



Kentucky Law Journal

Volume 11 | Issue 2

Article 5

1923

Law in the Mountains

A. T. W. Manning

27th Judicial District Circuit Court

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Law and Society Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Manning, A. T. W. (1923) "Law in the Mountains," *Kentucky Law Journal*: Vol. 11 : Iss. 2 , Article 5.

Available at: <https://uknowledge.uky.edu/klj/vol11/iss2/5>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

LAW IN THE MOUNTAINS

By A. T. W. MANNING*

It has been said that the purest Anglo-Saxon blood on earth is to be found in the mountains of Kentucky, Tennessee, Virginia and North Carolina. This is probably true. Certain it is that the Kentucky mountaineer presents a complex problem with respect to the law and the courts. For a great many years, the mountainous region of Kentucky has been regarded as the home of the moonshiner, the bootlegger and the feudist, and there are a great many citizens of the State, no doubt, who are better informed with respect to the inhabitants of Bulgaria than with respect to the average mountaineer of Kentucky. The impression is widespread throughout the United States that the Kentucky mountaineer has small regard for the law of God and less for the law of the land. Such is not the case however. There is no people on earth more intensely and conscientiously religious, and no people on earth who love the law of the land or who fear it more than the average mountaineer; and no people have a clearer conception of abstract justice or of right and wrong than do these people. Is it then true that moonshine and bootlegging and feuds have flourished in this section among such people all these years? Yes, it is. You ask, are not all of these things prohibited and condemned by the law? And it must be admitted they are. Then you ask as how these statements which apparently conflict each with the other, may be reconciled; and that entails the story of a court which does not function; a law that is quiescent, and a people made the victims of these disasters.

To get a fair view of conditions prevailing today and to be able to appreciate the comparison, one must know something of conditions a year ago.

It is always and at best a difficult matter for a court and the officers of the law to enforce any provision of the law that is to any considerable extent in conflict with public opinion or public sentiment. Public opinion is often a matter of environment and measures of the greatest moment and of the greatest good are sometimes very distasteful, especially to the particular class of people most directly affected thereby. Because of the physical advantages resulting from the uneven topo-

*Circuit Judge, 27th Judicial District, Manchester, Ky.

graphy of this section and the large areas of mountain and forest uninhabited there has always been more or less moonshining in the mountains of Kentucky. Until the passage of the State wide prohibition laws the State courts and State and county officials were not concerned or legally obligated in any way to fight moonshining, nor did they have jurisdiction to try or punish such offenders, it being a matter cognizable under the internal revenue laws of the United States of which the Federal Courts had exclusive jurisdiction. In those days the Internal Revenue men and United States Marshals, usually being strange in the moonshiner's country, were at a great disadvantage and only in rare instances were they able to apprehend the moonshiner or destroy his still. The person who furnished information to the Government Officers was forever afterward regarded as the enemy of the moonshiner and on slight provocation, at the first opportunity, one or the other should be made to bite the dust. Then and there were sown the seeds of another feud, as the moonshiner's people, brothers, sons, father, uncles and cousins, espoused his cause and his defense while the informer's people, his brothers, sons, father, uncles and cousins, rallied to his support until it came to be regarded as the death challenge that a citizen of any community give such information to the officers. Wherever there was situated a still, every man in that community was classified and known as a sympathizer or an enemy. Continually there waged an unremitting campaign for recruits, the contending elements extending assistance and friendship to every man involved in any dispute or controversy in return for which that element expected like assistance whenever the occasion should arise. As the campaign waxed warmer and the parties skirmished and maneuvered for position and advantage, killings often occurred before the still was reported. Thus the real and basic cause of all the trouble was obliterated in the killing and open warfare existed between the factions thereafter and was generally regarded as a "family feud." With the advent of Woman Suffrage and the enactment of the State wide prohibition laws, came a demand from these new made voters that this law should be enforced in this section for the protection of their men folk and themselves. It was their decree that no man should be elected to office who would not pledge himself wholeheartedly and unreservedly to the program of enforcing the

prohibition laws. There were those, however, who believed the criminal element to be in the ascendancy and who offered themselves for office, declaring that these laws could not be enforced. In some district of the mountains of Kentucky, the issue was clear cut and the lines tightly drawn, one side declaring the laws could not be enforced, the other declaring that the laws not only could but must be enforced. The late Judge Hiram J. Johnson of London, Kentucky, the candidate for Circuit Judge of the Twenty-seventh Judicial District was the leader and champion of the law enforcement party in the campaign in that district. Conditions had reached a terrible stage. Feuds were springing up in every neighborhood. In almost every hollow a moonshine still was being operated and the product flooded the entire county and was being transported to all parts of the State. Many of the best citizens of the country were arming themselves in their own defense, while day and night the mountain side rang with the hideous yell of drunken men and the report and echo of the deadly forty-five. Human life, human liberty and human property were all fast being reduced to a question of human might. There were portions of the district where no public gathering could be held. Church houses were abandoned and school houses made a target for the reckless and drunken passerby. No man felt secure and no man was secure; for a State or a county which cannot enforce its every law may not enforce any law. It would take this article beyond reasonable bounds to attempt to relate the details of this campaign or give any material part of the incidents of it. This statement of existing conditions is made in order that it may be seen what impetus was given the opinion and sentiment in support of lawlessness by the character of the campaign to the effect that the laws could not be enforced. The devotees of the principle sought to impress that idea on all of the public by demonstrating and "putting on" for that occasion and for the purpose of this campaign an extra reign of terror. All of this was met by fearless, stubborn and determined resistance and the law enforcement party won in the primary of 1921. Unwilling to accept and acknowledge defeat, however, the campaign was continued through the general election and again the law enforcement party won by a much augmented majority. Thus the first skirmish was a victory, but the fight

for the enforcement of the law had just begun. The real question then was how can the thing be accomplished?

The officers who were elected in that campaign were pledged to the enforcement of all of the laws, particularly the prohibition laws; but indictments are returned and the guilt or innocence of the accused determined by jurors of the vicinage, and not by the officers elected by the people. It requires no argument to convince any reasonable mind that bootleggers, moonshiners and feudists could hardly be expected to indict and convict their own kind and kindred. Judge Johnson recognized this fact and the campaign which resulted in his election also served to give him and his supporters and friends of the cause he espoused an accurate knowledge of practically every man and woman in the district with respect to the enforcement of the law. In each of the three counties composing the district (Clay, Laurel and Jackson) at the first term of court held by him, he found it necessary to empty the jury wheel and appoint Jury Commissioners whom he knew to be in sympathy with the program of enforcing the laws, and in instructing his jury commissioners touching the qualifications of jurors, he commanded his jury commissioners to observe the mandate of the Statute which required jurors to be sober, as well as discreet and intelligent citizens and housekeepers above the age of twenty-one years, saying to his commissioners plainly that those who were engaged in the manufacture, sale or use of moonshine liquor could not be regarded by any stretch of the imagination as meeting any of the requirements of the law specifying that they should be sober, discreet and intelligent. He, also, warned his jury commissioners that those who entertained or expressed the opinion that the Commonwealth of Kentucky could not enforce its every law were not of the type who should be selected for the purpose and duty of doing the thing they believed, or claimed to believe, could not be done.

Thus juries were obtained in each of the counties from the highest type of the purest Anglo-Saxon blood on earth, and to their keeping was intrusted this greatest of Anglo-Saxon institutions, "Trial by Jury." They were indeed themselves being tried as by fire. How they met that supreme test of manhood and citizenship when father was required to indict son and brother, heard the damning evidence of the guilt of father

and brother and under his oath before his God voted true bills of accusation against them; good women saw their sons, husbands and brothers go to jail and still thanked God for the law that was able to preserve them from other, further and worse crimes, able even to save their lives and protect the remainder of their families from a destruction that was imminent and threatening; for a law that could stop the poisonous flow of the moonshine still and could hush the deafening roar of the forty-five and high-power rifle together with those attendant wails of the widow and orphans of the victims of lawlessness; these things are all now being told in the beautiful and eloquent terms of the happy faces and lightened hearts of the citizenship of this district where through the enforcement of the laws peace has been restored and men no longer seek to supplant its wisdom accumulated through all the ages by the puny rage or dastardly acts of lawlessness.

Not all of this resulted from the verdicts of juries. Judge Johnson found it necessary to often employ the only measure known to our system of jurisprudence whereby the lawless may be prevented from committing threatened acts of violence and crime and made to halt in their "wild career." Desperadoes and the so called "bad men," including those engaged in fostering and inciting feuds and other terrors in their various communities, including the attempted intimidation of witnesses and jurors and the court, were brought before him and upon investigation of their conduct, were required to execute "Peace Bonds"—often now referred to and known and called by many good citizens "Liberty Bonds." After all, they meant "Liberty Bonds" for whole neighborhoods, counties, and at last this entire judicial district is being again set free from an intolerable slavery to lawlessness through this agency of the law. Good citizens no longer find it necessary to arm themselves against the desperate character, when relief of this sort may be had by application to the court. He feels that he is thus protected against the destruction of his life and property. He feels that he is free to inform on the moonshiner and the bootlegger, and to tell his disturbances and troubles to the court. He is restored to his freedom and that to all Americans is pure, sweet *Liberty*. Nor was all this done without a show of resistance. The judge was not immune from attempted intimidation. Often

he is reminded by friends and by foes of all of the dire consequences that may attend him personally, politically and every other wise. Judge Johnson feared no man or set of men or women. He followed the admonition of Moses to the Judges of Israel: "Ye shall not respect persons in judgment, but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's."—Deut. 1.17.

Being a lawyer of unusual ability, Judge Johnson could find in the law a remedy for the wrongs of an outraged citizenship, redress for a ravished justice. Many men who had long occupied a position of immunity for the first time were called to the bar of justice and were made to feel the restraint and weight of much deserved penalties. No amount of political power or show of violence seemed to have the slightest effect on the scales of justice. The biggest, most powerful, most prominent of the violators of the law met the same justice the poor, ragged and friendless encountered. Fortunate is the country where the law is known to protect the innocent through the punishment of the guilty. Less than one year of this sort of court, a court that functions and gives life and action to the spirit of the law for the purpose of protecting the innocent by punishing the guilty, has made moonshining, bootlegging and feuds unpopular and unprofitable so that they are now fading away like fleeting clouds from this judicial sky.

The battle is not yet won, however. Bootleggers, feudists and other dangerous characters now besiege the court with writs of habeas corpus and petitions for writs of prohibition in their efforts to escape the required "Liberty Bond," and the trial judge may now be required to assume the additional burden of becoming a party litigant with the criminal he tries before the Kentucky Court of Appeals, or he may be prohibited from requiring the most dangerous character to execute bond to keep the peace and be of good behavior. It does not seem reasonable to require such a thing in addition to the other burdens and danger encountered in this program of law enforcement. It would seem that the supposed integrity of the trial judge and his knowledge of conditions and facts together with the orders of the court should not be impeached by allegations of men of dangerous and questionable characters, and he be called upon to defend the orders of the court and establish the verity

thereof. Such a course is regarded as a very serious impediment to the enforcement of the law and the restoration of peace and quiet to this troubled section.

And then another campaign must be waged in the primary and general elections of 1923. Truly "Eternal vigilance is the price of human liberty."