379
N81
No. 3692

A STUDY OF THE JUSTICE OF THE PEACE COURT SYSTEM WITH EMPHASIS ON THAT OF DALLAS COUNTY, TEXAS

THESIS

Presented to the Graduate Council of the
North Texas State University in Partial
fulfillment of the Requirements

For the Degree of

MASTER OF SCIENCE

By

Walter S. Robinson, Jr., B. S.
Denton, Texas

May, 1968

TABLE OF CONTENTS

Chapter		Page
I.	INTRODUCTION	1
II.	THE HISTORICAL DEVELOPMENT AND SIGNIFICANCE OF THE JUSTICE OF THE PEACE COURT SYSTEM IN ENGLAND AND THE UNITED STATES	5
	Introduction The English Justice of the Peace The Office of Justice of the Peace in America	
III.	THE JUSTICE OF THE PEACE COURT IN TEXAS . .	27
	Creation and Qualification The Criminal Powers, Duties and Proceedings in General of Texas Justices Civil Powers and Duties Conclusion	
IV.	THE CASE AGAINST THE JUSTICE OF THE PEACE COURT SYSTEM	68
	The Unfitness of the System for Mid-Twentieth Century Society: Its Inadequacies, Abuses and Defects	
V.	THE CASE FOR THE LAY JUSTICE OF THE PEACE: A COMPILATION OF ARGUMENTS PRESENTED IN ANSWER TO THE ATTACKS OF CRITICS	107
	Introduction Lay Justice Arguments with Writer's Observations and Comments Summary	

TABLE OF CONTENTS, Continued

Chapter | Page

VI. OBSERVATIONS ON THE DALLAS COUNTY JUSTICES OF THE PEACE IN THE LIGHT OF THE ARGUMENTS OF THE SYSTEM'S CRITICS AND DEFENDERS 137

Introduction
The Dallas County Justice Court System
The Dallas County Justices
Conclusions

VII. CONCLUSION 176

Introduction
The Justice Court in Modern America
Recommendations
Conclusion

APPENDIX 186

BIBLIOGRAPHY 191

CHAPTER I

INTRODUCTION

This thesis seeks to examine in detail the arguments centering around the American justice of the peace court system and evaluate the justices of the peace of Dallas County in the light of these arguments. A second purpose is to evaluate the positions of critics and defenders of the present justice system in the light of the needs of the litigants who come before the justice courts in Dallas County--or who would come before the replacement court advocated by the Texas State Bar Association. Finally, a summary analysis leads to recommendations for best serving the interests of these litigants.

In the preparation of this study, wide use was made of both written materials and personal interviews. The first three chapters are based largely on written materials, many of which are primary sources. The written source materials include reports, journal articles, especially articles in legal periodicals, books, newspapers, court case reports and statutes. The latter chapters, the most significant part of the study, are based almost entirely on personal interviews and observations of the justice courts.

Of necessity, anonymity is employed in regard to some sources in Chapter V. In this chapter the Dallas County justices are evaluated in the light of the arguments of the critics and proponents of the justice court system. Anonymity is also employed in the discussions of individual justices and in some of the references to them. This employment of anonymity is necessary for two reasons. Some of the justices expressed a desire to remain anonymous as to their statements about themselves and other justices. Also some evaluations are based partially on the writer's observations.

The thesis body consists of six chapters. Chapter II presents a discussion of the justice court in Anglo-American civilization. The impressive role of the institution in England helps to explain why the early English colonists saw fit to make it a part of the local government of each colony they established in America; likewise, the role of the court in the colonies helps to explain why the states of the United States established it as a basic part of their local governments.

Chapter III reports the position of the justice court in Texas government, past and present. The greater portion of this chapter is devoted to the presentation of a detailed

examination of the statutory provisions and court decisions which govern the jurisdiction of the Texas justice of the peace at the present time.

Chapter IV presents the case against the justice of the peace court system. Among the sources used were general studies of the justice court system and studies particular to certain states. Although some studies go much more into detail than others, all seem to be in general agreement as to major conclusions. Several older studies were used because of their originality and the fact that extensive research was done in the preparation of them. Paul F. Douglas, for example, spent five years in the preparation of his study. Mr. Douglas's basic findings, in spite of their age, are generally identical to the findings of other studies, including the most recent ones. The more recent studies, in fact, frequently and extensively cite the older ones. Finally, Chapter IV includes a discussion of the Texas Bar Association study and proposals for remedying the weaknesses of the Texas justice system.

Chapter V presents the defense of lay justice courts principally from Dallas County lay justices. These lay justices not only answer the charges of the critics but claim qualities for the lay justice court which they hold

make it far superior to both the attorney-justice court and the replacement court proposed by the Texas State Bar Association. The lay justices employ a number of arguments to back up their claim.

Chapter VI, as noted earlier, presents the writer's evaluation of the ten justices of Dallas County in the light of the arguments of the critics and defenders of lay justice courts. In addition to personal interviews with the ten justices, many hours of observation were spent in their courts.

Chapter VII, the concluding chapter, presents the writer's conclusions and recommendations for improving the product of the justice court. These recommendations are made with primary consideration for those persons coming before the justice courts of Texas, and they grow out of the principal needs demonstrated in the Dallas County study.

CHAPTER II

THE HISTORICAL DEVELOPMENT AND SIGNIFICANCE OF THE JUSTICE OF THE PEACE COURT SYSTEM IN ENGLAND AND THE UNITED STATES

Introduction

The office of justice of the peace, which dates from the year of 1361, is one of the oldest and most celebrated of English institutions. It was by virtue of this office that the process of governmental centralization was finally completed in England.[1] Although fundamental changes have since been made in the English institution, it was at the height of its development at the time British colonists established it in America. The office developed in Anglo-America along lines different from the English pattern as it served to fill an important governmental need in the frontier setting of early America.[2]

---

[1]Charles A. Beard, The Office of Justice of the Peace in England, Vol. XX of Studies in History, Economics and Public Law, edited by the Faculty of Political Science of Columbia University, (New York, 1904), 70-71.

[2]Kenneth E. Vanlandingham, "The Decline of the Justice of the Peace," Kansas Law Review, XII (1963-64), 391.

This chapter reports, first, the origins of the office of the English justice of the peace; the development of its powers, both judicial and administrative, through the years preceeding American colonization; and the significance of the office to English governmental history. Another section of the chapter deals with the justice court in America: its wide acceptance by the English colonists and later by the states of the United States, its modification as it developed in the new nation, the characteristic jurisdiction of the justice court in America, its significance in frontier society and the reasons for the gradual decline of the powers of the institution in Nineteenth Century America.

The English Justice of the Peace

<u>Origins of the English Justice of the Peace</u>

Prior to the Norman Conquest (1066) the whole plan of English local government centered about the office of sheriff. A Crown appointee, this official was almost solely responsible to the Crown for the preservation of

peace and order in the shire or county; he was charged with combined executive and judicial functions.[3]

The Conquest at first operated to strengthen and increase the sheriff's local powers. The Norman kings, however, grew more and more suspicious of his large powers and began to take great care to see that these powers were employed for the ultimate benefit of the Crown. The suspicions of the Crown eventually led it to a decision to place some kind of a check on the powers of the sheriff,[4] a royal officer who was increasingly getting out of control.

Thus King Richard I (1189-1199) placed the coroner by the sheriff's side as a check upon him.[5] The coroner exercised judicial powers in criminal and sometimes in civil business. The office, however, became elective and its efficiency as a guardian of the royal interest declined.[6]

---

[3]Herbert S. MacDonald, "An Obituary Note on the Connecticut Justice of the Peace," Connecticut Bar Journal, XXXV (March, 1961), 412.

[4]*Ibid.*, p. 412.

[5]Ben W. Palmer, "The Vestigial Justice of the Peace," American Bar Association Journal, XLVII, (April, 1961), 383.

[6]William S. Holdsworth, *A History of English Law* (London, 1924), I, 286.

In these circumstances another effort was made to secure the better enforcement of the King's laws. In 1195 Archbishop Hubert Walter, Richard I's Chief Justiciar, issued a proclamation for the preservation of the peace.[7] Knights were assigned in each county to take from all persons fifteen years of age or older an oath contained in the proclamation to the effect "that they would aid the preservation of the peace" in certain specified ways. These knights were to receive all prisoners arrested by the oath takers and hand them over to the sheriff. In these knights may be seen "the origin of the keepers or conservators of the peace, who are the immediate ancestors of the justices."[8]

In 1264 the Crown appointed men designated as custodians "or conservators of the peace." These men apparently were always knights of the shire. Although they possessed powers greater than those of the knights appointed in the preceeding decades, these conservators of the peace were still confined largely to the apprehension

---

[7] *Ibid.*

[8] *Ibid.*, p. 287.

of offenders. Consequently they were still little more than royal aids to the sheriff in preserving the peace.[9]

In 1285 the Statute of Winchester organized the police system of the country, and by it the conservators or custodians were assigned to receive the presentments made by the constables (officers charged with keeping the king's peace within their respective districts) as to infringements of the statute.[10]

During the reign of Edward II (1307-1327) the writs and orders concerning the custodians are exceedingly numerous and show a slight progression in the functions of the office. By the close of the second Edward's reign the powers and duties of the conservator were taking the form they were to have in the hands of the justices of the peace under Edward III.[11]

Edward III ascended the throne in 1327 under circumstances which made him quite apprehensive concerning his retention of the Crown. Finding that the conservators of the peace were performing a useful service and remaining

---

[9]MacDonald, _op_. _cit_., pp. 412-413.

[10]Palmer, _op_. _cit_., p. 383.

[11]Beard, _op_. _cit_., p. 28.

responsible to the Crown, he secured the passage of a significant statute during the first year of his reign. This statute provided for the appointment of conservators of the peace in each county.[12] In 1328 they were given power to punish offenders. Further statutory enlargement of their powers followed in 1330, 1333, 1337 and 1343.[13] In 1344 conservators of the peace were empowered to hear and determine felonies and trespasses.[14]

Two sharply contrasting movements, one of a military nature, the other economic, soon combined to create disquiet and unrest throughout the land. The first was the aftermath of the Hundred Years War (1337-1453) with France. Many English soldiers returning from the Continent with the rewards of plunder found it difficult to settle down once more to domestic and peaceful pursuits.[15] Their conduct indeed called for a measure of preventive justice.

Meanwhile the Black Death (bubonic plague) had struck Europe in 1348-1349, proved fatal to a large portion of the

---

[12]MacDonald, op. cit., p. 413.

[13]Beard, op. cit., pp. 36-40.

[14]Holdsworth, op. cit., I, 287.

[15]J. P. Eddy, Justice of the Peace (London, 1963), pp. 1-2.

laboring population, and produced far-reaching social changes. The medieval system of agriculture was utterly unsettled; wages had risen tremendously as a result of the shortage of agricultural laborers.[16]

These two factors combined to result in the Justice of the Peace Act of 1361.[17] This milestone statute assigned in every county in England "one Lord, and with him three or four of the most worthy in the county, with some learned in the law" to keep the peace, arrest and imprison criminals, inquire of violations of the King's statutes, take surety of suspected persons and to "hear and determine at the king's suit all manner of felonies and trespasses done in the same county" according to the laws and customs of the Realm.[18]

Nature of the Powers of the English Justice - 1361-1650

The reader will note that the Act of 1361 charged the justices of the peace with both judicial and administrative duties. It is difficult to separate these two aspects of the work of English justices.

---

16 [16]Palmer, *op. cit.*, p. 383.

[17]Eddy, *op. cit.*, pp. 1-2.

[18]Holdsworth, *op. cit.*, I, 288.

No such distinction, in fact, was made in the minds of legislators during the period between the enactment of the Justice of the Peace Act of 1361 and the transplantation of the institution in the American colonies. Measures pertaining to local government were given to the justices to enforce directly or indirectly. "Administrative work often involved judicial powers and vice-versa."[19]

It seems proper to comment on the meaning of the term "administration" as used in this context. As was usual in the Middle Ages, the legislature seems to have proceeded upon the presumption that the laws would be obeyed. It was considered sufficient to provide officials and courts to punish breaches. Thus like the older courts and officials, the justices were put into the position of not taking active measures to enforce the laws, but to punish breaches of them.[20] In these circumstances the justices were obliged to use whatever means they could to discover breaches of the law. The machinery of the jury of presentment, available when the justices met in Quarter

---

[19]Beard, _op. cit._, p. 100.

[20]Holdsworth, _op. cit._, IV, 135.

Sessions (see next paragraph), proved to be of considerable value in discovering such breaches.[21]

In 1363 the English justices were ordered to hold group sessions four times each year;[22] these were known as Quarter Sessions. Only in these sessions could the justices execute their "general authority" to inquire by the jury of presentment. The jury was given a general charge as to matters into which to inquire. Upon completion the jurors made their presentments, and indictments in accordance with these were drawn up. The persons accused were then duly tried.[23]

The civil jurisdiction of the English justices of the peace was inconsiderable. One of their few civil powers was the settlement of disputes between master and servant, or between masters and their apprentices. Another was the supervision of certain partitions between lords and commoners if appointed individually for this purpose by the Quarter Sessions.[24] Thus, particularly if judged by

---

[21] Ibid.

[22] Holdsworth, op. cit., I, 288.

[23] Eddy, op. cit., pp. 26-27.

[24] Holdsworth, op. cit., IV, 139, 141.

the amount of civil power of the American justice of the peace, the English justice for all practical purposes had no civil jurisdiction.

The English Justice of the Peace: 1361-1485

Between 1361 and 1485, the first year of the Tudor period, two related factors combined to bring about the concentration of judicial and administrative powers in the hands of the English justices of the peace. The Crown was pursuing a policy of strengthening the national system under royal authority. In addition "special social forces" were at work undermining the old local system.[25] These included the increasing inability of the old and cumbersome local institutions to conveniently enforce the new national legislation on trade, labor and police affairs passed in pursuance of the Crown's goal of centralization.[26]

The national legislation affecting English justices between the Justice of the Peace Act of 1361 and the advent of the Tudor Period in 1485 dealt with trade, labor

---

[25] Beard, *op. cit.*, p. 56.

[26] *Ibid.*

and police affairs. In the latter part of Edward III's reign the justices were empowered to hear and determine all cases under the statutes for laborers and artificers (a specialized laborer);[27] subsequent legislation set the wages of servants, laborers and artificers by statutes, and the enforcement of these statutes was placed in the hands of the justices.[28] During the reign of Henry VI, the justices were given jurisdiction under the statutes regulating the weights and measures used in trade; also they were given jurisdiction under the statute regulating the trade guilds. In the area of police affairs statute after statute was enacted in the interval between 1361 and 1485. With the numerous statutes came a corresponding increase in the power and duties of the justices.[29]

With the increased power of the justices the older local governmental institutions continued to decay. As a result of this decay a large degree of control over the local officers passed into the hands of the justices. The justices were empowered to punish mayors, baliffs, stewards,

---

[27] Ibid., pp. 58-60.

[28] Ibid., pp. 61-63.

[29] Ibid., p. 66.

constables and jailers who failed in the execution of certain duties. They were also empowered to punish the sheriffs for exceeding their authorized powers.[30]

The English Justice of the Peace--1485 to the Period of Colonization in America

The Tudor monarchy pursued a goal of greater and more complete consolidation and centralization.[31] The Tudor monarchs also found the justices efficient and flexible instruments for carrying on the judicial and administrative work necessitated by this policy.[32] When, in perfecting their centralized system, the Tudor monarchs found it necessary to make some one officer responsible for the entire local administration, the justices of the peace were the natural choice. Consequently there followed a long series of acts designed to give the justices extended authority over the other county officers.[33]

The rapidly extending and penetrating powers of the Tudor government eventually touched "every side of

---

[30] *Ibid.*, pp. 56-57.

[31] MacDonald, *op. cit.*, p. 415.

[32] Beard, *op. cit.*, p. 70.

[33] *Ibid.*, p. 78.

national life.[34] The Tudor statutes covered the fields of labor and trade much more extensively than had those of the four monarchs who immediately proceeded the Tudor Era. In addition, the Tudor statutes covered many new areas not previously dealt with. In both cases the English justices were endowed with many additional powers and duties. When Elizabeth I died "hardly anything in the country side was alien to their province."

> "They tried. . .offenses. They kept up roads, bridges and prisons so far as they were kept up at all. They licensed ale-houses. They arrested criminals. They became agents of the vast and intricate economic control taken over by the State from the old corporations. They enforced the new Poor Law. When Elizabeth's religious policy, involving hunts after Jesuits, recusants [persons who refused to attend the Church of England], and non-conformists depended largely on their activity and good will."[35]

Even this compendious summary fails to mention many of the duties incumbent upon the justices.

That the justices of the peace were the "men of all work" in the Tudor plan of local government is undisputed. The scope of their duties became so great during this period that one Elizabethan legal authority, Lambard,

---

[34] Ibid., p. 73.

[35] G. M. Trevelyan, Constitutional History. Quoted in Eddy, op. cit., p. 10.

author of a classic treatise on the justice of the peace in Elizabeth's reign, asked "'how many justices think you now may suffice [without breaking their backs] to beare so many, not loads but stacks of statutes?'"[36]

The English justices of the peace retained their decisively important position until the latter part of the nineteenth century.[37] Thus the institution enjoyed great prominence in England during the era of the Stuart kings (1603-1714), the period in which it was brought to America by British colonists.[38]

The Influence of the English Justice of the Peace On The Development of the English Governmental Form

Another aspect of the significance of the justices of the peace in the development of the English government is entitled to separate consideration. As noted, the policies of the English monarchs from 1361 until the period of British colonization in America called for consolidation and centralization of governmental powers. The

---

[36] Lambard, *Eirenarcha*, quoted in F. W. Maitland, *Constitutional History of England* (Cambridge, 1926), p. 233.

[37] Holdsworth, *op. cit.*, IV, 138.

[38] *Vernon's Annotated Constitution of the State of Texas* (Kansas City, 1948), II, 283.

justices were chosen to play an increasingly important role in the implementation of this general policy of centralization.[39]

To insure the faithfulness of these important royal officers, their appointment was kept in the hands of the Crown from the earliest days of the institution onward.[40] All such appointments throughout the period were made from one social class, the Crown's purpose being to consolidate local authority in the hands of the class who most closely identified with the interests of the Crown. Thus the justices were chosen from the rising and powerful middle class of landed gentry who superceded the feudal baronage. This class generally rallied to preserve the sovereignty of the Crown.[41]

These same justices, however, being members of the local gentry, had strong local roots and local interests. They depended for their social position upon the good will of the neighboring squires and were on very friendly terms

---

[39] Holdsworth, *op. cit.*, I, 288.

[40] *Ibid.*, p. 291.

[41] Palmer, *op. cit.*, pp. 383-384.

with the middle class of both town and country.[42] Moreover the great majority of English justices were not paid for their services during most of the period under study. The justices in fact have been referred to as "the great unpaid"[43] for five of the six hundred years of their history. Most justices, however, being members of the local gentry, were gentlemen of independent means.[44] The fact that they did not have to depend on remuneration for their services no doubt contributed to their defense of local interests. Thus the English justices of the peace, although acting under royal commission and exercising royal powers by delegation, served as effective defenders of the interests of local self-government.[45]

The Office of Justice of the Peace in America

The Justice of the Peace in Colonial American and United States History

The importance of this historical review to the thesis subject, which deals with the justice court system in Texas

---

[42] *Ibid.* Beard, *op. cit.*, p. 71.

[43] John P. Dawson, *A History of Lay Judges* (Cambridge, 1960), pp. 140-141.

[44] Palmer, *op. cit.*, p. 383.

[45] Dawson, *op. cit.*, p. 141. Beard, *op. cit.*, p. 71.

and Dallas County especially and in the United States, lies in the fact that it was the office of the English justice of the peace of the seventeenth century which was brought to America by the early English colonists. That the office of justice of the peace was recognized as an important local institution by the people of colonial America--and their descendant generations--is evidenced by the fact all of the first forty-eight states eventually adopted the institution.[46]

In America the office of justice of the peace was one of the first instruments of local government created by the English colonists. The records of Massachusetts Bay Colony indicate the appointment [by the governor] of several justices as early as 1630. The first constable was appointed in Plymouth in 1632; the constable, as in England, was the chief officer of the justice courts in America from the colonial period forward. Colonial justices were appointed by the governor. Legal training was not a prerequisite to appointment.[47]

---

[46] Vernon's Annotated Texas Constitution, II, 283. Vanlandingham, op. cit., p. 389.

[47] Wallace D. Beasley, Coordinator, Justice of the Peace Institute, Agricultural and Mechanical College of Texas (College Station, Texas, n.d.), p.2.

Colonial justices in many colonies initially played a much greater role in the conduct of local government than do their successors of today. In Virginia all county officers were appointed by the governor of the colony on the recommendations of the justices. Thus the latter became a self-perpetuating body of aristocratic planters with control of the entire county administration.[48] In Pennsylvania and New Jersey, they possessed the power of tax assessment. In the aforementioned colonies, as well as in most of those of New England and South Carolina, the justices of the peace were the general administrative and judicial officials of the county.[49]

Two vital distinctions between the English and American justice court systems of the seventeenth century resulted in the two systems' developing along lines which were materially different. The first was that the colonial justices were granted civil jurisdiction for the trial of small claims.[50] This extension of jurisdiction was no

---

[48] Clyde F. Snider, Local Government in Rural America (New York, 1957), p. 11.

[49] Beasley, *op. cit.*, p. 2.

[50] MacDonald, *op. cit.*, p. 417. Vernon's Annotated Texas Constitution, II, 284.

doubt made as a matter of necessity because of the frontier conditions existent. The second was that the colonial justices were remunerated by a fee system whereas their English counterparts served in the main without pay [at least known pay] as a matter of public service and for the honor attached to a royal appointment.[51]

Following the American Revolution, other significant departures from the English model in regard to both functions and extent of judicial powers were made in the American office of justice of the peace. In the period from 1790 to 1860 the office was divested of most of its administrative powers.[52] With the loss of these powers the office no longer retained its position of county-wide predominance for this "predominance" was based largely on the officer's administrative powers. This is not to say that the office no longer had county-wide significance for the justices continued to exercise county-wide jurisdiction in many criminal and civil matters. The major steps which resulted in the decrease in the functions and power of the American justice of the peace were (1) the state governors were dispossessed of their power to appoint justices

---

[51] Ibid.

[52] Beasley, op. cit., p. 2.

of the peace; this power was taken from them through many of the revolutionary constitutions and placed for a time in the hands of the state legislatures; (2) the major administrative powers exercised by the justices were acquired by elected boards of county commissioners; (3) the office became elective, the precinct or township being the electoral area.[53]

By 1860 the office of justice of the peace in the United States could be described with several general characteristics: (1) it was a minor judicial office with limited civil and criminal jurisdiction; (2) it was generally an elective office with a subdividion of the county as the electoral district; (3) it retained only minor administrative functions such as conserving the peace and performing marriages, and (4) it was generally both a county and township office whose judge (justice), although chosen in the township or precinct, exercised county-wide jurisdiction over many subjects and causes.[54] These characteristics have remained generally descriptive of the justice court systems in the United States.

---

[53] *Ibid.*

[54] *Ibid.*

Evaluation of the Early Justice of the Peace Courts in America

For the social organization of early America, its justice of the peace system is considered adequate by most authorities. The system undoubtedly filled an important need in the backwoods conditions of colonial days when means of travel and communication were slow and difficult and a court was needed in every hamlet. Few legal precepts and enactments had been worked out, and there was little legislation either to guide or hamper a magistrate. Moreover there were few lawyers.[55] In addition, the populace living under frontier conditions was much more interested in a man's character and ability to promote stability and provide protection than in his knowledge of law.. As it worked out the recipient of the office was usually a person of character and dignity. Thereby he enjoyed the confidence and respect of his community.[56] Thus in the social setting of the period he served very well the judicial needs of the day.[57]

---

[55] Chester H. Smith, "The Justice of the Peace System In the United States," *California Law Review*, XV (1926-27), 118.

[56] *Vernon's Annotated Texas Constitution*, II, 285.

[57] Vanlandingham, *op. cit.*, p. 391.

That the pattern of American life has changed vastly from these early developmental years and that the justice of the peace system has continued without basic alteration raise fundamental questions of the continued adequacy of the system and appropriateness of the office.

CHAPTER III

THE JUSTICE OF THE PEACE COURT IN TEXAS

The Justice of the Peace Court in Texas History

The justice court system has been part of the judicial machinery of Texas since 1836, the year that Texas won her independence from Mexico. The first constitution of the Republic of Texas (1836) declared that a "convenient number of Justices of the Peace" should be elected for each county.[1] The justice system has been retained in all subsequent constitutions, although the later instruments have restricted the justice's jurisdiction and made the number of courts per county more specific.[2]

The later constitutions have withdrawn much of the criminal jurisdiction provided under the Constitution of 1836. Thus the Texas justice has long been limited to the trying of only certain misdemeanor cases, the punishment for which is also specifically limited. He still remains important, however, in his capacity as a magistrate. As

---

[1] *Vernon's Annotated Texas Constitution*, II, 284.

[2] *Ibid.*

to civil jurisdiction, the Constitution of 1876 limited it to cases in which the amount in controversy was $200 or less. The Texas justice's administrative duties, however, have not been materially changed by the later constitutions.[3]

Creation and Qualification

The justice of the peace court is created by the Constitution of Texas. The lowest of the constitutional courts, it is vested with both criminal and civil jurisdiction. The justice court generally operates in a subdivision of the county known as a justice precinct. Justice precincts are special justice court districts created by the county commissioners court, the governing body of the county. The commissioners courts of the several counties are constitutionally charged with dividing the county into not less than four nor more than eight justice precincts, with a justice and constable in each. The constitution states that, in any precinct where there is a city of 8,000 or more inhabitants, there shall be two justice courts.[4] This provision, however, is frequently not followed.[5]

---

[3] *Ibid.*

[4] *The Constitution of Texas*, Art. V, Sec. 18.

[5] Interview with Judge David Johnston, Justice of the Peace, Precinct 2, Dallas County, July 18, 1966.

To be eligible for the elective office of justice of the peace a person need only be a qualified voter; he need only have resided in the precinct for six months and in the state for one year. The term of office, formerly two years, was changed to four years by constitutional amendment in 1954. Although justices were originally--and until recent times--compensated on a fee basis, they have been since 1966 compensated by salary.[6]

The Criminal Powers, Duties and Proceedings In General of Texas Justices

Justices of the peace have jurisdiction in criminal matters where the maximum penalty or fine provided by statute does not exceed $200.[7] Although the maximum fine or penalty may not exceed $200, the justice is without jurisdiction if the statute makes provision for imprisonment in jail as part of the penalty.[8] During the first years of the operation of our present Constitution, the Court of Appeals held in _Tuttle v. State_ that the instrument confers criminal jurisdiction on justice

---

[6] _Ibid_., June 23, 1966.

[7] _Texas Constitution_, Art. V, Sec. 19.

[8] _Ex Parte Morris_, 168 Tex. Cr. R. 281.

courts only

> in cases where the penalty was by pecuniary fine alone, not to exceed the limit specified [§200] . . . [and] whenever in misdemeanors, imprisonment may be assessed as an alternative . . . justice courts have no jurisdiction to try.[9]

A justice also has no authority to revoke a license under a statute having the appropriate provisions as to monetary penalty and imprisonment, if it also has a provision for the revocation of a license.[10]

These rules do not, however, interfere with the authority of the justice court to imprison for non-payment of fines and costs or to punish for contempt of court.[11] Justices are empowered to punish for contempt of court in all proceedings; criminal and civil. The justice may punish the contemnor by a fine not to exceed $25 or by imprisonment not to exceed one day, or by both.

Other major jurisdictional limitations have to do with territorial boundaries and conflict of interest. Misdemeanor cases are ordinarily required to be tried within the

---

[9] Tuttle v. State, 1 Texas Cr. R. 364 (1876). The Court of Appeals existed and exercised appellate criminal jurisdiction between 1892 and 1898.

[10] Ex Parte Howard, 347 S. W. 2d 721 (1961).

[11] Tuttle v. State, 1 Texas Cr. R. 364 (1876).

precinct in which the offense was committed or in which the defendant resides. If a qualified justice is not available within the precinct where the particular offense occurred, the justice in the next adjacent precinct within the county is to have jurisdiction.[12] Transfers to another justice precinct within the county under other circumstances may be obtained in certain cases. If, for example, the State's attorney and the defendant or his attorney execute a written agreement requesting transfer to a particular precinct, the justice, at his discretion, may permit a transfer to said precinct.[13] In actual practice these venue restrictions often go unheeded, thus making superfluous the requirements of the above exception.[14] The justice of the peace is forbidden to sit in any case where he may be the injured party, where he has been counsel for the State or the accused, or where the accused or the party injured may be "connected with him by consanguinity or affinity within the third degree."[15]

---

[12]Vernon's Texas Session Law Service, Code of Criminal Procedure (Kansas City, 1965), Art. 4.12.

[13]Ibid.

[14]Interview with Judge Johnston, July 18, 1966.

[15]Ibid., Art. 30.01.

Texas justices are vested with other powers incidental to their criminal (and civil) jurisdiction. They may convene court at any time to try cases under their jurisdiction.[16] They are authorized to set surety bonds in all proceedings before their courts in which such bonds are used and to take forfeitures of bonds given for the appearance of a party or as a guaranty in civil proceedings.[17]

The Texas justice's responsibilities and duties regarding surety bonds, both criminal and civil, are large and most significant. The personal and property rights of litigants often depend greatly on the way the justice carries out these duties and responsibilities. Likewise the state, especially in criminal proceedings, has much at stake. For the above reasons considerable attention is given in this chapter to surety bonds and their role in the several justice court proceedings.

Texas justices have no final jurisdiction in criminal trials. The State Constitution allows appeals to be taken "in all criminal cases."[18] Appeals taken are tried

---

[16] Ibid., Art. 4.15.

[17] Ibid., Art. 4.13.

[18] Texas Constitution, Art. V, Sec. 19.

de novo in county court; this is a new trial without regard to the previous trial or its record.

Criminal Trials

More detailed information concerning the justices' duties and powers in regard to the regular criminal trial is now in order. The justice is to try cases without delay unless good grounds are shown for a postponement. In the event of postponement he may require bail. If the defendant does not meet such bail, it is the justice's duty to order him retained in custody until the final determination of the case.[19] The defendant may waive a jury if he so chooses,[20] but in the event that he does not, it is the justice's duty to issue a writ commanding the proper officer to summon forthwith a jury of six men and/or women qualified to serve as jurors.[21] In the event that any man so summoned fails to attend, the justice is empowered to fine him for contempt.[22] The justice must read the complaint to the defendant; if there be no complaint, the

---

[19] *Texas Code of Criminal Procedure*, Art. 45.23.

[20] *Ibid.*, Art. 45.24.

[21] *Ibid.*, Art. 45.25.

[22] *Ibid.*

accusation having originated with the justice himself upon finding, he must state such accusation to the defendant.[23] The pleading of the defendant may be oral or in writing as he may elect.[24] Only four pleas are permissible; a guilty plea, a not guilty plea, a plea of nolo contendere and one special plea based on the fact of a previous conviction or acquittal for the same offense.[25] The justice is required to enter a plea of not guilty for the defendant if he refuses to plead.[26] It is his duty to enforce in his court the same rules of evidence which govern trials of criminal actions in the state district courts.[27] In the event that the State is not represented by counsel, the justice must examine the witnesses.[28] When a verdict is reported by the jury, the justice must see that it is in its proper form and render the proper judgment thereon.[29]

---

[23] Ibid., Art. 45.26.

[24] Ibid., Art. 45.33.

[25] Ibid., Art. 45.31, 45.32.

[26] Ibid., Art. 45.35.

[27] Ibid., Art. 45.38.

[28] Ibid., Art. 45.36.

[29] Ibid., Art. 45.42.

All judgments with or without a jury as well as all final orders of the justice must be rendered in open court.[30] The judgment in case of conviction states that the State of Texas recovers from the defendant both the fine and court costs. The justice is empowered to detain the defendant in jail, if he chooses to do so, until the fine and costs are paid.

As previously noted, the justice has no final jurisdiction in criminal matters. A defendant may appeal a justice court judgment even if he originally pleaded guilty.[31] An appeal must be taken within ten days following the judgment;[32] it does not become effective or stop execution of the penalty until an adequate appeal bond has been met and filed.[33] It is the justice's duty to set the bond in an amount "not less than double the amount of fine and costs adjudged against him;"[34] the bond cannot be for any sum less than $50. A justice is also empowered to

---

[30]Ibid., Art. 45.49.

[31]Ex Parte Jones, 128 Texas C.R. 380.

[32]Texas Code of Criminal Procedure, Art. 44.08, Sec. C.

[33]Ibid., Art. 44.13, 44.14.

[34]Ibid., Art. 44.13.

grant a new trial--one only--if he considers that justice was not done the defendant in the original trial.[36]

Special Types of Criminal Proceedings Before Justices

The Texas justice has additional duties in criminal matters which are distinguishable from the aforementioned. In the capacity of magistrate, the justice is charged with issuing all processes intended to aid in preventing and suppressing crime, conducting examining trials, preserving the peace within his jurisdiction by all lawful means and bringing about the arrest of offenders by all lawful means in order that they may be brought to trial.[37] As the justice is acting as a magistrate in such cases and not as a justice court judge, he is not governed by the limits of justice court jurisdiction.[38]

Arrest warrants and search warrants.--Justices, in their capacity as magistrates, are invested with a critically important responsibility, that of issuing arrest

---

[36] *Ibid.*, Art. 45.44.

[37] *Ibid.*, Art. 2.10.

[38] *Kerry v. State*, 17 Texas Cr. R. 178 (1884); *Hart v. State*, 55 Texas Cr. R. 202, 206 (1883).

warrants and search warrants. The American people have long considered it a basic and fundamental right to be secure in their persons, homes and possessions from all unreasonable seizures and searches. The Fourth amendment to the United States Constitution guarantees this right. This right is also guaranteed to the people of Texas in the State Constitution: "and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation."[39] The Texas Code of Criminal Procedure also charges the magistrate to make certain that several substantial requisites are met before he issues either type of warrant. The arrest warrant is to be issued only if the complaint meets the following requisites.

1) It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.

2) It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.

---

[39] Texas Constitution, Art. I, Sec. 9.

3) It must state the time and place of the commission of the offense, as definitely as can be done by the affiant.

4) It must be signed by the affiant by writing his name or affixing his mark.[40]

Similar comprehensive requisites exist for the search warrant.[41] The magistrates responsibilities relating to arrest and search warrants frequently do not end upon issuance of the instruments. When either warrant is executed and returned to him it is his duty to try any questions arising upon the same.[42]

Examining trials.--When a person charged with a crime is brought before a justice acting in the capacity of magistrate, it is the duty of the justice to "examine into the truth of the accusation made."[43] The justice must allow the accused sufficient time to secure counsel.[44] It is his duty to inform the accused, preceeding the examination of witnesses, of his right to make a statement relative to the accusation against him; at the same time he

---

[40]Texas Code of Criminal Procedure, Art. 15.05.

[41]Ibid., Art. 18.08.

[42]Ibid., Art. 18.25.

[43]Ibid., Art. 16.01.

[44]Ibid.

must inform him that he cannot be compelled to make any statement whatever, but that if he chooses to do so such statement may be used in evidence against him.[45] If the accused desires to make a statement he must do so before the examination of any witness. The justice is charged with seeing that such statements are reduced to writing and signed, but not sworn to, by the accused. The justice must also attest by his own certificate and signature to the execution and signing of the statement.[46] If either party requests a postponement of the examining trial the justice may, at his discretion, grant same.[47]

It is also the duty of the presiding justice to see that the statutory legal procedure for examining trials, as to evidence and witnesses, is observed. The examining court is governed by the same rules of evidence which govern a regular trial.[48] Each witness must be examined in the presence of the accused.[49] The right of cross-examination is accorded both defense and prosecution. In the event that

---

[45] _Ibid._, Art. 16.03.

[46] _Ibid._, Art. 16.04.

[47] _Ibid._, Art. 16.02.

[48] _Ibid._, Art. 16.07.

[49] _Ibid._, Art. 16.08.

neither party is represented by counsel the magistrate may examine the witnesses, and the accused is accorded the same right.[50] The testimony of each witness must be reduced to writing by or under the direction of the magistrate and approved and signed by such witness. The magistrate is required to certify to the execution and signing of the statements.[51] The magistrate is empowered to attach a witness in any county of the state upon an affidavit by the interested party stating that the witness is material to the particular cause.[52] If, after examination of the witnesses in attendance, the magistrate believes that there is other material testimony which may be had by a postponement, he shall upon request--and affidavit as to the material facts--by the prosecutor or defendant postpone the hearing for a reasonable time to enable such testimony to be procured.[53]

Following the completion of testimony, the magistrate must take one of three possible actions in regard to the

---

[50]*Ibid.*, Art. 16.06.

[51]*Ibid.*, Art. 16.09.

[52]*Ibid.*, Arts. 16.10, 16.11.

[53]*Ibid.*, Art. 16.14.

defendant. He must either discharge him, commit him to jail or admit him to bail, as the law and facts of the case may require.[54] If the accused is charged with a capital offense, a justice magistrate is without authority to discharge him; he may, however, commit him to jail or admit him to bail,[55] unless "the proof is evident" in which case there can be no bail.[56] In cases where the magistrate admits to bail and surety or sureties are tendered by the defendant or his bondsmen, it is the magistrate's duty to make certain that such sureties are sufficient.[57]

Peace bond proceedings.--Whenever a magistrate is informed under oath that an offense is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit an offense, it is his duty to immediately issue a warrant for the arrest of the accused.[58] When the accused is brought before the court, the magistrate must examine the

---

[54]*Ibid.*, Art. 16.17.

[55]*Ibid.*, Art. 16.15.

[56]*Texas Constitution*, Art. I, Sec. 11.

[57]*Texas Code of Criminal Procedure*, Art. 17.09 Sec. 3.

[58]*Ibid.*, Art. 7.01.

accusation as to proof. If he finds that there is just reason to apprehend that the offense was intended to be committed, or that the threat was seriously made and that it was not made conditionally to prevent an unlawful attack, he shall issue an order requiring the accused to enter into bond in an amount as he may in his discretion require.[59] If he finds in the negative he shall discharge the defendant.[60] The condition of the bond is that the accused will not commit such offense, and that he will keep the peace toward the person threatened and toward all others named in the bond for any period of time not to exceed one year from the date of the bond.[61] The magistrate's duties in taking such a bond are the same as in the other proceedings. If the defendant fails to give bond the justice shall commit him to jail for one year from the date of the first order requiring such bond.[62]

Another aspect of this type of proceeding deals with libel. A magistrate must first be convinced, by an

---

[59]*Ibid.*, Art. 7.03.

[60]*Ibid.*, Art. 7.10.

[61]*Ibid.*, Art. 7.03.

[62]*Ibid.*, Art. 7.08.

informant under oath, that there is good reason to believe that a third party is about to--or is continuing to--publish, sell or circulate a publication which is an offense under the penal code of the State or commit a libel against the informant. The person accused may then be required to enter into bond as assurance that he will not perpetrate such acts.[63] The magistrate's duties in taking a libel bond are the same as in the peace bond proceedings.

Anti-trust law duties.--It is the duty of the justice to assist the Attorney General, any of his assistants, or any district or county attorney acting under his direction in securing information from specified witnesses as to violations of the State Antitrust Law.[64] Upon application to a justice by one of these officers stating that he has reason to believe that a witness, domiciled in the county of the justice, knows of a violation of a provision of the antitrust chapter, it is the duty of the justice to summon

---

[63] Ibid., Art. 7.11.

[64] Vernon's Texas Statutes, Penal Code (Kansas City, 1948), Art. 1636.

and examine such witness in relation to such a violation. The justice's responsibilities and powers as to the procurement of the witnesses' testimony are the same as in the examining trial. In this proceeding, however, such testimony is to be delivered to the attorney requesting it.[65]

Coroner's inquests.--The justice of the peace is charged with the duty of holding a coroner's inquest in the event that a death, under certain specified circumstances, occurs in his precinct.[66] Such inquests are to be held without a jury and in the following cases:

1) When a person dies in prison or in jail.
2) When any person is killed; or from any cause dies in the absence of one or more good witnesses.
3) When the body of a human being is found, and the circumstances of his death are unknown.
4) When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means.
5) When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide.
6) When a person dies without having been attended by a duly licensed and practicing physician . . . and the local health officer or registrar required to report the cause of death . . . does not know the cause of death.

---

[65] _Ibid._

[66] _Texas Code of Criminal Procedure_, Art. 49.01.

7) When a person dies who has been attended by a duly licensed and practicing physician . . . and such physician is not certain as to the cause of death and thus unable to certify with certainty the cause of death as required by state law.[67]

The inquest proceeding--in cases where no one has been charged with causing the death of the deceased--may be held publicly or privately, as the justice sees fit.[68] He may have a person arrested before the inquest is held if he has knowledge that the killing was the act of such person or upon an affidavit to this effect by another.[69] If the justice finds during the inquest that a person still at large perpetrated the killing he will forthwith issue a warrant for his arrest.[70] The justice may subpoena to enforce the attendance of witnesses upon an inquest.[71] It is his duty to administer the oath to the witnesses, examine them, record their testimony and have them subscribe to it. He must accord the accused or his counsel, if any, the right to cross-examine the witnesses.[72] The justice may, in all cases, call in an "expert witness"--in the person of either the county health officer or a

---

[67] _Ibid._

[68] _Ibid._, Art. 49.11.

[69] _Ibid._, Art. 49.14.

[70] _Ibid._, Art. 49.18

[71] _Ibid._, Art. 49.09.

[72] _Ibid._, Art. 49.14.

licensed physician as the particular circumstances dictate --in an inquest to ascertain the cause of death and procure his opinion and advice as to the necessity of an autopsy in determining the cause.[73] The justice must certify to the inquest proceedings and forward all testimony, his finding, and the bail bonds, if any, to the district court clerk.[74]

Fire inquest.--When an affidavit is sworn before a justice stating that there is ground to believe that a building has been unlawfully set, or attempted to be set, on fire, it is the duty of the justice to cause "the truth of such complaint to be investigated."[75] The fire inquest proceeding is governed by the rules that govern the inquests upon dead bodies;[76] the justice has identical duties and responsibilities relating to the testimony of witnesses.

The fire inquest proceeding utilizes a jury. The jury's duty is to inspect the place in question, hear the testimony of witnesses, find and certify how and in what manner such fire occurred or was attempted together with

---

[73] Ibid., Art. 49.03

[74] Ibid., Art. 49.22.

[75] Ibid., Art. 50.01

[76] Ibid., Art. 50.02.

all the attending circumstances, and likewise find and certify as to the guilty parties, either principal or accessory.[77] In the event that the jury finds that a building has been unlawfully set, or the same has been attempted, it is the justice's duty to bind over the witnesses to appear and testify before the next grand jury.[78]

Civil Powers and Duties

Civil Jurisdiction in General

The Texas Constitution establishes the general civil jurisdiction of the justice courts. This document invests justices of the peace with jurisdiction in civil matters in all cases where the amount in controversy is $200 or less, exclusive of interest, and of which exclusive original jurisdiction is not given to the county or district courts.[79] It permits additional jurisdiction, both civil and criminal, to be provided by statute. Appeals must be allowed in all civil cases where the judgment is for more than twenty dollars, exclusive of costs. The justices are also established as *ex-officio* notaries public.[80]

---

[77] *Ibid.*, Art. 50.03

[78] *Ibid.*, Art. 50.04.

[79] *Texas Constitution*, Art. 5, Sec. 19.

[80] *Ibid.*

Thus in ordinary civil matters--such as ordinary suits for debts or damages--the justice may handle only cases involving $200 or less, exclusive of interest and cost. Even this jurisdiction is sometimes further restricted. For example, an attorney fee provided by note or contract or by act of the legislature must be considered part of the amount in controversy. Thus if the principal amount and the attorney's fee together total more than $200, the justice has no jurisdiction and cannot handle the case.[81] Also where a suit is for damages for the wrongful taking of personal property, with interest on the amount claimed for damages, the interest is considered part of the amount in controversy.[82]

A significant jurisdictional limitation relates to the injunctive power. A state appellate court has ruled that a Texas justice has no jurisdiction of an injunction regardless of the subject or value involved.[83]

---

[81] United Finance Corporation v. Quinn, 149 S. W. 2d 148 (Gal., 1941).

[82] Jeans v. Liquid Carbonic Co., 173 S. W. 643 (Austin, 1915).

[83] Poe v. Ferguson, 168 S. W. 459 (Ft. Worth, 1915).

Procedure for Initiating Ordinary Civil Suits, Docketing

The plaintiff's pleadings in justice court civil cases are required to be oral, except where otherwise specifically provided;[84] the same is the case for the defendant's answer. Thus ordinarily no written statement or paper need be delivered, as in the courts of record, to the justice to initiate a civil suit. The plaintiff or his attorney merely orally states to the justice what the suit is for or about; in the same manner the defendant or his attorney makes answer.

Upon presentation of the plaintiff's pleading the justice is to enter the suit in his docket.[85] The justice is required to keep a docket record of each case from its inception until its final disposition in his court. His duty is only to note briefly certain enumerated material facts.[86]

After the suit has been lodged with the justice, it is his duty to issue forthwith citations for the defendant or

---

[84] Vernon's Texas Statutes, Rules of Civil Procedure (Kansas City, 1948), Rule No. 525.

[85] Ibid.

[86] Ibid., Rule No. 524.

defendants. He must first make sure that such citations contain certain substantial requisites; these include the name of the parties, the nature of plaintiff's demand, the location of the court and the time of the court setting. Each citation must be signed by the justice with his official designation.[87]

Procedure for Trial and Handling of Ordinary Civil Suits

The plaintiff's pleadings and the defendant's answer in justice court civil cases must ordinarily be oral. If, however, an answer or other pleading sets up any of the matters specified in Rule 93 of the Texas Rules of Civil Procedure, it must be in writing, signed by the party or his attorney and verified by affidavit.[88] Such requirements do not apply if "the truth of such matters appear of record."[89] It is the justice's duty to see that the requirement as to the comprehensive Rule 93 with its sixteen "matters" is closely observed by litigants. These matters include, for example:

---

[87] *Ibid.*, Rule No. 534.

[88] *Ibid.*, Rule No. 526.

[89] *Ibid.*, Rule No. 93.

1) That the plaintiff has not legal capacity to sue, or that the defendant has not legal capacity to be sued.
2) That there is another suit pending in this State between the same parties involving the same claims.
3) A denial of partnership as alleged in any pleading as to any party to the suit.[90]

Another type of answer or pleading by a defendant which, in the justice court, must be in writing and sworn to is the plea of privilege.[91]

Rules of Procedure for Ordinary Civil Cases in Justice Court

After having been served with citation at least ten days before appearance day, the defendant is responsible for filing his answer at or before ten o'clock on such day.[92] As noted, all that is necessary to meet this requirement is for the defendant or his attorney to appear and orally answer at the proper time.

If the defendant who has been duly served with citation fails to appear at or before ten o'clocl A.M. on the designated appearance day, the justice shall, if the plaintiff's claim be liquidated and proved by a written

---

[90] Ibid.

[91] Ibid., Rules No. 527 and 86.

[92] Ibid., Rule No. 535.

instrument purported to have been executed by the defendant, or be upon an open account verified by an affidavit, render judgment for the plaintiff.[93] If the plaintiff's claim is not so liquidated, the justice shall hear his testimony; if from such testimony it appears to him that the plaintiff is entitled to recover, he shall render judgment accordingly. If it appears otherwise, he shall render judgment for the defendant even if the defendant fails to appear.[94]

The justice has important responsibilities in regard to jury trials in his court. If either party to a case demands a jury, he shall direct the sheriff or constable to summon a jury panel.[95] He shall rule on the sufficiency of any challenge for cause made in regard to a prospective juror by either party.[96] When the jury has been selected he must administer the oath to the members. The justice must not charge the jury in any cause tried in his court.[97]

The justice must follow certain rules in regard to judgments rendered by him. When he tries a case without a jury, he shall announce his decision in open court.[98]

---

[93] _Ibid._, Rule No. 538

[94] _Ibid._

[95] _Ibid._, Rule No. 544.

[96] _Ibid._, Rule No. 549

[97] _Ibid._, Rule No. 554.

[98] _Ibid._, Rule No. 557.

When a case has been tried by a jury and a verdict rendered by them, the justice shall render judgment on the verdict.[99] Where the suit is for the recovery of specific articles and the decision is for the plaintiff, the justice shall see that the articles are separately assessed; the judgment shall be that the plaintiff recover such specific articles if they can be found, and if not, then their value as assessed with interest thereon.[100] The justice shall see that the "costs" are assessed against the unsuccessful party, except in cases where it is otherwise specifically provided.[101] The judgment shall be recorded in the justice's docket and signed by him. Such judgment shall clearly state the determination of the rights of the parties in the subject in controversy and the party who shall pay the costs. It shall direct the issuance of whatever process may be necessary to carry the judgment into execution.[102]

Justices are empowered to set aside judgments and grant new trials. A judgment by default or dismissal, rendered not more than ten days previously, may be set aside upon motion in writing, for good cause shown,

---

[99] _Ibid._, Rule No. 566

[100] _Ibid._, Rule No. 560.

[101] _Ibid._, Rule No. 539.

[102] _Ibid._, Rule No. 558.

supported by affidavit.[103] A new trial may be granted, within ten days following a judgment, upon motion in writing showing that justice was not done in the trial of the cause.[104] Only one new trial may be granted to either party.[105]

Every suit in the justice court--except for certain specified types of cases and the existence of certain circumstances in ordinary cases--must be tried in the county and precinct in which the defendant or one or more of several defendants reside.[106] Despite this explicit statutory requirement, this rule, as it regards many precincts, is in most types of cases not observed.[107]

The Texas justice is subject to several rules governing change of venue. Generally, a party to a suit before a justice may make an affidavit, supported by the affidavits of two other credible citizens of the county, that they have good reason to believe and do believe, that

---

[103] *Ibid.*, Rule No. 566.

[104] *Ibid.*, Rule No. 567.

[105] *Ibid.*, Rule No. 570.

[106] *Vernon's Texas Statutes*, Texas Civil Statutes (Kansas City, 1948), Art. 2390.

[107] Interview with Judge Johnston, July 18, 1966.

such party cannot have a fair and impartial trial before such justice or in such justice's precinct. The justice shall then transfer such suit to the court of the nearest justice in the county not subject to the same or some other disqualification.[108] He may also make a change of venue to "any other justice of the county upon the written consent of the parties to the case or their attorneys."[109] In the event of a venue change the justice shall issue an order of transfer stating the cause of the transfer and the name of the court to which it is made. He shall require the parties and their witnesses to appear before the court in its next ensuing term.[110] Upon the making of the transfer order the justice shall make out a true and correct transcript of all the entries made in his docket in the cause, certify thereto officially, and send it together with certified copy of the bill of costs and the original papers in the cause to the appropriate justice.[111]

---

[108] Texas Rules of Civil Procedure, Rule No. 528.

[109] _Ibid._, Rule No. 530.

[110] _Ibid._, Rule No. 531.

[111] _Ibid._, Rule No. 532.

The justice shall not permit a case to be filed in his precinct if the facts of such case place it among those specifically listed types which must be filed in some other particular precinct.[112] He shall, conversely, permit the filing in his precinct of a case not meeting the "defendant's residence" rule if such case is among the types exempted from such rule by the special justice court venue statute.[113]

Special Types of Civil Proceedings Before Justices

Attachment proceedings.--The property of a debtor may be seized by legal proceeding before trial to insure its availability when judgment is rendered. One widely used method of seizing property is by attachment, by what is called a writ of attachment.

The justice of the peace is charged with issuing writs of attachment upon the assertion by the plaintiff or his agent, by affidavit, of the existence of certain substantial requisites to the issuance of the writ. One "basic" requirement is the sworn statement by the plaintiff that he fears the defendant will secrete, dispose of or

---

[112] Texas Civil Statutes, Art. 2390.

[113] Ibid. Examples of the types exempted are cases of forcible entry and detainer and suits for damages for torts.

remove his property for the purpose of defrauding his creditors.[114] In addition to the "basic" requirements, the plaintiff must make affidavit that he will probably lose his due unless such attachment is issued.[115]

Sequestration proceedings - the seizing of property before trial for special reasons.--Sequestration proceedings (writs of sequestration) are used in justice courts for two types of suits. Such proceedings are used in suits for the title or possession of any personal property of any description, and in suits to enforce a lien or foreclose a mortgage on such property.[116]

As in the case of the writ of attachment, the justice is charged with issuing the writ of sequestration upon the establishment by the plaintiff or his agent, by affidavit, of certain substantial requisites particular to this form of writ. One such requisite is an oath by the plaintiff that he fears the property in question will be lost, wasted or removed from the limits of the county during the pendency of the suit unless such writ is issued.[117]

---

[114] Texas Civil Statutes, Art. 275.

[115] _Ibid._, Art. 276.

[116] _Ibid._, Art. 6840.

[117] _Ibid._

Distress proceedings--procedure for the quick recovery of rent.--Distress proceedings (distress warrant) are mainly used in justice courts in suits to seize and detain goods of another as security to obtain satisfaction of a claim for rent or advances due on real property. Such goods are commonly found within the rented premises. It is the duty of the justice to issue the distress warrant upon the establishment by the plaintiff, by affidavit, of certain substantial requisites particular to this type of warrant.[118] An "additional" requirement is an affidavit by the plaintiff that such warrant is not sued out for the purpose of vexing and harrassing the defendant.[119]

The constable or sheriff executing the distress warrant must first make demand on the defendant for the specified amount in the warrant. If the defendant cannot pay the specified amount, his dwelling is padlocked with his possessions inside or a "sufficient" amount of his personal property is seized.[120] The executing officer will leave the premises locked until he receives further instructions from the court that issued the warrant.

---

[118] Ibid., Art. 5227.

[119] Texas Rules of Civil Procedure, Rule No. 610.

[120] Ibid, Rule No. 613.

It should be noted in passing that the distress warrant proceeding is used mostly in connection with commercial property. This is because the family provider's home furnishings, utensils, _etc_. are largely exempted by state law.

Forcible entry and detainer proceedings--the proceedings used to recover possession of land or buildings.--The statutory article describing the circumstances in which action in forcible entry and detainer lies gives any justice of the peace of the precinct where the property is situated "jurisdiction of any case arising under this title."[121] Nevertheless the justice court's powers in the proceeding are quite limited. For instance, where the title to real estate is put in issue in such a proceeding, only the district court has jurisdiction to try the case.[122] For this reason unless the relation of landlord and tenant exists between the plaintiff and the defendant and is involved in the suit, the justice court has no jurisdiction.[123] A tenant is defined as "one who occupies the

---

[121]Texas Civil Statutes, Art. 3973.

[122]_Fry v. Ahrens_, 256 S. W. 2d 115 (Gal., 1953).

[123]_Johnson v. Hampton_, 266 S. W. 561 (1924).

lands or premises of another, in subordination to that other's title, and with his assent, expressed or implied."[124]

The justice must see that the proceeding is used only in accordance with the aforementioned and other important limitations. He must not allow a forcible entry and detainer to be filed unless the landlord has given the tenant a minimum of three days' written notice, delivered to the leased premises, to vacate same.[125] Exceptions to this rule exist where the two parties have otherwise contracted orally, upon a written lease, and where the landlord is renting to the defendant for a tenancy of less than weekly periods.[126] The tenant need not be in default with his rental payments to be subject to this action by the landlord.

The justice is charged with issuing citation to the defendant after determining that the plaintiff's complaint contains the essential elements. The citation must be

---

[124] Francis v. Holmes, 118 S. W. 881 (Ft. Worth, 1990).

[125] Texas Civil Statutes, Art. 3975a.

[126] Ibid.

delivered to the defendant at least six days before the return day thereof.[127]

The forcible entry and detainer action is to be tried as an ordinary case.[128] Either party may obtain trial by jury by making demand on the justice. The only issue is to be as to the right to actual possession.[129] If the judgment or verdict is in favor of the plaintiff, the justice will give judgment for the plaintiff for restitution of the premises and costs and award the plaintiff his writ of restitution.[130] If the judgment be for the defendant, all costs are to be assessed against the plaintiff.[131]

Garnishment proceedings--the seizing of bank accounts and other claims before trial.--The justice of the peace is empowered to issue writs of garnishment in the following cases:

1) Where an original attachment has been issued

---

[127] Texas Rules of Civil Procedure, Rule No. 739.

[128] *Ibid.*, Rule No. 743.

[129] *Ibid.*, Rule No. 746.

[130] *Ibid.*, Rule No. 748.

[131] *Ibid.*

2) Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid and that the defendant has not within his knowledge property in his possession within this State, subject to execution, sufficient to satisfy such debt; and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.
3) Where the plaintiff has a valid, subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this State, subject to execution sufficient to satisfy such judgment.[132]

The justice shall issue the writ of garnishment upon the plaintiff's application after first determining that said application contains the requisites for the particular writ.[133]

The garnishee, although a third party, is harnessed with legal responsibilities in this proceeding. Upon being served with the writ of garnishment, the garnishee is forbidden to pay the defendant any debt, to deliver to him any effects or--if a joint stock company--to permit or recognize any sale or transfer of defendant's shares or interest.[134] As the garnishee is indebted to the defendant, the justice is, if the court finds for the plaintiff, to

---

[132]Texas Civil Statutes, Art. 4076.

[133]Texas Rules of Civil Procedure, Rule No. 658.

[134]Texas Civil Statutes, Art. 4084.

render judgment for the plaintiff against the garnishee.[135] If the garnishee fails or refuses to pay, execution is to issue as in other cases.[136]

Driver's license suspension proceedings.--The justice of the peace is one of the officers vested with the duty of holding hearings for licensees whom the Director of the Department of Public Safety believes incapable of safely continuing to operate a motor vehicle.[137] The hearing is held on specific charges set forth by the Department. If the licensee or his attorney so request, the justice is to issue subpoena for the attendance of witnesses and the production of relative books and papers as in ordinary cases.[138] Upon such hearing and in the event of an affirmative finding, the justice shall report the same to the Department, which shall have authority to suspend said license for a period not greater than one year. The "affirmative finding," like most other justice court decisions, may be appealed to the county court, where it is tried de novo.[139]

---

[135]Texas Rules of Civil Procedure, Rule No. 668.

[136]Ibid.

[137]Texas Civil Statutes, Art. 66876, Sec. 22.

[138]Ibid. [139]Ibid.

Small claims jurisdiction and procedure.--The 53rd Texas Legislature (1953), to provide a more inexpensive and expeditious method of settling small claims, created and established in each county of the state courts of inferior jurisdiction known as "Small Claims Courts." The justices of the peace in their several counties and precincts were designated as judges of these courts and charged with exercising the jurisdiction vested in them.[140]

The Small Claims Court is vested with concurrent jurisdiction with the justice of the peace court in the following instances:

> . . . in all actions for the recovery of money only where the amount involved, exclusive of costs, does not exceed the sum of Fifty Dollars ($50), except that when the claim is for wages or salary earned, or for work or labor performed under any contract of employment, the jurisdictional amount, exclusive of costs, shall not exceed one hundred dollars ($100).[141]

The Small Claims Court's jurisdiction is further limited by the following provisions. It is specifically provided that no action can be brought in the court by any assignee of an action or upon any assigned claim, by any person or business engaged either primarily or secondarily in the business of lending money at interest, or by any

---

[140] Ibid., Art. 2460a, Sec. 1.

[141] Ibid., Art. 2460a, Sec. 2.

collection agency or collector. Suits by heirs, however, are specifically excepted from the restrictions on assigned claims.[142]

The Small Claims Court differs from the justice court in some procedural aspects. Unlike the requirement in the justice of the peace court, a written statement of the plaintiff's claim is required to initiate a suit;[143] this written statement must be filed under oath.[144]

The remaining procedural details regulating the operation of the Small Claims Court and its judge are either quite similar or identical to those of the justice of the peace court. All actions shall be brought in the county and precinct in which the defendant resides, except that when the defendant has contracted to perform an obligation in a particular county the action may be brought in such county.[145] Upon the filing of the aforementioned sworn statement and the payment of the filing fee, the justice shall issue process; and the citation shall

---

[142] Ibid.

[143] Ibid., Art. 2460a.

[144] Ibid., Art. 2460a, Sec. 4.

[145] Ibid., Art. 2460a, Sec. 3.

be served as in the justice court.[146] Also--except for the aforementioned sworn statement--no formal pleading shall be required.[147]

The bond requirements affecting the several types of recovery proceedings are similar in most cases. The plaintiff in the attachment, sequestration and distress proceedings must execute a bond for the defendant's protection;[148] the same requirement holds for the type of garnishment proceeding that is preceded by no related legal action.[149] The plaintiff in a forcible entry and detainer proceeding may gain possession of the premises earlier by executing a bond for the defendant's protection.[150] The defendant in the attachment, sequestration, distress and garnishment proceedings may retain possession--until the issue is tried in court--of the property in question by executing a replevy bond for the

---

146 *Ibid.*, Art. 2460a, Sec. 5.

147 *Ibid.*, Art. 2460a, Sec. 7.

148 *Ibid.*, Art. 279. Texas Rules of Civil Procedure, Rule No. 698. *Ibid.*, Rule No. 611.

149 *Ibid.*, Rule No. 658a.

150 *Ibid.*, Rule No. 740.

plaintiff's protection.[151] The executing of a bond by the defendant in a forcible entry and detainer proceeding nullifies the effect of the plaintiff having executed a bond earlier.[152]

Conclusion

The justice of the peace court has played a significant role in Texas local government since 1836. The Texas justice today retains a wide variety of powers and duties. In addition to general criminal and civil powers and duties he is charged with conducting special types of criminal and civil proceedings. This wide variety of powers and duties illustrates the necessity for the Texas justice of the peace to be knowledgeable, adaptable, and flexible.

---

[151] *Ibid.*, Rule No. 599, Rule No. 701, Rule No. 614, Rule No. 644.

[152] *Ibid.*, Rule No. 740.

CHAPTER IV

THE CASE AGAINST THE JUSTICE OF THE PEACE COURT SYSTEM

For the greater part of the Twentieth Century the justice of the peace court system has been a subject evoking zealous criticism from law professors, political science professors, judges, attorneys and probably the majority of American citizens. Of the branches of the judicial systems of the several states, it is the part held to be, by all odds, most in need of radical reform, if not replacement.[1] It is commonly characterized as a "horse and buggy" court which in modern times has developed into as poor a court as the ingenuity of man could possibly devise. Several studies made in various American states claim that certain marked characteristics are common to most Twentieth Century state justice court systems. These alleged characteristics --the subject of this chapter--are held to make the system a gross impediment to the achievement of justice in minor

---

[1]Warwick R. Furr, II, "The Justice of the Peace in Virginia: A Neglected Aspect of the Judiciary," Virginia Law Review, LII (January, 1966), 152-153.

civil and criminal cases. The justice courts are described as being administratively incompetent and inefficient. Further, they are said to be of the public respect for the judicial branch, as the only contact of the majority of citizens with the state judicial machinery is in these courts.[2]

The Unfitness of the System for Mid-Twentieth Century Society: Its Inadequacies, Abuses and Defects

The critics of the justice court system greatly lament the fact that these "worn out cogs" in the wheel of justice are the medium through which our courts have their greatest public influence and by which they are judged.[3]

These courts undoubtedly did an adequate job in the earlier period of American history when transportation and communication were slow and difficult and a court was needed in every village. There were few legal precepts and enactments and little legislation either to guide or hamper

---

[2] _The Christian Science Monitor_, April 26, 1967, Sec. 2, p. 1.

[3] John A. Romayne, "Law School Training For Non-Lawyer Judges," _Journal of Legal Education_, XVII (1965), 199. Charles F. McCormick, "Modernizing the Courts of Texas," _Public Affairs Comment_ (Austin, The University of Texas Institute of Public Affairs, 1957), p. 4

justice. There was also an acute shortage of attorneys. Hence a layman was probably as capable as anyone to administer justice according to his own judgment and common sense.[4]

In the present period we have paved roads, automobiles, and forms of instant communication. These obtain, with few exceptions, even in the most remote of rural communities. Thus the conditions which forced the creation and spread of the justice of the peace system in the United States have long ceased to exist.[5] The present period is a complex commercial and industrial age which has developed a highly technical and specialized body of legal precepts and enactments peculiar to a period of maturity of law.[6] The justices of the peace are often called upon to make applications of these laws. It follows that the justice of the peace of today should be qualified by the training and character necessary to exercise such jurisdiction fairly

---

[4]Smith, _op. cit._, p. 118.

[5]Vanlandingham, _op. cit._, p. 390.

[6]Smith, _op. cit._, p. 119, citing Roscoe Pound, _Outline of Lectures on Jurisprudence_ (Cambridge, 1925), pp. 40-43.

and properly,[7] for in no small degree the liberty, security, and property of citizens rest with this officer.

The studies and observations made by competent legal and political science writers, evaluating the system through the same or similar criteria, strongly assert that there is little justification for the system's existence in our present-day society.

Educational and Judicial Status of the Office of Justice of the Peace

One principal criticism of the justice of the peace is his lack of legal education. Under most state laws no special qualifications are needed for the office. Only one state, Louisiana, requires that he be able to read and write.[8]

A nation-wide study made in 1949 found that only six per cent of the justices in the U.S. were attorneys.[9] Most attorney justices are found in urban areas. Not only are the incomes of judges generally greater in the urban than

---

[7]Ronald C. LaFace and Schultz, Thomas G., "The Justice of the Peace Court in Florida," University of Florida Law Review, XVIII (Summer, 1965), 118.

[8]Louisiana State Constitution, Article 7, Sec. 47.

[9]Jack Harrison Pollack, "Cow Pasture Justice," Michigan State Bar Journal, XXVIII (March, 1949), 13.

in the rural justice courts, but the position has value as a "feeder" to build the attorneys' law practice.[10] The incumbent is usually a recent law school graduate seeking experience or an older member of the bar who for one reason or another is not active in practice.

On the other hand the majority of lay justices are said to be not only lacking in legal training but are also lacking in basic education. Studies show that in a great many cases lay justices do not even hold a high school diploma. Some are even illiterate. They are nearly equally deficient in judicial experience.[11]

In most cases a justice's qualifications are political rather than educational.[12] Through politics, incapable laymen not infrequently exclude capable attorneys who desire employment in their professional field. In the spirit of Jacksonian democracy, the ability to get elected

---

[10] Paul F. Douglas, The Justice of the Peace Courts of Hamilton County, Ohio (Baltimore, 1932), p. 29.

[11] Time, "Philadelphia's Magisterial Mess," LXXXVI, (October 11, 1965), 59. George Lawson Partain, "The Justice of the Peace: Constitutional Questions." West Virginia Law Review, LXIX (April, 1967), 314.

[12] Joe Alex Morris, "The J. P.: Should He Be Abolished?", The Saturday Evening Post, CCXXXI (October 11, 1958), 100.

is sufficient qualification. Three instances of experienced attorneys losing elections to poorly educated lay justices have been witnessed by this writer in Dallas County.[13]

One may insist with reason that a man's ability is not to be judged solely by the years spent in school. Educational qualifications do, however, have a direct bearing upon the quality of the personnel of a group.[14] In no branch of human activity under present day conditions are high educational requirements more necessary than among those who administer the law.[15]

The typical lay justice, however aware of the fact that he may be called upon to apply a multitude of laws, does not feel incompetent to handle the juristic phases of the office merely because of a scanty legal education. He seldom exerts any notable effort to overcome his "legal illiteracy." The exercise of self-restraint because of it characterizes a small minority. Douglas found only one

---

[13]Hershell Martin, Attorney, defeated by Judge Felix F. Fox, layman, Democratic Primary, 1962. Fred Brown, Attorney, defeated by Theran Ward, layman, Democratic Primary, 1962. Hubert Wills, Attorney, defeated by Judge E. C. King, layman, Democratic Primary, 1966.

[14]Douglas, _op. cit._, p. 28.

[15]_Ibid._

justice in his five-year study of the institution in Ohio who felt incapable of administering the office because of his ignorance of the principles of law.[16] The typical attitude is well expressed by a retired farmer and practicing justice: "'Blackstone says that all law is based on reason and common sense. That being the case we need mature men in office.'"[17] A more extreme lay justice attitude is seen in the statement of a retired railroad man serving as justice: "'The decision of cases is very simple. There is no question of law involved. Either the defendant owes the money or he don't.'"[18]

Justices of the peace throughout the nation evidence some interesting characteristics as to personnel. They are usually men of mature age. The typical justice, excepting many of those living in urban areas, does not make his living solely from "justice of the peacing." Most justices serve part-time in one or more occupations; among the more common are those of storekeeper, farmer,

---

[16]Ibid., p. 45.

[17]Douglas, p. 45, quoting an unnamed Ohio Justice of the Peace.

[18]Ibid.

butcher, barber, carpenter and real estate agent.[19] The distribution amond the vocations indicates that the office tends to be held by what may be termed the semi-skilled and lower sections of the white-collar occupations of society. The main motivation is undoubtedly the desire for extra income. A few seek the position for the honor of the title of "judge."[20]

There is generally little incentive for the highly capable individual to seek the office.[21] The popular image of the "typical j.p.," the uncertain fee system, and the often low incomes--a factor significantly related to the excessive number of positions in many areas--combine to create this lack of incentive.

The reasons accounting for the general failure of the position to attract well qualified individuals in large measure explain the following observations made by several writers. A typical practice in some areas is for a person's name to be "written in" at the election, the office not having attracted a candidate. Even then such

---

[19]Irwin Ross, "Let's Get Rid of Horse and Buggy Justice," Coronet, XLI (February, 1957), 144.

[20]Douglas, *op. cit.*, p. 29.

[21]Vanlandingham, *op. cit.*, p. 391.

candidates often consider the office so unbecoming or unworthwhile that they do not bother to qualify. Of those who do qualify, a considerable portion do not bother to execute the duties of office.[22] Thus the regard in which the public generally holds the office and its failure to accord it serious and responsible consideration permits the "less fit" and unsavory characters not infrequently to secure election.[23]

The critics recognize the existence of conscientious and dedicated lay justices who, though deficient in legal education and experience, offset the mischief of the lesser types. These are accorded only a nominal recognition, however.

The Local Nature of the Justice of the Peace Court

The reasoning behind the use of numerous local justice courts in early America.--While the "local" nature of the early justice courts was briefly touched upon in Chapter II, a discussion of the subject is in order at this point. As

---

[22] H. K. Allen, "Administration of Minor Justice in Selected Illinois Counties," *Illinois Law Review*, XXXI (April, 1937), 1035.

[23] Joe Alex Morris, *op. cit.*, p. 100.

noted, the justice courts were necessarily "local" in the "backwoods" era; their local character, however, was retained and lauded as a virtue as the post-frontier stage of various areas developed. It was thought that, as a resident of the relatively small county precinct, the justice would be familiar with the people and their needs. The fact that he was popularly elected within the precinct would further insure against "detached" decisions and administration. For a people who were distrustful of appointed judicial officers serving large jurisdictions, the "local" justice was ideal. Such local courts were held to be convenient for those who had minor judicial business and best to serve the demand for readily available justice.[24]

The demand for economy, local responsibility, strict enforcement, and readily available justice affected the character of the justice courts in other important ways. Most states established excessively large numbers of justice courts; some had several thousand justices. For example, a 1955 study showed that the Kentucky constitution

---

[24] Gail M. Morris, Justice of the Peace Courts in Indiana (Bloomington, 1942), p. 16.

required a minimum of 3320 justices for that state,[25] no doubt a carryover from the earlier days. Similarly Pennsylvania had approximately 5,500 justices in 1949.[26] The early state constitutional conventions and legislatures believed that numerous justice courts would accomplish several significant results. Strict and sufficient enforcement would be readily achieved; not only would there be adequate numbers of courts, but the resulting competition for fees would increase the vigilance of the justices and their constables. The justices would be readily available when an urgent need arose. Also, a greater number of citizens could enjoy the "peerage" of public service, a matter of no little importance in the Jacksonian period.[27]

Defects of the "localized" justice court.--The "local" nature of the justice court system, lauded by both the lawmakers who originally installed it in the several states and the defenders of the system today, allegedly contains many inherent defects, all of which are adverse to a

---

[25]Vanlandingham, op. cit., p. 389.

[26]Pollack, op. cit., p. 13.

[27]Interview with Maurice Harrell, former Assistant District Attorney, Dallas County, Texas, August 31, 1966. Mr. Harrell served as the district-attorney's representative in the justice courts of Dallas County.

judicious disposition of litigation. The justice of the peace is generally elected from relatively small subdivisions of the county, most commonly known as precincts. Thus he is not beyond local attacks and the influence of petty politics. His integrity as a judicial officer is seriously affected by the desire to continue in office, which depends on his ability to win votes.[28] Thus he is frequently not an impartial arbiter when a party litigant who is his friend or is able to control a significant number of votes appears before him. Oftentimes a litigant is represented in justice court by an attorney who is a powerful party politician. The result, again, is frequently a tragic miscarriage of justice.[29]

The "accessibility" and "local familiarity" argument of justice court proponents, past and present, is rejected by critics. In the present day, accessibility is not a matter of distance but of ease and convenience. It may well be easier to go ten miles over good roads than one or two miles over bad ones.[30] Despite the large number and

---

[28]Smith, _op. cit._, pp. 121-122.

[29]_Ibid._

[30]Edson R. Sunderland, "A Study of the Justices of the Peace and other Minor Courts--Requisites for an Adequate State-Wide Minor Court System," _Fifteenth Annual Report of Judicial Council of Michigan_ (Lansing, Michigan, 1945), p. 73.

alleged availability of justices, litigants often experience the utmost difficulty in locating the "local court" and its judicial officer, the court being located almost anywhere and the judge being away and busy at almost any occupation. These irregular and excessively informal local courts inconvenience attorneys; this results in more expense for litigants employing counsel. Thus it is often impractical to take misdemeanor cases before the nearest justice.[31] The fact that cases need not be heard in the precinct of their origin weakens the "accessibility" aspect--and the "local familiarity" aspect as well--of the proponents' argument. The "local familiarity" aspect is likewise invalid. In the capacity of advisor or counselor, the justice might be more useful if well-informed regarding local people and local events; but as an officer for the administration of justice, he is probably harmed rather than benefited by such knowledge.[32] Enlightening on this point is a portion of an opinion rendered by a Michigan appellate court judge nearly a century ago:

---

[31] Ibid.

[32] Ibid., p. 74.

> By both the civil law and the English law, no judge was allowed to sit in his own home or county at all, to try civil or criminal cases. It is only during the present century that this restriction has been removed--so jealous was the law of any disturbing local influences which might warp justice.[33]

It is the quality of the judicial product, rather than speed, convenience and "local familiarity," that is of cardinal importance.[34]

The Fee System

A description of the fee system and its development in early America.--Justices of the peace and constables receive no salary in many states. Instead they are compensated by fees assessed as part of the "costs" in the cases brought before the court. In civil suits the court costs--including the justices' fees--ordinarily as in other courts become a charge on the losing party; in criminal suits they are ordinarily assessed against the defendant in event of conviction.

In a few states today--and in many more before fee compensation came under such severe criticism--the justice

---

[33] Royce v. Goodwin, 22 Michigan 496, 499 (1871).

[34] Sunderland, op. cit., p. 74, 85.

receives no compensation in criminal actions if the defendant is acquitted. However, the majority of states provide for the costs to be paid by the county in the event of acquital.[35] Most justices, however, give every indication of a strong preference to collect from the defendant.[36]

The fee system at the time of its installation in the colonial period and up until the early Twentieth Century was generally held to have virtues which exceeded its alleged defects. Most state governments and the general public as well highly valued economy in the administration of minor justice. In addition "petty causes" of "poor litigants," involving insignificant penalties and small sums, were accorded a secondary status; it was believed in the Nineteenth Century and earlier that such cases did not merit the same standard of justice as did the lawsuit involving thousands of dollars.[37] Then as now the state governments desired sufficiently strict enforcement of the laws. It was

---

[35] Interview with Judge Johnston, July 18, 1966.

[36] Furr, _op. cit._, pp. 158-159. Interview with Maurice Harrell.

[37] Vanlandingham, _op. cit._, p. 119.

thought that the "fee system" would stimulate the justice and constable to effectiveness in their work considerably more than would a salary. Thus the legislatures based the remuneration of justices of the peace upon the principle of a sliding "fee" scale: "the more business, the more pay."[38]

Legal questions regarding the fee system.--The fee system of compensation, a characteristic and inherent part of the justice court system, renders the justice of the peace incapable of dispensing "impartial justice."[39] This is held to be the case without regard to legal education. It is simply too much to expect a judge whose income depends on the disposition of a case to be impartial, even though he may well make a conscious effort to be so.

Long before the fee system came into disrepute in America--even before this country was colonized--it was castigated by one of England's outstanding jurists. The distinguished English jurist, Lord Coke, had the question before his court in 1610 in regard to the decision of an administrative body. In this case, commonly called "Bonham's Case," a doctor had been forbidden to practice

---

[38]Douglas, op. cit., p. 34.

[39]Vanlandingham, op. cit., p. 392.

medicine by the Royal College of Physicians. Upon failing to comply with the order the doctor was fined and imprisoned. The doctor brought suit against the members of the Royal College contending that since they had the power to levy fines and punishment and to retain one-half of the fines levied, he had been judged by a pecuniarily interested tribunal and as a result had been denied a fair trial. In accepting the aggrieved party's position, Lord Coke stated that it was a long-established maxim of the common law that no man could be a judge and a party to the same case. He further stated that where the presiding tribunal had an interest in the outcome of the litigation, it was in effect a party to the action.[40]

In spite of this principle of the English common law it has been the practice in the several American states to allow justices of the peace, mayors and other lesser officials to hold court when their compensation was made to depend in part or wholly upon convictions, and they thus

---

[40]Editorial Comment, "Constitutional Law - Due Process - Pecuniary Interest of Tribunal," Iowa Law Review, XLVII (1961-1962), 1096, quoting from Bonham's Case, 8 Coke 114a (C.P. 1610).

apparently had a pecuniary interest in the case.[41] In 1927, however, the United States Supreme Court rendered a decision which seemed when it was decided to sound the knell of the fee-paid justice.[42]

The question was raised as to whether such tribunals fell within the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution. In 1927 the United States Supreme Court gave an answer to this question in the case of Tumey v. State of Ohio.[43] In this case the defendant was arrested and charged with violation of state probation laws. He was then brought to trial before the mayor of a small community. The proceeds from the fines were equally divided between the state and local treasuries; the mayor received a certain portion of the amount marked for the local treasury. Chief Justice Taft, speaking for the Court, concluded that the fee method of compensating judicial officers had not become "so imbedded by custom in the general practice either at common

---

[41]Hugh E. Willis, "Are Justice of the Peace Courts Impartial Tribunals?," Indiana Law Journal, III (May, 1928), 654.

[42]Furr, op. cit., p. 159.

[43]Tumey v. Ohio, 273 U.S. 510 (1927).

law or in this country that it can be regarded as due process of law. . . ."[44] The Court relied on two factors in holding that Tumey had been denied due process: (1) the personal pecuniary interest of the mayor and (2) his official pecuniary interest as head of the local government.[45]

A broad interpretation of this landmark decision would indicate that the fee justice system is void in its entirety for want of due process. However, the Tumey decision was limited by the same court one year later upon a similar set of facts when it upheld the conviction in *Dugan v. Ohio*.[46] The Court, again speaking through Chief Justice Taft, distinguished the Tumey case on the ground that the mayor in "Dugan" was paid a fixed amount from a "general" fund, and although the fines were paid into this fund, the mayor's pecuniary interest was not so direct as to conflict with due process.[47] The contention that the justice as mayor of the city had an interest in the

---

[44] *Ibid.*, p. 531.

[45] *Ibid.*, p. 535.

[46] *Dugan v. Ohio*, 277 U.S. 61 (1928).

[47] *Ibid.*, p. 64.

financial well-being of the community was rejected on the ground that his interest was too "remote" because he was not the single head of the municipal government but only one of the five commissioners in the commission form of government.[48] Thus the two grounds constituting the basis of the Tumey decision were eluded by showing that the justice was only indirectly interested in the disposition of the case. This in effect amounted to a declaration that the fee-justice system meets the requirements of due process so long as some procedural devise or safeguard, such as a general fund, is present which makes the particular system under attack distinguishable from the one involved in the Tumey case.

This in fact was the position adopted by the majority of the state courts which were confronted with the question in a wave of cases immediately following the Tumey and Dugan decisions. In addition to the distinctions made in the Dugan decision, the state courts seized upon certain language from the Tumey decision as authority that the Supreme Court did not hold all fee systems to be unconstitutional. The state courts were most influenced by the

---

[48] Ibid., p. 65.

fact that Chief Justice Taft stated a specific exception to his holding. While stating that the fee system was not so imbedded in our legal practice as to be regarded as due process of law, he went on to say that there would not be a violation of due process where "the costs usually imposed are so small that they may be properly ignored as within the maxim *de minimis non curat lex*."[49] The state courts construed this to be a clear statement that the fee system in general was not violative of due process, but only those systems which were similar to the one struck down in the Tumey decision.[50]

A more recent landmark decision dealing with the question split the Supreme Court of Washington, five to four. In this case, which was styled *Application of Borchert*,[51] the defendant contended that he would be deprived of Fourteenth Amendment due process because the justice of the peace before whom he was appearing had a pecuniary interest in the outcome of the litigation as she

---

[49] *Tumey v. Ohio*, 531.

[50] Editorial Comment, *Iowa Law Review*, p. 1097 Fn.

[51] *Application of Borchert*, 359 P. 2d 789 (Wash., 1961).

received her compensation from the fees collected upon conviction. Before ruling on the objection, the fee justice informed the defendant of his statutory right to a change of venue to a court of a salaried justice. When he refused to avail himself of this right his objection was overruled and he was tried and convicted as charged. The bare majority of the State Supreme Court held that the requirements of due process were satisfied as the defendant was afforded the right to a change of venue.[52]

The instant case is representative of the four-decade regression in the concept of due process. In determining the constitutionality of a system of which the fee justice is a part, courts should consider only whether it affords the "possibility" of an unfair trial. This was aptly expressed by Chief Justice Taft in the Tumey decision:

> Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proff required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter of due process of law.[53]

Fortunately many courts now realize that due process is not satisfied by devices calculated to make the judge's interest

---

[52]Ibid.

[53]Tumey v. Ohio, 510, 532.

remote or by affording the defendant other "procedural safeguards" to cure the pecuniary interest which might be present.[54]

The fee system in operation.--The primary evil resulting from the fee system is the pressure it exerts on the individual justice to get more business to enlarge his income. It often takes the form of encouraging litigation of controversies which otherwise might never get into court at all.[55] The result is especially pernicious where a multiplicity of justice courts compete for business under the fee system. The strong economic motivation, regardless of the amount of competition, usually results in the administration of the court according to the principles of private, competitive enterprise.[56] The result provides most of the basis for the extensively reiterated charge that "j.p." stands for "judgment for the plaintiff."

Before examining the statistics supporting the prejudiced judgment charge, it would be enlightening to

---

[54]Editorial Comment, Iowa Law Review, p. 1103.

[55]Sunderland, op. cit., pp. 106-107.

[56]Gail M. Morris, op. cit., p. 18.

look at a setting in which many such judgments take place. Probably the most publicized justice of the peace abuse is that of the "speed trap." The automobile user is responsible for much of the criminal business which comes to justice courts. In one study, offenses especially related to motor vehicle laws were found to constitute 42 per cent of the criminal offenses analyzed.[57] With the cooperation of an enterprising constable, the volume of business which a justice may build up in automobile cases is often limited only by what the motoring public will endure. Unreasonable speed limits and hidden stop signs render the average motorist quite vulnerable. As the "speed trap" practice generally preys on out-of-state or distantly domiciled motorists, the justice is usually relatively safe from political repercussions.[58]

As indicated, the percentage of convictions in criminal cases in justice courts is extremely high. In a study conducted by Warren of 35,800 cases between 1931 and 1936, he found that 97.5 per cent of the litigants were convicted.[59] While this high percentage of convictions

---

[57]Douglas, op. cit., p. 103.

[58]Interview with Maurice Harrell.

[59]George Warren, Traffic Courts (Boston, 1942), p. 218.

can be partially explained away by showing the cost and "trouble" involved in proving one's innocence, it undoubtedly partially results from the fact that a defendant in a traffic case is frequently a non-resident and a stranger while the arresting officer is seeking a potential source of business; the choice of non-resident victims is usually not fraught with dangerous political repercussions. Another factor may well be a belief on the part of the justice that his fees would be more easily recovered from the defendant upon conviction than from the county upon acquittal.[60]

In automobile cases, and other cases as well, involving law enforcement officers such as the constable, highway patrolmen or deputy sheriffs, the situation is usually one where the officers are seeking convictions and the justice his fees. Few cases would be brought to a particular justice's court if his dispositions had previously failed to satisfy the arresting force.[61] Thus an attitude sympathetic toward the police, rather than one insisting upon protecting the rights of the defendant,

---

[60]Joe Alex Morris, op. cit., p. 102.

[61]Interview with Maurice Harrell.

is likely to result in more business whether or not the particular justice is the most readily accessible.

At this point a few findings should be noted concerning the constable, the executive officer of the justice court, because the problems of this office tend to compound those of the justice of the peace. Like the justice of the peace, he is the subject of vehement criticism. Constables, in fact, suffer from many of the same disqualifications as justices of the peace. They are usually part-time officers who are compensated by fees instead of by salary. Typically they do so little business that they acquire only the smallest amount of knowledge or skill; and, as the result of the usually small and irregular income from official activities, men of ability are rarely attracted to the position.[62] In the opinion of one writer, it would be difficult to find an elected American officer who has less positive connection with organized government than the constable.[63]

Further questionable motivations and opportunities are found, as a result of the fee system, in the justices'

---

[62]Sunderland, op. cit., p. 112.

[63]Douglas, op. cit., p. 70.

handling of cases initiated by business concerns. Competition for fees not infrequently results in tacit arrangements between certain justices and businesses which utilize the courts extensively.[64] These include collection agencies, finance companies, department stores, and even law firms having large collection departments.[65] Needless to say, the "accounts" of some of the larger credit dealers are plums worth striving after.

There are several other pernicious practices engendered by the fee system. The most striking practice is that of making arrests based on false charges;[66] this is commonly the work of the justice's constable, as sheriff's deputies and other officers ordinarily have no economic motivation. Inflated court costs (including fees) and fines are frequently imposed on non-resident motorists. Another practice is settling with such litigants for whatever they have, often in flagrant disregard of court costs, fines, and the nature of the crime.[67]

---

[64]Partain, *op. cit.*, p. 319.

[65]Sunderland, *op. cit.*, p. 107.

[66]*Ibid.*, p. 106.

[67]Gail M. Morris, *op. cit.*, p. 18.

The "judgment for the plaintiff" contention is supported by most impressive statistics. A study of the justice courts in six Michigan counties revealed that of 933 civil cases disposed of, 926 or 99.2 per cent, were decided in favor of the plaintiff.[68] A Tennessee study of 25,088 civil cases showed that judgments for the plaintiff constituted 98.3 per cent of the total.[69] Although the very nature of civil cases would lead one to expect that a large proportion of them would be in the plaintiff's favor in any court, the percentages revealed by the studies are clearly excessive.

The justice-constable partnership organized for collection purposes has been a recurring source of criticism. The partnership frequently receives a commission or a percentage of collections in lieu of or together with additional fees. The business concerns are not only benefited by the increased motivation and interest of the justice and constable but also by frequent employment of "extra-legal" processes to obtain the desired end. For

---

[68] Sunderland, *op. cit.*, p. 107.

[69] T. L. Howard, "The Justice of the Peace System in Tennessee," *Tennessee Law Review*, XIII (December, 1934), 25.

example, Douglas, in his Ohio study, found justices who also held positions as collectors.[70]

A statistical comparison between the courts of fee-compensated justices and those of salaried justices as to the percentage of judgments for the plaintiff also supports the "excessive percentage" charge of the fee system's critics. A study in Indiana, where several of the more populous counties have salaried justices in urban areas, reveals some especially noteworthy figures. In a survey of civil cases disposed of in that state, it was found that in those counties which had some salaried justices, only 53.6 per cent of all such cases resulted in judgment for the plaintiff, whereas in counties which had all justices on a fee basis judgment was given for the plaintiff in more than 79 per cent of the cases.[71] A Michigan study, attempting to prove the same point, makes a good case by comparing the percentage of such judgments in fee justice courts with the percentage in some of the superior courts of the state. While the fee-justice court rate of

---

[70]Douglas, op. cit., pp. 38-39.

[71]Gail M. Morris, op. cit., p. 25.

judgments for the plaintiff was about 99 per cent, the comparative rate in the superior courts considered was only 65 per cent.[72]

Other Questionable Financial Inducements

Other financial inducements also frequently lead justices to step beyond the standards of responsibility expected of a judge. Perhaps the best known abuse of this type is the indiscriminate performance of the marriage ceremony, often between intoxicated adults and between minors who do not have parental approval.[73] Their acknowledging of legal papers, in the capacity of notary public (most are *ex-officio* notaries public), is sometimes carelessly undertaken. As previously noted, justices also sometimes work for collectors on a commission basis, a form of illegal compensation.

Informality of Judicial Administration and Decorum

The justice of the peace court system is charged with other serious defects in regard to the administration of a judicial body. Justices frequently conduct their courts

---

[72] Sunderland, *op. cit.*, p. 107.

[73] Palmer, *op. cit.*, p. 380.

in anything but a professional manner. Although statutes generally provide the normal legal procedure for justice courts, custom and expediency tend to result in a process unknown to the law.[74] This process is characterized by informal methods and "judicial reasoning" based upon common sense and is not uncommonly in disregard of law. As would be expected, the resulting decisions not infrequently constitute a miscarriage of justice.[75] This "process" also results in costs being waived or reduced for favored litigants while being advanced for others. Such arbitrary variations and discriminations in costs and penalties are widely known and deeply resented.[76]

An inherent aspect of the characteristically informal methods is the lack of judicial decorum. The conduct of many justices results in litigants' seeing them as something of a "comic philosopher." Their lack of judicial consciousness has resulted in their holding court behind a plow in Illinois, while in the process of milking a cow in

---

[74] Douglas, *op. cit.*, p. 44.

[75] *Ibid.*, pp. 45-46. Several examples of this informal reasoning, as observed by the writer in the justice courts of Dallas County, are reported in Chapter VI.

[76] Sunderland, *op. cit.*, p. 117.

Tennessee,[77] and in numerous instances along the side of a busy road. They have simultaneously acted as both an executive and a judicial officer by arresting an offender and proceeding to try him.[78]

A similar factor contributing to the lack of judicial decorum within many of the justice of the peace court rooms is inadequacy of facilities. An Illinois study, for example, revealed that only a very few justices handled enough cases to justify special court quarters.[79] Most justices who do possess such quarters are found in urban areas. Thus in the majority of cases the court quarters are unbecoming to the dignity of the function. They are located, for example, in barns, "decadent" structures and general stores. The inappropriate location in which they are usually found, however, is the home of the justice.[80] Further, the furnishings and equipment generally match the premises.

---

[77]Pollack, _op. cit._, p. 13.

[78]Douglas, _op. cit._, p. 33.

[79]Allen, _op. cit._, p. 1049.

[80]Pollack, _op. cit._, p. 13.

As one might well suppose in light of the other administrative characteristics, the records of justice courts are frequently defective and incomplete in form and substance;[81] excessively brief entries which have little uniformity and are often out of sequence are characteristic.[82] Such records make it difficult or impossible to find out what was done in many cases. The characteristic lay justice, chiefly concerned with his other business or occupation, has neither the knowledge, skill, experience, or facilities to keep adequate records.[83]

Problems of Inadequate Coordination of the System

Another major defect characteristic of most justice court systems is the lack of administrative control and coordination. This defect undoubtedly enhances most of the other aforementioned deficiencies. It is a carry-over from the formative years when justice courts were created and allowed to operate in a haphazard fashion without the checks which control ordinary courts.[84] The result today

---

[81]Sunderland, *op. cit.*, pp. 109-110.

[82]Douglas, *op. cit.*, pp. 60-66.

[83]Sunderland, *op. cit.*, pp. 109-110.

[84]Mildred J. Giese, "Why Illinois Proposes to Abolish Justice of the Peace Courts," *Illinois State Bar Journal*, L (March, 1962), 677-679.

is that justice courts tend to be isolated tribunals varying widely in their characteristics and practices;[85] the justice of such a tribunal tends to be a law unto himself.[86] The lack of administrative coordination manifests itself in other important ways. Instead of cases being filed with a central office and assigned impartially to the various justice courts, the plaintiffs or their attorneys are usually allowed to pick their court--or, more accurately, their justice. As previously noted, justices quite frequently engage in the practice of offering inducements to attract clients, both for reasons of fee-compensation and of politics. The result, which prevails in most areas of the United States, is obvious: while one justice may be busy, a fellow justice may have little work to do.[87] Extremes are quite common. In Illinois, for example, fewer than 10 per cent of the justices were handling approximately 80 per cent of the business.[88] Of course the

---

[85]Douglas, _op. cit._, p. 76.

[86]_Ibid._

[87]Giese, _op. cit._, p. 680.

[88]Allen, _op. cit._, p. 1048.

factors of convenience and the characteristically excessive number of justice courts, together with practices resulting from inducements of fee enrichment and political considerations, significantly contribute to the lack of administrative control and coordination.

Insufficiency of the Built-In Remedy for Abuses

The special remedy of trial *de novo* appeal, evidently offered by the state legislatures to set straight injustices suffered in the sub-standard justice courts which they allow to continue, fails for the most part to achieve the purpose for which it was designed. Many appeals are not taken because the sums involved do not justify the cost. Furthermore the vast majority of litigants and accused have neither the knowledgenor funds to prosecute an appeal.[89] Difficulty and delay combine with expense to result in the small number taken. One writer, considering only the cases that could be appealed, found that only three per cent of such justice court judgments were appealed.[90] The system's low percentage of cases

---

[89] LaFace and Shultz, *op. cit.*, p. 119.

[90] Douglas, *op. cit.*, pp. 95-97.

appealed certainly does not mean that litigants are satisfied with all the other decisions.[91]

Constitutional Amendment Proposal to Abolish The Texas Justice Court System

In Texas as in other areas of the United States dissatisfaction with the justice court system on the part of attorneys and judges has increased with the passage of time. In 1962 this dissatisfaction among Texas attorneys culminated in the State Association's electing to prepare and give its support to a proposed constitutional amendment providing several optional means to secure the abolition of the justice court system in Texas. The proposed amendment was of the long detailed statutory type.[92]

The proposal was drawn by and contained the recommendations of the State Bar Committee on Improving Justice Court Justice. This committee was chaired by a Houston attorney, Nowlin Randolph. Mr. Randolph has led the fight for abolition of the justice court system in Texas since 1960.[93]

---

[91] Allen, op. cit., p. 1051.

[92] Nowlin Randolph and B. R. Sleeper, "Local Option Abolition of Justice Courts," Texas Bar Journal, XXV (January, 1962), 14-16, 62-68.

[93] Ibid.

Mr. Randolph and other proponents of the amendment attempted to bring the proposal before the Fifty-eighth Legislature (1963) and expended much effort to gain support for it among the members of the Legislature. Despite all their efforts, however, the proposed amendment was not reported by the committee to which it was assigned in the 1963 legislature.[94] Further, it was not even given a committee hearing in the Fifty-ninth Legislature (1965) nor in the Sixtieth Legislature (1967). According to Mr. Randolph, the fate of the proposed amendment was mainly the result of the lobbying efforts of the Texas Justices of the Peace and Constables Association, The failure of members of the State Bar to work as hard as they might have in support of their proposal was important. Public apathy was another significant factor.[95]

The essential provisions of the proposed amendment reflect the criticisms of the proponents of abolition. Thus the judge of the replacement court, the circuit court, would have to be a licensed attorney. The circuit court

---

[94]Telephone interview with Mr. Nowlin Randolph, Attorney at Law, Houston, Texas, November 20, 1967.

[95]*Ibid.*

would have county-wide jurisdiction. A plural number of circuit courts within a county would not be required.[96] This would eliminate the requirement of the Texas Constitution that there be a minimum of four justice courts in each county, a number which critics hold to be excessive at least in the great majority of the counties of the State. The amendment would further require that all judges of the circuit courts be compensated by salary; it sets the initial salary of the circuit court judges at two-thirds of the pay of the district judge in the county.[97]

Summation

The criticisms generally leveled against the justice of the peace court system in America are many. These criticisms include condemnation for the lack of legal education for judges, the ineffectiveness in modern times of the "localized" nature of the justice court system, the defects of the "fee" system of compensation, poor

---

[96]Randolph and Sleeper, _op_. _cit_., p. 66.

[97]Proposed Constitutional Amendment Providing for the Abolition of the Texas Justice Court System and Its Replacement by a System Described in the Amendment, Mimeographed pamphlet. See Appendix "A" for a reproduction of proposed Amendment.

judicial administration and lack of judicial decorum, the weaknesses resulting from a lack of coordination of state justice court systems, and the insufficiency of the built-in remedy for abuses suffered. Efforts of the Texas State Bar Association to obtain the adoption of a constitutional amendment which would abolish the justice court system in Texas have been unsuccessful. Calling for the replacement of the present justice court, the proposal has met with vehement opposition from the organized justices. Discouraged proponents of the amendment have become inactive, but criticism of the system continues.

CHAPTER V

THE CASE FOR THE LAY JUSTICE OF THE PEACE: A COMPILATION OF ARGUMENTS PRESENTED IN ANSWER TO THE ATTACKS OF CRITICS

Introduction

The lay justices of Dallas County--like those of the entire state and nation--have long been conscious of and sensitive to the criticisms hurled against them by attorneys and others. In answer to these criticisms they have evolved a series of arguments which present a strikingly different picture of lay justices and their administration of the office. In recent years, in the wake of the State Bar Association's concentrated effort to abolish the justice court system in Texas, the lay justice arguments have been vigorously expounded by the lay justices of Dallas County and the entire state.

Lay Justice Arguments With Writer's
Observations and Comments

The Only "People-Centered" Court Remaining

The principal argument propounded by the Dallas County lay justices in defense of their continued existence holds that the justice court is "a people's court," the only one remaining in the state. The public is accorded direct access to the justice courts without the intermediary of counsel;[1] this is to say that the administration and "atmosphere" of the justice court--as compared with that in the other Texas Constitutional courts--makes it far more practical for a litigant to plead his own cause. On the other hand litigants, especially the needy, can often obtain free "legal advice" from the justice--legal remedies available for their particular problem and advice as to the best way to proceed with the solution of the problem--without the burdensome expense of counsel.[2] Litigants' controversies are accorded "prompt attention" instead of being placed at the end of a log-jammed docket,

---

[1]Interview with Judge W. E. "Bill" Richburg, Justice of the Peace, Precinct 7, Place 1, Dallas County, July 25, 1966.

[2]Ibid.

a feature held to be characteristic of the county and district courts.[3] An important attribute, highly praised by the lay justices, is the common practice of allowing litigants on both sides to tell the story as a whole, in their own way and in their own words if they so desire.[4]

The "people-centered" argument pictures the lay justice not only as a judge adjudicating a legal controversy but also as something of a benevolent social worker who goes beyond the confines of "court business" to understand the "true" situation, alleviate human suffering, prevent further deterioration of the situation and "rehabilitate and guide the parties involved."[5] This extra-judicial effort is expended in a concern for reaching the lay justices' philosophical goal of a "more complete service" to the litigants served than would be accorded by strictly judicial processes.[6] Most of these supporting arguments--in addition to others--will be examined in greater detail in other parts of this chapter.

---

[3] Ibid.

[4] Interview with Judge Theran Ward, Justice of the Peace, Precinct 3, Dallas County, July 18, 1966.

[5] Interview with Judge Felix F. Fox, Justice of the Peace, Precinct 4, Dallas County, July 20, 1966.

[6] Interview with Judge Ward.

The Issue of a "People-Centered" Court

The "people-centered" nature of the lay justice court is partially explained by a comparison by contrast between lay and attorney justices. Common sense is held to be the most important "qualification" for the office of the justice of the peace.[7] Furthermore, this "qualification" is purported to be common to the members of the lay justice group and markedly absent in the case of many attorneys.[8] This lay justice contention undoubtedly reflects an idea quite prevalent among certain classes in American society: that common sense and a formally educated mind are seldom found in the same individual.

"Common sense" is held to be the basis upon which all true wisdom is predicated.[9] Common sense together with conscientious effort enables a layman to comprehend satisfactorily any aspect of the law confronted in the administration of the justice of the peace court.[10] Common sense is in fact the basis of law even though the legal

---

[7] Ibid.

[8] Interview with Judge Fox.

[9] Interview with Judge Richburg.

[10] Interview with Judge Johnston.

academicians, judges and attorneys have corrupted its "purity" with "fabrications" and projections. It is thus a sufficient substitute for formal legal education, at least in the case of the justice of the peace.[11] The most important aspect of this common sense, however, lies in the fact that it enables the lay justice to see the "human heart" of a controversy, to see all of its facets in a true perspective.[12] The lay justice, unlike an attorney, is not led astray by the "fabrications" and projections of "questionable jurists." He is able to see a controversy in "black and white" while many of the academically apt attorneys see them in hazy gray.[13]

The attorney justice, on the other hand, is held to have a mind "shackled" with legal principles, an excessive concern for the application of rules, a tendency to be overly critical of evidence and overly concerned about what other lawyers might think about the administration of his court. As a result he is usually unable to see a

---

[11]Interview with Judge Richburg.

[12]Interview with Baxton Bryant, Democratic candidate for Congress, Primary Election, 1964, July 25, 1963.

[13]Interview with Judge Richburg.

controversy with the "depth of perception" characteristic of a lay justice.[14]

In addition the lay justice, as another result of not being confined by the attorney's professional restraints, is able to "cut across law" to obtain a good result as well as to handle effectively a greater volume of business. Thus the solutions he obtains are of greater value to the litigants and society than purely legalistic solutions would be.[15]

The above argument is further expanded, especially as it relates to the nature of the work of the justice court. Attorneys as a result of their spirit of professionalism are held to look with disdain--and a consequent lack of interest--on certain types of cases which come before the justice court.[16] These case types include a large number of neighborhood disputes which often originate with the children and are taken up by the parents; also included are all descriptions of domestic disputes including those involving the "romantic triangle."

---

[14] Ibid.

[15] Ibid.

[16] Interview with Judge Ward.

"Romantic triangles" are the setting in which many Dallas homicides occur.[17] Such cases often come before justices of the peace in the early and allegedly critical stage: a marriage partner fearing her mate seeks a peace bond for her own protection--and not infrequently that of her children--in the justice court. Existent in such fact situations is a potential for considerable human suffering and even the crime of murder.[18] Yet many attorneys, including those who are justices of the peace, disgusted by the fervent emotional verbal exchanges made up of all kinds of sordid language and the rank immaturity and lack of social development on the part of litigants which characterize these disputes, tend to hold themselves above such cases.[19] "Too much above," holds the lay justice argument. Lay justices, on the other hand, do not hold themselves above any aspect of their duty.[20]

---

[17] Interview with Henry M. Wade, District Attorney, Dallas County, March 3, 1964.

[18] Interview with Judge Richburg.

[19] Interview with Judge Joe B. Brown, Jr., Justice of the Peace, Precinct 7, Place 2, Dallas County, July 18, 1966.

[20] Interview with Judge Richburg.

The lay justices also explain their "people centered nature" by a lack of economic motivation in seeking and administering the office on their part as contrasted with a strong economic motivation on the part of their attorney counterparts.[21] Economic considerations, in fact, are held to be the all-pervading concern of attorneys;[22] a corollary of this charge holds that they are not "too discriminating" in the methods employed in obtaining their fees.[23] Lay justices hold that an attorney serving as a justice of the peace seldom rises above this standard.[24]

Lay justices are quick to give striking examples of mercenary attorneys. A favorite story of Judge E. C. King, formerly of Precinct 6, Dallas County, was told to this writer with considerable emotion. Judge King had imprisoned a prominent citizen in lieu of $20.50 fine and costs. The much disturbed citizen was humiliated and desperate. He said that he would give anything to avoid having to remain in jail overnight. A lawyer overheard this statement and offered to get the man out of jail for a $500 fee.

---

[21]Interview with Judge Ward.

[22]Interview with Judge E. C. King, Deceased November, 1966--formerly Justice of the Peace, Precinct 6, Dallas County, May 11, 1966.

[23]Ibid.

The offer was accepted; the man was freed . . . All that was required to free the man was payment of his $20.50 fine and court costs.[25] Judge Richburg tells of a tendency among attorneys to recommend divorce proceedings --offer their services--in domestic disputes, many of which could be saved by "judicial counseling."[26]

At the same time lay justices emphatically deny that they are economically motivated,[27] a charge hurled against lay justices in general by attorney critics in connection with lay justice administration of the justice courts under the fee system. The lay justices offer facts regarding their stand on the fee system and related matters, and hold them to prove not only their opposition to the fee system but the lack of economic motivation on their part. They point out that they have never defended the fee system of compensation. On the contrary they have waged a constant battle to secure its abolition by statute or constitutional amendment.[28] The lay justices claim that

---

[25]Interview with Judge E. C. King.

[26]Interview with Judge Richburg.

[27]Interviews with Justices King, Fox, and Richburg, May 11, 1966, July 20, 1966, July 25, 1966, respectively.

[28]Interview with Judge Johnston July 18, 1966.

their efforts resulted in the Texas Legislature's approving and the voters' ratifying a constitutional amendment (1948) which resulted in the abolition of the fee system in many counties.[29] This amendment enabled any county of the state, at the option of its commissioners' court, to take its several justices--and other precinct officers--off fee compensation and place them on salary.[30] Many of the state's counties, especially the more populous ones, chose to place their justices on salary.[31]

The Texas Justices of the Peace and Constables Association was not satisfied. Its members wanted to free the justice courts more completely of the image given them by the ill-famed fee system by securing legislation that would abolish this system of compensation in its entirety and place all Texas justices of the peace on a salary.[32] This effort became even more urgent when a State Bar Committee launched the campaign for abolition of the entire

---

[29] Ibid.

[30] Vernon's Annotated Revised Civil Statutes of the State of Texas, Vol. XII Texas Constitution, Art. 16, LXI (Kansas City, Vernon Law Book Co., 1966).

[31] Interview with Judge Johnston, July 18, 1966.

[32] Ibid.

justice court system in the early 1960's. Thus, at the same time the Association was fighting a defensive war in the legislature for the continued existence of the justice court system, it was seeking legislation to purge itself of defects which, according to Association members, have been opposed by lay justices for many years.[33] Not only did the Association insist that all justices be placed on a salary, but it also pushed for a drastic reduction of the "court cost" fees attached to criminal misdemeanors in justice courts, which were set at $15.50 by statute.[34]

In the Fifty-ninth Texas Legislature (1965) the Association achieved success in both efforts. A new statute abolished the fee system in all counties where it still existed and required that all justices be compensated by salary. Another statute greatly reduced the high "court cost" fees attached to criminal misdemeanors in Justice courts.[35]

Another facet of the "people-centered" argument for the lay justice court deals with the historical American

---

[33] Ibid.

[34] Ibid.

[35] Ibid. Texas Civil Statutes, Art. 39121, Sec. 10.

governmental virtue of local popular control. Considerable emphasis is placed in the fact that Texas justices of the peace are elected from small districts or precincts. They have the direct approval, initially at least, of the people over whom they preside.[36] This is held most nearly to approach the American ideals of popular sovereignty and local control.[37] To restrict candidates to attorneys--a plan supported by most critics of the lay justice court system--would often so restrict the electorate as to make popular sovereignty meaningless. The fact that several Texas counties have no lawyers is used to illustrate this point.[38]

To better emphasize the significance for the public of local and popular control of judicial officers, this lay justice argument gets into the issue of appointment versus election; contrasts with other courts in the Texas system and with those of the United States especially are made. The corporation courts, with their appointed judges, are held to be the "biggest kangaroo courts in existence."[39]

---

[36]Interview with Judge Richburg.

[37]Interview with Judge Johnston, March 23, 1966.

[38]Interview with Judge Will Hash, Justice of the Peace, Precinct 5, Dallas County, March 23, 1966.

[39]Interview with Judge Johnston, March 23, 1966.

This charge is for the most part made in reference to traffic violation convictions in municipal courts. The former President of the Texas Justices of the Peace and Constables Association states that the conviction rate for such cases is much higher in the Dallas municipal courts--all with appointed attorney judges--than in the lay justice courts of the state.[40] This fact is used to support the allegation that appointed judges with similar jurisdiction are less judicious, because they are not subject to popular control. It is also utilized to refute the "J. P. stands for justice for the plaintiff" charge so often hurled at lay justices.

The United States Supreme Court and its unpopular decisions are also cited in support of their arguments by lay justices. The famous cases of Baker v. Carr and Engel v. Vitale, especially the latter, are highly criticized by them. The argument alleges that such cases well illustrate that the Court's appointed members with life tenure are "out of touch" with the people they serve and thus are often inimical to the true interests of the public.[41]

---

[40] Ibid.

[41] Interview with Judge Richburg.

Conversely the justices of the peace with their periodically elective tenure and small electoral districts are the most "in touch" and thus most nearly approach the American governmental ideal of local control. Thus they have made excellent forums for the "locally situated little man's small troubles."[42]

Manifestations of the "People-Centered" Nature

As a result of the lay justice's freedom from the aforementioned professional restraints and diversions incident to the attorney justice, he has the freedom and opportunity not only to build rapport with the litigants but to ascertain and employ the best approach for a "more complete" solution of the problem.[43] The justice is able to converse with the litigants in "their own language," a circumstance which tends to evoke confidence, "get through to the person's system of values and thus promote cooperation."[44]

---

[42]Interview with Roby Love, Constable, Justice Precinct 1, Dallas County, August 15, 1963.

[43]Interview with Judge Richburg.

[44]Interview with Judge Fox.

There are several basic approaches--and combinations of them--which are employed by the "typical" lay justice. The justice's preliminary evaluation of both the litigants and the fact situation indicates the proper approach for the particular controversy.[45] In one approach the justice appeals to the religious values of the party (or parties) in an effort to provoke responsibility and understanding on their part. In another approach the justice emphasizes the duties and qualities of good citizenship, parenthood, personal maturity, and the virtue of living up to them; he then helps the litigant to see for himself where he has failed to live up to these standards in the fact situation before the court and tries to produce in him a determination to live up to these standards in the future. A constructive approach as opposed to a punitive one, that is the building up of a person's ego by expressions of confidence and understanding, is sometimes employed. Of course a strictly business-like approach is used when the circumstances call for it.[46]

A technique utilized in all but the last of the aforementioned approaches contributes greatly to the successes

---

[45] Interview with Judge Richburg.

[46] *Ibid.*

achieved with them. This technique consists of the justice's practice of both allowing and soliciting free expression from the litigants. With the lay justice acting as a moderator, the litigants gain insight, not only as to their own position and views in the controversy, but especially of the position and views of their adversary. The result is often to increase understanding and dissipate animosity on the part of both parties. Thus the basis for a "more complete social solution" of the controversy is established.[47]

The "people-centered" consciousness of lay justices is held to manifest itself in another most important way. Lay justices claim that their services are "constantly available_ to the public.[48] The court-room day alone of some Dallas County lay justices is held to exceed eight hours.[49] Beyond this their service is quite frequently rendered from their homes by telephone. Justices drive many miles in their own vehicles: they visit hospitals, homes and scenes of violent deaths at any time, day or night.[50] As

[47] Interview with Judge Ward.

[48] Interview with Judge Hash, March 23, 1966.

[49] Interview with Judge Richburg.

[50] Interview with Judge Fox.

described by one lay justice's supporters during a primary election campaign: "He has served the people. . .without regard to hours."[51]

Lay justices claim that their services are more readily available to the public than are the services of county judges, district judges, and especially the services of attorney justices of the peace. County judges and district judges are held to function only in their courts and to "keep banker's hours." Parties in these courts must frequently wait months and even years before their case is adjudicated.[52] In their evaluation of attorney justices in the light of "availability" the lay justices are most outspoken. Attorney justices are accused of using "time belonging to their constituents" to pursue their "number one interest," the practice of law.[53] One Dallas County lay justice, speaking of the attorney justice in the adjoining precinct, stated that the latter was not available in his office more than one hour each day.[54]

---

[51] Grand Prairie News Texan, May 4, 1966, p. 5.

[52] Interview with Judge E. C. King.

[53] Ibid.

[54] Ibid.

The Justice Court as a Historically Satisfactory Governmental Institution

Another type of lay justice argument appeals to the public's high regard for American tradition and heritage. This argument asserts that the justice court system has been a satisfactory governmental institution throughout the entire period of American history.[55] Until well into the twentieth century the system was in use in all of the states of the Union. Even today it continues to be used in more than forty of the fifty states.[56] That the people have been satisfied with the system is evidenced by the fact that they have retained it to this day.[57] Thus satisfaction with the justice court system continues in modern times. This present-day satisfaction is evidenced by the failure often met when groups attempt to abolish the system by constitutional amendment where the office and its duties are established in the Constitution. The efforts to obtain curtailment of its jurisdiction by

---

[55] *Ibid.*

[56] Interview with Judge Richburg.

[57] Interview with Judge Pierce McBride, Justice of the Peace, Precinct 1, Place 2, Dallas County, July 21, 1966.

legislative enactment, where the constitution permits, are held to have been little more successful.[58]

This satisfaction through the years has been largely due to the flexibility of the lay justices, as contrasted with attorney justices, and their consequent ability to adapt their services to the "socio-legal" needs created by the varying conditions found in American history.[59] The public has never presumed that justices of the peace would come into the office pre-trained for their special duties. Yet through the years the people have remained generally satisfied with lay administration of the justice court.[60]

The State Bar Plan as a Threat to Democratic Ideals

Still another argument pictures the State Bar's plan as an "aristocratic threat" to American democratic ideals. An analogy is drawn between proponents of the justice court system with its lay justices and the defenders of patronage in the great civil service controversy of the last century. Both groups are pictured as fighters for

---

[58] *Ibid*.

[59] Interview with Judge Richburg.

[60] Interview with Judge McBride, July 18, 1966.

democratic ideals.[61] The State Bar's plan would allow lawyers to "take over" by virtually eliminating laymen, not only from the justice courts (or the courts established to replace them), but from the entire Texas court system. For, if the "layman unfitness" reasoning were adopted in regard to the justice courts, it would probably carry to the other levels of courts where laymen having established eligibility through experience, also preside.[62] Thus the adoption of such a plan would promote even more the establishment of an "aristocracy" within the Texas government, i.e., the legal profession.[63]

Utilitarian Value of the "People-Centered" Court In Modern Day Society

There is a great social need for the "people-centered" lay justice court in our modern day society. The system's attackers' assertion that the justice court has outlived its usefulness could not be more false.[64] Many of the disputes which find their way into justice courts are the

---

[61] Interview with Judge Johnston, July 18, 1966.

[62] Ibid.

[63] Ibid.

[64] Interview with Judge Richburg.

result of problems created by our urban society. There are a great many more domestic and neighborhood type disputes in our complex industrial age than there were in any preceeding period of American history.[65] When those involved come into justice court, as they so often do, they are entitled to something more than legal justice, i.e., "personalized" aid in achieving a solution to the overall problem.[66]

Lay Justice Thinking Regarding Their Fitness for the Office

As previously noted, most lay justices appear to be little impressed with the supposed legal superiority of attorneys. This writer has observed several situations and circumstances which he believes partially explain this attitude. The lay justices claim that attorneys, especially the younger ones, often ask them for advice regarding their legal practice in justice courts.[67] Lay justices also claim that they sometimes find it necessary to correct the tactics of a practicing barrister. Judge

---

[65] *Ibid.*

[66] Interview with Judge Ward.

[67] Interview with Judge Johnston, March 23, 1966.

W. L. "Lew" Sterrett of Dallas, a former lay justice, tells of the "numerous attorneys I trained while a justice of the peace."[68]

These inquiries by attorneys are undoubtedly mostly in regard to procedure and remedies pertaining in justice court practice, the fine points of academic law being seldom involved. Undoubtedly the attorney is sometimes discussing his case with a justice to "feel him out." With this information he can modify his approach or seek a change of venue to another justice court. Nevertheless this practice quite evidently tends to convince the lay justices of their equal or superior competence as compared to that of a licensed attorney. Another result is that valid legal contentions may receive little credence from "unimpressed" justices.

There is no doubt that most lay justices do not consider the lack of formal education, especially legal education, a disqualifying factor for their office. They sometimes express regret concerning the meagerness of their own education, but often in the same breath point out the shortcomings of attorneys and others who are well educated.

---

[68]Interview with W. L. "Lew" Sterrett, County Judge, Dallas County, August 29, 1966.

Judge Richburg, for instance, acknowledging the fact of "a few bad lay justices" quickly retorts with specific cases of attorney judges who, despite their academic attainments, utterly failed to maintain the judicial standard.[69]

These lay judges have developed and become affiliated with certain institutes and organizations which in their minds, and probably to a certain actual degree, compensate for their lack of formal education and legal training. The most prominent of these is the Justice of the Peace Training Institutes. The Texas Law Enforcement Foundation in cooperation with Texas A. and M. University Engineering Extension Service began the sponsorship in August, 1959, of seminars to aid the justices of the peace in their efforts to master the many and special phases of their official duties.[70] The seminars have been held in several Texas cities and have been attended by justices of the peace and constables from all parts of the state. They have been under the direction of Wallace D. Beasley, Coordinator of Police Training for the Engineering Extension Service. The

---

[69] Interview with Judge Richburg.

[70] Interview with Judge Brown, July 18, 1966.

numerous guest instructors included judges, professors, law enforcement officials and attorneys.[71]

The quality and content of the curriculum of the institutes is indicated by the distinguished instructors and their subjects:

1) Henry Wade, "Rights of the Accused."

2) Charles W. Tessmer, "The Rights of the Accused From the Viewpoint of the Defense Attorney."

3) A. D. "Jim" Bowie, "The Effect of Unreasonable Arrests, Searches and Seizures in Texas."

4) E. O. Northcutt, "Civil Law in Justice Courts."

5) Charles Batchelor, "The Obligation of Police and Courts in Traffic Law Enforcement."[72]

Lay justices are a part of the county governmental system. Individuals with little formal education--legal or otherwise--often hold many of the top offices in county government. For example, it was recently revealed that the great majority of county judges in Texas are laymen. In

---

[71]Beasley, op. cit., Preface.

[72]Ibid. Henry Wade is District Attorney, Dallas County; Charles W. Tessmer, Prominent Dallas County Criminal Attorney; A. D. "Jim' Bowie, Deceased February, 1968, Formerly First Assistant District Attorney and Judge, Criminal District Court No. 5, Dallas County; E. O. Northcutt, Justice, Court of Civil Appeals, Amarillo; Charles Batchelor, Chief of Police, Dallas, Formerly Assistant Police Chief, Dallas Police Department, Dallas.

this setting it has not been uncommon for lay justices to move into the higher eschelons of county government. They have served as county commissioners and in practically all county officer capacities, including the most notable county post, that of county judge.[73] The present Dallas County presiding judge, W. L. "Lew" Sterrett, is an ex-lay justice. Generally lay justices--and other laymen--have received much less criticism in the higher offices than in that of justice of the peace. Not uncommonly they are praised for their work in the administration of county affairs.[74] This writer believes that knowledge of these facts not only convinces lay justices as to their competence as compared with attorneys, but also serves to give them self-confidence in office.

Another factor which probably, however illogically, tends to convince the relatively uneducated lay justices that they are nevertheless "qualified" is membership in the Masonic Lodge. In Dallas County and many other Texas counties "a very substantial percentage" of county officials, attorneys and business leaders and experts are Masons. One

---

[73]Interview with Judge Brown, July 18, 1966.

[74]*Ibid.*

Dallas County officer stated that Masonic membership, and the holding of at least several Masonic degrees, is "expected" of county officers by many of their fellow officers, friends and acquaintances,[75] this writer's own observations indicate the accuracy of this statement. At any rate most Dallas County justices of the peace, past as well as present, have quite evidently endeavored to become accomplished Masons. As a result of this endeavor several of the present justices hold the second highest degree in the order; all but one of the remaining justices are Masonic members holding several of the lesser degrees.

As indicated, lay justices share membership in the Masonic Order with judges, lawyers, professional managers, and others with a considerable amount of formal education. They also share an attitude common to the majority of Masonic members that Masonic accomplishment is an indication of good character, integrity and ability. Even though the lay justices are not nearly so well educated as some of the other members, they compare quite favorably

---

[75]Interview with a bailiff in a Dallas County Criminal District Court. Subject requests to remain anonymous. This officer is a Mason with many acquaintances among Dallas County officials.

with them in the achievement of success in Masonry. The author believes that this fact tends to convince the lay justices of their "judicial qualifications" relative to attorney justices.

Of course the human tendency to rationalize for one's shortcomings and for the protection of one's position and status is undoubtedly a partial explanation for the lay justices' thinking regarding their fitness for the position.

Lay Justice Comment Regarding the Proposed Texas Constitutional Amendment

In addition to the aforementioned arguments, the lay justices express serious doubts about the State Bar's proposed solution to its criticism of the system. They point out that problems would result from the need for the large appropriations required to effect the questionable transition. They doubt that attorneys would be available and willing to serve in the less populous counties.[76] They question whether litigants seeking "understanding and guidance" would be willing to relate

[76]Interview with Judge Johnston, March 23, 1966.

to attorney justices many of the "socio-legal" problems which they so readily relate to lay justices.[77]

The lay justices have their own interpretation of why similar amendments and legislation have been adopted in eight of the other states. The charge that incompetent unscrupulous lay justices, which constitute the small minority and of which the majority whole-heartedly disapprove, were unfairly pictured as being typical of all.[78] The lawyers contrasted their formal legal education with the average lay justice's lack of it, but utterly failed to mention the value of self-education, character, experience, training seminars and especially dedication to public service which characterizes the majority of lay justices.[79] The reformers did not mention the many "professional diversions" to which so many of the lawyers are susceptible.[80] Most of all, they gave no recognition to the "quasi-judicial" justice function through which a great deal of human misery has been alleviated and averted.[81]

---

[77] Interview with Judge Ward.

[78] Interview with Judge Richburg.

[79] _Ibid_.

[80] Interview with Judge Ward.

[81] _Ibid_.

Some comment on the comparisons between lay justices and attorney justices found in this chapter is called for before closing the chapter. These comparisons play upon one of the American public's popular conceptions of attorneys. The American public's generally high respect for law cannot be construed to mean an analogous respect for lawyers.[82] The specter of the "jake-leg" lawyer with his questionable tactics and "deals" is well known to most citizens. This image pictures many lawyers' motivation as being monetary gain and the accomplishment of "questionable" goals. It thus de-emphasizes the adherence to ethical standards and ideals which generally characterizes American attorneys. The lay justices, however, make wide use of the negative image.

Summary

Upon the arguments presented in this chapter the lay justices of Dallas County make their case. The lay justices claim to be "people-centered" and assert that their attorney-justice counterparts lack this quality. The local popularly controlled justice court--in contrast

---

[82]Martin Mayer, "Justice, Law and the Lawyer," The Saturday Evening Post (February 26, 1966), pp. 36-39, 70-81.

with courts with appointed judges--is more judicious and more "in touch" with the people it serves. The justice court has been a historically satisfactory governmental institution and the Texas State Bar plan to abolish it is an "aristocratic threat" to American ideals. The greatest value of the "people-centered" lay justice court lies in the fact that it serves to alleviate a great social need of modern day society.

CHAPTER VI

OBSERVATIONS ON THE DALLAS COUNTY JUSTICES OF THE PEACE IN THE LIGHT OF THE ARGUMENTS OF THE SYSTEM'S CRITICS AND DEFENDERS

Introduction

This chapter is a study of each of the ten incumbent justices of Dallas County during the interval from 1964 to 1967. Each justice is viewed in the light of arguments advanced by the system's critics and proponents. Considerable care has been taken to ascertain the qualities of each justice and report only those for which the evidence is quite convincing. Judgments are made only when the writer believes that his observations and other evidence justify the making of them.

Several methods were used to gather the evidence for the evaluations made in this chapter. Interviews were conducted with the ten justices concerned and with other individuals especially familiar with the operation of the Dallas County justice courts. The Dallas County auditor's reports on the Dallas County justice courts provided valuable statistical information. Local newspaper articles were

also used. Many hours were spent in the court rooms of the several justices, observing them in the conduct of their work.

As noted earlier, the evaluations of the individual justices were made largely from information obtained and observations made in 1965 and 1966. The writer, while writing this chapter in the late summer of 1967, had occasion to re-visit all seven of the justices remaining in office in their courts. None of the observations made at this time were inconsistent with those made earlier.

The Dallas County Justice Court System

Dallas County has eight justice court precincts, the maximum number under the State Constitution. Two of the eight precincts, Numbers 1 and 7, have two justice of the peace courts each. These two precincts include all of the land area incorporated into the city limits of Dallas; the division line between the two precincts is the Trinity River which transverses the City of Dallas. The remaining portion of Dallas County is divided into six single-court precincts. Each of these six outlying justice courts is located within the largest city of its respective precinct; the six justice precincts and the location of their courts

are as follows: Precinct 2, Richardson; Precinct 3, Garland; Precinct 4, Mesquite; Precinct 5, Lancaster; Precinct 6, Grand Prairie and Precinct 8, Irving.

The ten Dallas County justices are compensated by salary; all of them, however, do not receive the same salary. In 1966 the four "downtown" justices, those in Precincts 1 and 7, received an annual salary of $12,000. The justices of the six outlying precincts, however, received considerably smaller salaries for the same period. The justices for Precincts 2, 3, 6 and 8 all received salaries ranging between $7,000 and $8,000. The justice of Precinct 4 received a salary of slightly more than $8,000 while the justice of Precinct 5 received slightly more than $6,500. In addition to their salaries all ten justices received an $1,800 automobile allowance in 1966.[1]

While some of the Dallas County justices believe that their salaries are insufficient, all favor salary compensation in preference to "fee" compensation. Several of the justices praised the 1965 statute which abolished the fee system in the areas of the State where it still existed.

---

[1] Dallas County Auditor's Office, "Dallas County Auditor's Report on the Justices of the Peace for Dallas County, 1966." Dallas, 1967.

There is a wide variance in the educational qualifications of the ten justices studied. While three of the ten justices are attorneys, four of the seven lay justices did not hold a high school diploma. Several of these lay justices, however, had some type of specialized vocational training.

Several facts were common to all ten justices in 1966. They were all Democrats. All of them had resided in Dallas County for at least twenty years and all had at least three years of experience as a justice of the peace. All ten justices had been elected over an opponent by the electorate of their respective precincts, although some had originally been appointed to the office.

The Dallas County Justices

Justice "A"

Judge "A" holds one of the two justice of the peace positions in Dallas County Justice Precinct "AB". Judge "A", an attorney, was born in Bastrop County, Texas in 1908. The son of a Methodist minister, he attended public schools in both Texas and Oklahoma. Following his graduation from high school in Dustin, Oklahoma, he entered Emory University in Atlanta, Georgia, in the fall of 1928. After the

completion of his pre-law studies at Emory he entered the Southern Methodist University School of Law, where he earned his law degree in 1935. In 1936 he was elected city attorney of Alvarado, Texas, but resigned this position a few months later to accept a position of claims adjuster for an insurance company. After two years with the insurance company he resigned to enter law practice in Dallas. From 1938 to 1962, except for a two-year period as an assistant to the Dallas city attorney (1943-45), Judge "A" pursued private law practice in Dallas. In 1962, he was appointed to his present position by the Dallas county commissioners court. He was elected to a four year term in 1964.[2]

As a justice of the peace, Judge "A" is something of a paradox. While noted for his "country" demeanor--his accent, some of his mannerisms and especially his almost constant tobacco chewing--he at the same time evidences an impressive mastery of book law and wide legal experience. He is also characterized by a warm friendly personality which, together with his legal qualifications, seems to produce the most nearly ideal justice in the county. Of the ten justices studied, Judge "A" has the most

---

[2]Interview with Judge "A", July 21, 1966.

satisfactory relationships with attorneys.[3] Likewise, litigants generally feel that they are personally well treated and that they receive a quite sufficient application of case law and statute to their particular cases.

Although his demeanor in the conducting of his court is not as "professional" as that of some of the other justices, his proficiency for the situation at hand is soon obvious to most of the parties appearing before him. If need be, he can be stern and authoritative, but ordinarily he is easy-going, often injecting personal humorous comments to ease a tense situation. He is nevertheless alert and attentive to detail, correcting and instructing the parties as to law and procedure when he thinks it necessary. This writer has witnessed his giving a detailed explanation of a relevant point of law for the benefit of confused litigants. As would be expected from the aforementioned, he conducts his court according to the relevant statutes, and case law, being careful not to exceed their letter and spirit.

Judge "A"'s court handles more cases than any other justice court in Dallas County. In 1963 his court handled

---

[3]Interview with a Dallas County assistant district attorney who wishes to remain anonymous.

approximately 35% of all cases handled in the county's justice courts; in 1964 the figure was 32%,[4] and in 1965 it was 33%.[5] While the aforementioned attributes of the justice go a long way in explaining this relatively large percentage, other factors also account for it. The two courts in Precinct "AB", being most readily available to the sheriff because of their location in downtown Dallas, are most frequently used by this officer for magistrate proceedings for county prisoners. Also, his precinct includes the largest portion of the City of Dallas and its justice courts are readily accessible to the downtown business area. In addition the City of Dallas files all of its tax suits in Precinct "AB"; all of these are filed in Judge "A"'s court. It should be noted that--when the city's preference for Judge "A"'s court is discounted--he leads his fellow Precinct "AB" justice by a case ratio of better than 3:2.[6] When the preference is not discounted his lead is better than 2:1.[7]

---

[4]"Dallas County Auditor's Report, 1964."

[5]"Dallas County Auditor's Report, 1965."

[6]Dallas County Auditor's Reports, 1964 and 1965 "

[7]*Ibid.*

Justice "B"

The second of the two justice of the peace positions in Precinct "AB" was held by an ex-newspaper reporter, Judge "B" This justice was born in Dallas, Texas in 1898; except for a brief naval career he has resided in Dallas County since his birth. Judge "B" attended the public schools of Dallas but did not complete the requirements for a high school diploma. While still in his early twenties he was employed by the *Dallas Times Herald* as a reporter; he worked in this capacity for twenty-five years, his special area of endeavor being police reporting. As a police reporter he acquired considerable interest in and knowledge of the duties and powers of the justice of the peace.[8] First elected in 1948, he held the place until his voluntary retirement at the end of 1966.

Judge "B" was characterized by a self-assured, authoritative and quite often terse manner. Although not very personable he is a conscientious man with strong religious convictions. For a man with no formal legal training, he was quite self-confident as to his knowledge of the law in his relationships with attorneys. He often read law on his

---

[8]Interview with Judge "B", July 21, 1966.

own initiative, especially in the areas relevant to justice court administration.[9]

Judge "B" maintains a rather strict judicial decorum in his courtroom. His posture was usually that of a professional and authoritative judge. Even though his conduct of his court was more according to professional standards than some of the other justices observed, he did not seem to have the rapport with the attorneys and litigants enjoyed by Judge "A". This was no doubt partly because he was not as legally knowledgeable as Judge "A", but certainly partly because he did not have his "warmness" of personality.[10] The writer believes that these two factors largely explain why Judge "A"'s court received the larger portion of the Precinct"AB" business.

Judge "B"'s administration of the laws associated with his powers and duties appeared to be adequate and certainly was far superior to that of some of the other lay justices observed.

---

[9]<u>Ibid</u>.

[10]This characteristic is significant in view of the lay justice argument holds that "personable" qualities that make for communication and understanding are a marked attribute of lay justices in comparison with attorney justices.

As a counselor and dispenser of free legal advice, Judge "B" did not appear as active as most of the other lay justices. However, as a deeply religious individual with strong "prohibitionist" views, he sometimes fervently counseled litigants on the effects of alcohol. In like manner, couples who came to him for the performance of the marriage ceremony were often lectured and counseled on the responsibilities of married life.[11]

Judge "C"

The justice of the peace position in Precinct "CD" is held by Judge "C", a former Dallas County deputy sheriff. Judge "C" was born in Dallas in 1927, and except for a tour of duty in the U.S. Navy, has always resided in Dallas County. He attended Woodrow Wilson High School and Terrell Preparatory School, receiving his diploma from the latter. Following his discharge from the U.S. Navy, he attended the University of Texas Credit Management School in preparation for a career in hospital administration. However, in January, 1949, he was appointed a deputy by Dallas County Sheriff Bill Decker. After nine years' service with the sheriff's department he became a candidate for justice of the peace

---

[11]*Ibid.*

in 1958. Victorious in his bid for election, Judge "C" took the oath of office in January, 1959.[12] He served until January, 1967 following his defeat in the general election of 1966.

Although a lay justice, Judge "C" was characterized by few of the defects attributed to lay justices by their critics. He was well versed in the statutes and procedures relevant to the justice court and administered his court in strict accordance thereto. In answering questions for this writer he has cited statutes in detail as well as court decisions relevant thereto. This knowledge of and deference to law is striking when Judge "C" is compared to the stereotype of the lay justice. Perhaps it is a reflection of his administrative training. There is nothing "countrified" in the manner in which Judge "C" conducts his court. This authoritative, reserved and self-assured lay justice maintained a professional decorum in his courtroom at all times. While formal in his conduct he was nevertheless personable and responsive to litigants' needs whenever they sought his advice or assistance. He was not, however,

---

[12] Interview with Judge "C", March 23, 1966, and July 18, 1966.

[13] *Ibid.*

as given to counseling as most of the other lay justices. Neither was he as easy to locate when his services were sought as were some of the other lay justices.

Judge "C" was an outspoken defender of the layman's fitness for the office of justice of the peace. He maintained that any layman with average intelligence and perseverance could quickly master the essentials necessary for satisfactory performance in the office.[13] To a greater degree than any other lay justice observed in this study Judge "C" had, with few exceptions, attained the standards held by the legal profession to be essential to the adequate administration of the justice court.

While serving as a justice of the peace, Judge "C" was sometimes outspoken on political and other issues. He was accused of and criticized for conducting himself in a manner unbecoming to a judge, a circumstance which doubtedly detracted from his judicial image and effectiveness. In the autumn of 1963 he bluntly accused the police department of his city of showing marked partiality to certain youngsters involved in juvenile crime in that city. Judge "C" charged that such partiality was shown because of the "social

---

[13] Ibid.

position" of the youngsters' parents.[14] Newspapers, especially the Dallas Morning News, gave wide publicity to the justice's charges, to the juvenile crime situation in the suburb, and to the manner in which the situation was being handled by the city's police department.[15] The net result of all the publicity amounted to a major "smear" on the favorable image and reputation usually enjoyed by the suburban city. A number of city leaders and others felt that Judge "C" had issued the charges merely to gain publicity for himself in order to further his political ambitions.[16] However, in fairness to the justice another evaluation should be projected: Judge "C" was characterized by his definite equalitarian viewpoint. His views on his role in the arraignment of accused Presidential assassin Lee Harvey Oswald provide an excellent illustration of this viewpoint. When asked by this writer about his handling of the examining trial of Oswald he replied that he handled it "just like any other murder, the way that it should be handled."[17]

---

[14] The Dallas Morning News, October 15, 1963.

[15] Ibid., October 16 and 17, 1963.

[16] Interview with another lay justice who wishes to remain anonymous on this point.

[17] Judge "C", January 3, 1964.

Justice "D"

The justice of the peace position in Precinct "EF" is held by a long-time resident of the city in which the court is located. This justice, born in Oklahoma in 1925, moved to the city, now one of Dallas' largest suburbs, at the age of nine and has resided there since that time. He attended the local public schools but withdrew before completing his high school work. In 1950 he was employed as a deputy by Sheriff Bill Decker. After several years with the Sheriff's Department, he joined the police department of his home-town, where he served for five years. In both of these positions he undertook the study of a number of courses designed for the professional law enforcement officer, thus somewhat supplementing his meager formal education.[18]

As a suburban police officer this justice-to-be both distinguished himself and gained the ill will of his superiors. Among his distinctions he lists the fact that he made six on-view felony arrests which ended in convictions, the only city officer to do so. On the other hand, he gained the animosity of departmental superiors and other city leaders by "standing on principle" and flatly refusing to donate to certain charities. This was interpreted as a

[18] Interview with Judge "D", July 18, 1966.

defiance of a humanitarian request with which the other city employees complied. He was also charged by his superiors with failure to issue traffic tickets. These factors finally resulted in his suspension from the police department.[19]

As a suspended police officer with the reputation of being a trouble-maker, he became a candidate for justice of the peace. The office at this time was held by an attorney. The attorney was quick in calling the voters' attention to his opponent's weak points and faults, especially his lack of legal training. The office-seeker retaliated by asserting that the attorney was giving most of his time to his legal practice and far too little to his justice position. The voters, in the 1962 Democratic Primary, gave the ex-policeman the nomination for justice of the peace, assuring his election to the office.

Upon assuming the duties of a justice, the ex-officer became a notably different person. The non-conformist traits

---

[19] Ibid.

[20] Ibid.

that previously characterized him were no longer present. One newspaperman observer described the change as "all pervading."[21] The "new" personality is characterized by a very benevolent and kindly demeanor, strikingly similar to that of many ministers. He evinces what appears to be a marked devotion to the people of his precinct.

This justice does a great deal of counseling with the litigants who come into his court. Counseling, in fact, in contrast to "adjudicating" cases in the courtroom, appears to be the principal characteristic of his administration of the court. He evidences a strong orientation toward, though not a professional knowledge of, psychology and related fields. For example, he tells of obtaining agreements from litigants to visit the "marriage counselor and psychiatrist of my choice."[22]

Justice "E"

The justice of the peace position in Precinct "GH" is held by Judge "E", one of the most colorful personalities

---

[21] Interview with an individual who knew Judge "D" as a newspaperman and later as an assistant district-attorney in the Dallas County justice courts. (Individual wishes to remain anonymous.)

[22] Interview with Judge "D".

in the suburban city in which the court is located. This justice was born in 1898, in San Augustine, Texas, and resided in that area until 1933. He attended the public schools in "skips and jumps"[23] as the responsibility of supporting four sisters and a brother had fallen on his shoulders upon the early death of his father. Although he was able to obtain a significant amount of schooling under these conditions, he was not able to complete high school.[24]

After arriving in Dallas County in 1933, he worked in the capacity of undertaker for a funeral home. Later he organized and operated what was known as the "Amateur Program." This program consisted of amateur "country-western" singers performing on the town square on Saturday nights from May through September. The justice-to-be received donations from the various city merchants who were interested in both attracting and holding a crowd in the city on Saturday nights. The program, which became synonymous with his name, was quite successful for a number of years; its organizer continued to present it for several years following his appointment to the justice of the peace position.[25]

---

[23] Interview with Judge "E.", July 20, 1966.

[24] *Ibid.*

[25] *Ibid.*

The appointment by the county commissioners court came in June, 1951. There were no political opponents in his election campaign until 1962, when a young local attorney announced his candidacy.[26] The election campaign was in keeping with most Americans' conception of that of the typical justice of the peace campaign. "Typical j.p." is in fact the term used by two other Dallas County justices to describe this man.[27] In his campaign, the attorney-opponent used a live fox as a personification of the justice; the justice, distributing matches and wooden nickels as campaign tokens, carried the election by a nearly two to one ratio.[28] To the successful incumbent, this victory constituted his constituents' validation of his argument asserting the superiority of lay justices put forward in the campaign.[29]

The 1962 election returns provide a measure of his popularity with most of the people of the city and

---

[26] Judge "E", who first received a salary of only $40 per month, points out that no attorney wanted the position until the salary became attractive. In 1961 the annual salary was $6,500.

[27] Interview with another justice who wishes to remain anonymous.

[28] Interview with Judge "E".

[29] Ibid.

precinct because of his personality and record of service. He has a friendly, easy-going manner and his speech is distinctly rural. He seems to evoke something of a sympathetic feeling for himself from the townspeople. The justice's interest in litigants often goes beyond a judicial interest. He not infrequently goes out of his way to visit and counsel with those who have been before him.[30] It can definitely be said that he has a more than average "common touch," which undoubtedly aids him in establishing a rapport with litigants, especially in his counseling endeavors.

His popular image, however, is that of a country justice not very well learned in the law. The judicial demeanor which he evidences is non-professional, and he does not exhibit a proficiency in the law. He advocates and practices informal arbitration, where at all possible, in contrast to formal adjudication.[31]

This justice tends to measure the success of his administration of his court by the amount of money taken in from fees and other sources. This point is well illustrated by

---

[30] Ibid.

[31] Ibid.

one of his statements made while discussing the amount of fees and other costs that he deposits with the county treasurer each month: "If I come under $4,000 a month now I feel I'm slipping."[32] The standard of his evaluation may well be related to the number of criminal misdeameanors, mostly traffic tickets, brought to him by deputy sheriffs and state patrolmen each month. Another justice, who wishes to remain anonymous, as well as several close-at-hand observers have noted his handling of traffic cases, the very strong inference being that he too readily accepts the state's charges. Thus the fact that he handles "more highway patrol tickets than any other j.p. in the county and 70 per cent of the sheriff's tickets"[33] could very possibly result from his "soliciting" the traffic cases of the officers involved by disposing of such cases in a manner most satisfying to them. In this line, it is to be noted that traffic cases upon conviction--especially prior to 1966--bring in relatively large amounts in fines and costs for Dallas County.

---

[32] Ibid.

[33] Ibid.

There are certain facts which tend to alleviate the image evinced by the foregoing paragraph. First, Precinct "GH" encompasses territory which is not in the incorporated limits of any city. The highway patrol and the sheriff concentrate their efforts in these areas as there are no municipal police to work them. Secondly, one city in the precinct does not maintain a municipal police department; thus traffic cases which ordinarily would be heard in a municipal court are heard in the justice court of Precinct "GH."

Justice "F"

The justice of the peace position in Precince "IJ" is held by Judge "F," a life-long resident of the surburban city in which his court is located. Judge "F" was born in this city in 1899. He attended the public schools of the area but did not complete the requirements for a high school diploma. He later attended the Metropolitan Business College in Dallas for a period of two years. In 1918 he began a thirty-three year career as an employee in general mercantile store business; he worked in all phases of the business, including the installation of plumbing fixtures and windmills sold by the store, and especially with undertaking. (In the course of this career he entered the Dallas

School of Embalming and satisfactorily completed its course of study in 1929.)[34] With the close of the mercantile store in which he was employed in 1951, he went to work in an appliance store where he remained until 1954. In 1955, following the resignation of the Precinct "IJ" justice of the peace, he was appointed to the position by the Dallas county commissioner's court.[35]

Judge "F" has many of the qualities alleged to be typical of the layman justice. He is generally friendly, witty, and easy-going in manner, and is undoubtedly personally acquainted with a larger percentage of the people in his precinct than is any other Dallas County justice. For the most part he is a "people-centered" justice--especially with local people. For civil and human conflict cases--as contrasted with criminal misdemeanors--he prefers to find a just and satisfactory solution through counseling rather than through judicial methods based strictly on statutes and case law. He admits that he is not very well versed in law, but believes that he is doing a satisfactory job as a

---

[34]Interview with Judge "F", July 20, 1966.

[35]*Ibid.*

justice.[36] He probably conducts more court business at home, percentagewise, than do any of the other nine justices.

Judge "F"'s handling of criminal misdemeanors contrasts with his characteristic handling of the aforementioned types. In this type of case, most of which are traffic violations, he tends to be "tough" and "according to the law." As noted earlier, this is the type of justice that law enforcement officers like and seek out. Although he does not handle as many of these cases as Justices "E" and "G", who lead in this area, this case type constitutes a larger percentage of his total volume. In 1964 criminal misdemeanor cases constituted approximately 92 per cent[37] of his total volume; in 1965 the figure was 87 per cent.[38] It is interesting to note that most of the litigants in these cases are not residents of Precinct "IJ", the bulk of them being transients passing through the precinct on Interstate 35, Interstate 45, Belt Line Road, and various other traffic arteries.

---

[36] Ibid., March 23, 1966.

[37] "Dallas County Auditor's Report, 1964."

[38] "Dallas County Auditor's Report, 1965."

Justice "G"

The justice of the peace position in Precinct "KL" was held by Judge "G." This justice was first elected in 1954 and never failed to be re-elected. The Precinct "KL" court is located in a surburban city with considerable industry. Judge "G" was very self-conscious about his age and refused to give the date of his birth. (Two other Dallas County justices insisted that he was in excess of 80 at the time of his death in 1966.) Judge "G" was born in Limestone County, Texas. He attended the public schools in Mexia and Hillsboro, receiving his high school diploma from Hillsboro High School. Following graduation he attended Hillsboro Business College for one year, where he majored in General Business.[39] Judge "G" engaged in several businesses and occupations during the course of his lifetime. For several years he was employed in road construction. He also owned several of the businesses in which he worked; these included a Chevrolet agency, a garage, a fuel business, and a firm engaged in the manufacture, sale and distribution of ice. He first held the position of justice of the peace in Arlington,

---

[39] Interview with Justice "G", May 11, 1966.

Tarrant County, Texas (1933-37). He was elected to the position in Precinct "KL" in 1954, taking office in January, 1955.[40]

Judge "G" was characterized by several qualities, most of them commendable. He was serious, alert and quite conscientious about his work. Although not well versed in the law, he was quite confident as to his ability and record. This writer was impressed with his dedication to duty and willingness to serve as a counselor as well as a judge. As a counselor he showed a marked amount of interest and sympathy in his dealings with people; his friends emphasized his counseling work with troublesome children and with elderly people in need of advice.[41]

Judge "G" was, however, subjected to the same inferences as Justices "E" and "F," that of being partial to the prosecution in criminal misdemeanor (mostly traffic) cases. An attorney-justice criticized Judge "G" on this point, stating that Judge "G"--along with Judge "E"--was creating a great deal of criticism against the Dallas County justice courts.[42] It is the opinion of this writer that Judge "G"'s

---

[40]Ibid.

[41]Grand Prairie News Texas, May 6, 1966, p. 5.

[42]Interview with an attorney-justice who wishes to remain anonymous.

experiences with untruthful litigants led him to sometimes give too little credence to the answers brought by law-enforcement officers.

Justice "H"

Judge "H" holds one of the two justice of the peace positions in Precinct "MN," a highly populated precinct of the City of Dallas.

Judge "H" is indeed an outstanding justice of the peace both in the light of the way he so markedly exemplifies traits of the popularized stereotype and in the light of individual accomplishment. Many of the claimed attributes of the popularly conceived rural "cornball" justice are demonstrated, both in his demeanor and in the way he conducts his court. In the realm of accomplishment, he is especially distinguished by the volume of "human conflict" cases handled and by the marked success--claimed by friends, supporters and many fellow lay justices--with which he has diminished the potentialities for violence present in these cases. He has for many years held thousands of peace bond hearings annually. In 1964 the number of such hearings was 3035;[43] in 1965 the number was 3073.[44] He is also

---

[43]"Dallas County Auditor's Report, 1964."

[44]"Dallas County Auditor's Report, 1965."

especially distinguished for tireless devotion to the duties of the office. Accordingly he was elected President of the Texas Justice of the Peace and Constables Association in 1958. The following year he was cited as the "Outstanding Justice of the Peace" for 1959 by the Texas Law Enforcement Foundation.[45]

Judge "H" was born in Ellis County, Texas, in 1903. He attended the public schools of the Stubbs community near Kaufman, Texas, receiving his high school diploma from Stubbs High School. Following graduation he attended the Tyler Commercial College, Tyler, Texas, where he studied bookkeeping, shorthand and typing. Following this schooling he located in Dallas, where he was employed by Dallas County on the White Rock Lake Prison Farm; here his duties consisted of keeping books and transferring prisoners to and from the farm. In 1940, after an interlude of work in the capacity of retail salesman, he went to work for the district clerk of Dallas County. During the next four years he worked in every department in the district clerk's office. In 1944 he became a candidate for the Justice of the Peace position.[46] Successful in his first bid for election, he has retained the office ever since.

---

[45] Interview with Judge "H", July 25, 1966.

[46] Ibid.

Although most justices of the peace lacking in formal legal education play down its value, Judge "H" goes one step further. He frequently, and evidently quite sincerely, both in statement and action, demonstrates a rather extreme disregard and even open contempt for what he calls "law-book" law. He describes "lawbook" law as often hopelessly confusing the issues of a case as well as the judge, attorneys and litigants. To this writer he described those who so heavily rely on "book law" as being without "experience" and thus not having a "true understanding" of the "real life" circumstances found in fact situations.[47] He demonstrates the same disregard for many procedural aspects and statutory limitations of certain non-monetary types. For instance, this writer has witnessed Judge "H," on many occasions, order a "runaway" father to pay a certain amount of child support or go to jail. The Texas justice is without jurisdiction to issue such an order, yet this is a very common practice in Judge "H"'s court. The assertion of "extra-jurisdictional" authority is also sometimes used in other types of cases by Judge "H." It is undoubtedly his "loose construction" of the peace bond statute that brings the great majority of litigants seeking this remedy into his court.

---

[47] Ibid.

The trying of cases by Judge "H" is characterized by certain commonly used practices. The justice evokes a basically paternalistic and authoritative attitude toward many litigants and not infrequently toward attorneys; this is to say that his relationship with litigants often resembles that of a father toward immature and troublesome children as contrasted with an adult-to-adult relationship. While this paternalistic relationship underlies most situations, the justice commonly "eases" into less severe relationships in the course of the trial apparently to ascertain more effectively the "human heart" of the particular situation. As noted, many of the popularly conceived rural types of characteristics are present in his manner of conducting court. Homespun stories and reasoning bearing on the particular fact situation are told in detail. One of many such stories used in criminal cases tells of the boy who could not learn to respect authority on the "outside" and after repeated violations was sent to the state penitentiary where one "must" respect the "unwritten laws" of prison inmate society in order to survive. This particular boy did not and ended up as a mere "1/4-inch notation" in the obituary column of the local paper. To further increase communication with certain litigants the justice

employs terms peculiar to his area: *e.g.*, "clowning" (acting a fool), "jicking" (acting silly), and "slow trailing" (following a person to see where he is going).[48] In this precinct these terms impart meanings quite different from that which they hold elsewhere. With his characteristic unconcern for "proper courtroom decorum" he often allows angry litigants to expend their animosity against their adversary in scarcely constrained verbal rage; this practice, he claims, makes the antagonists more ready to listen to reason and more able to see the situation in its true light.[49] Rather unreserved humor is sometimes injected to ease a tense atmosphere and thus make the litigants more susceptible to reason and compromise.[50]

One cannot escape the conclusion, however, that the justice finds some fact situations amusing and enjoyable and deliberately handles them in such a way as to make them even more so. This is especially noticeable when the justice has friends or visitors in his courtroom. It must be said for Judge "H", however, that he seldom allows such non-judicious diversions to affect the final decision in a case.

---

[48]*Ibid.* These three terms were defined for the writer by Judge "H".

[49]*Ibid.*

[50]*Ibid.*

At no time does the spirit of his paternalistic and domineering personality cease to pervade the scenes in his courtroom.

A considerable number of litigants and observers see especially in Judge "H" what so many lay justices claim to be their main attribute: wisdom based largely upon experience and common sense. The view of such litigants was well expressed by a prominant Dallas County political figure, Baxton Bryant: "Israel had her King Solomon, Dallas County has her Judge 'H'."[51] This writer has in fact witnessed this justice apply the same technique to cases before him as that attributed to King Solomon in the classical Biblical account.[52]

---

[51] Interview with Baxton Bryant, July 25, 1963.

[52] One case involved a man and his girl-friend arguing over a pig. The pig was one of a litter of a sow owned by the girl-friend. Both parties claimed the pig on the basis of a previous agreement. Judge "H" attempted to determine the owner by gauging the two claimants' reactions to his suggestion to cut the pig in half and give each party one part. In another case a mother-in-law visiting in her daughter's home asked the judge to put her son-in-law under a peace bond. She stated under oath that the son-in-law had threatened on several occasions to shoot her daughter. The son-in-law did not deny the allegations. After hearing the statements of both parties the justice asked the young wife, who was also present, several questions about her husband's conduct toward her prior to her mother's arrival. On the basis of these answers the justice denied the peace bond and scolded the mother-in-law for inciting trouble between her daughter and son-in-law.

As a dispenser of free legal advice, Judge "H" is unexcelled as to the amount given. Literally thousands come to him each year to find out what can be done legally about their particular problems. Off-the-cuff "extra-legal" advice is also frequently given.

Justice "I"

The second of the two justice of the peace positions in Precinct "MN" is held by an attorney. This justice was born in Dallas in 1930. He was educated in the public schools of the Oak Cliff section of Dallas, graduating from Sunset High School in 1947. The son of an attorney, who also served as a justice of the peace in this precinct and later distinguished himself as a Dallas County Criminal District Judge, this justice majored in pre-law at Southern Methodist University, earning his bachelor's degree in Business Administration in 1951. He then entered the S.M.U. School of Law, where he earned his L.L.B. degree in 1954.[53] Following his graduation from law school, Judge "I" was inducted into the U.S. army, where he served until 1956 in the Corps of Engineers as a legal adviser. Upon the completion of his military duty he returned to Dallas and pursued the practice of law; in connection with his practice, Judge "I" was

---

[53]Interview with Judge "I". July 18, 1966.

admitted and qualified to practice before the United States Supreme Court in 1960. He continued in the practice of law until January 1, 1963, the day he took over the justiceship in Precinct "M", to which he had been elected in 1962.[54]

When all criteria are considered, Judge "I" is by far the most professional of the Dallas County justices. He evidences a mastery of academic law and is characterized by a marked degree of sophistication in manner and demeanor. As an attorney who prefers civil practice over criminal practice, he describes the "human conflict" type of disputes as somewhat boring and disgusting to the professionally trained attorney who sees no challenge in them. In the controversy revolving around the Texas justice court system, he definitely identifies with the critics of the system.[55] Judge "I" still maintains a "part time" private legal practice and is not so "readily available" as the other Precinct "MN" justice.

In conducting court business, Judge "I" is reserved and quite professional, but does not evidence the

---

[54] <u>Ibid</u>.

[55] <u>Ibid</u>., July 29, 1965.

self-assurance shown by some of the other justices. He shows a consistently polite consideration toward both litigants and attorneys. Although generally quite businesslike and adhering to the relevant statutes in letter and spirit, he sometimes appears to be rather casual regarding litigants' conduct in certain "human conflict" cases, one result being that belligerent litigants hurled abusive language at one another on these occasions. In general, however, his professional decorum demands the respect and deference of both litigants and attorneys.

The Dallas County Auditor's Reports relate interesting statistics regarding the two Precinct "MN" justice courts. In a comparison by volume of cases handled during the three year period from 1963 through 1965, Judge "H" exceeded Judge "I" by ratios ranging from 3:1 to 5:1.[56] As might be expected from a comparison of the two justice's attitudes toward "human conflict" cases involving the use of peace bonds, Judge "H" handled more than twenty times as many such cases as did Judge "I."[57] This difference counts for a considerable part of the discrepancy in volume. As

---

[56]"Dallas County Auditor's Reports, 1963, 1964, and 1965."

[57]*Ibid.*

for criminal misdemeanor cases, Judge "I" handled the greater number; also this type of case counted for a large percentage of his total volume.[58] This writer suspects that Judge "I"'s businesslike manner and adherence to case law and statute, when compared with the other justice, resulted in a marked preference for his court on the part of the precinct's constable, county deputy sheriffs and state highway patrolmen prosecuting criminal misdemeanors in Precinct "MN."

Justice "J"

The justice of the peace position in Precinct "OP" is held by an attorney with considerable legal experience in both criminal and civil law. A Dallas County native, he was born in Dallas in 1924. He attended the public schools of Dallas and received his high school diploma from Adamson High School in the Oak Cliff area. His pre-legal training was undertaken at the former North Texas Agricultural College at Arlington and at Baylor University. For his legal training he returned to Dallas and enrolled in the S.M.U. School of Law, from which he received his law degree in 1958. He then entered private law practice.[59]

---

[58] Ibid.

[59] Interview with Judge "J", July 25, 1966.

For the past thirteen years he has resided in the chief city of the precinct which he serves. Since 1958 he has engaged in legal practice in both Dallas and the city in which his court is located. In 1962 he was a successful candidate for justice of the peace in Precinct "OP" and assumed the duties of office on January 1, 1963.[60]

While Judge "J" is certainly well versed in the law and proficient in his application thereof, he appears to be characterized by a greater number of the faults held by the lay justices to be characteristic of the attorney-justice than the other two attorney-justices observed. First, this writer feels that he lacks the proper consideration for the feelings of litigants. He too often seems to be unduly terse, even abusive and insulting. Similarly he often appears unsympathetic, disgusted, and even contemptuous toward the "human" as contrasted with legal aspects of "human conflict" cases. Of course the aforementioned practices are diametrically opposed to the "friendly philosopher" approach which builds the rapport for and emphasizes the use of counseling. This is not to suggest that Judge "J" does not employ counseling in some cases,

[60] _Ibid._

but that his personality and philosophy generally lead him to emphasize an approach which is not as people-centered as those of the other justices observed. The writer's observations and comments on other justices support the conclusion that Judge "J" is a lawyer first and a justice second. He spends a considerable portion of his time outside of his court in pursuit of his legal practice. In light of the above, it is interesting to note that among the ten justice courts of the county, Judge "J"'s court handled the smallest percentage of the county's justice court business in both 1964 and 1965.[61] In 1965 the percentage dropped below two per cent.[62]

Conclusions

Several general conclusions may be drawn from an analysis of the findings of the writer's study of the ten Dallas County justices. The attorney justices as a group were more concerned with the legal aspects of cases that were the lay justices; as they were more concerned with law and more able to apply it correctly, they rendered a higher percentage of "judicious" decisions than did their counterparts. The lay justices, however, were more interested in

---

61"Dallas County Auditor's Reports, 1964 and 1965."

62"Dallas County Auditor's Reports, 1965."

the human problems from which the cases before their courts had sprung; they did considerably more "judicial counseling" than did their attorney counterparts, not confining themselves nearly so closely to the legal aspects of cases. The lay justices, as a group, were as poorly educated as those reported in the works of the system's critics. Two of the lay justices, however, had acquired an impressive mastery of the law relevant to the justice courts, an accomplishment held by the defenders of the system to be possible for all lay justices. Two of the attorney justices gave credence, by their courtroom conduct, to the argument that they, as a group, prefer to avoid "human conflict" types of cases. On the other hand, at least one of the lay justices tended to negate the argument that the laymen are more personable and sympathetic with the litigants who come before them.

In sum, the Dallas County justices of the peace studied here seem generally to bear out the general observations made of the office and its holders for the state and for the nation. Although there are some exceptions, the Dallas justices may, then, be described as "typical." This research has produced no evidence to warrant conclusions

concerning the Dallas justice system which are significantly different from those concerning the system generally.

CHAPTER VII

CONCLUSION

Introduction

This final chapter first relates the writer's conclusions regarding the justice of the peace court system in modern America. Another section deals with recommendations of the writer, recommendations which he believes would, if implemented, increase the value to society of the Texas justice of the peace system.

The Justice Court in Modern America

After careful consideration of the arguments on both sides of the controversy raging around the justice of the peace court with its characteristic lay justice, and after many months of observation in the justice courts of Dallas County, this writer has reached the conclusion that the justice court system is inadequate for the governmental need that it is supposed to fill. Several fundamental observations make it illogical to reach any other conclusion. The justice courts too often fail to afford justice to the litigants who come before them. They frequently

fail to apply the law correctly to controversies before their court, committing errors which often wrongfully deprive litigants of their liberty and property. As justice under law for every individual is a fundamental concept of the American governmental system, the importance of this problem can hardly be overemphasized.

Further, the justice court imparts an unfavorable image of the State's legal system, an image which tends to undermine respect for law and governmental authority; the importance of this situation is emphasized by the fact that more citizens come into contact with this court than with all the other state courts combined. In an era characterized by disregard and disrespect of law, this negative image imparted by the justice courts takes on even greater significance.

Recommendations

A Court of Law with Judicial Standards And a Professionally Trained Judge

A court exercising the same or similar jurisdiction as that of the Texas justice court should have a judge who is well versed in both the letter and the spirit of the law as well as one who has character and integrity. Litigants who stand to lose their property, liberty (in an

examining trial) or suffer some limitation to be placed upon their freedom (*i.e.*, peace bond proceeding) in such a court are entitled to and have a right to expect professional expertise and integrity in the person of the judge who decides the case. Litigants deserve to have all aspects of their cases handled in a manner most conducive to realization of justice under law.

The best way to assure the presence of the aforementioned qualities in the person of the judge would be to establish the requirement that the judge must be an attorney at law in good standing. This requirement might not always obtain the type of individual sought, but the likelihood of obtaining such an individual would be greatly increased over that which exists in the present Texas justice court system, for the following reasons. Most Texas lawyers have acquired a mastery of law that would enable them to serve satisfactorily as a judge of a justice court (or of a court with the same or similar jurisdiction). Also, the majority of Texas attorneys are men of character and integrity; the state has for many years taken pains to assure the presence of these qualities in its attorneys. For example, law students are required to go before a screening committee of lawyers before or

during their first year of law school. In addition, the State Bar is ever alert for violations of its professional code on the part of its members. Those found to have violated the code are subject to disbarment.

A Court of Law Oriented Toward Guidance and Counseling

In the course of several months of observation in the justice courts of Dallas County, this writer was astounded by the large number of social problems--mostly in the form of domestic and neighborhood disputes--which were brought to the justice court for some kind of relief or remedy. Many of these cases were brought into the court because one of the parties felt that some kind of forceful relief was needed immediately. The party sought relief in the justice court because relief backed by force of law cannot be obtained by merely going to a psychologist or social worker. It was often apparent, however, that the litigants seeking the legal remedy were also in need of--and sometimes seeking either consciously or unconsciously--a solution to their overall social problem.

As noted in Chapter V, the lay justice arguments contend that a strictly judicial treatment will not afford a satisfactory solution to many of these case types and that

a considerable number of these cases contain the seeds of major crime and greater human suffering. With these contentions the writer is in agreement. Accordingly the writer believes that lay justices are to be commended for their efforts to achieve a more complete solution of these case types through "judicial counseling." Even though the writer appreciates their efforts, he nevertheless believes that lay justice counseling is based too much upon the justices' personal ideas and intuition and too little upon expert knowledge. When one considers that modern living tends to increase the number of these case types, the need for a better way to handle the "social side" of them is even more apparent. For the reasons outlined above this writer proposes the establishment of a professional court that is "socially oriented." This court would replace the Texas justice court and exercise the same or similar jurisdiction.

A basic condition would have to be met before a socially oriented court could be established. The State Legislature would have to recognize the need for the proposed reform in proposing constitutional amendments for voter consideration and in enacting laws providing for its establishment and financing. The cost of such an institution would certainly be great, but the public interest

justifies the expense. A similar recognition on the part of the several county commissioners courts, if not essential, would be most desirable.

The writer believes that constitutional provision and legislative enactment of the following suggestions would insure the success of the proposed system. The qualifications for the judge of the proposed court should be quite comprehensive. The judge should first be an attorney at law, as the proposed court would be primarily a judicial institution. The judge should possess a considerable and pertinent knowledge and understanding of psychology and sociology; he should also evidence a personality philosophically suited for the work of the proposed court. To aid the judge in the social aspect of his work professional social workers would be attached to his court. The non-legal qualifications of applicants for judge of the proposed court would be measured by reliable civil service tests administered by an officer of the county commissioners' court. These non-legal qualifications would make the judge more able to recognize the existence of a serious social problem and more able to appreciate the goals and work of the professional government social workers who would "follow up" the cases designated by him.

The judge of the "socially oriented" court would have an interest in the litigants appearing before him that would go far beyond the adjudication of their legal issue. He would be trained to recognize the existence of a major social problem needing professional attention as it appears during his handling of the legal issue which evolved from the problem. He would counsel and work with the litigants himself, but only to the extent that such extra-legal work did not interfere materially with the judicial work of his court. If he believed that additional social work was needed he would refer the case to the professional county social workers who would be assigned to his court.

Upon being referred to the social problem by the judge, the social worker would make a thorough investigation of the circumstances of the case. He would then take the actions indicated by his findings. This might be merely counseling with the litigants. On the other hand, it might include both counseling and aiding the litigants to obtain the benefits of other public services and aids available to them.

Thus the socially oriented court would provide the litigants--in cases where the need is apparent to the judge--with benefits far beyond those deriving from the legal adjudication of a case at bar. It would also benefit the court system and society in general by enabling the litigants to deal satisfactorily with the social problem from which the legal action evolved; in specific cases, the effect would be to decrease the potentiality of future legal actions and serious crimes. Further, many litigants would emerge from the experience able to handle any future social problems in the manner of enlightened mature and responsible citizens.

Recommendations Concerning Administrative Matters

The other powers and duties of the proposed court--in addition to the "social" duties described above--would be similar to those of the present Texas justice court. Thus the justice of the proposed court would have both criminal and civil jurisdiction, function as a magistrate and work for the total solution of the "needy" cases which came before him.

The proposed court would have county-wide jurisdiction and the social workers attached to the court would work throughout the jurisdiction. In cases where a sparce

population--under 5,000--would not justify the establishment of such a court in a county, two or more counties would be combined into one jurisdiction. On the other hand the several commissioners courts would be empowered to create additional "socially-oriented" courts as the need arose.

The judge of the proposed court would be appointed rather than elected. The appointment would be made by the county commissioners' court, but only after the applicant had satisfied certain established minimum requirements. The appointment would be made for a term of two years. At the end of the two year period the commissioners' court would evaluate the judge's record in light of the goals of the "socially oriented" court plan; if they found the judge's work satisfactory he would be eligible for re-appointment.

An attractive minimum salary--a salary substantially higher than that presently paid to most justices of the peace--would be provided for the judges of the proposed court. The writer believes that the salary should be at least $12,000 in counties having a population of 30,000 or more inhabitants; in counties with a smaller population the salary should be at least $10,000. An attractive salary

in the sparsely populated counties would help attract individuals with the requisite qualifications.

Conclusion

The writer's recommendations are based on his study of the justice court system and especially upon his observations in the ten justice courts of Dallas County. It is the writer's belief that the implementation of the aforementioned recommendations would accord a greater degree of justice to litigants served, increase citizens' confidence in their legal system, and decrease the number of future cases by obtaining a more complete solution of the cases which would come before the court.

APPENDIX

SUGGESTED "LOCAL OPTION" AMENDMENT FOR ABOLITION OF JUSTICE COURTS

* * * * * * * * * * * * * *

H. J. R. No.__________

Proposing an amendment to the Constitution of Texas authorizing the abolition of the justice courts in any county by the vote of qualified electors or act of the Legislature and providing for the transfer of jurisdiction of any justice courts so abolished.

Be it resolved by the Legislature of the State of Texas:

Section 1. Section 19 of Article V of the Constitution of the State of Texas is hereby amended by adding thereto the following additional paragraph:

"The Justice Courts of any county may be abolished by either of the following methods: (1) an act of the Legislature; (2) an election called by an act of the Legislature as to any one or more or all counties; (3) an election called by order of the Commissioners' Court of any county; provided, however, that it shall be mandatory for the Commissioners Court of any county to call such an election upon petition signed by qualified electors of such county to not less than five per cent of the current poll tas receipts in and for said county. In the event that such courts are abolished by an act of the Legislature or in the event that such an election is authorized by an act of the Legislature relating to one or more, but not all, of the counties, then any such act shall not be subject to the provisions of Sec. 57 of Article III of the Constitution. In the event the Legislature shall authorize or direct to be held on the date this constitutional amendment is submitted to the vote of the people an election to determine whether Justice Courts shall be abolished in each of the

counties, and in the event such an election is so held in one or more counties, then such election is hereby validated, and the Justice Courts of each county in which a majority of those voting upon the issue of abolition of Justice Courts cast their votes for abolition shall be abolished, effective December 31, 1966. Thereafter, the effective date of abolition of any Justice Court abolished hereunder shall be not less than sixty days and not more than one year after the effective date of the act if abolished by act of the Legislature and not less than sixty days and not more than one year after the election if abolished by election. In any county in which Justice Courts are abolished, the Commissioners Court of such County shall create one or more courts of record to be known as Circuit Courts, each having the jurisdiction of a Justice Court and of a County Court as now or as may hereafter be provided by law, except that it shall have no probate jurisdiction; or the Legislature may create one or more like Circuit Courts in any such county with like jurisdiction, which action of the Legislature shall not be subject to the provisions of Section 57 of Article III of the Constitution. When the Justice Courts of any county are abolished, on the effective date of such abolition the jurisdiction, civil and criminal, theretofore exercised by Justices of the Peace in such county shall be exercised by the Circuit Court thus created in such county, or by the County Court if the jurisdiction of the Justice Court is transferred to the County Court as hereinafter provided, and all rights, duties and powers of the Justices of the Peace in such county shall be thereto terminated on such date. Any Circuit Court may hold court in two or more places in said county, as may be designated by the Commissioners Court. The judge of any Circuit Court shall be a duly licensed attorney. Not less than thirty days prior to the effective date of abolition hereunder of any Justice Court in any county, the Commissioners Court of such county shall select by a majority vote the Judge of the Circuit Court to serve from the effective date of establishment thereof to the first general election next thereafter, or transfer the jurisdiction of the Justice Court or Courts to the County Court as hereinafter provided. Thereafter the Judge of the Circuit Court shall be elected at the general election and the term of the judge shall be for four years; the Circuit Judge shall be paid a sum equal to two-thirds of the pay of the District Judge in said county or such

greater or lesser sum as may hereafter be fixed by law. All cases, matters and proceedings pending in the Justice Courts shall, on the date of abolition thereof in any county, be transferred to the Circuit Court created under authority of this amendment or to the County Court if the jurisdiction of the Justice Courts be transferred to the County Court as hereinafter provided, and all records shall be delivered by the Justices of the Peace to the County Clerk. The Circuit Court shall have the power to issue any and all writs necessary to enforce its orders, judgments or decrees, and the orders, judgments or decrees, including dormant judgments, of any previously existing Justice Court, just as if the same had been first obtained in said Circuit Court. Until further provision be made, the fees and costs and the practice and procedure applicable to Justice Courts and County Courts shall be applicable to cases, controversies, proceedings, and matters transferred to or filed in the Circuit Court (or in the County Court if the jurisdiction of the Justice Courts is transferred to the County Court as hereinafter provided), according to the nature of the case, controversy, proceeding or matter; written pleadings shall be required except when the court is sitting as a small claims court; appeals may be taken from the judgments of the Circuit Court under the same conditions and procedure as are now, or as may hereafter be, provided for appeals from the judgments of the County Court. The Commissioners Court may, with the consent of the County Judge, forego the creation of any new court to take over the jurisdiction of the Justice Courts and may provide that the same be transferred to the County Court, which shall thereafter have and exercise the jurisdiction of a County Court plus that of a Justice Court. In counties abolishing Justice Courts hereunder the right of appeal to the County Court for cases presently within the jurisdiction of Justice Courts is likewise abolished; provided, however, that cases pending in County Courts or County Courts at Law on appeal from Justice Courts on the affective date of the abolition of Justice Courts in any county and cases in which notice of appeal from Justice Courts has been given but appeal has not been perfected on said date and in which appeal is perfected thereafter as now provided by law may be tried de novo in the court created under authority of this amendment. The County Clerk shall be clerk of any Circuit Court created under authority of this amendment. The Circuit Court shall

have the same assistance from other officers of the county in discharging the duties as are now given to District Courts."

Section 2. The third sentence of Section 18 of Article V of the Constitution is hereby amended to read as follows:

"In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace; provided, however, that no Justices of the Peace shall be elected in any county in which the abolition of Justice Courts has been voted by the electorate or ordered by action of the Legislature."

Section 3. The amendment of the Constitution hereby provided shall become effective at midnight on December 31, 1964.

Section 4. The foregoing constitutional amendment shall be submitted to vote of the qualified electors of this state at an election to be held on the first Tuesday after the first Monday in November, 1964, at which election all ballots shall have printed thereon:

"FOR the constitutional amendment providing for the abolition of the Justice Courts in any county by vote of the qualified electors of such county or by act of the Legislature and providing for the transfer of thelr jurisdiction and their rights, powers and duties to other courts."

"AGAINST the constitutional amendment providing for the abolition of the Justice Courts in any county by vote of the qualified electors of such county or by act of the Legislature and providing for the transfer of their jurisdiction and their rights, powers and duties to other courts."

Section 5. The governor of Texas shall issue the necessary proclamation for said election and shall have the

same published in the manner required by law and shall cause said election to be held as required by the Constitution and laws of this state. The expense of publication and election for such amendment shall be paid from the proper appropriation made by law.

BIBLIOGRAPHY

Books

Beard, Charles A., The Office of Justice of the Peace In England, New York, Columbia University Press, 1904.

Beasley, Wallace D., Justice of the Peace Institute, College Station, Texas, Agricultural and Mechanical College of Texas, n.d.

Dawson, John P., A History of Lay Judges, Cambridge, Harvard University Press, 1960.

Douglas, Paul F., The Justice of the Peace Courts of Hamilton County, Ohio, Baltimore, Johns Hopkins Press, 1932.

Eddy, John P., Justice of the Peace, London, Cassell, 1963.

Holdsworth, William S., A History of the English Law, Volumes I and IV (12 volumes), Boston, Little, Brown and Co., 1924.

Maitland, Frederic William, The Constitutional History of England, Cambridge, The University Press, 1926.

Morris, Gail M., Justice of the Peace Courts in Indiana, Bloomington, Indiana University Bureau of Government Research, 1942.

Snider, Clyde F., Local Government in Rural America, New York, Appleton-Century-Crofts, 1957.

Warren, George, Traffic Courts, Boston, Little, Brown and Co., 1942.

Articles

Allen, H. K., "Administration of Minor Justice in Selected Illinois Counties," Illinois Law Review, XXXI (April, 1937), 1047-1055.

Editorial Comment, "Constitutional Law-Due Process-Pecuniary Interest of Tribunal," Iowa Law Review, XLVII (1961-62), 1094-1103.

Furr, Warwick R., II, "The Justice of the Peace in Virginia: A Neglected Aspect of the Judiciary," Virginia Law Review, LII (January, 1966), 151-188.

Giese, Mildred J., "Why Illinois Proposes to Abolish Justice of the Peace Courts," Illinois Bar Journal, L (March, 1962), 677-685.

Howard, T. L., "The Justice of the Peace System in Tennessee," Tennessee Law Review, XIII (December, 1934), 19-38.

LaFace, Ronald C. and Schultz, Thomas G., "The Justice of the Peace Court in Florida," University of Florida Law Review, XVIII (Summer, 1965), 109-126.

MacDonald, Herbert S., "An Obituary Note on the Connecticut Justice of the Peace," Connecticut Bar Journal, XXXV (September, 1961), 411-431.

Mayer, Martin, "Justice, Law and the Lawyer," The Saturday Evening Post, CCXXXIX (February 26, 1966), 36-39, 76-81.

Morris, Joe Alex, "The 'J. P.:' Should He Be Abolished?," The Saturday Evening Post, CCXXXI (October 11, 1958), 19, 100-105.

Palmer, Ben W., "The Vestigial Justice of the Peace," American Bar Association Journal, XLVII (April, 1961), 380-385.

Partain, George Lawson, "The Justice of the Peace: Constitutional Questions," West Virginia Law Review, LXIX (April, 1967), 314-326.

"Philadelphia's Magisterial Mess," *Time*, LXXXVI (October 11, 1965), 59.

Pollack, Jack Harrison, "Cow Pasture Justice," *Michigan State Bar Journal*, XXVIII (March, 1949), 12-16

Randolph, Nowlin and Sleeper, B. R., "Local Option Abolition of Justice Courts," *Texas Bar Journal*, XXV (January, 1962), 14-15, 64-68.

Ronayne, John A., "Law School Training for Non-Lawyer Judges," *Journal of Legal Education*, XVII (1965), 197-208.

Ross, Irwin, "Let's Get Rid of Horse and Buggy Justice," *Coronet*, XLI (February, 1957), 142-146.

Smith, Chester H., "The Justice of the Peace System in the United States," *California Law Review*, XV (January, 1927), 118-141.

Willis, Hugh E., "Are Justice of the Peace Courts Impartial Tribunals," *Indiana Law Journal*, III (May, 1928), 654-657.

Vanlandingham, Kenneth E., "The Decline of the Justice of the Peace," *Kansas Law Review*, XII (1964), 389-403.

Public Documents

Application of Borchert, 359 P. 2d 789 (1961).

Dugan v. Ohio, 277 U. S. 61 (1928).

Ex Parte Howard, 347 S. W. 2d 721 (1961).

Ex Parte Jones, 128 Texas Cr. R. 380 (1935).

Ex Parte Morris, 168 Texas Cr. R. 281 (1959).

Francis v. Holmes, 118 S. W. 881 (1890).

Fry v. Ahrens, 256 S. W. 2d 115 (1953).

Hart v. State, 55 Texas Cr. R. 202,206 (1883).

Jeans v. Liquid Carbonic Co., 175 S. W. 643 (1915).

Johnson v. Hampton, 266 S. W. 561 (1924).

Judicial Council of Michigan, _Fifteenth Annual Report_, "A Study of the Justices of the Peace and other Minor Courts--Requisites for an Adequate State Wide Minor Court System," (Edson R. Sunderland) Lansing, 1945.

Kerry v. State, 17 Texas Cr. R. 178 (1884).

Louisiana State Constitution, Article 7, Section 47.

Office of the County Auditor, "Report on Justices of the Peace, 1963," Dallas, Dallas County, 1964.

Office of the County Auditor, "Report on Justices of the Peace, 1964," Dallas, Dallas County, 1965.

Office of the County Auditor, "Report on Justices of the Peace, 1965," Dallas, Dallas County, 1966.

Office of the County Auditor, "Report on Justices of the Peace, 1966," Dallas, Dallas County, 1967.

Poe v. Ferguson, 168 S. W. 459 (1915).

Proposed Constitutional Amendment for the Abolition of the Justice Courts, no place, no date.

Royce v. Goodwin, 22 Michigan 496, 499 (1871).

Tumey v. Ohio, 273 U. S. 510 (1927).

Tuttle v. State, 1 Texas Cr. R. 364 (1876).

United Finance Corporation v. Quinn, 149 S. W. 2d 148 (1941).

Vernon's Annotated Constitution of the State of Texas, Kansas City, Mo., Vernon Law Book Co., 1955.

Vernon's Texas Statutes, Kansas City, Mo., Vernon Law Book Co., 1948. Supplements, 1950, 1952, 1954, 1956, 1958, 1960, 1962, 1964, 1966.

Interviews

Brown, Joe B. Jr., Justice of the Peace, Precinct 7, Place 2, Dallas County, Texas, July 29, 1963 and July 18, 1966.

Bryant, Baxton, Democratic Candidate for Congress, Primary Election, 1964, Dallas, Texas, July 25, 1963.

Davis, Charlie T., Justice of the Peace, Precinct 1, Place 1, Dallas County, Texas, July 21, 1966.

Fox, Felix F., Justice of the Peace, Precinct 4, Dallas County, Texas, July 20, 1966.

Harrell, Maurice, A Former Assistant District Attorney of Dallas County, Dallas, Texas, August 31, 1966.

Hash, Will, Justice of the Peace, Precinct 5, Dallas County, Texas, March 23, 1966 and July 20, 1966.

Johnston, David, Justice of the Peace (Retired), Precinct 2, Dallas County, Texas, January 3, 1964, March 23, 1966, June 23, 1966 and July 18, 1966.

King, E. C., Justice of the Peace (Deceased), Precinct 6, Dallas County, Texas, May 11, 1966.

Love, Roby, Constable, Justice Precinct 1, Dallas County, Texas, August 15, 1963.

McBride, Pierce, Justice of the Peace, Precinct 1, Place 2, Dallas County, Texas, July 18, 1966 and July 21, 1966.

Randolph, Nowlin, Attorney at Law, Houston, Texas, November 20, 1967. (via telephone)

Richburg, W. E. "Bill," Justice of the Peace, Precinct 7, Place 1, Dallas County, Texas, July 25, 1966.

Russell, Lloyd G., Justice of the Peace, Precinct 8, Dallas County, Texas, July 25, 1966.

Sterrett, W. L. "Lew," County Judge, Dallas County, Texas, August 29, 1966.

Wade, Henry M., District Attorney, Dallas County, Texas, March 3, 1964.

Ward, Theran, Justice of the Peace, Precinct 3, Dallas County, Texas, July 18, 1966.

Newspapers

Grand Prairie News Texan, May 4, 1966; May 6, 1966.

The Christian Science Monitor, April 26, 1967.

The Dallas Morning News, October 15, 1963; October 16, 1963; October 17, 1963.