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Robert Stanley Lowe

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A CALL TO CHANGE WYOMING'S MINOR JUDICIAL SYSTEM

ROBERT STANLEY LOWE*

It has often been said the courts most Americans encounter in their lifetimes are the police and justice courts.¹ Relatively few people ever get into District Courts, and even lesser numbers experience a session in the State Supreme Court. Consequently, the opinions most people form about our system of justice, law enforcement and their respect for laws generally is based on their personal experiences in our minor judicial system, whether good or bad. As we enter the rocket age, can we in good conscience tolerate an archaic system of judicial administration to flourish? Can we in our present-day competition with foreign ideologies have our people subjected to any form of justice short of the best we can provide? Practically everyone agrees something must be done, but like Mark Twain's famous remark about the weather, no one does anything about it. I believe the time has come for a reform of our minor judicial system in Wyoming, particularly regarding our justice of the peace courts.

There are two principal objectives to be attained: (1) laymen serving as judges should be replaced by actively practicing attorneys; and (2) the prestige of the minor courts must be elevated. The two are quite closely related, actually, but yet something else must be done to improve the courts' prestige. The kindly country squire riding about his bailiwick on horseback politely doffing his hat to his uneducated back-woody constituents was alright in grandpa's day, but it is not today. My short experience serving as a justice of the peace compels me to conclude there are too many matters too much involved and complicated for one not 'learned in the law.'

The idea of lawyers serving as judges of justice courts is popular with the public. Numerous people have opined to me that if they were 'brought to court' they want to know the judge interpreting the law and deciding the case is trained in the law.

Unfortunately, however, for the most part the legal profession has shunned its responsibilities of filling these lesser judicial positions. This is understandable when one considers the amount of time-consuming work involved and the insufficient pay allowed by statute.²

*Mr. Lowe is a graduate of the University of Nebraska Law School. He is a member of the Wyoming State Bar, the Nebraska Bar Association, and the American Bar Association. The author has served as a Justice of the Peace.

1. Trelease, *Minimum Standards of Judicial Administration in Wyoming* (1951). 5 Wyo. L.J. 159, 167.

2. W.S. §§ 5-100, 5-101 (1957). The highest pay is given justices in cities of 15,000 population or more, \$2,600 per year. In precincts of 6,000 to 15,000 population the salary is \$2,200; in precincts of 3,000 to 6,000 it is \$1,550, and in those between 1,500 and 3,000 population it is \$1,150. What is worse, the statutes do not expressly permit a county to furnish a clerk to keep the justice courts' records, although some counties provide clerical help apparently under the general deputies and assistants statute. W.S. § 18-82 (1957).

Because of the unfavorable reputation of justice courts gained from years of administration by lay judges, people (and sometimes even lawyers) are inclined to not properly respect them. This makes the administration and enforcement of law sometimes difficult, to say the least.

My proposals to correct this unfortunate situation are two-fold: (1) either require practicing lawyers to serve as justices, with a suitable increase in pay, and with an increase in their jurisdiction, or (2) abolish the justice of the peace court system completely and replace it with another county-wide court system.

The first alternative would require only action by the legislature to amend the existing statutes.³ The second would require constitutional amendments and the subsequent implementation of them by legislative enactment.

Section 1 of Article 5 of the Wyoming Constitution provides:

The judicial power of the state shall be vested in the senate, sitting as a court of impeachment, in a supreme court, district courts, *justices of the peace*, courts of arbitration and such courts as the legislature may, by general law, establish for incorporated cities or incorporated towns.

In addition, the Wyoming Constitution has another provision about justice courts, Section 22 of Article 5, in which the jurisdiction of the courts is defined. Section 23 of the same Article provides generally for appeals from justice courts and police magistrates.

Therefore, three provisions of the Constitution would have to be amended to rid ourselves of the justice court system and replace it with another. Perhaps, however, we might decide to merely supplement our present system by adding another court by amendment.

Is it worth the effort? I believe it is from the standpoint of restoring dignity and prestige to our institution of judicial administration. I have talked with several of Wyoming's lawyers about this and find a whole-hearted concurrence of opinion on this.

In order to get the matter into a serious talking stage, let me make the following recommendations about a new court system.

NAME: Call the courts what you will, county court, court of common pleas, etc.⁴ Section 9 of the Organic Act⁵ organizing the Wyoming Territorial government in 1868 created a somewhat similar court called a probate court.

TERRITORIAL JURISDICTION: They should be limited to the counties with all business conducted at the county seat.

3. W.S. § 5-85, et seq. (1957).

4. 21 C.J.S. "Courts", § 11.

5. 15 Stats. at L. 178, c. 235, 1 W.S., pp. 35, 38 (1957).

RECORDS: They should be courts of record as defined by ordinary standards,⁶ have a clerk, reporter and seal.

CIVIL JURISDICTION: They should relieve the district courts of small cases under \$500 and have exclusive jurisdiction of those; they should have concurrent jurisdiction up to \$1,000. Present justice jurisdiction is \$200.⁷

PROBATE JURISDICTION: They should handle estates of a limited amount of appraised value, say, \$10,000. This would apply to both decedents and guardianship estates. Also, they should handle adoptions.

CRIMINAL JURISDICTION: They should have jurisdiction to handle all misdemeanors, both high and low. At present, jurisdiction of misdemeanors is divided between district courts and justices of the peace by statutory law,⁸ not by the Constitution.⁹

WORKMEN'S COMPENSATION: Many arguments have been advanced that these cases should likewise be handled in the new courts. This would be of value in counties which do not have a resident district judge. However, the clerks of district courts are experienced and equipped to handle these cases and perhaps it would be well to leave them where they are. It is a matter to be considered, though.

APPEALS: Appellate jurisdiction should be vested in the district courts. Procedure could be provided by rules of the Supreme Court¹⁰ or perhaps if desired by statute. Since the recommended new courts would be courts of record, the appeals should not have to be by trials de novo; appeals on the record would certainly eliminate needless waste of time in a re-trial of the issues.¹¹

COMMISSIONERS: The judges of the new courts should have power to appoint a commissioner to act on matters similar to our present district court commissioners.¹² By the Juvenile Court Act¹³ enacted by the legislature under authority of the Constitutional amendment of 1948¹⁴ express provision was made for commissioners of the juvenile courts.¹⁵

JUDGES, QUALIFICATIONS: The qualifications should be the same

6. 21 C.J.S. "Courts" § 5.
7. W.S. § 5-917 (1957). It probably would be well to give the new courts jurisdiction of divorce cases involving property valued at \$1,000 or less.
8. W.S. § 7-409 (1957).
9. Wyo. Const. Art. 5, §22.
10. Wyo. Const. Art. 5, § 2.
11. This would not require another Constitutional amendment inasmuch as Section 10 of Article 5, Wyoming Constitution, dealing with district courts, provides in part, ". . . They shall have appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. . . ."
12. W.S. § 5-71 (1957).
13. W.S. § 14-97 et seq. (1957).
14. Wyo. Const. Art 5, § 29.
15. W.S. §§ 14-98, 14-99 (1957).

as those required of district judges.¹⁶ Because of the similarities of duties there would be no justification for lessening the requirements.

JUDGES, SELECTION: The term of office should be the same as other county officers, four years.¹⁷ Otherwise, there is no reason why the judges should not be elected the same as other judges on either a non-partisan ticket as district judges are elected¹⁸ or on a partisan ticket as justices of the peace are elected.¹⁹ However, this might be a good opportunity to try the so-called Missouri Plan²⁰ of selecting judges, or a modified version of it. If it proves satisfactory we might want to use it in selecting Supreme Court and district court judges.

JUDGES, SALARY: The salary should be adequate to attract qualified men to fill the jobs. By present standards, \$10,000 per year would not be excessive in the larger counties. The salaries should be fixed in accordance with existing law classifying the counties into three classes plus three additional categories higher than first class counties.²¹ There is some doubt whether third class counties would need a full-time judge. Perhaps judges of such counties should be permitted to practice in the district courts on matters not conflicting with their judicial duties to supplement their incomes.

Undoubtedly there are many other problems to be considered in establishing a new judicial system, but these would seem to cover somewhat the major points to be given primary consideration.

If it is determined that we should retain the justice of the peace system, many of the recommendations made here could be adopted in enlarging the functions and duties of those courts. In fact, if the legislature does decide to submit appropriate Constitutional amendments to the people at the next following general election,²² it might be well to consider expanding upon the laws relating to justice courts to fill in until the new judicial system is approved and goes into actual operation. The implementing legislation would not be adopted until after the constitutional amendments were ratified.

These proposals to improve our minor court system are designed to relieve our eleven district judges somewhat and also to give more continuous judicial service to those counties which do not have a district judge in residence. Perhaps the solution might be, as has often been suggested, that we get more district judges; but the likelihood of securing legislative authorization at this time for more district judges is doubtful.

16. Wyo. Const. Art. 5, § 12; W.S. §§ 5-1, 5-42 (1957).

17. Cf. W.S. § 5-88 (1957).

18. W.S. § 22-108 (1957).

19. W.S. § 22-59 (1957).

20. Winters, A Better Way to Select Our Judges, 5 Wyo. L.J. 116 (1951).

21. W.S. §§ 18-73, 18-74 (1957).

22. Wyo. Const. Art. 20, § 1.

The increase in the minor judicial system advocated here would eliminate considerably the type of matters district courts should not be burdened down with anyway. Undoubtedly, the larger matters in district courts would be dispensed with more efficiently and speedily due to the smaller matters being handled in the new courts.

Therefore, the improvement in the administration of justice should earn for both our higher and lower courts the admiration and respect of the public they have every right to expect and which the law, as a living changing institution, so richly deserves.