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Article Summary: When Norris was serving as District Judge in the Fourteenth District, 1896-1902, Blackledge was a young lawyer. His 1936 account of those days, published here, is in the collection of Norris's papers in the Library of Congress.

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BLACKLEDGE ON NORRIS: REFLECTIONS ON NEBRASKA JUSTICE IN THE 1890's

EDITED BY RICHARD LOWITT

LOUIS H. Blackledge like George W. Norris served as a District Judge. Norris was Judge of the Fourteenth Judicial District during the period discussed in this memorandum. Blackledge, a young lawyer practicing in the district at the time, wrote these reminiscences about forty years after he first made the acquaintance of the presiding judge. In his turn, Blackledge, too, had a distinguished career on the bench. He was elected judge of the Tenth Judicial District in 1920 and served until 1941 when he retired to re-enter the practice of law in Hastings where he made his home from 1929 until his death in 1950 at the age of 82.

As is evident from his reflections Blackledge was a friend of George W. Norris. What makes this memorandum important, however, is the picture it presents of the conditions under which justice was dispensed in an area just emerging from the pioneer stage of its development. That Norris was the judge involved adds to its historic

Dr. Lowitt, associate professor of history at Connecticut College, is a frequent contributor to Nebraska History.

significance. After preparing this memorandum in February, 1936, Judge Blackledge sent a copy to Senator Norris. The copy became part of the Senator's personal file and is located in the voluminous collection of George W. Norris Papers on deposit in the Library of Congress.

MEMO in re: GEORGE W. NORRIS

Yes, I know that he is, and for many years has been Senator Norris of Nebraska. I know that for many years prior he was Congressman Norris of Nebraska, who first came into national notice when his independence of spirit caused him to lead a successful revolt in the House of Representatives against the iron clad rule of Uncle Joe Cannon, then Speaker of the House. I know too of his labors and accomplishments as a statesman which have justly given to him a place of eminence among the great men who have had leading parts in the political history and development of our nation. But to me, he is, and will always be, Judge Norris of the 14th Judicial District of Nebraska.[1] It indicates the esteem and affectionate regard in which I hold him. It recalls the days of the not gay, but struggling, hard working, drought driven, panic stricken early nineties in southwest Nebraska—when the very hardships under which people dwelt and worked developed strong characters and strong friendships which shall never fail. It symbolizes the groundwork of character, spirit and purpose without which later achievements now serving to mark him with distinction, could not have been.

My acquaintance with Judge Norris really began with his accession to the office of District Judge, of the district named, in January 1896.[2] I was a young lawyer located in the western part of the district, trying to learn my way around. He was a few years my senior, located at Beaver

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[1] Norris served from 1896 until his election to Congress in 1902.

[2] For a discussion of the controversial and exciting 1895 election when Norris was elected to the bench, see Richard Lowitt, *George W. Norris: The Making of a Progressive 1861-1912* (Syracuse, 1963) pp. 27-37 and "Populism and Politics: The Start of George W. Norris' Political Career," *Nebraska History,* vol. 42, no. 2, June, 1961, pp. 75-94.

City, the county seat of Furnas County, in the easternmost part of the district. I had met him, and knew of him in a general way as an energetic lawyer of the younger set who had earned favorable recognition in his practice. The seventy-five miles or so that separated our locations furnished in those days more of an obstacle to frequent personal contact than would be the case now. The contact of the judge, however, with the lawyers, when it came to the holding of terms of court throughout the district of eight counties, wherein most of the lawyers had more or less business in at least three or four adjacent counties, was much closer and more personal than would exist under present conditions.

The conditions of the times and the country in which Judge Norris worked and developed in these early years should be constantly borne in mind in considering that period of his career. Terms of court were held in the counties at stated intervals. We traveled by rail from one county seat to another for attendance at court—when there was a railroad. During much of the time there were at least three counties without railroad communication and the travel was by bronco and buggy. Living quarters and judicial quarters were usually crammed, often sadly insufficient. Usually a group of from ten to twenty lawyers including those from nearby counties and some from greater distances would be in attendance for the opening of the term. We had to be there and ready, for the work of the term was transacted with business and dispatch. There was neither time, nor means, nor disposition to assign cases, send out word, and await the convenience of attorneys, litigants and witnesses to attend. The continuous sessions, except in two or three of the more populous counties, rarely lasted longer than two weeks. The case must be tried then or wait another six months. It was quite a task for jurors selected from all over the county to drive their ten to twenty miles by horse and buggy, and put themselves up in the accommodations available during the term. The country was just passing through the pioneer stage of settlement of government homesteads, pre-emp-

tions and tree claims, proving up on them and getting mortgage loans, soon to be foreclosed. Telephones were non-existent. The most metropolitan city in the district, McCook, claiming 3000 inhabitants, having possibly 2000, was breaking through with the only electric street lighting system in the district—the arc light, which only old timers can now remember. The town of the Judge's residence was a main street town of not more than 1000 souls,[3] all other county seats were smaller. For such of them as were not reached by rail, the bronco and buggy drive was from twenty to thirty miles. The enterprising but now extinct liveryman knew his journeymen and the court dates and was on hand with his buckboards when the delegation arrived at the nearest railway station—and the courthouse twenty miles away.

Judge Norris never undertook to separate or isolate himself from the crowd. Of course, the favored liveryman always saw to it that the Judge and his Reporter had the favored seat in the best outfit, which was as it should be. The others of us piled into whatever rigs were available and the journey began—to end some four to six hours later, depending on weather and roads which now would hardly be allowed the dignity of trails.

The three or four resident lawyers had of course their own homes, and often would take a visiting lawyer in during his stay. Usually there was some kind hearted citizen with a residence more commodious than the average who would demonstrate western hospitality and keep the judge and as many of the lawyers as his accommodations permitted. It is astonishing how you can double up in case of necessity. I am sure the Judge well remembers Dad Hatch of Hayes Center who, himself a Civil War veteran, with his good wife and whatever extra help was needed for the occasion, would provide our accommodations. Such a place became G.H.Q. during sessions. We ate, slept and discussed

[3] Norris moved from Beaver City to McCook in 1900, chiefly because it was more centrally located in the Judicial District and because it was on the main line of the Burlington and Missouri Railroad.

Furnas County Courthouse, Beaver City, Nebraska.

Bust of George W. Norris, Nebraska Hall of Fame.

in close proximity. The table was supplied with abundance of wholesome healthful food for the men, set and served family style where things were passed around and all were satisfied. I know the Judge remembers, because one time he spilled a dish of gravy on my new trousers. That was 40 years ago and he apologized again for it in his Senatorial office in Washington last winter.

Most of the counties had, considering the times and conditions, fairly good court houses, or buildings used as such, but in some, alas! The court was held in a little room, perhaps 14 x 20, and which between times was occupied by some county officer. There was a table which served as the judicial bench, and another for his reporter. The counter was moved back and space provided for the jury, the attorneys and the persons necessary to the particular case. Sometimes more pretentious quarters, as a vacant store room, were available, and when the term of the regular court house came, of course, that was luxury.

There, my friend, you have the setting in brief outline. Do not, I beg of you, mistakenly imagine that the court conducted under these conditions by Judge Norris was of the clap-trap variety, often illustrated in current movies or broadcast over radio, with much pounding of the desk, demands for order and speeches out of turn by everybody. It was always a real court, clothed in that dignity and decorum which belongs to carefully and ably considered justice impartially administered according to established forms and precedents. Those present of course did not conceive of a court being operated for demonstration or show. If there had been such, the very presence and bearing of Judge Norris would, and doubtless sometimes did, dissipate such an idea before it had opportunity to form. No one could enter his courtroom, even in its most primitive surroundings, without realization that he was then present in a tribunal engaged in the important work of administering justice, according to our form of government, and that the tribunal and the man there officiating were entitled to his respectful regard. This was all accom-

plished without any display of demanding his rights, or of vociferation or of crabbed manner. Always ready to hear first and decide afterward, well grounded in the principles of law, he was courteous, capable, impartial, fearless in the administration of his office.

As Judge his services were so satisfactory that he was re-elected at the end of his first term and later resigned the office upon his election to Congress in November 1902.

In the conduct of the work of the court he always preserved a proper decorum, but never lost his sense of humor, at times administering a little chastening under its cover. In the trial of a case in which murder was charged, and which had attracted a large attendance of spectators, there was a defense counsel who delighted in the spotlight. The case was near its end and an evening session was directed to complete the taking of testimony. A goodly number of ladies were present, and defense counsel disported himself so that he might be noticed by all and seemed anxious to display his oratory. The taking of testimony concluded earlier than had been expected and the Judge suggested that a recess be taken until the following day for the arguments of counsel, and submission of the case to the jury. Defense counsel protested that the evening was yet young and the argument might be heard, perhaps completed, that evening. The Judge stated that both sides had been diligent in the presentation of their case through several days, perhaps a good night's rest would be better. "But your Honor," protested defense counsel, "There are a large number of people present, many of them ladies, who I am sure very much desire to hear the arguments in this case." Said the Judge, "Well, Mr. . . . , the court and jury will be here in the morning, and court is now recessed until that time."

In a somewhat similar manner he impressed upon a recalcitrant jury the advisability of getting together on a verdict in a case in which he thought there was no adequate ground for delay or disagreement. The jury, having

failed to report a verdict was called in and questioned by the Judge somewhat as to the prospect of an agreement, and whether any matter of not understanding the law of the case as contained in the instructions already given them was present, and finding no real ground for a delay, asked to see the verdict forms which had been submitted to them. He observed the forms carefully and said, "Gentlemen, the decision of this case rests with you. It was submitted to you for that purpose and ought to be decided. I note that in preparing these verdict forms I entered the month of September, leaving the day blank, which you should fill in when you have agreed upon one of the verdicts. Of course if you don't agree in the remaining part of September, you will change that and make it October; if you don't agree until November, you will make it November. You will now retire in charge of the bailiff and resume your deliberations." The implications were sufficient and in a short time a verdict was returned.

It sometimes happens that the trial court upon review of its case in the court of last resort, which in Nebraska is designated the Supreme Court, cannot see the justice of a reversal by the appellate court. There was one such instance in the experience of Judge Norris. It was a criminal case in which the charge was burglary and larceny. The defendants were evidently experienced in the business, had entered a village store, abstracted a large number of men's shoes, taken them across the state line into Colorado and there set up business in a box car distributing high class shoes at very low prices. They were apprehended and on trial convicted, receiving a rather stiff penitentiary sentence, which was also characteristic of the Judge in such cases.

Upon appeal, the case was reversed by the Supreme Court, on a proposition that Judge Norris considered too technical and unimportant. It involved the question, embodied in an instruction to the jury, of the consideration to be given to evidence showing the accused to have been found in possession of recently stolen property. It stated

in substance that the possession of recently stolen property immediately after the theft is sufficient, if unexplained, to warrant a conviction of larceny. The reversal was on the ground that the statement should have been permissive instead of positive; that is, *may be* sufficient instead of *is* sufficient as was the language used. (Williams v. State 60 Neb. 526, 83, N.W. Rep. 681). Judge Norris thought the limb was too small on which to hang a reversal, was considerably put out, and did not hesitate to say so.

When the case came up for retrial, as is usual following such delays, interest in the prosecution had waned and the case gotten cold; the defense made a better showing on the second trial. The jury room was temporary quarters off the office of the County Clerk. Only an ordinary door intervened and their discussions could be plainly heard by one listening in the County Clerk's office. During the late evening the Clerk called the Judge's attention to the deliberations of the jury. He listened in, and the discussion was not of the case at all, in the sense of consideration of the evidence, but it was near election time. The prosecutor was candidate for reelection as County Attorney and defense counsel was his opposing candidate. The discussions were political speeches as to the merits of the two candidates. The sentiment was about equally divided in the jury and neither element was willing that the other candidate should have the benefit of a winner in that case. By morning they had compromised and brought in a verdict of guilty of larceny, but fixing the value of the property taken at $34.50 which, being under $35.00, fixed the grade of the offense as petit larceny instead of grand, and made the punishment a jail sentence instead of the penitentiary. The Judge was helpless. He could neither change the verdict nor send the jury back to make another. The best he could do, and which he did in appropriate manner, on sentencing defendants to the limit of jail sentence allowed by law was to warn the good citizens of the community that this would give time to strengthen their doors, bar their windows and provide new locks, against the time when the defendants should be released.

There was another instance in which the Judge's ideas met more favorable consideration at the hands of both jury and appellate court and the criticism came from another source. This case involved a most brutal assault upon a farmer and his wife, for the purpose of robbery. In it the robbers had succeeded in getting only $7.65, but had most brutally beaten both the farmer and his wife. Fortunately for the victims the money they had gotten together with which to pay off their farm mortgage, some $400.00, and which it appeared was known to these parties, had been used for that purpose just a day previously, and only the small sum was left at the time of the robbery. They were charged with assault and robbery and the sum stolen was stated at $7.65, and in this way did not imply so serious a matter. When the whole evidence was heard of course the amount actually taken was of little moment, and after a verdict of guilty the defendants were given sentences of 15 and 13 years, respectively in the penitentiary, the heavier sentence being the limit allowed by law. Thereby the Judge got himself into disrepute with two certain travelers one of whom being in town a day or two later heard of the "draconian" sentence, and that the young men had stolen $7.65. This was enough for him. It so happened that the same evening the Judge having completed his work at that term went as usual by rail to Arapahoe there to remain over night and drive to his Beaver City home the following morning. Alighting from the train and taking the bus uptown to his hotel he found two other passengers neither of them knowing or recognizing the Judge and one of whom broke the news to the other of the frightful instance of tyranny he had discovered that day. "Did you hear about the Judge sentencing those two boys up at .....?" "Damdest thing I ever heard." "Just think of it stole $7.65 and he gave 'em 15 years in the pen—or one of them 15 and the other 13, just as bad." "What's this country coming to when things like that can happen?" "Something ought to be done about it." "Seven dollars and sixty-five cents, and they draw 15 years in the pen." "Hell

of a judge, I say." "Maybe he ought to have a little of that himself."

It happened that the travelers and the judge went to different hotels. He did not disclose his identity nor undertake to explain to the aggrieved citizen, who, unless he took the pains to enquire into the truth of the matter, may still believe that was a judge gone wrong. Judge Norris, however got many a chuckle out of the description he unwittingly heard given of himself, but he went serenely on then, as he has ever since done, doing the work his hands found to do, in the way he thought it should be done, leaving his work to speak for itself to those who will take pains to be informed of the real truth respecting it, and paying little attention to those detractors who vociferate loudly, but upon little or no real information. "May his tribe increase!"

Honorable Lewis H. Blackledge,
Hastings, Nebraska,
2/24/36.