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REPORT OF MINOR COURTS COMMITTEE

ROBERT STANLEY LOWE, Chairman*

Mr. President and members of the Bar, your Committee on Minor Courts respectfully submits its report.¹ We sincerely hope it stimulates not only your thoughts, but also your actions.

In an article addressed recently to a prominent lawyer's group² Justice Tom C. Clark quoted Edmund Burke, "Evil grows because good men do nothing." In this article, Mr. Justice Clark was talking about improving our courts.

The evil to which we address ourselves today is found in our present day minor court system. Though Wyoming is blessed with a splendid upper court system, comprised of our trial District Courts and appellate Supreme Court, our minor courts depreciate our state judicial system beyond description. As our upper courts daily strive to build up the image of the law in our common wealth, the minor courts—justice of the peace and police magistrate courts—just as regularly tear it down. We are not alone in these views: they are reinforced by others who have studied the problem in Wyoming.³

Do not misunderstand me. We do not impune justices of the peace personally because to do so would be to blame them for not making time stand still; this present situation is not of their doing. They just happen to be in an institution that has become out of place in a modern world.

We concur with Justice J. Allan Crockett of the Utah Supreme Court who spoke recently at a Regional Meeting of the American Bar Association at Salt Lake City. He cautioned against undue criticism of justices of the peace as a group. After all, he observed, they have served us well through the years. In their heyday, they had respect of legal scholars of no less repute than Lord Coke.⁴ However, the Utah Justice went on to say, "The Justice of the Peace system, created by our Constitution, is one facet of our society which seems to have stood still in an otherwise fast-moving world."⁵

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1. Delivered at the annual meeting of the Wyoming State Bar at Worland on September 7, 1962. A previous report made September 6, 1961, is found at 16 Wyo. L.J. 134, "Committee Report—Study of Minor Judicial System"; and Mr. Lowe is the author of "A Call to Changing Wyoming's Minor Judicial System," 15 Wyo. L.J. 48.
2. The National Association of Claimants' Counsel of America (commonly called NACCA), *P. I. & E. Bulletin*, Vol. 1, No. 5, April, 1962.
3. Wyoming Law Journal Board of Editors, "The Minor Courts of Wyoming," 15 Wyo. L.J. 22.
4. "And it is certain that the authority of justices of assises itinerat through the whole realme, and the institution of justices of peace in every county being duely performed, are the most excellent means for the preservation of the king's peace, and quite of the realme, of any other in the Christian world." Coke, *First Institute*, Boven, *The Lion and the Throne*, p. 277 (Little, Brown and Co., 1957.)
5. *Desert News*, Vol. 357, No. 131, Friday, June 1, 1962, p. 10A.

In passing, we cannot leave unnoticed those dedicated members of the Bar who have done, and daily continue to do, what little they can toward preventing a total eclipse of our minor system by serving as judges of these courts in their respective localities. Their lot is a hard one, I know, for I have served also and know firsthand of the public disrespect (and even that of some members of our Bar) toward these important component parts of our system of justice. Except in rare instances, it is not the courts presided over by lawyers which have brought ignominy upon our judicial system, but in the main, it is those run by laymen which have brought about the public's scorn. This brings us to the nub of the problem: the need for law-trained judges to administer the affairs of the courts with which the greater numbers of our people come in contact.

"A modern judicial system is a must in this high-speed jet era. Modern thinking and new attitudes are needed to make modern judicial systems effective."⁶ These are the thought-provoking words of former Arizona Governor Howard Pyle at the recent Salt Lake City ABA Regional Meeting. He is presently the President of the National Safety Council. He told us something that gives all members of the bench and bar a guilt complex everytime we hear it: he told us traffic courts are the weakest link in the entire chain of traffic law enforcement and accident prevention. He—like so many other national leaders—appealed to us to modernize our thinking and devise modern tools with which to work at the important job of administering justice.

This we must do to sustain the honor of our profession and calling. This is a time for leadership by the lawyers in *their* field which for all practical purposes is their exclusive domain little understood—let alone controlled—by the public in general. We alone can make the proper changes which must be made. This is a matter of change. That is why we do not choose to use the word "reform" but prefer the word "modernize" because that is what we are striving for.

What we are talking about is a system which was well-adapted to the horse and buggy age but which still lives on and on notwithstanding the fact that our scientists (regardless of whether for good or for bad) moved us out of the horse-and-buggy age 60 years ago. To compound the felony, so to speak, not only did we leave that buggy age 60 years ago, but in the meantime science has literally taken us by the hand and dragged us through the automobile, the airplane, the jet plane, the "miracle drug," the atomic, and now well out into the space ages.

But yet, here we sit—with the "vestigial justice of the peace"⁷ corroding the beautiful glisten on the shield of Mistress Justice and gnawing at the guts of respect and esteem for our wonderful institution of justice.

6. *Ibid.*, p. 1B.

7. "The Vestigial Justice of the Peace" by Ben W. Palmer, 47 A.B.A.J. 380 (April, 1961).

Though we laugh at old J.P. stories—this is no laughing matter. Though some of us sneer at appearing in minor courts—the matters of the multitudes who go there in search of justice are not to be sneered at; to those who seek they are important.

I will be the first to admit that a study of the ancient justice of the peace system is interesting⁸ but really it profits us little to study such a precedent based upon such entirely different times and needs. It sheds little light on the pathways ahead in the rocket age, let alone the modern atomic age, to base our thinking upon an institution the roots of which date back to 1195.⁹

Whether we like it or not, we are in an age of science; the noble age of letters, with all its glory and greatness, is past. We now live in a time marked by two things which have become the ultimate objectives: exactness and efficiency. Exactness which we see in the machining of steel and other more modern metals—the push-button control to veer a rocket enroute toward Venus closer for a better view of that heretofore hidden. Efficiency which demands precise timing and reduction of unnecessary waste—that gold-calf god of science which now costs men jobs in the wake of changes toward automation; efficiency, which has created machines which make the minds of men obsolete. Exactness and efficiency are here—and apparently to stay. The law, to keep pace, is going to adopt them too. Already we have heard talk of a machine which does research for lawyers much faster and more efficiently than humans can do.

Now, what does all of this mean to us lawyers? Shall we seek for exact justice like the legendary search for the Holy Crail? Is there—reposing up there someplace—really such a thing as “exact justice”? I fear not. It is one of those things we have always in the past, and will always in the future, strive to attain, but it will only rarely be found. Generally, it will elude our grasp as has the practical application of the theory of perpetual motion always managed to elude the grasp of scientists. Besides, there is nothing exact; even scientists will be the first to admit their profession is not exact but is only a guess based upon certain facts and principles. That is why they speak of theories—not exact facts, as they engage in another new experiment. If they worked with exact principles, why have they lost so many rockets as they have been developing rocket science?

In the field of law, of course, exact justice is impossible. Who is going to tell when we have reached the absolute answer? What is the standard we will use? Remember Justice Cardozo's classic, “Law accepts as the pattern of its justice the morality of the community whose conduct

8. *Ibid.*; 13 *Encyclopaedia Britannica* 207.

9. Even the Magna Charta discloses a desire for law-trained judges to administer the courts when it says, “We will only appoint such men to be justiciaries, . . . as know the law of the land and will keep it well.”

it assumes to regulate?"¹⁰ Whose social pattern do we select as the standard, and why?

No, exact justice is not our real objective. The people, whose wishes, in a democracy, must be respected do not expect it any more than they expect every scientific experiment to be successful on the first try. What they do expect, however, and that which they have every right to expect, is that we adopt and use a system of administering justice which is as exact as possible. One which is manned by trained experts, and one which is unencumbered by old, out-dated methods of operation and functioning. Too, they expect, and are entitled to get, efficiency. Efficiency in operation which expedites matters as quickly and inexpensively as possible. These are the ways the modern goals of exactness and efficiency come into their own in the administration of modern justice.

Now, what we have been discussing up to now is the need as we see it. Admittedly, we have relied considerably upon studies which have been conducted in Michigan,¹¹ Maine,¹² Illinois,¹³ Iowa,¹⁴ Connecticut,¹⁵ California,¹⁶ Colorado,¹⁷ Tennessee,¹⁸ as well as in other states including Utah and West Virginia. They are practically unanimous in reaching the same conclusions as we have about the need. We find nothing in our studies that makes Wyoming any different from the other states. But, to the contrary, the splendid study which has been carried out by the Board of Editors of the Wyoming Law Journal¹⁹ confirms the conclusions of our committee.

Before passing on to your committee's recommendations, we would ask you to listen to the views of that eminent legal scholar, Dean Roscoe Pound, former Dean of Nebraska and Harvard Law Colleges:²⁰

Tribunals for the disposition of small causes are in most jurisdictions the weakest part of our judicial system. No tribunals are more in need of elevation to the rank of a coordinate branch.

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10. Hall, *Selected Writings Benjamin Nathan Cardozo*, p. 274 (Fallon Law Book Comany, New York, New York, Copyright 1947).
 11. Fifteenth and Sixteenth Annual Report, Judicial Council of Michigan, "A Study of Justices of the Peace and other Minor Courts—Requisites for an adequate state-wide minor court system" (Reprinted by American Judicature Society, 1155 East Sixtieth Street, Chicago 37, Illinois, May, 1957); 43 *Journal of the American Judicature Society*, No. 2, p. 100.
 12. A District Court for Maine by The Institute of Judicial Administration, Publication No. 100-4, January, 1961.
 13. "Why Illinois Proposes to Abolish Justice of the Peace Courts" by Mildred J. Giese, III. B.J., May-June, 1958; "A New Judicial Article for Illinois," 45 *Journal of the American Judicature Society*, No. 11, p. 283.
 14. "Judicial Reorganization in Iowa" by Judge Harvey Uhlenhopp, 44 *Iowa L. Rev.* 6.
 15. "Court Reorganization in Connecticut" by David Mars, 41 *Journal of the American Judicature Society*, No. 1, p. 6; 42 *Journal of the American Judicature Society*, No. 6, p. 199.
 16. 34 *Journal of the American Judicature Society*, p. 58.
 17. Report to the Colorado General Assembly; Justice Courts in Colorado (Colorado Legislative Council, Research Publication No. 24, December, 1958); 43 *Journal of the American Judicature Society*, No. 5, p. 169.
 18. "General Sessions Courts in Tennessee" by Henry N. Williams, 31 *Journal of the American Judicature Society*, p. 101.
 19. Note 3, *supra*.
 20. Pound, *V Jurisprudence* 410 (West Publishing Co., 1959).

The amount of money involved has a direct relation to the amount of expense to which the law may reasonably subject litigants and thus may well determine to which branch of the court a case should be assigned. But it does not necessarily determine the amount of skill and experience which should be applied to decide it. Even small causes call for a high type of judge if they are to be decided justly as well as expeditiously. A judge dignified with the title of Judge of the Court of Justice of the State, assigned to the County Courts, is none too good for cases which are of enough importance to the parties to bring to court and hence are of importance to a state seeking equal justice to all. After all, this is the tribunal which had to do with the largest number of people. . . . The judges assigned to small causes should be of such calibre that they can be trusted and will command the respect and confidence of the public, so that there will be no need of retrial on appeal, but review can be confined to ascertaining that the law was properly found, interpreted and applied. *The farther we can get away from the old idea of a justice of the peace for small causes, the better.* (emphasis supplied).

Now, what specifically does your committee recommend to answer this problem? Our recommendation is easily divided into two parts, namely, an appropriate course of action, and an effective means of carrying it out. We propose an amendment to the State Constitution to eliminate all references to justice of the peace and other minor courts. The State Supreme Court and District Courts would, therefore, remain as the only courts provided for expressly in the Constitution. The Constitution would leave the establishment and functioning of minor courts to the discretion of the Legislature. This could be achieved simply by adding to Section 1 of Article 5 of the Wyoming Constitution (in lieu of the stricken language about the minor courts) language similar to that found in the Federal Constitution,²¹ "and such inferior courts as the Legislature shall from time to time ordain and establish."

This recommended action entails changing only three sections of the Wyoming Constitution, Sections 1, 22 and 23, all of Article 5. You will observe, too, that by the language being added by the amendment, the present statutory law providing for justice of the peace and police magistrate courts would remain in force and effect until the Legislature could act to establish the new minor court system.²²

Regarding the second part of our proposal, that is, the effective means of carrying it out, we have a request to make of the officers and District Commissioners of the Bar: we would request that our committee be enlarged to 23 members, one for each county, to give us an effective advocate for this cause in each county of the state.

Of course, until such time as our proposed Constitutional Amendment has been adopted, it is somewhat premature for us to speak of definite proposals to be considered in adopting a new minor court system. How-

2.1 Art. III, § 1, United States Constitution.

22. Chapters 4 and 5, §§ 5-85 to 5-114, and 5-115 to 5-138, Wyo. Stat. (1957).

ever, you can rest assured your committee has some very definite ideas on the subject and is in the process of accumulating even more. Our panel discussion which we will have at the end of this report will cover some of the many new and varied ideas for minor courts that have been or are being adopted in other states. The ideas we are going to discuss are only thought-stimulators; they are not our recommendations at this time. The only recommendation we make positively at this time are, first, that preparatory action be taken to "modernize" our minor courts, and second, that our new minor courts—by whatever name they may be called—be staffed with law-trained judges. We earnestly solicit your concurrence—your help.

Justice Clark, in the article we referred to at the beginning of this report, quotes Dean Robert F. Drinan of the Boston College of Law in this poignant observation:²³

The oath of a lawyer means he promises society, calling God as his witness, that he will act as his client's fiduciary and that in that capacity he is the trustee of the legal and moral legacy which belongs as of right to all . . . citizens.

How can the toleration of judicial inefficiency be squared with the solemn covenants which a lawyer has made with man, God and his own conscience? Judicial inefficiency not merely wastes the taxpayers' money, not only alienates the public from the bench and the bar but—far more importantly—the presence and condonation of judicial inefficiency silences and corrupts the consciences of the judges, the lawyers and the court personnel who live and work amid the compromise.

. . . There is nothing more corrosive of conscience and destructive of integrity than the guilty knowledge that we tolerate each day—through fear or apathy—conditions which we know should be and could be corrected.

Mr. President, your committee on Minor Courts, therefore, submits its report to the 1962 Wyoming State Bar Convention and in doing so re-asserts that the time for action is now. At we here dedicate ourselves to this solemn cause, let us harken to the famous words of J. G. Holland, "Wrong rules the land, and waiting Justice sleeps."

23. Note 2, *supra*.