



# PAVAN V. PARIKH

## *Hamilton County Clerk of Courts*

### **The History of the Office of the Criminal Bailiff-Part One**

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#### **Intro**

In July of 2023, we initiated a search into the origins of our Clerk of Courts' "Bailiff Division," discovering a previously unknown office, the "**Office of the Criminal Bailiff.**" The history of this virtually unknown office yielded rich and complex history, riddled with political drama. Although this particular Criminal Bailiff was never under the direct jurisdiction of this office, one of the many twists that was discovered in this was that the original plans for this office did in fact have a direct connection to our office, the Clerk of Courts.

One of the earliest known uses of the term bailiff, was found in Norman England, as early as the year 1066. Some bailiffs served the lord of the manor while others served the many courts as well as the sheriff. These bailiffs, with the responsibility of executing the decisions of the court operated in their respective districts known as a "bailiwick," a term still in usage today. The bailiff, being such an ancient office, could be equated by someone as being the fictional Sheriff of Nottingham's predecessor from "Robin Hood." However, there is an actual Sheriff of Nottingham England, an office which dates to 1449, but is now simply a ceremonial office and position.

Today, there are various types of bailiffs, serving different roles in different court jurisdictions. Anyone accustomed to the daytime court reality shows would be familiar with, a bailiff dressed in a law enforcement uniform with law enforcement powers responsible for the court's security. In Hamilton County, these bailiffs are known as "Criminal Bailiffs" who provide security for Municipal Court judges and their courtrooms. There are also "Civil Bailiffs" who are responsible for carrying out eviction orders and serving civil summons of the Municipal Court. Unique to Hamilton County, both of those bailiff's divisions are under the Hamilton County Clerk of Courts. In every other county in the state of Ohio, those "bailiffs" are either employees of the actual court they serve, or their duties are performed by the Sheriff's Office of that county.

There is also a third type of bailiff, in Hamilton County a "Judge's" Bailiff." Employed by the judge that they serve, these bailiffs perform some of the scheduling of the docket and assist the judge with other administrative tasks.

#### **The History of Criminal Bailiffs in Hamilton County**

In February 1877, Hamilton County elected a new Clerk of Court, Louis G. Bernard, a democrat. For the two years prior to his election as clerk, Bernard served as the clerk of the Board of Improvements. During this period, he was also referred to as secretary of the Democratic Central

Committee. A September 1, 1876, article in the *Cincinnati Commercial* was heavily critical of Bernard, going so far as to call him a “carpetbagger” who had lived in Cincinnati for only three years after arriving from New York, receiving a lucrative job as soon as he arrived.

The second of three key-players was a man by the name of Joe Moses. Appointed Deputy Sheriff in 1873 by Sheriff-Elect George W. Ziegler, Moses was noted in local periodicals regarding arrests that he had made, as well as transporting prisoners from Hamilton County to Columbus and the Ohio State Penitentiary. These prisoner transports would later become a central issue of contention and play into the drama in the creation of the Bailiff’s Office. Joe Moses would become the first Criminal Bailiff not just for Hamilton County, but the first Criminal Bailiff in the entire state of Ohio.

The third and final key player in this history was senior Ohio State Senator, James M. Armstrong, a democrat from Cincinnati.

Without the efforts of these three, it is unlikely the “Office of the Criminal Bailiff” would have been realized in Hamilton County or the rest of the state.

The year 1878 was particularly seminal in Joe Moses’ life and career when he was thrust into the spotlight due to a major judicial scandal. This proved Moses to be a man of integrity who took his job seriously, and as someone who wielded considerable power.

The scandal that brought Joe Moses name to the fore at the time began on March 7, 1878, noted in the next day’s *Cincinnati Commercial Tribune* in an article with the teaser of a title of, “That Grand Jury-How Judge Cox Filled To Suit Himself.” On March 7, Clerk of Court Bernard drew fifteen names from a box to serve on a grand jury (which was the custom at the time as now both grand juries and trial juries are selected at random by a computer taken from a database of registered voters) but only eight persons responded. With this, the prosecutor requested the judge order body attachments (warrants) for the seven who did not respond to be brought before the court to fulfill their jury service. Judge Joseph Cox assumed that the seven non-respondents were likely to have some sort of exemption, such as military service. Instead, the judge accepted names noted as coming from by-standers, one of which happened to be the judge’s son, Walter Cox, and his fellow attorney, T.C. Campbell.

Another piece in the March 9 *Cincinnati Daily Star*, “Row In Judge Cox’s Room,” described a lively and excitable atmosphere in Judge Cox’s Criminal Court Room No. 5. After the routine business of the docket was completed, Judge Cox requested Sheriff Wallace be brought before him, to which Sheriff Wallace complied, accompanied by deputy sheriff, Joe Moses. With both standing before the judge, Cox read the text of the recently published articles describing the details of his alleged impropriety. This prompted the judge to demand that Sheriff Wallace discharge his deputy, now accusing Moses of being the author of one of the articles. Wallace and Moses attempted to respond but were immediately interrupted, Judge Cox spoke on the record that his son “did not suggest any names to him for the Grand Jury.” At this point, Sheriff Wallace told the Judge, “Why, your son himself told me that you had asked him to select some jurors.” Judge Cox did not attempt to defend this statement, instead deciding to no longer recognize Joe Moses as deputy sheriff, appointing “Mr. Goeke” to act as deputy. With tensions rising, Moses responded that, “he would act as Deputy as long as he was not discharged by the Sheriff who had appointed him.” At this, Sheriff Wallace told Judge Cox that he would not discharge Moses as long as he did his duty. In what

appeared to be a desperate attempt at this point to end the day's standoff, Cox then dismissed the jury and ordered Goeke to take Mr. Moses' place and adjourned court. One article that covered the morning's events printed the following, "It is said that many friends of Mr. Moses were present, numbering over half a hundred and that each one of them insisted on shaking his hand, congratulating him for taking the bold stand that he did and squaring off against Judge Cox as it was the general opinion of all present in the courtroom that the Judge's conduct was entirely uncalled for."

The headline in the March 11, 1878 *Cincinnati Daily Star* read, "The Judge Surrenders and Joe Moses Keeps his Place," describing one side of the courtroom filled with lawyers discussing the situation, both pro and con, while the other side held the politicians from both parties trying to make sense out of the proceedings, while reporters sat trying to assess what had just occurred. While that was the setup of the public portion of the courtroom, the actual "court" staff were occupied in the private room behind the bench consulting with what the article coined the "Big Six" and others over the matter. Another article printed one day after reported that Joe Moses had even sought the Judge in his consultation room as to have some type of opening dialogue with him and after a very lengthy discussion and explanation, it was cooler heads that finally prevailed.

Whatever was discussed behind closed doors resulted in an amicable peace. Judge Cox emerged from his private room at 11:15 to gavel court into session, saying, "Mr. Sheriff, please open Court." Seated at his desk, Deputy Moses promptly responded to Cox's command. The court then asked Mr. Moses to call the jury summoned for the day, to which Moses complied. The whispered conversations overheard in the courtroom conveyed a sense of satisfaction and approval of all whom were present.

With that, the jury took their seats in the case against a Michael Fogarty, charged with killing John Palmer. The article concluded that, "It was a clear backdown on the part of Judge Cox."

In another article titled, "The Burial of the Hatchett," it implied that not everyone was happy that peace was achieved or at least didn't expect it to have been achieved at all. Perhaps some artistic liberties were employed, as this article alleged that Clerk of Court Louis Bernard was on hand with about fifty assistants, all ready and eager for the fray, wanting to throw paper weights at the court. Capping off the end to the drama, was an article from the *Cincinnati Commercial* titled, "Cox vs. Moses, The Treaty of Peace Signed," reported on some of specific details that were apparently agreed to in the recent accord. One of them being that on special occasions deputy Joe Moses would be permitted to wear side arms. Perhaps the most important and surprising term agreed to, was that Moses would receive the support of Judge Cox as nominee for Sheriff at the next election.

If the beginning of 1878 was a victory for Joe Moses, the end of that year was not. In October of 1878, things appeared to go south for Joe Moses. In that month, a new Sheriff was elected. George Weber, a republican, had won by 1,800 votes to replace Sheriff William P. Wallace, the democrat. A pivotal point and realization in Moses' life occurs as a result of what was printed on October 16<sup>th</sup> 1878, and was also perhaps the greatest catalyst for what would lead to the "Office of the Criminal Bailiff" being created. The article, simply titled "Sheriff Weber Full List of His Appointments," listed Sheriff George Weber's appointees, and Joe Moses' name was not one of them. As anyone working for an elected official knows, this is always an inherent risk. In December, it was really starting to sink in for Joe Moses that he soon would not be under the employ of the

Sheriff, so much so that the *Cincinnati Daily Star* reported that the soon to be ex-Deputy Sheriff would be a “good man” to be the next Warden of the Ohio Penitentiary.

On December 14, 1878, the *Marion Daily Star*, reporting on what could possibly be Moses’ last prisoner transport to Columbus, noted that he had five men and one woman in his charge, brought the total number of prisoners he’d transported during his six-year career to 660. The article went on to say that Moses, “felt his official career is approaching an end, as the Sheriff-elect, who is a Republican, left him off the slate of his would-be assistants.”

In 1879, Moses officially retired from the Hamilton County Sheriff’s Office, quoted as saying, “under the new regime with regret and good wishes of the Judges of the Court.”

On January 6, 1879, as George Weber was sworn in as Hamilton County’s new Sheriff, Ohio State Senator James M. Armstrong, was preparing to introduce what would soon be known as the “Bailiff Bill.” Support for Armstrong’s bill was uncertain, as outlined in the *Cincinnati Commercial*, writing, “Mr. Armstrong, introduced a little bill in the Senate, which is designed to disturb the peace of mind of the new Sheriff of Hamilton County,” adding that “the bill undertakes to deprive the Sheriff of the power of appointing a deputy to act as bailiff in criminal proceedings,” with the appointment power vested with the Probate Court. Many in the public saw this for what it was and were not pleased.

Armstrong introduced the bill on January 11, 1879, and Ohio Senate Bill 201, passed on February 7, 1879.

As the bill neared passage in both chambers, the attention what was now alternatively being coined as the Armstrong Criminal Bailiff Bill, or simply, the Bailiff Bill began to grow. Not only was attention growing with regard to this new bill, but also opposition to it was as well. An article published in the January 18, 1879 *Cincinnati Daily Gazette* titled, “Inwardness of the Criminal Bailiff Bill Revealed” indicated this. In what some are now referring to as “The Armstrong Criminal Bailiff Bill”, alleging that none other than Joe Moses would assume the job as Criminal Bailiff should the bill pass.

The article alleged the appointment of Moses came from a of a strategically contrived plan between Moses, Bernard, and Armstrong. Both Moses and Bernard had traveled to personally monitor the progress of the bill, the newspaper article noting their lobbying efforts while in the capital, “Bernard had been working assiduously here in the interest of the bill for some days,” to create the new office of “Criminal Bailiff,” to be entirely independent of the elected sheriff and once again, if passed, Joe Moses would become the Criminal Bailiff. The article also alleges that the actual intent of this bill had been known within certain circles of Cincinnati, although now, the intent was now known in Columbus.

The bill authorized the establishment of office of “Criminal Bailiff” strictly in counties with populations in excess of 180,000 residents. In 1879, only Hamilton County fit that criteria.

The bill authorized the Probate Court judge to appoint a Criminal Bailiff for a term of two years, twenty days after its enactment. The bill mandated replacement of the deputy sheriffs in the courts with the new criminal bailiff who would act with the duties of the bailiff in place of the sheriff in all matters of a criminal nature in the Probate Court and Courts of Common Pleas. This extended to bailiffs performing prisoner transports. It also directed that the bailiff was to perform all

duties during such trials as are now performed by the sheriff, including drawing of jurors. This bill was slowly whittling away the duties and powers of the elected sheriff.

On February 7, 1879, most of the morning was taken up by the debate of the bill, and after its third reading, things started to heat up. After the bill's third reading, Senator Armstrong realized that opposition still loomed large. In an attempt to try to stay ahead of this, he decided to call for a full vote of the Senate to try and push this through as fast as possible. However, after calling the full Senate for the vote, he realized that there were many Senators absent. This is when he dispatches the Sergeant-at-Arms, in an attempt to locate the absent legislators. The result of this being five Senators making their way into the chamber. And to the delight of Armstrong, of the five, only one of the legislators that appeared happened to be a republican, therefore business proceeded as usual.

The fruits of Armstrong's quick thinking and wit worked, as the Senate did pass the "Bailiff Bill." However, after all of this debate, there was a new catch. The bill had been debated so much that some type of alteration was inevitable. In the version now just passed by the Senate, the appointing power of the Criminal Bailiff was taken away from the single Probate Judge, the appointing authority now resting with the Judge of the Court of Common Pleas presiding in the "criminal department" of the court.

Although altered, passage of the bill put Bernard in a very festive mood. Now, the pair then turned their attention to getting it through the House. One paper wrote, "Joe Moses is here to fight his Criminal Bailiff Bill through the House" and "Lou Bernard is here to see that Moses makes no mistake." This was still an uphill battle as there was still considerable opposition, and the bill was still not the law yet. Members of the public began to complain, saying the Bailiff Bill smelled of pure partisanship. They pointed out in a very blunt manner that the Sheriff is a republican and that the judge who would appoint the "bailiff", a democrat.

On March 3, 1879, the *Cincinnati Daily Star* reported that the creation of this office was asked for by the Hamilton County bench, or at least endorsed by its judiciary, while many looked on the office as an effort to "gobble up one of Sheriff Weber's plums and deprive" him of the position in which the voters had elected him to.

After a month of non-stop bickering regarding this bill, on March 26, 1879, the *Cincinnati Daily Star* reported that the Criminal Bailiff Bill was up for final passage. Apparently, The Bailiff Bill was not the only issue of contention occurring in the House at this time. Tempers were running high in this chamber due to Representatives Poe and Booth battling over something. These two, reportedly so hot under the collar after taking opposing positions on a bill regarding the regulation of fees of county officers, that there was talk of a "duel" between them as a worthwhile remedy to solving their differences. In the end, the "Bailiff Bill" did make it out of the House, however due to it once again being amended so heavily, it had been sent back to the Senate for passage once again.

On April 2, 1879, the Senate passed Senate Bill 201 titled, "Creating the office of criminal bailiff." What appeared to be a major victory for Armstrong, Bernard, and Moses, came with a massive caveat. This was a classic case of the law of unintended consequences as, once again, there was a drastic change in the language of the bill. Although all three men got the creation of the office that they wanted, the final version of what was passed into law now made the newly created position under the jurisdiction of the sheriff of the county, not the Clerk of Court, obviously evaporating the most important aspect of their bill.



Another amendment of the bill that stuck was the portion giving the Judges of the Court of Common Pleas the appointing authority of said “Criminal Bailiff.” With so many elements having changed in the text of the bill from its original inception, one article referred to the bill as having its usefulness destroyed.

As mentioned before, the newspaper coverage around this new office implied that it was specifically created for Hamilton County. Again, despite the language not singling out Hamilton County, the county was the only one at the time in the state with a population of 180,000. This again, providing the appearance that this office was created specifically for Hamilton County.

### **The First Criminal Bailiff in Ohio**

On April 7, 1879, Joe Moses received his new title as Criminal Bailiff of Hamilton County after Court of Common Pleas Judge Robert A. Johnston appointed him to a two-year term. A joint session of the judges of the Court of Common Pleas provided the new Criminal Bailiff with a salary of \$100.00 per month and required a \$5,000 bond to be posted with the sheriff for the performance of his duties. Although everything seemed to be smooth during this joint session proceeding, an interesting remark was apparently made by Judge Longworth saying the duties of the Criminal Bailiff and Deputy Sheriff were “substantially the same.” Perhaps, this was setting the tone and a revelation for what was about to come.

On April 22, Ohio’s first Criminal Bailiff, Joe Moses was sworn in by Judge Johnston of the Court of Common Pleas.

That very same day, Moses’ new and unexpected employer, Sheriff George Weber issued an order concerning the new Criminal Bailiff to his deputies. In the order, he stated that per the judge’s appointment, Joe Moses will be appearing in the Criminal Court on that day as Criminal Bailiff, “to perform such duties in said courtroom as the Sheriff may direct.” He added that when (the sheriff) is not present, his deputy would act in capacity as “Criminal Deputy Sheriff,” and give any necessary directions to Criminal Bailiff Moses so as to enable him to perform his duties.

These last-minute changes in the bill, namely the placing of the Criminal Bailiff under the control of the Sheriff, would set the stage for further controversy.

On May 15, 1879, less than a month after Moses assumed his new office, more trouble was brewing. This time it would be a disagreement regarding who should have custody of the prisoners, the Sheriff, or the newly minted Criminal Bailiff. The following week, Sheriff Weber brought the matter before the court in hopes of clarifying the role of the Sheriff concerning who officially had custody of the prisoners being brought before the court.

The controversy that was unfolding was not lost on the publications of the day. In fact, if you had picked up any one of Cincinnati’s various newspapers for May 15, 1879, you would have found a story covering the most recent episode, of this now longstanding saga. An article titled, “A Speck of War” published in the *Cincinnati Enquirer* was one to shed more light on this. This time, the incident was apparently characterized as a “misunderstanding,” and once again, implicated that Clerk Louis Bernard was involved in some way.

The article explained that on the day prior, May 14, Sheriff Weber filed an ex-parte filing (Latin for one-sided) and in this case asking the Court of Common Pleas to make a legal declaration as to define something when an emergency arises. In this case, who has the authority and jurisdiction over the custody of prisoners while in the courtroom, the Sheriff or the Clerk of Court? In his filing, Sheriff Weber informed the court that in his official capacity as Sheriff of Hamilton County, he had in his custody six prisoners sentenced to confinement in the state penitentiary in Columbus. He went on to explain to the court what proper procedure was, that in order for the confined and committed prisoners to be delivered to and accepted by the penitentiary, he must have the “commitments” (court orders sentencing the prisoners to confinement) delivered to him being that these commitment papers would be furnished to the penitentiary upon the prisoners’ arrival to the penitentiary.

In taking a clear and defined stand, Sheriff Weber argues in his filing to the Court of Common Pleas that it is the duty of the Clerk of the Court of Common Pleas to deliver to him the commitment forms within 30 days after sentences are pronounced. Once again, many of the initial key figures that were instrumental in having the position of Criminal Bailiff created in the first place are once again in play, that of democratic Clerk of Court, Bernard, republican Sheriff Weber, and of course, Joe Moses, now holding the position of Criminal Bailiff.

In support of what he felt was his rightful authority, Weber went on to detail in his filing the interference that his office had been dealing with in the past weeks, since the passage of the Bailiff Bill. In attempting to find some resolve on his own with this, before seeking the aid of the court, the Sheriff apparently requested from then Deputy Clerk, Harlow C. Holabird, who was the one in actual physical possession of the commitment forms, to deliver them to him. Holabird, in lock, stock, and barrel with his boss, Clerk Bernard refused to deliver them just the same. Ultimately, Sheriff Weber, in his petition requested that the court compel by way of a court order, the Clerk and his deputy to deliver the commitment forms to him, as well as for advice and direction as to his duties in the premises. The court ordered that Weber’s petition be filed and an article makes it clear what everyone already following this saga already knew. In the simplest of terms, this case was brought before the court to get lasting resolve as to determine the powers of Joe Moses as Criminal Bailiff, George Weber as Sheriff, and which one was to have jurisdiction over the custody and transport of prisoners to the penitentiary.

The official decision of Court of Common Pleas Judge Smith in this case could not be located, the decision and its text likely destroyed in the 1884 courthouse fire, but the May 19, 1879, *Cincinnati Daily Gazette*, provides a very detailed account of the hearing on Sheriff Weber’s petition and in a May 20, 1879 article, provides the decision that Judge Smith rendered.

Attorney Howard Tilden appeared on behalf of George Weber, and Alexander Long on behalf of Bernard. Tilden argued the issue was equally important to both the Sheriff as well as the Clerk and the Bailiff, as each needed to know in a clear and defined legal decision, the exact duties for each of them going forward. Tilden pressed that the “Bailiff is the Captain of the prisoners’ guard, but the fixing of the time for them to be sent to Columbus is in the discretion of the Sheriff.”

In Tilden wrapping up his portion, trying his best to advocate for the sheriff, he wanted to press upon the court the following. He argued passionately that it was the Sheriff that was the liable party if he failed to deliver the commitments to the penitentiary within 30 days of sentences being

imposed. In simple terms, if the paperwork was not delivered to him, he would not know when that 30-day window commenced, making him subject to possible sanctions and litigation.

Tilden finished by asking the court to issue an order directing Clerk Bernard to deliver the commitment paperwork to the Sheriff. These were the difficult questions that Judge Smith would have to decide: Does the act that created the Criminal Bailiff make the Criminal Bailiff supersede that of the Sheriff? Does the act simply appoint a Criminal Bailiff to be a deputy to act under the Sheriff, although it's a court appointed position?

A May 20 article, titled "The Trouble that Joe Moses Made," outlined Judge Smith's decision. In his ruling, which kind of seems like no decision at all or an easy way out, Judge Smith held that this matter had been decided by his predecessor, Judge Johnston, when presiding in the Criminal Room at last term, had appointed Joe Moses Criminal Bailiff. He further articulated that his predecessor, during that term, tried and sentenced the prisoners in respect of whom the commitments had been issued, had certified as to the appointments of the guards to assist in removing the prisoners, had certified to the bill of costs, and had caused the commitments to be given to the Bailiff. In his decision, he cited that under these facts and circumstances, at least with regard to these particular commitments, it would not be proper for him (Judge Smith) to interfere.

In wrapping up his decision, Judge Smith left room for himself to determine the future roles of both the Criminal Bailiff and Sheriff in regard to any subsequent commitments, saying that if the question were to come up with reference to prisoners coming before him, he should hold himself free to consider the question and interpret the law. Although we will never know if this was the result of a sidebar conversation, backroom negotiations, or other means, what we do know is that the very next day, as well as for the rest of 1879, articles detailed both Moses and either Sheriff Weber or one of his deputies jointly transporting prisoners/commitments from Hamilton County up to the penitentiary.

In July 1879, the litigation between both of these offices appeared to have died down, but the controversy on both side continued to swirl about the creation of this new position. The unending controversy was likely, partly fueled by the dynamic of state politics at the time. Some felt that a major contributing element of this was that although Hamilton County had just elected a republican sheriff, the state had a democratic legislature, nobody was quite sure how this chemistry would play out. As in the case of Joe Moses, given this dynamic, how could Hamilton County find a special place for Joe Moses, but at the same time, not be guilty of passing "special" legislation? As reported in the *Belmont Chronicle* on July 24, 1879, the new office had robbed the sheriff of Hamilton County of his dues, guaranteed to him by the statutes, the power to have of custody and transport sentenced prisoners to the penitentiary. In October of the same year, a scathing speech was given by Thomas McDougall, a local attorney and Republican activist. He intimated how the bill recently passed was especially made for Joe Moses. He added that that after Sheriff Weber was elected, Mr. Moses suddenly found himself without employment, a perfectly legal act as the new sheriff was not obliged to keep Joe Moses in his employ, if he wished.

The year 1880 would begin with more drama regarding the Bailiff Bill passed the previous year. In a case appealed to the District Court, Ohio's Appellate Court system at the time, counsel for convicted child-rapist, Harry Hulse presented a list of thirty-one alleged errors that had occurred during the trial. The majority of the alleged errors cited in the appeal concerned that of the jury selection and instructions. However, there were other errors presented pertaining to the duties of



the deputy sheriff versus that of the criminal bailiff, namely, which one had the authority to fill up the jury from bystanders.

Counsel presented to the District Court, that the trial court erred when it instructed Deputy Sheriff James to perform duties in the trial court that the law had clearly designated be performed by the Criminal Bailiff. Judge Avery said the court would consider whether or not that the case should be taken up for hearing out of its regular order and advised counsel for the state, and for the defendant, to present written arguments. Although we were unable to again locate the court's actual ruling in this case in our official records, as well as any newspaper article, we do know that this case made it up on appeal to the Ohio Supreme Court. As to Hulse's sentence and appeal, the decision of Ohio's highest court was a reversal of the trial court's decision, vacating the accused's lifetime sentence and granting him a new trial. As to their decision in the ongoing Sheriff and Criminal Bailiff debacle. They ruled that the trial court did not exceed its authority when it directed a deputy sheriff to select a jury from the bystanders. They go on to cite that under section 2 of the act of 1879, "it seems the peculiar duty of the criminal bailiff to have the care and custody of the accused. If it was his duty to go out to the streets or among the bystanders to select jurors, it would at times leave an unrecognized prisoner without a guardian." In their further elaboration of the act, they also pointed out that under this law, that "It shall be the duty of such criminal bailiff to act for the sheriff in all criminal cases, and matters of a criminal nature", and "He shall be present during all trials of criminal cases in said courts, under direction of the sheriff, and perform all the duties during such trials as are now performed by the sheriff of such counties."

Within a year of its passage, a bill was introduced in the Ohio House of Representatives for the proposed abolishment of the Criminal Bailiff bill. Introduced by Representative Williams, who was the first to speak on this measure, he brought to light a central theme behind the efforts to abolish this office. The common sentiment behind every person that supported the abolishment of Joe Moses' position was that they had no issue at all with Moses, the man himself, nor in the way that he performed his position. Their single issue of contention was the simple fact this position was a result of a partisan political scheme, or political payback.

Speaking on the Ohio House floor, Williams, accused "the partisans who created this bill were guilty of creating an office for nothing else than to make a place to put Joe Moses and wanted the undoing of an office that was done for personal legislation." He went on to speak of constituents demanding the office be abolished, promising he would see to it. He went on to say that the duties given to the new Criminal Bailiff were the purview of the Sheriff who did not deserve to be stripped of them. Next, Representative Paine of Jackson County, took to the floor, telling the chamber that he had come to this very same chamber last winter with every intention of voting to abolish the office, but now had changed his mind. Paine spoke of the judges of Hamilton County, regardless of their party affiliation, having endorsed Moses. Few, if any words were spoken in opposition to Joe Moses. After all the votes were tallied, there were 55 nays to abolish, versus 43 yeas. Following the vote, an unnamed person was quoted saying, "altogether no political bill that ever perished in the open House ever died more quietly."

Going forward two years after the first attempt to abolish the office failed, the House was poised to make another attempt. The February 2, 1882, edition of the *Eaton Democrat* reported that a bill had just been introduced by Mr. Warren to abolish the Office of the Criminal Bailiff of Hamilton County. This time however, the proposal to abolish caused quite a stir and created considerable discussion, with another article stating, "The office was created by what is known as

the O'Connor Legislature, and is held by the bill to be a useless one." On February 9, a Representative Cooper proposed that the abolishment be effective for January 1, 1883. The result was a second failed attempt in abolishing the office.

Representative Warren now theorized that the votes needed would be gained when the bill is brought up to a full House. On February 11, the House devoted much of the afternoon discussing the proposed bill. To quote an article, "after a big racket and lots of filibustering for a couple of hours, the consideration was postponed." Another article reported the chamber becoming restless, the members are getting tired of all of the noise being raised over this bill and that the general opinion of the members is that there is much more important business to attend to. After all of this "racket," and reconsideration of the bill, they decided to place it before the chamber for the following Wednesday, the intent being to "inflict the bill onto the Senate." On February 22, the effort to abolish would still not find success, this time meeting its demise after failing to a 49 to 33 vote. With the third attempt failing, there would be no discussion of the abolishing the office for the next two years.

With the Office of the Criminal Bailiff having survived all attempts to abolish it, on April 24, 1883, Joe Moses' term as Criminal Bailiff was to expire. On that same day, Court of Common Pleas Judge Robert A. Johnston appointed him to the post for an additional two years. The *Cincinnati Enquirer* credited Moses with transporting more prisoners safely to the penitentiary than any one man in the state and that he is so ingrained within the court system that he has become "almost a necessary fixture."

### **Notable Highlights of Joe Moses' Career as Criminal Bailiff**

Keeping in mind that this paper is not just on the history of the Office of the Criminal Bailiff, but also its first Criminal Bailiff, Joe Moses, it is only fair to mention some key things and career highlights that Moses would take part in while acting in his official role as Criminal Bailiff. These items of interest would begin in December 1883, and read like a script from a movie.

The first one involved an escaped convict by the name of Frederick J. Kelly, known also as A. Marston Raymond. "An escaped Convict", "Back Behind Bars", "A Young Wife's Despair," were just a few titles of articles detailing Kelly's escape. The lead up to the segment that played at the end of that year that placed Moses in the spotlight, occurred many years prior.

Known and reported as the "Atwater Block" arson case, this occurred in the city of Cleveland. On or about February 2, 1871, the local fire department was dispatched to a report of flames visible from a second-floor room at a building known as the Atwater Building. A news report stated that the room to which the fire was confined was used as a store room by the "Merchants Stencil Works," and connected to an F.J. Kelly, a proprietor most recently from Chicago. Investigators noted that the origin of the fire was very odd and somewhat suspicious as that particular room contained no stove. In fact, a statement provided by an eyewitness tells of him, when returning to his nearby room, seeing see smoke emanating from the storeroom and noticed some hay or straw in a box in one corner of the room, along with kindling which was also burning. Further adding to the suspicion was what was printed on February 10, about eight days after the fire, indicating the occupants of the storeroom several weeks prior had obtained a \$10,000 insurance on a stock in which \$100.00 could have purchased.

Approximately two months after the fire, Frederick J. Kelly is indicted on charges of complicity in relation to arson. During his trial, Chief Engineer Hill of the Fire Department testified that during the course of his investigation, there were many facts that pointed “clearly to incendiarism, of the most diabolical kind.” After the course of this trial, Kelly was found guilty and on April 1, 1871, he was sentenced by a Cuyahoga County Court to twenty years on the charge of aiding to commit arson. In January 1876, after serving five of his 20-year sentence, he was now a free man, not due to good behavior, but due to a successful and cunning escape from the Penitentiary. On January 14, 1876 Kelly, who was working in the stamping department of the Columbus Penitentiary made his escape while a number of other prisoners were making their way to supper. In what sounded like the perfect Hollywood script, Frederick J. Kelly managed to conceal himself in a lot of rubbish and was hauled out of the prison yard in a box. This started his journey from Columbus to Cincinnati and then finally, to Kansas where he was aided by his brother. While residing with a new identity in Kansas, he learned the art of crystal painting. Approximately eight months after his escape, Kelly married and took a bride in Washington Territory. After marrying on the West coast, Kelly travelled East making his way to a number of large cities, and now going by the name of “Albert Marston Raymond.” In his attempt to really recreate a new life and identity, he was now teaching the art of crystal painting.

In December of 1883, his new life and new identity both started to crumble. Then, Ohio State Petitionary Warden, Noah Thomas received what was described as a “badly written and wretchedly spelled anonymous communication” simply signed “Justice.” This rather crude piece of writing stated that Kelly was living in a room located at No. 86 Court Street in Cincinnati and staying under the name “Albert M. Raymond.” Acting on this information, Warden Thomas sent a telegram to Joe Moses that read: “To Joe Moses, Criminal Bailiff, Cincinnati, O- Have a Albert M. Raymond, teacher of some kind of painting, at No. 86 Court Street, Cincinnati, arrested. My letter, explaining, will reach you this afternoon.”

On December 17, 1883, Criminal Bailiff Joe Moses, joined by Assistant Prosecutor Jordan Thomas and Police Inspector Edwin Hudson arrived at a boardinghouse located at No. 86 Court Street which ends up being a boarding house. Thomas entered first, as he entered, asking for “Professor Raymond”, While Hudson and Moses waited outside, Thomas stated to the proprietor he needed to copy some pictures, When Raymond appeared, he was immediately suspicious. Thomas signaled to Hudson and Moses to enter, Hudson informed Raymond that he was under arrest.

Raymond reacted defensively placing his hand in his hip-pocket.

Inspector Hudson, believing that Raymond was reaching to draw a revolver from his pocket, prompted Hudson to draw his, informing Raymond he would be taking him dead or alive.

Raymond finally acquiesced, his hip-pocket revealing not a revolver or other weapon, but a wallet with \$2,526.16. The prisoner remained mute, leaving the three officials without knowledge of the crime committed by Professor Raymond.

Thirty-five-year-old Raymond still did not speak of guilt or innocence, the words that he spoke were only expressing concern for his wife and his unborn child. It was starting to sink in that he still had 15 years left on the shelf and now, had a child on the way. Naturally, this arrest combined with all of the family circumstances evolving were devastating to Raymond’s young wife

who said that they were planning on leaving for her former home in Washington Territory in the Pacific Northwest to spend Christmas. Around January 5<sup>th</sup> 1884, Frederick J. Kelly aka A. Marston Raymond and his young family received the ultimate Christmas gift, news that Ohio Governor Charles Foster pardoned the escaped convict, turned painter.

As 1883 ebbed into the following year, Cincinnati faced a momentous event in its history when the Hamilton County Courthouse, the “finest building in the West,” was burned in riotous calamity.

On December 24, 1883, two stable workers, William Berner and Joseph Palmer, murdered their employer, William Kirk. The populous, tired of scandal and corruption erupted in the burning desire to hang Berner and Palmer. The mix-raced Palmer was found guilty and sentenced to hang, while German-born Berner was convicted of manslaughter, the lowest degree of criminal homicide. This prompted a mob of 10,000 incensed citizens to march from Cincinnati Music Hall and would mark the beginning of a three-day firestorm resulting in the destruction of the courthouse. Ohio National Guard regiments were mustered and sent to Cincinnati, also prompting Secretary of War Robert Todd Lincoln (son of Abraham Lincoln) to deploy a detachment of United States Regulars to protect all United States property. Criminal Bailiff Joe Moses played a central role in the saga.

On January 11, 1884, Moses served Palmer and Berner with grand jury indictments while the pair were held in the county jail.

Joe Moses, upon serving the indictment to Palmer states to him the following, “Joseph Palmer, the grand jury has indicted you for the murder of Wm. Kirk: here is your copy of the indictment.” Palmer received his indictment with indifference, returning to his cell. Berner, on the other hand, trembled like a leaf on the verge of tears. Despite a handwritten confession by Berner that he was the one that committed the murderous act, two months later, on March 24, 1884, at 11:30 a.m., the jury in the case of William Berner handed down an unbelievable and almost unfathomable verdict, not of murder, but of manslaughter. The result of Berner hiring a criminal lawyer with a reputation for bribing jurors and being cahoots with some members of the judiciary, Thomas (T.C.) Campbell.

Presiding Judge Stanley S. Matthews, being so incensed, remarked after reading the jury’s verdict, “It’s a damned outrage!” Judge Matthews then dismissed the jury without thanking them for their service, a custom and courtesy still very much in practice today. Immediately after, Moses whisked Berner away through a door behind the judge’s bench and through the judge’s private room, down some back stairs and then into a tunnel leading to the jail. In an effort to avoid the potential of a mob seizing Berner, it was reported that deputies had already begun the transport of Berner to Columbus, all under the cover of darkness. Although the public had been informed of this, they did not believe the authorities.

After learning this, the public immediately turned their attention and rage to Moses. An article published by the *Cincinnati Enquirer* on March 30, 1884 detailed how the situation became most perilous for the Criminal Bailiff. They noted that Joe Moses had an encounter that “fairly froze his blood” and made him turn as pale as a sheet, leaving him so breathless that he rushed into the Central Station to report that a number of citizens had just paid him a visit at his residence on Sycamore street. As the still angry mob approached him, they cast aspersions, yelling “You cheated us of Berner” and “You sneaked him off!” In trying to quell them, he yelled back telling them that

he had just been performing his duties, to which the mob replied “Duty be damned” and “We’ll burn your house over your head tonight, and lynch you in the bargain.” That night, Moses made the decision to remain housed at the Central Station, all while he made arrangements for his family to be rapidly moved from their residence to a place of safety.

On March 29, 1884, a town meeting was held at Cincinnati Music Hall where angry citizens trumpeted their call to action, “Off to the Jail!” believing that Berner was still in the custody of Sheriff Morton L. Hawkins and his deputies. The now, 10,000-strong mob marched toward the jail to find Berner and dispense the justice that he deserved.

It was now midnight, and a train had just pulled into Cincinnati. The train men, along with their passengers all gave an account of how mobs had started to form in Loveland and Morrow, their sole purpose being to seize Berner from the authorities and execute him. With additional reports of mobs waiting at every train station, the authorities’ main task at this point was to get Berner transported to the Columbus Penitentiary alive and unharmed. Two deputies accompanied the now, in disguise Berner and drove from Cincinnati over to Linwood to take their accommodation train in Loveland.

The *Sacramento Daily Record-Union* reported that Moses boarded the train at the Little Miami Depot, to accompany Berner to state prison. Berner was placed on the train before it had come to a complete stop. Being in such a hurry, when the train pulled into the Depot, Berner was placed on the car next to the sleeper car before the train had a chance to even come to a full stop.

Berner was seated with two deputies while Moses sat in the next car. Somehow, the mob knew Berner’s route. As the train came to a stop, a howling mob of about 300 hundred men could be heard. The mob was then somehow able to identify that Berner was in fact on the train, some of the mob masked, some not, then climbed into the cars. Berner sprung up from his seat, attempted to jump, but fell from the platform, headfirst into the ground. As Berner regained his composure, he now entered the same train car from the rear, walked about two-thirds of the way through the car when one of the deputies spots him and yells out “There he goes, now catch him!” Berner again jumped from the train car, as the train started to pull away from the station. Berner was now an escaped convict on the run.

During the night, Berner, keeping in sight of the railroad, secured himself in a box-car for the night. When daylight appeared, he left the improvised comfort of the box-car to make his way for the woods. Around 10:00 a.m., after being aided by horses and buggies the entire night in their quest to capture Berner, Joe Moses would once again have his prisoner in custody. On March 30, at 8:30 p.m., Berner was finally remanded to the penitentiary, alive and unharmed.

On April 13, 1884 the *Cincinnati Commercial Gazette* published an article with a sketch of Joe Moses, a sign to one side, saying, “To Columbus” and a sketch of a prisoner to the right in his custody. It told a story of the now 42-year-old Moses, a father of six, having transported a total of 1,200 convicts to the Ohio Penitentiary without a single escape. The article also highlighted 16 of the county’s most notorious prisoners Moses had successfully transported to Columbus, including William Berner, whom they noted, “landed safely in the Penitentiary, although he ran the gauntlet with this prisoner.”



The article wrapped up detailing that when Moses was elected as a member of the Board of Education, a democrat, but his popularity crossed political lines to receive the most votes cast in that election. Moses continued in the role of Criminal Bailiff of Hamilton County for the next five years. About a month later, Moses was still involved in one way or another concerning the aftermath of the riot. On Tuesday, May 13, Moses, assisted by Deputy Sheriff Anthony Jefferson arrested a man by the name of Wm. Hart, recently indicted for setting fire to the courthouse.

His ten-year run as Hamilton County's first Criminal Bailiff came to an end, when in a surprise move, a joint session of the Court of Common Pleas judges voted to terminate Moses as criminal bailiff on April 19, 1889. This move came about as a result of a recent amendment to the Criminal Bailiff law giving appointment authority to all seven judges of the Court of Common Pleas, removing the authority from the single judge assigned to make the appointment.

### **The Office of the Criminal Bailiff after Joe Moses**

Hamilton County's second Criminal Bailiff was William Bowman, and his appointment appears to have been universally popular. Two articles, one titled "The Stranglers Win" from the *Cincinnati Enquirer* and another from the *Cincinnati Commercial Gazette*, similarly reported that the failure to reappoint Moses was purely partisan, stating that, "the vote was withheld from the public, and all that could be learned was that the partisan pressure was too great to be resisted."

The *Commercial Gazette* article of April 21, 1889 also told of a seal of perpetual secrecy had been part of the ballots by which Bowman was elected. That secrecy was quickly broken when several of the judges decided to speak about the candidates that each supported and the way in which they did cast their ballots.

By July 1889, Moses had taken a position in the real estate department of the Big Four Railroad, a collective of four railroads headquartered in Central Union Depot and the Railway Company of Cincinnati. Central Union Station, also known at the time as Grand Central Depot, which was located at Third Street and Central Avenue was the home of the "Big Four Railroad."

A cache of recently discovered records contained multiple railroad police commissions, once commissioning Thomas McDermott, notarized by Joseph Moses

William Bowman, being first appointed Criminal Bailiff in 1889, would be reappointed in April of 1895, and also in April of 1897. On his reappointment in 1895, it was reported that there was no contest for this position.

Again, as history has shown, controversy has a way of descending upon this office. In 1903, this controversy centered around Criminal Bailiff Bowman's salary, or in this case, lack of salary. It appeared that due to a technicality in the County Auditor's Office, Bowman had failed to receive a salary for a period of time. This technicality stemmed from the Auditor's Office failing to honor warrants upon the fee fund, due to a decision that was pending in the Supreme Court of Ohio. Apparently, with Auditor Eugene L. Lewis refusing to budge and the Board of County Commissioners not knowing when there would be any resolve, they passed a resolution declaring that the matter was an "unforeseen contingency" and finally appropriating \$750.00 from the contingent fund to pay Bowman's salary. William Bowman would serve as Criminal Bailiff until 1924.

In 1917, in honor of his seventieth birthday, The *American Israelite* published a brief article about Joe Moses. In it, they mention that he was a member of one of the oldest Jewish families in this city. They also talked about him having been a deputy sheriff and criminal bailiff for many years prior. They also didn't fail to highlight that he was the one who had charge of William Berner, whose manslaughter conviction caused the riot of 1884 and that some of the older citizens of the city would no doubt remember those tumultuous days.

In 1924, Bowman's 34-year long tenure as this county's second Criminal Bailiff came to an end when he passed away at the age of 84 after battling a lingering. On or around June 22, 1924, Bowman's successor was named, that position going to a Deputy Sheriff Charles Stagnaro, in which it was reported that both Bowman and Stagnaro had assisted each other for many years while transporting prisoners.

In 1930, at the ripe age of 88, the first Criminal Bailiff, Joe Moses passed away. On December 2, 1930, the *Cincinnati Enquirer* wrote a very short, but illuminating article titled "Moses Rites Arranged." The article went on to detail that Moses' father, Simeon Moses was, one of the pioneer merchants of Cincinnati and one of the founders of the Rockdale Temple at Rockdale and Harvey Avenues. It also noted that among many of Joe Moses' long list of friends, by this time, the late Chief Justice William Howard Taft, who until the time of his death, always sent a birthday greeting to Mr. Moses. This long-term friendship likely stemmed from Taft's time working as a court reporter for the Cincinnati Commercial and continued during Taft's years as an assistant county prosecutor, private attorney, and judge.

In December 1942, Criminal Bailiff Charles Stagnaro retires, the Court of Common Pleas appointed Raymond Kies. Kies would serve in this position until early 1953, when he passed away. The next person to hold this position was William J. Wiggeringloh, who prior to this, was the Captain of the Hamilton County Sheriff's Road Patrol Division. Wiggeringloh would only hold this position for three years, passing away after a brief illness.

William J. Wiggeringloh's successor was none-other than his son, William R. Wiggeringloh. William R. resigned in 1964 to become the new court Assignment Commissioner.

This resignation made way for the seventh, and last known Criminal Bailiff on record, Stanley S. (Whitey) Heber. Heber's name is the last one that we can connect to that of the Office of Criminal Bailiff.

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