

# People You Should Know The Bailiffs and Court Marshals

BY THOMAS M. DUNLAP<sup>1</sup>



Thomas M. Dunlap  
Riley & Dunlap, PC  
Fulton

In this, the second article examining state court personnel,<sup>2</sup> the focus is on bailiffs and court marshals. The positions of “bailiff” and “court marshal” have a number of statutory distinctions, as we shall see.

Nevertheless, the job duties of the person holding either title include providing security in the courtroom and “taking control” of trial juries.

## History

The judicial role of the current bailiff/court marshal can be traced to the medieval bailiff.<sup>3</sup> In feudal Great Britain, the bailiff of a manor was a managerial position, appointed by the lord of the manor. The bailiff supervised “the lands and buildings of the manor, collected ... rents, and managed” manor expenses and profits.<sup>4</sup>

The term “bailiff” came to refer to a court officer who assisted judges at the biennial “sessions of the royal court ... in each shire.”<sup>5</sup> The bailiff also had duties outside the courtroom, including process serv[ing], execut[ion] of writs, assembl[y] of juries, and collection of court ordered fines.<sup>6</sup> Until abolition of imprisonment for debt in England, it was the bailiff who not only executed writs whereby debtors’ property was seized, inventoried, and sold, but also seized debtors pending satisfaction of monetary judgments.<sup>7</sup>

Charles Dickens was a first-hand observer of the role of the bailiff. After all, his own father was committed to the Marshalsea Debtors’ Prison for non-payment of 40 pounds owed to

a creditor.<sup>8</sup> The bailiff is a recurring, unsympathetic character in the novels of Dickens.

Describing Sally Brass in *The Old Curiosity Shop*:

She had been remarkable, when a tender prattler, for an uncommon talent in counterfeiting the walk and manner of a bailiff: in which character she had learned to tap her little playfellows on the shoulder, and to carry them off to imaginary sponging-houses, with a correctness of imitation which was the surprise and delight of all who witnessed her performances, and which was only to be exceeded by her exquisite manner of putting an execution into her doll’s house, and taking an exact inventory of the chairs and tables.<sup>9</sup>

Needless to say, the bailiff is no longer the pariah of Victorian literature.

## Missouri Statutes and Court Rules A. The Bailiff

Until the repeal of § 590.105, RSMo in 2001, Missouri statutes included a distinct reference to the position of bailiff as the peace officer providing court security. The job of bailiff (but not the title) flows from § 57.090: “The several sheriffs shall attend each division of the circuit court presided over by a circuit or an associate circuit judge held in their counties, when so directed by the court. . . .”<sup>10</sup>

# Know: Court Marshals

Although the sheriff can attend the court, it is typical that a deputy sheriff does so, on behalf of the sheriff.<sup>11</sup> When the deputy is filling the role of court security officer or jury custodian, the deputy is often referred to as the bailiff.

The Supreme Court of Missouri uses the term “bailiff.” For instance, Supreme Court Operating Rule 6, Model Local Rule 52.1 provides that jury questionnaires are available “by contacting the bailiff” and, after completion of voir dire, questionnaires are to be returned to the bailiff. MAI (Missouri Approved Instructions) CR3d 300.04 cautions jurors that the bailiff and other officers of the court are not permitted to talk to them about any subject connected to the trial.

References to bailiff are contained in the local rules in a number of circuits, and those rules share the following language: “The sheriff or deputy sheriff shall perform the duties of bailiff and shall maintain order in the courtroom.”<sup>12</sup>

Rule 26.1 of the “Rules of the Circuit Court of the Twenty-Fifth Judicial Circuit” particularly notes that among

the duties of the bailiff is that of “taking charge of juries.”

The funding for the sheriff and his deputies (and, therefore, the deputy sheriff acting as bailiff) is a county obligation.<sup>13</sup> By contrast, the funding source for a court marshal *cannot* be a county. What is a court marshal?

## B. The Court Marshal

The court marshal position is created by statute. Section 485.010 authorizes “[t]he presiding judge of each circuit [to] appoint ... other staff personnel [(undefined)] to aid the presiding judge in the administration of the judicial business of the circuit.”<sup>14</sup> The term “other staff personnel” reasonably includes court marshals. They “serve at the pleasure of the presiding judge” and are paid from sources other than county funds.<sup>15</sup>

In addition to the appointment of a court marshal pursuant to § 485.010, presiding judges of circuits containing “one or more facilities operated by the department of corrections with an average total inmate population in all such facilities in the circuit over the

previous two years of more than two thousand five hundred inmates may appoint a circuit court marshal.”<sup>16</sup>

The circuit court marshal “serve[s] at the pleasure of the presiding judge.”<sup>17</sup> Her statutory duties are “to aid the presiding judge in the administration of the judicial business of the circuit by overseeing the physical security of the courthouse, serving court-generated papers and orders, and assisting the judges of the circuit as the presiding judge determines appropriate.”<sup>18</sup>

“The salary of a circuit court marshal [is] established by the presiding judge ... [from] funds made available for that purpose.”<sup>19</sup> The sources for payment are state funds or federal grant money, not county funds.<sup>20</sup> The salary is capped at not more than “ninety percent of the salary of the highest paid sheriff serving a county wholly or partially within that circuit.”<sup>21</sup>

In the 13th Judicial Circuit, which contains a qualifying Department of Corrections facility, the circuit court marshal’s office in Columbia supervises on-site marshals in Callaway and Boone counties. Among his duties, the circuit court marshal serves on the security committees of Boone County and Callaway County.

All court marshals may carry firearms “for the proper discharge of their duties.”<sup>22</sup> They “have all powers granted law enforcement officers in [Missouri] to apprehend and arrest persons and ... ensure the proper security and functioning of the court employing [the] marshal.”<sup>23</sup>

The 30th Judicial Circuit (Benton, Dallas, Hickory, Polk, and Webster counties) has adopted a rule establishing court marshals “for all divisions of every county of the ... [c]ircuit, to “be appointed by the Circuit and Associate Circuit Judge of their respective counties.”<sup>24</sup>



## The Bailiff and Court Marshal<sup>25</sup> in Case Law

The bailiff has rarely been the subject of Missouri appellate decisions, but the Supreme Court of Missouri has considered the bailiff in two cases and there is additional interesting precedent regarding the bailiff as both witness and jury minder.

### A. Let's Order Supper . . . or Not

In *State v. Kirk*,<sup>26</sup> Judge Campbell,

in accordance with his usual custom in a criminal case, instructed the bailiff to take menus from a local restaurant to the jury room at 5:30 p.m. The bailiff [did so and] instructed the jury it would take an hour to serve a meal so they should order dinner unless they could reach a verdict within any reasonable time of less than [an] hour.<sup>27</sup>

The jury told the bailiff that they didn't want to order "as they thought they would be reaching a verdict in less than an hour. At 6:13 p.m., the jury returned [a guilty] verdict."<sup>28</sup>

Kirk asserted on appeal that the judge's contact with the jury was improper in that "the effect of [the] communication [through the bailiff] coerced the jury into reaching a [guilty] verdict."<sup>29</sup>

Finding the "communication had no effect whatever on the jury's deliberation or the verdict," the coercion argument was overruled.<sup>30</sup> But, the Court suggested that "[i]n the future, it would be preferable if [the bailiff deleted his] reference to when [the jury] might reach a verdict" and limited his communication to the jury to "it will take a certain amount of time to fill dinner orders" and then ask if the jury desires to order dinner.<sup>31</sup>

## B. Who Defends and Indemnifies the Bailiff?

In *Cates v. Webster*,<sup>32</sup> bailiff Cates was a named defendant in a tort action. Cates filed a declaratory judgment action to determine if the attorney general was required to defend him in the tort case and if money from the State Legal Expense Fund was available for payment of any amount required by final judgment adverse to Cates in the tort suit.<sup>33</sup> The policy of Jackson County was to defend and insure "county officials and employees . . . for acts arising out of and performed in connection with the exercise of the duties of their respective offices."<sup>34</sup> But, when the attorney general rejected Cates's tort claim defense, Jackson County voluntarily represented Cates in his declaratory judgment action, asserting that Cates was entitled to State Legal Expense Fund coverage concomitant with defense by the attorney general.

After rejecting an argument for retrospective application of § 105.711.2 by the attorney general (there was no judgment against Cates in the tort case at the time of the passage of § 105.711.2), the Court turned to whether Cates was a state (or state agency) employee. If so, Cates was entitled to a state defense and state payment of a judgment in tort against Cates. If not, Cates was not a state employee, so . . . call Jackson County.<sup>35</sup>

Although the Court noted that Cates was directed, and subject to being fired by the associate circuit judge (a state employee), the test under § 105.711.2(2), was not control, but "who pays the employee."<sup>36</sup> The evidence substantiated that Jackson County paid Cates's salary and provided his employee benefits. Thus, Cates was not an employee of the state, or an agency of the state, and not entitled to protection under the State Legal

Expense Fund nor defense by the attorney general.

Conclusion: Rule 1 – Because a bailiff is paid by the county, he is not protected by § 105.771.2(2).

Rule 2 – If Cates was a court marshal paid with state funds, Cates would, in the opinion of this author, have been protected by § 105.711.2(2).

Rule 3 – If Cates was a court marshal paid with federal grant money, we have an undecided issue.

## C. Bailiff as Witness and Custodian of the Jury

Casper Stuart's 1958 Ford was taken from his car lot in Mexico, Missouri. Carl Newsom testified that Richard Tyarks took the car. Tyarks testified that Newsom took the car. Deputy Sheriff Russell Wilkes investigated the case, talked with Newsom and Tyarks, found the car, and Wilkes was endorsed as a witness on the information. Wilkes "controverted [the] defendant's testimony that [the] defendant was given the title to the stolen car."<sup>37</sup>

Deputy Sheriff Wilkes had custody of the jury throughout the trial. The defendant objected at trial to a witness for the state having custody of the jury, relying upon *Turner v. State of Louisiana*.<sup>38</sup> *Turner* held that a "[s]tate court defendant [was] denied . . . a fair trial by an impartial jury when the . . . deputy sheriffs who gave key testimony leading to defendant's conviction had charge of the jury during the three-day trial and had [intimate and continuous contact with the jurors] outside the courtroom during the performance of their duties."<sup>39</sup>

After his conviction, Tyarks raised the *Turner* issue on appeal. The Court rejected the *Turner* argument because



the record didn't show that Wilkes "had continuous and intimate contact with the jury."<sup>40</sup> Nevertheless, the Court reversed the case and remanded it for a new trial, establishing a general rule that "it is reversible error to permit an officer, who testifies about matters which are more than merely formal aspects of the case, whose testimony tends to prove the guilt of the defendant, to be in charge of the jury."<sup>41</sup> The Court based its ruling on a defendant's right to an impartial jury in a criminal case under Article I, § 18(a) of the Missouri Constitution. Because Deputy Sheriff Wilkes was a substantial witness for the state whose testimony tended to prove the guilt of the defendant, he should not have served as custodian of the jury.<sup>42</sup>

*Tyarks* has been distinguished in *State v. Blevins*.<sup>43</sup> "Deputy Clay Jeffries, [while] on patrol, saw [Teddie] Blevins's truck go by."<sup>44</sup> Jeffries was "[a]ware that Blevins's license was revoked."<sup>45</sup> As he was following the truck, "a loaded pistol was tossed out the passenger window."<sup>46</sup> "Blevins was driving." Carrie Messick was in the front seat, and "Blevins's daughter was in the back."<sup>47</sup> "[N]o one claimed the pistol."<sup>48</sup> Jeffries interviewed Messick, and ultimately "Blevins was charged with kidnapping, unlawful gun possession by a felon, and driving without a license."<sup>49</sup> Jeffries was an endorsed witness.

Jeffries had been directed to watch the door to the jury room and keep people who were not called as prospective jurors from going into the jury room. "[D]efense counsel sought a mistrial, asserting that" Jeffries was "act[ing] in the role of protector or guardian of the jury"<sup>50</sup> despite being endorsed as a witness. That mistrial request was denied after recessing the trial and taking testimony from Deputy Jeffries in relation to the motion. Jeffries was directed to have no further contact with the jury. The

appellate court distinguished *Blevins* by concluding that Jeffries "was not in charge of the jury, and did not maintain [a] custodial relationship with members of the jury throughout the trial."<sup>51</sup> The jury found Blevins not guilty on the kidnapping charge and guilty on possession of the pistol based on the testimony of Messick that Blevins was in possession of the pistol, an element on which Deputy Jeffries had no pertinent knowledge. It was obvious to the court that Jeffries's jury contact did not add to his credibility so as to prejudice the defense. Rather, the credibility of Jeffries was at issue, if at all, only on the charge that resulted in defendant's acquittal (kidnapping). Hence, Blevins was not able to "carry his burden of showing prejudice, *i.e.*, a reasonable probability that any error affected the trial's outcome."<sup>52</sup>


As the bottom line of such parsing, here is the teaching for the trial court: Don't allow an endorsed witness for the state to take charge of the jury in a criminal case.

### Seven Courtroom Tips

1. Warn your criminal defendant client that the bailiff/court marshal will apply the handcuffs after the judge pronounces allocution, judgment, and sentence. It is appreciated by the bailiff/court marshal who prefers not to (a) wrestle with your uninformed, disbelieving client, or (b) provide CPR on collapse.
2. Tell your criminal defendant client to keep his hands out of his pockets when appearing at the bench. Many outstate courtrooms lack metal detection devices. Guns, knives, etc. are readily concealed. "Let's see your hands, ma'am," is, at best, embarrassing.
3. The court marshal is the custodian of the jury questionnaire responses. You should contact the court marshal to determine when the "book" is available for review pre-

Employee Relations  
Labor Relations  
Collective Bargaining

**GRANTMEDIATION**  
& arbitration services



**Gary M. Grant**

TELEPHONE	EFAX
314.972.3223	314.787.4299
EMAIL	
ggrantgmas@outlook.com	

trial and understand your obligations regarding use and return of the venire information. In circuits in which there is no court marshal, you should contact the circuit clerk or bailiff, as appropriate, to determine the procedure for obtaining jury questionnaire responses.

4. Introduce yourself to the bailiffs/court marshals. Like court reporters, they know lots of stuff. They are interesting people. They might have occasion to come to your defense. Bailiffs/court marshals can move your file from the bottom of the pile to the top, and you sure can't.

5. Treat the bailiff/court marshal with deserved respect.<sup>53</sup> Jurors observe you at all times. Jurors are dependent upon the bailiff/court marshal. The bailiff/court marshal is their friend. How do you treat their friend?

6. In some circuits, the bailiff/marshal performs court service duties, including explaining and monitoring community service in unsupervised probation cases. Make sure that your client provides timely and complete reporting to the bailiff/marshal. It will be appreciated and avoid probation violations.

7. I bet you don't know: the best place to set up a display screen so the jury can see it, whether extension cords are available, whether the court has an easel, or fifty other questions regarding the courtroom of the future. I bet the bailiff/court marshal does.

### Conclusion

Regardless of title and derivation, bailiffs and court marshals are keen observers of the denizens of the courtroom. From the wearer of the robe to the wearer of the orange, bailiffs and court marshals "get it." Connect. It will help you and your client.

### Endnotes

1 Thomas M. Dunlap, Riley & Dunlap, P.C., is a graduate of Westminster College and University of Missouri-Columbia School of Law. He has engaged in the general practice of

law in Callaway County for 38 years.

2 See Thomas M. Dunlap, *People You Should Know: The Court Reporters*, 69 J. MoBAR 270 (2013).

3 See, for example, [http://en.wikipedia.org/wiki/Bailiff#Great\\_Britain](http://en.wikipedia.org/wiki/Bailiff#Great_Britain) and <http://www.britannica.com/EBchecked/topic/49275/bailiff>.

4 [http://en.wikipedia.org/wiki/Bailiff#Great\\_Britain](http://en.wikipedia.org/wiki/Bailiff#Great_Britain).

5 <http://www.britannica.com/EBchecked/topic/49275/bailiff>.

6 *Id.*

7 *Id.*

8 Lecture by Professor Angus Easson, *Lesser Breeds within the Law: Dickens and Minor Legal Officers*, at Barnard's Inn Hall, Gresham College (Nov. 21, 2006).

9 CHARLES DICKENS, *THE OLD CURIOSITY SHOP* 297 (Oxford Univ. Press 2008) (1841).

10 Section 57.090, RSMo 2000.

11 Section 57.270, RSMo 2000.

12 See Rule 101, 39th Judicial Circuit; Rule 101, 38th Judicial Circuit; and Rule 100.5, 26th Judicial Circuit.

13 Sections 57.317, 57.201, 57.240, 57.250, and 57.251, RSMo 2000.

14 Section 485.010, RSMo 2000.

15 *Id.*

16 Section 476.083.1, RSMo Supp. 2013.

17 *Id.*

18 *Id.*

19 Section 476.083.2, RSMo Supp. 2013.

20 *Id.*

21 *Id.*

22 Section 476.062, RSMo 2000.

23 *Id.*

24 Rule 15, 30th Judicial Circuit.

25 There are no decided "court marshal"

cases under § 485.010, RSMo or § 476.083, RSMo, but the "bailiff" cases discussed herein are applicable to the position of court marshal, except as distinguished in the discussion of *Cates v. Webster*, 727 S.W.2d 901 (Mo. 1987).

26 636 S.W.2d 952 (Mo. 1982).

27 *Id.* at 955.

28 *Id.* at 955-56.

29 *Id.* at 955.

30 *Id.* at 956.

31 *Id.*

32 727 S.W.2d 901 (Mo. banc 1987).

33 See § 105.711.2, RSMo Supp. 2013.

34 *Id.* at 903.

35 *Id.* at 905.

36 *Id.*

37 *State v. Tyarks*, 433 S.W.2d 568, 572 (Mo. 1968).

38 379 U.S. 466 (1965).

39 *Turner v. State of Louisiana*, 379 U.S. 466 (1965).

40 433 S.W.2d at 569.

41 *Id.* at 569-70.

42 *Id.* at 570.

43 385 S.W.3d 526 (Mo. App. S.D. 2012).

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

50 *State v. Blevins*, 385 S.W.3d 526, 528.

51 385 S.W.3d 526.

52 *Id.* at 529.

53 I am reminded by Judge Gary Oxenhandler that an original watercolor hangs in the Boone County Courthouse "in honor of the Court Marshals of the 13th Judicial Circuit."

# Reduce your environmental footprint. Save paper with the eJournal.

## Members of The Missouri Bar:

All members currently receive the *Journal of The Missouri Bar* in the printed format. If you prefer this method of delivery, you need not do anything.

However, if you would prefer to instead receive the electronic version of the *Journal*, please let us know by sending an email to [journal@mobar.org](mailto:journal@mobar.org).

