sydney E. Shuteran, chairman, presiding. He pointed to the April meeting of the Denver Bar Association, under the auspices of the Junior Bar Section, at which William R. Newcomb discussed a minimum fee schedule for Denver, and that the association adopted such a schedule in October.

James F. Price, dean of the University of Denver School of Law reported the current efforts of law schools to improve their curriculums. Recently the American Bar Association undertook a study to be financed by the association and the Carnegie Foundation. Some persons have suggested internships for lawyers, possibly in low cost legal service bureaus or in legal aid bureaus. The general plan at present is for the law school to have the student a greater part of the time, such as four years out of six.

Dr. Lawrence T. Brown, chairman of the Public Policy Committee of the Denver County Medical Society and vice-president of the Colorado Medical Society, appeared, at his own request to express opposition to the Wagner-Murray-Dingle bill.

T. Raber Taylor, Denver, discussed integration of the bar. He stated that all studies of the subject made in Colorado indicate that a majority of Colorado lawyers favor integration, and that an examination of the past several years' issues of DICTA and the Rocky Mountain Law Review reveal many articles favoring integration. A recent survey indicates that 90% of the young lawyers who were in service favor integration.

There is a definite relationship between the economic status of lawyers and integration. In a recent survey of the economic status of Colorado lawyers, it was shown that the lawyers of Colorado have a low economic status. What are the remedies? They are:

1. Reduced library costs.
2. Higher fees.
3. Elimination of unauthorized practice.
4. Education of the public as to the desirability of legal services.
5. Higher standards of admission.
6. Integration of the bar.

In a survey made during the war it was shown that 75% of the lawyers want minimum schedules and 68% wanted the bar to educate the public as to the need for legal services and advertise legal services.

G. Dexter Blount, Denver, described what is meant by the integrated bar. Edward L. Wood, Denver, discussed the benefits which can be derived from integration. After a lively discussion, the board of governors was instructed to send a mail ballot on integration to all practising lawyers in Colorado, and to proceed in accordance with the results.

The Saturday morning session was devoted to a discussion of the work of the Committee on Judicial Administration. Col. Philip S. Van Cise presented his various sub-committee chairmen, who discussed the work of

the various sub-committees. Winston S. Howard discussed the non-partisan aspects of the plan, selection, tenure and compensation. Fred Neef discussed the Supreme Court. Joseph G. Hodges discussed the district courts. Peter Holme, Jr., discussed the county courts. Elmer Brock, Jr., discussed the juvenile court. Stanley Johnson, executive secretary of the committee, discussed the justice courts in the absence of Harold M. Webster, and also some general aspects of the committee work.

The Friday luncheon program was presented by The Law Club of Denver, of which Richard Tull is president. It was a trial in Heaven, presided over by Judge Moses Hallet, who had been called from a card game with St. Peter and St. Ives to preside, and who was annoyed at having to give up his game to try the cases presented. Stanley Johnson was Judge Hallet, St. George Gordon was the bailiff, Berton T. Gobble the district attorney, Alan Phipps the public defender, Warren K. Robinson the G.I. lawyer and Charles A. Baer, another district attorney. Packer was discharged on a charge of cannibalism on the defense of justifiable homicide—because of the O.P.A. and the meat shortage. Charles Graham was not guilty of loitering in front of the Y.W.C.A. He was picketing because the Y. is unfair to organized dating bureaus. A petition was presented for complete judicial reorganization by P. Sinless Van Precise, who claimed that judges are politicians first and engage in opinion writing second. They have to spend too much time running for reelection. The G.I. lawyer appeared in uniform because he was just looking for some civilian clothes. He was against judicial reform.

Other subjects taken up by his honor were the Clayton Trust case, District Attorney Burke's grand jury investigation, the political campaign, integration, pre-trial and legal research. It was suggested that a telephone bureau for giving legal advice to busy lawyers be set up so that the lawyers won't have to bother busy court clerks.

## **President's Address<sup>†</sup>**

BY FRANK L. MOORHEAD\*

A year has quickly passed since the last meeting of our association, and for me it has been a year of great interest and some concern. We have been passing through a reconversion period, from war conditions to a peace time practice. The predominant work of the association appears to have been the assistance given the returning veteran, both as to his establishing himself in a practice he had given up for entering the service, and for the placing of those graduates of law schools, who, by reason of war service, had not been in former practice and were looking for a location.

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<sup>†</sup>Delivered to the Colorado Bar Association, Oct. 19, 1946.

\*Of the Boulder, Colorado, bar; retiring president of the Colorado Bar Association.

The members of the committee having this in charge have done a remarkable job, giving freely of their time in finding out where men or women might be placed, interviewing those who were seeking locations and advising them as to the best advantages for them.

In this connection there appears a practice by the Supreme Court of Colorado, which, although prompted by a feeling of patriotism or a concession to the fine services performed by those engaged in military service, yet in some instances might result in some ill effects upon the profession as a whole and perhaps more particularly upon those individuals directly affected. The Court admitted to practice without examination those returning veterans who were graduates of approved law schools but who had been deprived of the opportunity of taking the bar examination, and this without any question or distinction between the person who had graduated from a law school, had never taken the bar examination, and those who had previously graduated from law schools and taken the bar examinations perhaps more than once and failed. Under the blanket rule of the Supreme Court those individuals were admitted without further examination. There are many questions involved in such a procedure and it would seem that consideration should be given by not only the bar association but also by the Supreme Court as to whether such procedure is for the good of all. Sidney Post Simpson in a recent article on "Continuing Education of the Bar" makes this observation:

"Every young lawyer disbarred because he was lead by economic pressures into improper conduct by reason of the fact that he did not know enough to make an honest living practicing law is a reproach to the organized bar."

This same subject was given much discussion in the state of California, where the legislature attempted to permit the admission to the bar of certain classes of students returning from war service to practice without examination, and the State Bar of California succeeded in defeating these bills. It is interesting to note that the press of California supported the position of the bar in the defeat of this legislation.

During the year there have been held several law institutes—one in Denver, one in Craig, one in Pueblo, and one in Grand Junction—these institutes being given as a service to the members of the bar, and the thanks of the association should go to those men who have given so freely of their time in addressing these institutes, and also the committee in charge should be given appreciation for the work it has done in arranging these institutes. The new members of the bar and the returning veterans greatly appreciate it—the information that was given them as to changes in procedure, probate law, and the ever changing conditions of income tax matters. Also, the discussions of pertinent questions involving real estate greatly aided, not only the young lawyer, but also was a great assistance to the older members of the profession.

The newly admitted lawyer needs to listen to expert practitioners and the older members of the bar do come to the point where they also profit from the knowledge of a specialist, and the older lawyer needs to brush up on his practical knowledge and to listen to others who are specialists in a certain field of law. Therefore it seems essential that the association should continue the legal institutes as one of its objectives for the good of the profession as a whole.

The association during the year has been faced with the same financial stringency which it has faced for many years. While it has been able to maintain a solvent condition no material increase in its financial assets has allowed the association to take on certain activities which should be taken by a bar association if it is to be a dynamic force in the state. We have continued to maintain a secretary's office through the patriotic service of the present secretary, and the question of an adequately paid secretary should be given serious consideration, by not only the Board of Governors but by the bar as a whole, if a great good to the bar is to come from an effective organization. In this regard we should again look with rather serious thought upon the fact that of 1628 practicing lawyers in the state of Colorado, only 1100 are members of the association, and it is with regret that throughout the state of Colorado there are many practicing lawyers with good practices who for some reason fail to appreciate the work of the association and their obligation to help in that work and to affiliate with this organization.

The association at the last annual meeting authorized a committee to make a comprehensive study of the judicial system as it exists in Colorado today. That committee has been appointed and it has started its work and I believe it is a decidedly progressive action. We have had good judges, but they are forced to face their selection by political parties and by votes, and if elected the salaries are inadequate when one considers that there is no provision for a judge who has served one or more terms upon the bench and has been retired, except the law affecting the Supreme Court judges; and all of the members of the bar are familiar with the situation that confronts a man who has given up active practice and clients to go upon the bench when he again faces the task of reestablishing himself in active practice.

One impression that has been gained during the year is an apparent lack of cooperation between the Supreme Court of the state and the bar association. The Supreme Court is the body in power to control admission to the bar, to control the examinations of the candidates for admission, to control disbarments—in short, to be the supervisor of the membership of the legal profession. On the other hand, the bar association is the only organized body with whom the Supreme Court can deal in matters having to do with certain changes or reforms in the general practice of law, in the matter of general requirements for admission to the bar, in discipline and disbarment. Certainly, the members of the profession are as much interested in the above mentioned



subjects as the members of the Supreme Court, and there should be a very close working relationship between these two bodies rather than the ignoring of one body by the other in matters essential to the welfare of the profession.

There is one way in which the work of the lawyers of the state could be brought to the attention of the public. The members of the association have done a wonderful work in aiding the veteran, his family and in all of the activities connected with the war. They have continued to aid the returning veteran, and yet the association has made no real public pronouncement of these works, and it would seem that the works of the association should be in some way given publicity, not for the mere sake of publicity, but for the general information of the public.

We have all read with alarm the reports of the increase in crime, the apparent lowering of moral standards and the increase in child delinquency. Don't you think that this is a challenge to the lawyers? We as officers of the courts should either take a firm stand for the betterment of these conditions or risk the reputation that we have been only financial beneficiaries of such conditions. It has been said—

“the difference between the true lawyer and those men who consider the law merely a trade is that the latter seeks to find ways to permit their clients to violate the moral standards of society without overstepping the letter of the law, while the former look for principles which will persuade their clients to keep within the limits of the spirit of the law in common moral standards.”

In answer to the query appearing in the August, 1946, issue of DICTA—“Colorado Bar Association—whither goest thou?”—it would seem that the bar association must answer that question by the willingness of more lawyers to take part in the deliberation of questions facing the bar association; the participation of more lawyers in sustaining memberships, unless more funds can be provided for doing those works which a good bar association must do. There should be a closer cooperation between bench and bar; a much more thorough interest taken in proposed legislation coming before the legislation at each session; strengthening of the position of the bar as to real estate standards and an insistence that should those standards be adopted by the bar, those standards be recognized by federal agencies; and finally a determination by the members of the bar that those principles of law which they have learned to believe were fundamental under the Constitution of the United States and the state of Colorado be maintained as the law.

It may be that through the enthusiastic interest of the young members of the bar joined with the experience of the older members, much can be accomplished in the future and the Colorado Bar Association can give a clear and well considered answer, by actions, to the query—“Colorado Bar Association—whither goest thou?”

## Recent Improvements in the Federal Judicial System<sup>†</sup>

BY TOM C. CLARK\*

Upon my return to the United States after witnessing the Neurenberg trials, I was shocked to learn there are those in the United States who opposed these trials. I think it is one of the first steps toward peace. I was surprised to learn that there were those who felt they were not in accordance with our way of life. After a bombing raid, the Germans picked at random 472 Italians from the streets of Rome and killed them—10 Italians for each German killed in the raid. Eleven Germans have been called to pay the penalty for the millions killed by the Germans. Those who are responsible must pay the penalty. Those who bring on war must pay the penalty. The Neurenberg trials will be a deterrent for all those who would wage an aggressive war.

The federal rules of criminal procedure have been a forward step in the administration of justice. They have been helpful. One now may waive indictment. A poor defendant may require attendance of witnesses at the expense of the government. A defendant can have a change of venue where he thinks he can't get a fair trial. The defendant may be transferred to the district in which he was indicted or to the district in which most of the witnesses may be.

The McCarran-Sumners Administrative Procedure Bill is a great step forward because of so much criticism of the administrative processes and agencies. This act governs the administrative processes of all agencies of the federal government, and is not limited to licensing functions. It covers every phase of the administrative process, including rule making, adjudication and licensing. One of the main purposes of the act is to assure that the public receives adequate information concerning every agency of the federal government. Thus, section 3 of the act requires each agency to describe its central field organization and the manner in which the public may secure information or make submittals or requests, and each agency has placed in the Federal Register a statement of the general course and method by which its functions are channeled and determined, as well as a description of all formal and informal procedures it uses. These matters are set forth in the 966 page edition of the Federal Register for Sept. 11, 1946.

Salaries of federal judges have been increased. The increase is late and not enough, but is better than the judges had. Now we'll be able to get better judges. Even now some refuse to take judgeships because of the low salary paid. The judges deserve recompense to insure security because of the

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<sup>†</sup>Summary of remarks before the Colorado Bar Association, Oct. 19, 1946.

\*Attorney General of the United States.

great responsibility. I hope the new salary will bring to the bench lawyers who have had experience in trial of cases. This great experience should be brought to the bench.

There is now no law that permits the lawyer income tax depletion or depreciation reserve. The time has arrived for us to think of these things. Now lots of lawyers are trying to get into salaried positions. Lawyers should try to evolve a plan to take care of the lean years. The bar has a lack of realization of the responsibility of people for their community. Now there is a breaking down of the sense of responsibility. There is a breaking down of law enforcement. I believe in local law enforcement. I believe in states' rights. The lawyers of Colorado are responsible for the enforcement of the laws in the communities of Colorado. I call attention to this breakdown of law enforcement. I hope the law will be enforced to the last letter.

Make suggestions to us. The government is responsible to the people and to the lawyers. Make suggestions to your government—it will be glad to have them.

## **The Layman in the Improvement of the Administration of Justice<sup>†</sup>**

BY BOLITHA J. LAWS\*

There have been times of disrespect for the courts. There have been delays in court procedure, causing the people to look to other tribunals. Recently the president of the United States brought about the swearing in of the Chief Justice of the Supreme Court on the White House porch. Incidents show that the public thinks the law and the courts are not measuring up to the requirements of business.

Administrative agencies are springing up because courts are frustrating and unbusinesslike. I am glad to see judges take part in the deliberations of the bar association and not remain cloistered. In a past time judges refused to cooperate to bring about changes in judicial procedure.

The Section of Judicial Administration of the American Bar Association was set up in 1937 under Arthur T. Vanderbilt, then president of the association. The study of judicial administration was approved in 1938 and then carried to the states. The outgrowth of this was stupendous.

Then followed reforms in federal courts. Judicial conferences were established. An administrative officer of federal courts was appointed. The judge had stepped down from his high estate to work with lawyers. Judges had to make reports as to the number of cases under advisement. Judges

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<sup>†</sup>Summary of remarks before the Colorado Bar Association, Oct. 19, 1946.

\*Chief Justice, United States District Court for the District of Columbia.

had to study ways of increasing court output. Pre-trial procedure grew up with its attendant benefits, particularly in trying cases on the real issues. Calendars were cut down and delays reduced. Laymen and litigants who knew about this approved it and had more confidence in the courts. Federal judges strove to get court reporters for federal courts. Now there can be a record in every federal court. This has had a wholesome effect on litigants knowing of it. There has been a drive to improve traffic courts during the last five years.

In the federal courts we have made studies in the matter of youth offenders. We are driving with all might and main to bring about judicial improvement. Judges are working with lawyers. We are one step short. The layman is the central figure of the drama. It is of utmost importance that laymen be brought into our conferences. Laymen don't know about these improvements. They can't see them like they can see physical improvements. Laymen must be brought into the picture so they will know. During the last ten years we have made the greatest improvements since the country began. We should use the skills of the laymen. Why shouldn't the laymen have comfortable quarters to expedite business while waiting long hours during trials? Can't we bring in successful business men who have adopted successful business methods. When we get the layman's viewpoint we will gain respect for the courts as never before.

### **New Members of Denver Bar Association**

The following persons were admitted to membership in the Denver Bar Association at the November 15, 1946, meeting:

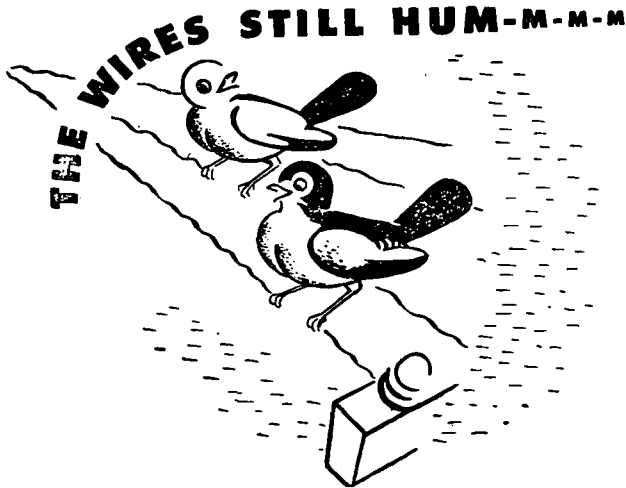
Jacob H. Chisen	Willson Hurt
Burton Crager	Robert H. McWilliams, Jr.
John M. Dickson	Wendell P. Sayers
Robert D. Ellis	Annette R. Shermack
Otis J. Gibson	Frederick G. Shermack
William M. Fleetwood	Richard W. Wright

### **Correction**

DICTA recently stated that Joseph W. Hawley, Jr., was an assistant Attorney General of Colorado, working with the P.U.C. This is not correct. Mr. Hawley, Jr., is on the faculty of the school of law of the University of Colorado. His father, Joseph W. Hawley, who has practised law in Trinidad for a number of years, is the new Assistant Attorney General.

### Our Returning Lawyer-Veterans

LENNART T. ERICKSON, 1st Lt., signal corps, served from June 1943 to Sept. 1946. He spent two years in Philadelphia and in Syracuse, N.Y., as Chief Negotiator and Property Disposal Officer, settling terminated signal corps contracts and disposing of surplus property. He has returned to practice in his former partnership of Perry and Erickson, with offices at 1513 Tremont Place, Denver.



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DICTA

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