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1963 Annual Report of the Committee on Minor Courts

Wyoming State Bar

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would be made and results might be reprisals at the worst and strained relations with the Appellate office at the best.

The Appellate Division should adopt as recognized policy the principle that taxpayer's representative may request a change in the assignment of the Technical Advisor on his case on the grounds that a reasonable disposition of the case is unlikely because of the personalities involved. This is not to say that the Tax Attorney will have any right to designate the Advisor who will handle the case or to request a "change of horses in midstream." It is to say that the tax attorney may expect the Appellate supervisor to honor his request for a change of assignment — before settlement negotiations have begun — on the grounds that the advisor assigned the case is one with whom the attorney has not been able to work and there is no reasonable prospect that the case can be settled unless the assignment is changed.

The foregoing is not to be construed as representing the views of the Internal Revenue Service representatives, nor those of all the Lawyer-members. Without conceding the deficiencies referred to in the items, the Internal Revenue Service representatives believe that the recommendations made in Items 1, 3, and 5 are already established in current Service procedures. With respect to Items 2, 4, and 6, the recommendations would require changes in long-established procedures promulgated in the National Office. The Service representatives believe that a reasonable application of the procedure recommended in Item 7 is so commonly accepted that any further addition to present Service instructions on the subject would be superfluous.

Following an extended but inconclusive discussion of Service policy regarding the conduct of Revenue Agents after the filing by a Lawyer of a Power of Attorney it was decided to present the problem, with the points raised by the Lawyers, for determination by the National Office and that the existence of the problem be brought to the attention of the American Bar Association Section on Taxation.

The next meeting of the Committee will be held July 18 and 19, 1963 in Denver, Colorado. Mr. Leslie H. Wald, representing the Colorado Bar Association, was elected Chairman for the meeting.

1963 ANNUAL REPORT OF THE COMMITTEE ON MINOR COURTS

MR. PRESIDENT AND MEMBERS OF THE WYOMING STATE BAR, your Committee on Minor Courts is pleased to report that the 1963 session of the Wyoming Legislature approved the Bar's proposal to lay the ground-work for modernizing our minor court system. Senate Joint Resolution No. 6 was adopted. By this proposed Constitutional Amendment all reference to minor courts, such as justice of the peace, municipal or police justice, and arbitration courts, would be removed

from our state Constitution. Instead, the new amendment provides that the Legislature may, by general law, establish and ordain subordinate courts from time to time. However, until the new system has been established by legislative enactment, the present system will continue.

Therefore, the immediate question which arises is, "What does the committee propose in place of the existing system?" We are prepared at this time to lay before you a general outline of the thoughts we have accumulated on this subject by our studies over the past two years. We do not at this time, however, endeavor to submit an absolutely final and complete substitute system because the matter is still under consideration by your committee and moreover there is no need to arouse adverse force to the passage of the amendment at this stage. The proposals we submit herewith, therefore, are by no means final. Our committee is always open for reasonable suggestions. We intend to study this by sub-committees further during this next ensuing year so as to have more definite plans for you at our next meeting. We are not trying to have everything ready to go for the January, 1965 session of the Legislature if the amendment passes in November, 1964 because this would be rushing things too much.

If the proposed Constitutional Amendment is passed by the electorate, the Wyoming State Bar Committee on Minor Courts should propose to the Legislature some of the following changes to modernize our subordinate court system:

1. The new court should be in the nature of a country court, but not necessarily called by that name. A name not confining it to county boundaries would be preferable.
2. It should be staffed with law-trained judges who are members of the bar.
3. The Judges' salaries should be sufficient to attract competent lawyers to take the jobs.
4. Other miscellaneous "modernizing" suggestions:
 - (a) Eliminate overlapping jurisdiction of the present justice of the peace and district courts. Presently, JP courts have exclusive jurisdiction up to \$100 and concurrent jurisdiction with the district courts up to \$200 in civil cases. This duplication is an unnecessary waste of judicial efficiency.
 - (b) The new court system should handle all civil cases involving a specified sum of money, say, up to \$2,000.00 in amount.
 - (c) The new court system should handle all misdemeanor cases. Presently, JP courts hear misdemeanor cases involving laws in which the Legislature has fixed the maximum penalty at \$100 fine or 6 months in the county jail or both. District courts then hear all misdemeanors involving laws in which the maximum fine is fixed at more than \$100 or the jail sentence is more than 6 months. This, again, constitutes an unnecessary burden upon our district courts.

(d) With law-trained judges manning the new subordinate courts, there is no need to prohibit these courts from hearing cases involving boundaries of or title to real estate as is the present situation with JP courts.

(e) A means of overseeing and regulating the new courts should be provided by the Legislature. Presently, the JP courts — for all practical purposes — are subject to no supervision or control by anyone, but are independent; in fact, too independent. They should not only be a part of our state's judicial system, but should be subject to the same checks and balances as are our other courts.

(f) Criminal proceedings should be simplified. Not only should a "shortform" of criminal pleading be authorized, but also a simplified form of procedure yet which amply protects the rights of citizens. This can be done by simplified forms for charging violations, together with simplified proceedings to be authorized for those who wish to expedite their matters. Included in this latter is the abolition of the ancient principle of venue which requires one charged with an offense to be arraigned in the county in which he committed it. We would suggest the matter be disposed of at the nearest court, regardless of county lines.

(g) In answer to the concern of some about the lack of convenience of the new courts in comparison to the old JP courts, we would propose the county commissioners be authorized to appoint magistrates in outlying communities before whom those charged with minor infractions could be arraigned. At such arraignment, bonds would be set for appearance in court. The amount of the bonds would be fixed by order of the court having jurisdiction of that county. Failure to appear would then result in forfeiture of the bond. More serious offenses would be brought to the county seat anyway, as they are presently handled. These magistrates would not be paid from fees collected from their victims, but would receive compensation fixed by the commissioners. (It is interesting to note that the so-called "fee justices" are the ones which have gained such a notorious reputation that a change of the present system is now made necessary; but the greatest opposition we have encountered so far is from those citizens who are most concerned about the convenience of these same fee justices.)

(h) The new courts can just as well handle not only all misdemeanor cases under state statute, but also all violations under municipal ordinances. Many ordinances are similar, if not parallel to the state statutes; the main difference is in the penalties which each prescribes. A uniform handling of all violations, regardless of whether it be under state statutes or city ordinances, will tend to eliminate one thing about the law which has always been a mystery to the average layman. The different treatment of the same offense can be demonstrated by the crime of drunken driving: under existing ordinances in Rawlins the maximum penalty a police justice can assess is a fine of \$100, and if they fail to pay the fine, they serve it out in jail for approximately 66 days; under state statute the maximum penalty a JP can assess is \$100 fine or 30 days in the county jail, or both. Uniformity of adjudications against law violators is essential to win public confidence and support.

(i) The new court system should have a simplified small claims procedure concerning civil cases for money not exceeding a sum of, say, \$500. Forms should be provided to facilitate the filing of such cases. Although perhaps not the magical formula which would simplify law like penicillin shots have done for the medical profession, yet this would greatly expedite the handling of these claims.

(j) The new court system would be a court of record. Like some modern trends, consideration could be given to allowing either human or mechanical reporting of proceedings. Litigants could have either a regular reporter or tape recorder report them. Appeals to district court would be on the record. There is no need to duplicate the efforts of both courts and impose on witnesses by having two separate trials as is the practice now.

(k) Judges should be interchangeable so as to help out other areas whose dockets get loaded up too much and also to allow for a change of judge if a litigant desires it. A presiding judge for the entire state could care for assignments of judges.

(l) In felony cases, the new court would be the court for preliminary hearings to determine if there was probable cause to bind prisoners over to district court along the lines of existing law.

(m) Judges should not be permitted to practice law. This places them in a possible conflict of interest and is particularly bad because of the position it puts others attorneys in when dealing or negotiating with them as fellow-lawyers.

(n) Judges of the new courts should be selected under the so-called Missouri system which provides for some non-political committee selecting the names of at least three qualified persons to be appointed to fill a vacancy; some appointing agency—either the Governor, the Supreme Court, or other designated body or office — then appoints one of them to the office. After the appointee has served and when the next general election comes up the electorate vote on whether or not he should be retained in office. If the vote is favorable, he remains in office until death or resignation or retirement; if unfavorable, the entire process is repeated. Similar systems have been adopted in several states now, and the idea is gaining much momentum nationally.

In order that we might give further study to the details of organizing the new court system, we are creating the following sub-committees to work on the basics so as to aid us when it comes time to submit this to the Legislature: (1) organization of the courts, civil jurisdiction, name, etc.; (2) clerks, reporters and other matters pertaining to the records of the courts; (3) criminal jurisdiction, including handling of misdemeanor cases (high and low) and preliminary hearings on felonies, etc.; (4) small claims procedure and jurisdiction; (5) appellate procedure; (6) rural magistrates to fix bonds on some misdemeanors over which new courts will have jurisdiction, and miscellaneous matters; and (7) qualifications and selection of judges, their salaries and incidental matters.

The job of selling the Constitutional Amendment to the electorate is essentially one for the entire Wyoming State Bar. We should like to propose that the Bar Commissioners act so as to provide the means of financing and carrying out the campaign. Also, we again request our committee be maintained at its present strength, i.e., at least one committeeman from each of the twenty-three counties. Our committee members can serve in each of their respective counties as a sort of campaign chairman for conducting the campaign locally with the help of their bars.

We cannot afford the luxury of over-confidence or complacency in this campaign. What we are working toward is an essential improvement in our state's system of justice. Here each of us is given a golden opportunity to contribute something of substance to "mistress justice" in this life which is but a brief moment in the expanse of eternity.

This new system will lend new dignity to the institution of justice in an age when the stout doors of Democracy are being battered by competing ideologies. Ask yourself this question: in this day and age of enlightenment, while we spend billions to devise bigger and better means to destroy mankind, can we conscientiously do less than give our citizens the best form of justice that money can buy? It has been estimated that no less than 75% of our American citizenry have their only experience with American justice in the minor courts. Are these present-day courts (barring those presided over by lawyers) really the splendid examples of our system of justice we can point to with pride?

In our present-day contest for the minds of men throughout the world, if representatives were sent here to study our system so as to copy it in the new countries being established, could we proudly display our system of fee justices in rural areas? A fee justice has been found in one of our neighboring states near a metropolitan center whose penalties had so endeared him to the state patrolmen that they brought all their "business" to him. This made his "business" so good that his annual income exceeded that of the Chief Justice of the Supreme Court of that state. Are we sure our citizenry are getting their full measure of due process in courts like these?

With every "right" goes responsibilities. While we lawyers enjoy our rights of practicing law in a land with probably the greatest system of justice in the world, what responsibilities do we have when we find part of it has become outmoded and archaic? Do we fulfill that responsibility by just sitting around, or by doing something about it?

Wyoming is the last state in the Rocky Mountain region to start something on this problem. Does this fact suggest ours is working alright, but the similar system in our sister states for some reason only peculiar to them has outlived its usefulness? The answer to this question is obvious: we all have known something should have been done some time ago. We just didn't do anything about it. Now we can, and shall.

Accordingly, Mr. President, I hereby move the acceptance and filing of this 1963 annual report of the Committee on Minor Courts.

Next, Mr. President, I propose the following Resolution :

WHEREAS, the Wyoming State Legislature in its 1963 session has adopted and approved the proposed Amendment to the Wyoming Constitution designated Senate Joint Resolution No. 6; and

WHEREAS, it is the sense of the Wyoming State Bar assembled at Laramie on September 27, 1963 that said proposed Constitutional Amendment should be endorsed by the State Bar and appropriate steps taken to promote its passage by the people at the polls in November, 1964.

NOW, THEREFORE, BE IT RESOLVED BY THE WYOMING STATE BAR that our organization hereby goes on record in support of the Constitutional Amendment passed as Senate Joint Resolution No. 6 in the 1963 session of the Wyoming Legislature and that the officers of the Bar give appropriate public notice of this action; and that the officers and commissioners of the Bar take appropriate action in support of the campaign to promote the favorable action of the people upon said proposed Amendment, including the expenditure of reasonable funds from the Bar treasury; and that the special committee on Minor Courts be continued for another year with its membership appointed by the President of the Bar at no less than one member for each of the twenty-three counties of Wyoming, and said committee shall continue its studies relative to the new system to be proposed in substitution of the present system and report thereon at the next regular meeting of the Bar in 1964.

Mr. President, I move the adoption of the foregoing Resolution.

Respectfully submitted,

ROBERT STANLEY LOWE, Chairman
 HAROLD E. MEIER
 RICHARD A. TOBIN
 OLIVER W. STEADMAN
 WILLIAM R. BUGE
 G. R. McCONNELL
 GERALD A. STACK

REPORT OF THE NECROLOGY COMMITTEE

September, 1963

During the past year our profession has been saddened by the deaths of eight respected members of the Wyoming State Bar.

George W. Bremer, Clarence A. Brimmer, Lewis H. Brown, Mrs. Madge Enterline, John U. Loomis, Joseph C. O'Mahoney, Richard C. Maurer and Lowell O. Stephens will long be remembered by members of the Wyoming State Bar as close friends and worthy advocates.