

December 2019

The Minor Courts of Wyoming

James Daley

Harry Harnesberger, Jr.

Floyd King

NettaBell Soderholm

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlj>

Recommended Citation

James Daley, Harry Harnesberger, Jr., Floyd King, & NettaBell Soderholm, *The Minor Courts of Wyoming*, 15 Wyo. L.J. 22 (1960)

Available at: <https://scholarship.law.uwyo.edu/wlj/vol15/iss1/2>

This Article is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

THE MINOR COURTS OF WYOMING*

I. INTRODUCTION AND SCOPE

This paper is a discussion of the history, organization, effectiveness and suggested reformation of the minor courts of Wyoming. The term "minor courts" includes the justice of the peace and police courts provided by the constitution and statutes of this state. To the extent that any article suggesting comprehensive judicial reform must consider related courts, the article will also discuss the district court system.

The basis for many of the conclusions reached by the authors is a questionnaire circulated by the Wyoming Law Journal among the district judges, police judges and justices of the peace, at the end of 1959. The answers reflected a widespread dissatisfaction with the present system particularly among the lawyers who were serving as justices. This article will summarize the particular complaints and present some of the solutions which have been attempted by other states.

II. ORIGIN

The office of Justice of the Peace was first created in England during the reign of Edward III in the fourteenth century. Blackstone has explained the procedure of appointing the justices and their required qualifications as follows:

Touching the number and qualifications of these justices, it was ordained by statute Edw. III c. 22, that two or three of the best reputation in each county, shall be assigned to be keepers of the peace. . . . And as to their qualifications, the statute just cited directs them to be of the best reputation, and most worthy men in the county, and the statute 13 Rich. II c. 7, orders them to be of the most sufficient knights, esquires, and gentlemen. And because, contrary to these statutes, men of small substance had crept into the commission, whose poverty made them both covetous and contemptible, it was enacted by statute 18 Hen. VI c. 11, that no justice should be put into commission if he had not lands to the value of 20 pounds per annum and, the rate of money being greatly altered since that time, it is now enacted by statute 5 Geo. II c. 18, that every justice, except as therein excepted, shall have 100 pounds per annum clear of all deductions.¹

When the office of Justice of the Peace was first created, it was designed to hear and determine criminal cases only, but at the time

*James B. Daly, editor-in-chief for the academic year 1959-1960 supervised and directed the research and writing of this paper. NettaBell Soderholm, Floyd King, Harry Harnsberger, Jr., and Lawrence A. Yonkee, members of the law journal staff, jointly performed the writing function. The basis for the conclusions drawn respecting the present Wyoming minor court system was questionnaires answered by justices of the peace, police justices and District Court Judges. Helpful information was also collected through interviews of judges, justices of the peace and members of the Wyoming State Bar. The writers wish to express their appreciation to each of those persons who completed and returned a questionnaire, and to those who consented to interviews.

1. Blackstone, Commentaries, 352-353 (1765).

the American colonies were formed the office was invested with both civil and criminal jurisdiction. The system was imported to the new world by virtue of the fact that the charters granted by the English Kings were based primarily on the English Common Law and the judicial power granted was to be exercised in conformity, so far as might be practicable, with the laws of England.² The inferior courts in America were variously known as Courts of Common Pleas, County Courts, Courts of Sessions, and Justices of the Peace Courts. There was maintained a Court of Appeal at London which had the power to set aside the colonial statutes or reverse the judgments of their courts in order to keep the judicial system in line with the English Common Law.³

In Wyoming, Justice of the Peace Courts were provided for by Section 9 of the Organic Act of 1868. This act stated that the jurisdiction of the justice of the peace, ". . . shall be as limited by law; provided that, the justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars. . . ." Article V, section 22 of the Wyoming Constitution which became effective on July 10, 1890, had substantially the same provision except that the "amount in controversy" was raised to two hundred dollars in civil actions. The Constitution provided generally that the number of justices shall be limited to ". . . such number as shall be necessary for the proper administration of justice."⁴

The origin of the police courts is not so certain. There seems to be no common law precedent for them, and they are best explained as a special type of justice of the peace court. In this state, as early as 1886, a police justice was required to be appointed by the town council of incorporated cities to hear and determine cases arising under the town ordinances. Under this law, the practice before such justices was to conform to the justice of the peace code concerning complaints, continuances, and appeals.⁵ In 1901, under the provision of the constitution authorizing the legislature to establish courts for the incorporated towns and cities, the municipal courts were created in substantially their present form.⁶ One provision of that act, which has since been amended, provided that the police judge was required to be the same person as the justice of the peace for that precinct.

III. CONSTITUTIONALITY

The constitutionality of proceedings before the police and justice courts of Wyoming has never been litigated. However, the United States

2. Warren, *Traffic Courts*, 186 (1942).

3. Schneider, *A Guide to Court Systems*, Institute of Judicial Administration, 16 (1957).

4. Wyo. Const., Art. V, § 1.

5. S. L. of Wyo., § 48, c. 10 (1886).

6. S. L. of Wyo., c. 101 (1901).

Supreme Court in the case of *Tumey v. Ohio*⁷ held that a conviction by a magistrate who had a direct financial interest in the outcome because he received a fee only upon conviction failed to meet the qualifications of due process of law. That Court further held that the entire system of fee-paid justices in Ohio was unconstitutional for the same reason.

Obviously, the holding in the *Tumey* case is not directly applicable to our own fee-paid justices of the peace, since their remuneration is not dependent entirely on conviction but is paid by the county in the case of an acquittal. On the other hand, it has been suggested in states with a system similar to ours, that fee justices are still unconstitutional when the realities of the system are faced.⁸ A combination of a failure of the county board to appropriate money for this purpose and the fact that arresting officers will take their business elsewhere if the justice is too liberal may, in effect, create the Ohio situation. In Wyoming, no specific appropriation is provided in the county budget for the payment of fees in cases of acquittal. Such payments are apparently made from the general appropriation for "Justices of the Peace Salaries and Expenses."⁹ It is impossible to tell to what extent these facts may be true in Wyoming, but at least one irate justice who answered our questionnaire made such an accusation.¹⁰

One authority feels that the effect of the *Tumey* case has been unduly limited by the state courts' narrow application of the holding.¹¹ In Indiana, for instance, it was held that the *Tumey* case did not apply since the defendant could appeal and receive a trial de novo, and because he could demand a jury trial. That court also thought that the possibility of a change of venue would protect defendant's rights.¹² The same conclusions have been reached by the Supreme Courts of New Mexico,¹³ Mississippi,¹⁴ Virginia,¹⁵ and several others.¹⁶ The contention that a change of venue sustains the fee system from being unconstitutional has been attacked on the grounds that the removal would necessarily be to another fee-compensated judge.¹⁷ In Wyoming, however, this objection would not be entirely valid since in some instances it is possible that removal could be to a salaried justice in a judicial precinct of more than 1,500 population.¹⁸ It seems rather doubtful, considering the number of

7. 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927).

8. Giese, Why Illinois Proposes to Abolish J.P. Courts, 46 Ill. B.J. 806 (1957-58).

9. Conversation with State Examiner, Mr. Hartwell, April, 1960.

10. Questionnaire sent out by Wyoming Law Journal.

11. Notes, 29 Notre Dame Law, 438 (1953-54).

12. *State v. Schelton*, 205 Ind. 416, 186 N.E. 772, 775 (1933).

13. *State v. Gonzales*, 43 N.M. 498, 95 P.2d 673 (1939).

14. *Arnold v. State*, 149 Miss. 738, 115 So. 885 (1928).

15. *Brooks v. Town of Potomac*, 149 Va. 427, 141 S.E. 249 (1928).

16. Giese, Why Illinois Proposes to Abolish J.P. Courts, 46 Ill. B.J. 806 (1957-58).

17. Notes, 29 Notre Dame Law, 438 (1953-54).

18. § 1-521, W.S. 1957 provides that "the justice shall transfer said proceedings . . . to the nearest justice of the peace, regardless of precinct lines, if there be another justice within twenty miles. . . ."

unsuccessful challenges in other states, that the Wyoming Justice of the Peace system would be ruled unconstitutional on the basis of the *Tumey* decision. However, the fee system lends itself to so many undesirable results that its abolishment would certainly be a furtherance of our system of justice.

IV. SPECIFIC CRITICISMS

The justice of the peace system, as a whole, has been in ill repute for a long time in this country.¹⁹ It was no doubt suitable in colonial times when a widely dispersed population without adequate communication and transportation demanded an effective and rapid legal system.²⁰ Today, the original reasons for "J.P.s" in many states have vanished.²¹ Wyoming, which such a short time ago was a primitive frontier state, naturally would tend to cling to the arrangement.

However, criticisms of these courts are numerous, and one especially applicable to this state is the inferior quality of the non-lawyer justices.²² Since the only qualifications in Wyoming are majority and residence, any Wyoming resident of the age of twenty-one is a prospective J.P.²³ In a number of cases in Illinois, questionnaires sent to justices of the peace were returned with the writing, English, and spelling below fifth grade quality.²⁴ In our survey, out of the twenty-two questionnaires returned, five justices were attorneys, one other had a college degree, nineteen had graduated from high school, leaving three or almost 14% who had never completed high school.²⁵

Probably more significant is the problem of the lack of legal knowledge. While many times a non-lawyer with very little formal education might have a well-developed sense of justice, the probabilities are that he would not. Many non-lawyer justices have no concept of the proper standards with which to determine cases. Such standards as political party affiliation, whether an alcoholic beverage was in any way connected with the issue at hand, race or religion have been reportedly used by these judges as the principal factor in deciding cases. While lawyer justices have been known to discard their legal training and employ petty prejudices in deciding an issue, there is probably less possibility that these trained men would resort to such tactics.

Other than traffic violations, a justice of the peace's jurisdiction is extended to such legal intricacies as: (1) actions for forcible entry and detainer, (2) the issuance of attachments, and, probably most important, (3) all civil actions in which the amount in controversy does not exceed

19. *Supra* note 16.

20. *Ibid.*

21. Notes, 29 *Notre Dame Law* 438 (1953-54).

22. Warren, *Traffic Courts*, 214 (1942).

23. § 5-90, W.S. 1957.

24. Warren, *Traffic Courts*, 191 (1942).

25. Questionnaire sent out by *Wyoming Law Journal*.

two hundred dollars.²⁶ Certainly, most laymen are ignorant of a working understanding concerning the legal implications of negligence, probable cause, the elements of a crime, and other doctrines which form the basis of much of the business conducted in justice court.

Unfortunately, due to a lack of lawyers in some Wyoming judicial precincts, a compulsory requirement that all J.P.'s be legally trained is not feasible under the present system. (The possibility concerning the compulsory requirement that all J.P.'s be attorneys under a revised court system will be discussed later.) For instance, there are some judicial precincts in which no attorneys reside. Also, there are some judicial precincts in Wyoming in which there is only one practicing attorney. If he were elected or appointed J.P., a person charged before the court would be deprived of an opportunity to be represented by legal counsel, unless that person was willing to send for a lawyer from another locality.

The most common complaint concerning the Justice of the Peace system in Wyoming is, quite naturally, a lack of adequate salary.³⁰ This complaint was principally voiced by lawyer J.P.'s with regard to the question of whether the civil jurisdictional limit should be raised from \$200 to \$500. Most of these lawyers are in favor of raising the jurisdictional limit, if the salary of the justice of the peace is raised accordingly. The complaint is undoubtedly legitimate, since the higher the jurisdictional limit, the more time an attorney J.P. will spend in court, and thus, the more time he will have to spend away from the office. Obviously, a better salary commensurate with the cost of living and present wages would attract a greater number of competent people to serve as Justices of the Peace.

Another abuse which has been recognized under the fee-system is the opportunity to overcharge, and hide the amount of fees collected. Our constitution specifically provides that these officers are not under the positive duty of keeping a true and accurate account of all fees collected by them.³¹ This particular problem is discussed in further detail at a later point with regard to the question of supervision over the J.P. court system. These sharp practices undoubtedly are not entertained in the majority of cases. However, the opportunity to employ them still exists and should be remedied.

Another problem which has been reported in other states and one to which the fee system lends itself, is the practice of "fee splitting" between the traffic judge and the arresting officer.³² Such an arrangement, quite

26. § 5-91, W.S. 1957.

27. § 6-63, W.S. 1957.

28. § 6-63, W.S. 1957.

29. § 6-70, W.S. 1957.

30. *Supra* note 25.

31. Wyo. Const., Art. XIV, § 2.

32. Mars, *Court Reorganization in Connecticut*, 41 *Am. Jud. Soc.* 6 (1957).

naturally, is an inducement to officers to make as many arrests as possible. This is itself an evil because such a system results in such things as speed traps, illegitimate arrests, and probably most important, summary and unjustifiable convictions so as to get the court costs immediately into the hands of the J.P. and the arresting officer according to their agreement. Abolition of the fee system is the answer to this problem, and the answer to many of the foregoing objections.

Several writers on Justice courts have discussed problems concerning supervision over these courts. Of forty-eight questionnaires, sent out by George Warren to the states in compiling information for his work on Traffic courts, thirty-six out of the thirty-seven returned stated that the Attorney-General's office had no jurisdiction or supervisory powers over Justice courts. Wyoming was one of these thirty-six.³³ While Wyoming statutes require periodical financial reports from these offices,³⁴ Warren's survey disclosed that the department in charge of such reports professed dissatisfaction over the compliance of justices with that law.³⁵ Other than this financial-record-keeping type of supervision, justices of the peace are apparently unregulated.

A conversation with the Wyoming State Examiner disclosed that the only check on Justices of the Peace is the periodic examination of their dockets. The State Examiner was frevent in his belief that such a check was completely inadequate. The present system, he explained, left open the opportunity for a J.P. to collect exorbitant court costs, and only enter the statutory amount on his docket. Also, he mentioned that in several cases the Examiner's office suspected that a Justice pocketed a fine and would enter on his docket that a jail sentence had been imposed and suspended, thus indicating to the Examiner that no fine had ever been collected. This is probably done by a collusive agreement between the defendant and the J.P., or by a threat that the defendant would be sentenced to jail unless he paid a fine. The J.P. is under no duty by law to give a receipt for any fine collected, thus leaving no cross check for the Examiner. A possible remedy for this type of abuse may be a requirement by law that both the defendant and the Justice sign the docket in testimony of its validity after sentence has been passed. This would require that a proper entry be made by the J.P. indicating his decision, the amount of the fine or jail sentence, and his fee, in order to secure the defendant's signature. Such a solution, however, may not be completely adequate since the defendant may summarily be required to sign the docket without reading it or even knowing what he is signing. Another possibility might be a requirement that the Justice return to the defendant a receipt for the fine and fees imposed. This receipt would be in the form of an addressed envelope

33. Warren, *Traffic Courts*, 193 (1942). This report was confirmed by a member of the Attorney General's staff.

34. §§ 5-100, 6-12, and 18-212, W.S. 1957.

35. Warren, *Traffic Courts*, 194 (1942).

to the State Examiner's office which must be posted by the defendant under penalty of law. This method would give the Examiner a cross check of any entry on the J.P.'s docket.

Justice courts in other states are frequently criticized for their failure to maintain the dignity and decorum so essential to the judicial process.³⁶ Obviously, each of the foregoing criticisms contribute heavily to the explanation for this feeling, but one other factor deserves mention. That is the condition and location of many J.P. courtrooms in this state. Some J.P.'s hold court in their homes, or on their back porches, and sometimes in their shirtsleeves. Their proceedings are subject to many interruptions. This setting certainly doesn't lend itself to the proper administration of justice. Fortunately, it is probably the exception rather than the rule. Such things do happen, however, particularly in smaller communities and rural areas. One of the primary reasons for such conditions is the archaic appropriation statute which provides that the county shall furnish the office of the justice of the peace in counties having a population of more than two thousand, the rent of such office not to exceed twenty dollars per month.³⁷ With twenty dollars a month available for office space, it is a fortunate thing indeed that J.P.'s have homes regardless of how shabby they may be, otherwise court would have to be held in the street. This statute was passed in 1903, and needless to say needs revision.

The final major problem which deserves mention is the concurrent³⁸ and overlapping jurisdiction between the trial courts of this state. Concurrent and overlapping jurisdiction is perhaps the most frequently encountered jurisdictional defect arising out of the structural complexity of our court system. As long as concurrent and overlapping jurisdiction remain in our courts, without placing the administrative responsibilities and the business management of all courts in a central group, there will be a duplication of functions, a waste of judicial manpower, and as a result—congestion and delays in administering justice.

The archaic structure of multiplicity of courts is not as prevalent in Wyoming as it is in a number of states which have undertaken a study to reorganize their courts. Wyoming with its three minor courts has a relatively simple structure when compared to a state such as New Jersey. Before New Jersey completed its reorganization, Mr. Warren reported that as many as ten different courts were handling traffic cases, and in many states it was fairly frequent to find six or more courts handling such matters.³⁹

36. Vanlandingham, *Pecuniary Interest of Justices of the Peace in Kentucky*, 45 Ky. L.J. 607 (1956-57).

37. § 5-95, 1957.

38. Concurrent jurisdiction has been defined as "that jurisdiction exercised by different courts at the same time, over the same subject matter and within the same territory, and wherein litigants may, in the first instance, resort to either court indifferently." *Murray v. City of Roanoke*, 64 S.E.2d 804, 808, *Mackinaw Drainage Dist. v. Martin*, 242 Ill. App. 139.

39. Warren, *Traffic Courts*, 19 (1942).

In the present court system of Wyoming, there are instances of concurrent jurisdiction in each type of court and also overlapping jurisdiction between the different levels of courts. Of the seven judicial districts, four districts are authorized to have two district court judges and the other three districts one. In the districts with two judges, the judges have concurrent jurisdiction, but the problems inherent in the instance of concurrent jurisdiction should be somewhat lessened by the statute which requires the Wyoming Supreme Court to adopt rules and regulations to provide for the division of the work between the two judges and to facilitate the administration of the business in these courts.⁴⁰ The same situation exists with regard to justices of the peace within the same county, but there is no machinery for the division of responsibility and case load among them. The justices of the peace also have concurrent jurisdiction with the district courts when the amount in controversy, exclusive of costs, is between one hundred and two hundred dollars.⁴¹ The last area of overlapping jurisdiction involves all three trial courts. Although the police justices are granted exclusive jurisdiction to hear and determine cases in which there has been an act in violation of a city ordinance,⁴² there are situations when the act may also be a crime against the state and the justice of the peace or the district court judge may be authorized to hear the case.

Most court reorganization plans try to eliminate the overlapping and concurrent jurisdiction since one of its results is giving the plaintiff a choice of tribunals in which he may institute his action. This sometimes results in what is referred to as "window shopping for justice." Frequently the plaintiff or arresting officer will seek out a justice with whom he is acquainted, or one with a reputation for favoring plaintiffs or imposing severe penalties. The fee system encourages competition among the justices in an attempt to have the action brought in their court. This problem has been a definite factor in the elimination of fee justices in some states.

40. § 5-42, W.S. 1957.

41. Article V, § 22 of the Wyoming Constitution provides that justice of the peace shall have concurrent jurisdiction in all civil actions where the amount in controversy, exclusive of costs, does not exceed two hundred dollars. However, § 5-91, W.S. 1957 states that in civil actions involving more than one hundred dollars, the action may be brought originally in the district court. (Inferentially, this statute means that the J.P.'s have exclusive jurisdiction of any civil controversy involving less than one hundred dollars. Perhaps the statute is unconstitutional.) This may raise an inference as to exclusive jurisdiction in the justice of the peace court where the controversy involves less than one hundred dollars. If such were the only inference, there could be a question as to constitutionality. However, since the language as to a sum over one hundred dollars reads permissively as to district court jurisdiction, the provision could be interpreted to mean that the district court could decline to take jurisdiction where the amount is less than one hundred dollars. In this sense the question would not appear to be a material one so far as constitutionality is concerned. A right to refuse to take jurisdiction is different from an exclusion from jurisdiction.

42. § 5-123, W.S. 1957.

V. REFORM

A. *Generally*

The inadequacies of the justice of the peace system have been exposed. It is our purpose to set out the means of improving that court, and in addition, to outline several systems either proposed or adopted in other states which replace the justice of the peace.

Before directing attention to reform at that level, it is necessary to review the efficiency of the District Courts. Any extensive change effected in the inferior tribunals would be reflected in the operation of the general trial court. If the minor courts are to be reformed, is there a need for reform in the balance of the court structure?

If this paper serves to initiate an intensive study of the courts, Wyoming will take its place among the great number of states that are, or have been, engaged in the struggle for improving the administration of justice. The struggle for court reform in this country was initiated by Roscoe Pound, in his memorable address delivered before the meeting of the American Bar Association at St. Paul in 1906.⁴³ Pound was then a young attorney from Nebraska. He shocked the leaders of the bar of that day by an attack on institutions believed grounded in the wisdom of centuries. Dean Wigmore later remarked that Pound's speech was the spark that kindled the white flame of progress.⁴⁴ Pound argued that the American courts were archaic in three respects: (1) in multiplicity of courts, (2) in preserving concurrent jurisdictions, and, (3) in the waste of judicial manpower involved. The administration of justice has broken down in many of our states which have employed a court system akin to that described by Pound. Consider that in 1953, the average time interval from "at issue" to trial in civil cases in the Supreme Court of Kings County (Brooklyn) was 53 months.⁴⁵ In 1958, in Cook County, Illinois (Chicago) the average time in personal injury cases from issue to trial was 57.2 months.⁴⁶ In 1957, the Chief Justice of the Supreme Court of the State of Colorado warned that the backlog of cases in his court had approached a crisis.⁴⁷ Early in 1960, that court had a backlog of approximately 300 cases, and appeals continued to pour in. Perhaps Americans are the most litigious people in the world; nevertheless, justice under law is the backbone of our political philosophy, and the courts must be efficient in administering to the multitude of controversies which arise in a busy society.

In addition to multiple courts and concurrent jurisdiction, the lack of machinery for effective business administration in the judicial branch of government is a patent contributor to delay.⁴⁸ This weakness has mani-

43. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. Rep. 395 (Part I, 1906).

44. Vanderbilt, *The Challenge of Law Reform*, 6 (1955).

45. Elliott, *Improving Our Courts*, 140 (1959).

46. *Ibid.*

47. *Id.* at 123.

48. Vanderbilt, *The Challenge of Law Reform*, 76 (1955).

festated itself most strongly in states which have a conglomeration of nearly autonomous courts. When there is no administrative power vested in anyone, there is, of course, no one to secure the efficient deployment of the states judicial personnel. The result has been that some judges are severely overburdened, while others may proceed at a lieisurely pace or sit idle part of the time.

Justice is not properly administered when disputes are left hanging for months and years. Distrust of the law and the courts is bred in the litigant. Businessmen must look elsewhere for a means of settling their differences.

There are other disturbing elements in the American courts; however, calendar congestion has done much to alert the states to the need for court reform. "The ravages suffered by society from the doling out of harassed and impatient justice can never be repaired." —Pound.⁴⁹

Much has been done in the struggle for reform. Outstanding men in the profession like Roscoe Pound and Chief Justice Arthur Vanderbilt have contributed greatly. Judicial councils have sprung up all over the country to study e.g., procedure, methods of selecting judges, means of escaping congestion. The American Bar Association has contributed extensively.⁵⁰ The Institute of Judicial Administration at New York University has become a clearing house on the subject. State Bar Associations have been active, and the American Judicature Society has been a continual inspiration in the cause for judicial reform.

The movement has broad implications, and much has been achieved. The federal rules of civil procedure have evolved and have been widely accepted in the states. New Jersey cast out an outmoded court structure and adopted a model system of courts. Salaries of the judiciary have been raised considerably, and new methods for selecting judges have been instituted. The jury system has been strengthened; and, all over the country, the justice of the peace courts have been under fire. That court has been improved in some states and abolished in many.

B. *The Wyoming District Court*

This article is devoted to the Wyoming minor courts; however, before considering reform at that level, we will treat the question, is reform needed at a higher level? The quick answer to this question is a resounding no! However, some adjustments might have to be made in District Courts if justices of the peace and police judges are replaced by a more ideal court.

Chief Justice Vanderbilt has set out four essential elements of a good judicial order.⁵¹ The first requirement is a simple court structure. The

49. Pound, *Organization of Courts* (1940).

50. Vanderbilt, *Minimum Standards of Judicial Administration: A Survey of the Extent to which the Standards of the American Bar Association for Improving the Administration of Justice have been Accepted Throughout the Country* (1959).

51. Vanderbilt, *Brief for a Better Court System*, *The New York Times Magazine* (May 5, 1957).

second requirement is the best possible judges, lawyers, and juries. The third is an effective business-like organization of courts, with responsible leadership. The last requirement is a flexible system of rules of procedure promulgated by the judges of the court of last resort in the state, rather than by the legislature. In applying these elements as a test of the quality of our over-all system, we discover that Wyoming measures up well.

Wyoming is not plagued with a complicated court structure. Vanderbilt contended that all the courts any state needs are three: (1) a general trial court with jurisdiction over every type of case; (2) a local court for the trial of minor cases; and, (3) an appellate tribunal to review questions of law from trial courts and administrative tribunals.⁵² Our court structure fits neatly in the model set out by Vanderbilt. We should be careful to preserve the model. We already have the simple structure that many of the older states are struggling to achieve. Many states have fallen into difficulty by multiplying tribunals when some new type of controversy or new kind of situation arises and presses for treatment. Multiplying courts would bring the attendant evils of overlapping and splinter jurisdiction, and suitors in the wrong court. In Wyoming, as greater concentrations of people occur, and a particular District Court becomes over-burdened, the situation should be relieved by adding more judges in that district. Nevertheless, there will be advocates for a surrogate court for probate matters, a multiplication of administrative tribunals, and even something like a court of common pleas. This has been the experience in other states; however, a review of the frustrations and complexities which necessarily follow, should cause the advocates of multiple courts to abandon their advocacy.⁵³

The period of Jacksonian democracy gave rise to the political judiciary, and political judiciaries have not yielded the best judges. Politics infringe upon the desired independence of judges. Where judges are popularly elected to short terms, two objections follow. First, good material for the judiciary is not willing to sacrifice an established practice for the uncertainty involved in frequent political forays. Second, good judges are often not good politicians, and judgeships go to the more flamboyant, gregarious candidate. These personality traits are not necessarily those of judicial timber. Although judges are elected in this state, these objections have not manifested themselves. Often an attorney ascends the bench by way of appointment; then, when he seeks re-election, it amounts to nothing more than a determination of the issue: should the particular judge be retained—yes or no? This sequence is close to the more advanced thinking in the area of judicial selection.⁵⁴ Further, our method of selecting judges withstands criticism on the ground that the judges of the Supreme Court and District Court are well accepted by the Bar and the public.

52. Vanderbilt, *The Challenge of Law Reform*, 39 (1955).

53. Mars, *Court Reorganization in Connecticut*, 41 *Am. Jud. Soc.* 6 (1957).

54. Hill, *Has Wyoming a Problem in Judicial Selection*, 5 *Wyo. L.J.* 51 (1950); also see Winters, *A Better Way to Select our Judges*, 5 *Wyo. L.J.* 117 (1951).

The terms of judges are sufficiently long, and the salaries high enough to attract outstanding attorneys to the higher courts. Regarding salaries of judges of the District Court, several of those judges in response to a questionnaire prepared by the editors of the Wyoming Law Journal, indicated that in their opinion, the salary of the District Judge is too low. The median salary in 1957 for Supreme Court Judges in state courts was \$17,000.⁵⁵ The median salary for trial judges in all state courts in 1957 was \$12,500.⁵⁶ In regard to the salary of trial judges, it should be noted that since the salary of the District Court Judge in Wyoming is \$11,500, Wyoming falls below the median. The following are representative salaries of trial judges and Supreme Court Judges in neighboring states: In 1956 in Arizona, the Supreme Court Justices' salaries were raised from \$12,500 to \$15,000; Superior Court Justices' salaries were raised from \$10,000 to \$12,500.⁵⁷ In 1957, the Utah legislature raised Supreme Court salaries from \$10,000 to \$12,000 and salaries of the District Court Judges were raised from \$8,000 to \$10,000.⁵⁸ In 1957, Nevada increased their Supreme Court Judges' salaries from \$15,000 to \$18,000.⁵⁹ In 1957, the Idaho legislature provide increases for the District Court Judges from \$7,500 to \$9,500.⁶⁰ South Dakota, in 1957, gave their Supreme Court Judges salary increases from \$8,000 to \$11,000, and raised Circuit Court Judges salaries to \$9,000.⁶¹

The above figures show that our District Judges' salaries are not low as compared to this group. However, we should not be too impressed with what our neighboring states are doing. Recently, in New York City, the city's Board of Estimate raised the salaries of 81 Justices and Judges of the Supreme Court, general sessions court, county court, and surrogate's court, bringing them to a salary level of \$34,500—the highest of any comparable trial courts in the nation.⁶² Granted, the circumstances in Wyoming are not in any way akin to those in New York City; however, trial judges there are receiving a salary three times greater than ours. Perhaps they attach greater significance to the position. Dean Leon Green has said: "A well-trained trial judge with adequate machinery at his disposal can do more by way of developing and maintaining orderly, inexpensive, and satisfactory government generally than any other official."⁶³ There is no cause for alarm over the salaries paid our judges; nevertheless, the legislature must be ever mindful of the fact that the caliber of judges we need must come from the best lawyers in the state, and these will not be attracted to the bench if it will involve a substantial reduction in income.

55. Elliott, *Improving Our Courts*, 137 (1959).

56. *Ibid.*

57. Chap. 58, *Arizona Laws 1956*.

58. Chap. 148, *Laws of Utah 1957*.

59. Chap. 328, *Nev. Stat. 1957*.

60. Chap. 315, *Idaho Session Laws 1957*.

61. Chap. 166, *S. D. Session Laws 1957*.

62. Elliott, *Improving Our Courts*, 137 (1959). See *N.Y. Times*, Dec. 19, 1958, p. 1, col. 1.

63. Green, *American Court Organization*, 18 *J. Am. Jud. Soc.* 75 (1934).

What has been said about Supreme Court Judges and trial judges in Wyoming is not true in regard to justices of the peace and police judges. The justice of the peace is more often than not a layman, and always a part-time judge. It is high time that the quality of the judges who administer justice in small causes be improved.

The third requirement for a good judicial order is effective business-like organization of courts, with responsible leadership. The American Bar Association has adopted from its section on Judicial Administration the following recommendation:

Provision should be made for a unified judicial system with power and responsibility in one of the judges to assign judges to judicial service so as to relieve congestion of dockets and utilize the available judges to the best advantage.

Administrative control in the courts has been strenuously restricted on two fronts. Judges are reluctant to surrender their freedom from supervision, and legislatures have halted at the prospect of vesting in the Chief Justice of the court of last resort any real administrative authority. However, ultimate responsibility must reside in some individual, otherwise, if management is left in groups, what is everybody's business turns out to be nobody's. There is a fear of abuse of discretion if one man possesses ultimate authority in certain matters. Yet, businessmen are not afraid of it. They realize that responsibility must be fixed at appropriate levels in any scheme of management. Chief Justices are men of stature and the possibility of their abusing authority in administration is negligible.

The American Bar Association's recommendation on administrative control has received the following comment from Dean Trelease:

Wyoming is listed as one of eleven states with no external control over the individual courts, where problems of congestion are treated on a voluntary basis by an overburdened judge calling upon other judges for temporary assistance. The Text states that an evaluation of Wyoming's system by local bench and bar indicates that there are few delays, little congestion, and general satisfaction with the informal system. The committee report, however, points out that personal efficiency of the individual judge may not be enough, and that there should be power to compel if indolence appears.⁶⁴

Questionnaires returned by District Judges indicate that there is presently no calendar problem in Wyoming. Cases are being efficiently disposed of. This speaks well for the present system and the District Judges; however, what is good today may not work so well at some time in the future. We may be compelled to consider the American Bar recommendation as changes occur in the economy and population of the state. The time may be near at hand. We already have two judges in several

64. Trelease, *Minimum Standards of Judicial Administration in Wyoming*, 5 *Wyo. L.J.* 159 (1951).

districts. What will happen in Cheyenne when three District Judges are needed? Who will assign the cases? Who will take the difficult cases? When this time comes, there will be a temptation to violate our simple court structure by adding some other court to take a part of the work; however, the problem would be easily solved by administrative control, with power in the Chief Justice to designate a District Judge as chief judge for the district. This chief judge could effectively balance the work load, and prevent any single judge from being overburdened. This method would also prevent the questionable practice of "shopping for justice."

The last requirement is for a flexible system of rules of procedure promulgated by the judges of the court of last resort rather than the legislature. Wyoming is excellent in this regard. The courts have full rule making authority. In the summer of 1957, the Wyoming Rules of Civil Procedure were adopted. The advent of the rules provides the basis for progressive thinking in this field in the state.

We may conclude that the District Courts are fulfilling their responsibility to the people of the state. However, the same cannot be said for the justice of the peace court. The shortcomings of that court have been shown. Is it necessary that we retain the J.P. to administer to small claims and petty crimes? The answer is no.

It has always been recognized that a wider discretion and freer scope for judicial action are requisite in the administration of justice in small causes. Hence, for a long time lay justices of the peace were taken to be the ideal tribunal. But the justices' courts of our formative era have proved to be wholly unsuited to the cities of today and have largely ceased to be satisfactory tribunals anywhere. In truth, it takes a judge who knows the law to know how and when to dispense with particular precepts. Small causes may well present quite as difficult problems as those involving large sums of money or valuable property. What is unprofitable for the lawyer is not necessarily unprofitable for the law.

Nor will it do to fall back on the stock saying that litigation ought to be discouraged, the inference being that it would be detrimentally encouraged by efficient tribunals for small causes. Litigation as a game or for the sake of litigation ought to be discouraged. But this has been the one form of petty litigation which has not been discouraged by the type of court and the procedure with which the poor litigant has had to contend. There is danger that in discouraging small causes we encourage wrongdoing, and any legal aid society can make it clear that we have been doing that very thing. Until recently we have been callous to the just claims of this type of controversy and there is still much to be done for them.⁶⁵

C. *Improving the Justice of the Peace Court*

The justice of the peace was necessary through the first quarter of the present century. A means had to be provided for keeping the peace

65. Pound, *Organization of Courts*, 263 (1940).

and settling minor disputes in a widely scattered population that was primarily rural. The need for local courts was further demanded by slow transportation facilities. Necessity of extensive local courts has been overcome by the advent of the automobile, paved highways, and farm-to-market roads in rural areas. Although there are great distances between towns, the Wyoming population is more centralized today. A trained, salaried judiciary to preside over the disposition of minor causes is essential; however, if the people of Wyoming insist on a resident judge in every locality, this would be impossible. There are not law-trained people everywhere, and a scarcity of judicial work in small communities would make salaried judges impractical. Our only solution is to provide a system wherein the court holds sessions at all county seats and at such other places as is economical and necessary. This would not impose great inconvenience. One can easily drive sixty miles today in the same time it took to travel six miles with team and wagon.

The choice is between a good court serving a wide area, or the retention of inadequate courts serving a limited area. If the choice is in favor of maintaining the status quo, the conditions in the J.P. court are ameliorable in four ways: (1) By requiring prospective lay justices to pass an examination before they will be considered qualified to serve as a justice of the peace.⁶⁶ (2) By integrating the justice of the peace court into the judicial system of the state and giving the District Court supervisory power over the justices. Also, it would be desirable to preserve the honesty of the J.P.'s by providing that defendants sign the docket and be provided with a receipt indicating the fine paid, which would be forwarded to the office of the State Examiner, as discussed previously. (3) By providing means for speedy removal of the J.P. who proves incompetent. (4) By providing higher compensation for justices of the peace, as well as a better allowance for furnishing court room facilities.

These changes would improve the existing system; however, to do this much would require careful study. Would there be a need to increase the number of District Judges if the additional responsibility of supervising the minor courts were placed there? If the District Court were responsible for the minor courts, should that court have the power to appoint and remove the personnel? Could the salaries of justices be increased if we retained the same number of those judges? While considering the answers to those problems, we might well turn to a consideration of the Virginia trial justice system. Following is a discussion of the Virginia plan, cast in a Wyoming setting.

1. THE TRIAL JUSTICE SYSTEM

Interposing the Virginia Trial Justice system on the existing Wyoming Court structure the courts of Wyoming would appear as follows: the Supreme Court and District Courts would remain; however, a group of

66. Chap. 1510, § 13, Cal. Stat. 1949

judicial officers called 'trial justices' would replace the inferior tribunals in Wyoming.

The civil and criminal jurisdiction of justices of the peace and police judges would be placed in trial justices; however, the J.P. would retain the power to issue warrants, subpoenas, and to conduct a preliminary examination of a person charged with a criminal offense. The trial justice would be appointed by the District Judge for a term of four years.⁶⁷ An associate would be appointed to assist in the absence of the trial justice.⁶⁸ The trial justice would appoint his clerk and have the power to remove that clerk. The District Judge would have supervisory authority over the trial justice, as well as the power to remove him. He would hold sessions at the county seats, and at such other places in the county as directed by the District Judge. The statutes would provide that a single trial justice could be appointed to serve more than one county, with the consent of the county commissioners in those counties affected.

The trial justice would have jurisdiction over all the misdemeanors, and exclusive jurisdiction in civil actions up to \$200, and concurrent jurisdiction with the District Court up to \$1,000.⁶⁹ In civil actions where the amount in controversy exceeds \$200, the case would be easily removed to the District Court upon the application of the defendant. The trial justice would be the judge of the juvenile court, and would have exclusive original jurisdiction of all offenses against the ordinances, laws and by-laws of the respective counties, cities and towns for which he is appointed. Fines collected in state cases would be paid into the state treasury, and fines collected in ordinance cases would be paid to the city whose ordinance was violated.

The salaries would be fixed by a committee of three District Court Judges. Salaries would range from not less than \$1,200 to a maximum of \$2,400 in the counties having a population of 10,000 inhabitants or less. The Virginia statutes provide for a gradual increase in salaries geared to the population of the county served, to a maximum salary of \$7,500 for counties whose population exceeds 50,000 inhabitants.⁷⁰ For justices serving more than one county, the total population of all counties in his area would be the guide.

In 1939, the total revenue from trial justices in Virginia amounted to \$442,517.26, while the total expense of operating the system was \$231,877.15.⁷¹

The amount of traveling required on the part of Virginia trial justices is not great. Thirty-one trial justices who held court in more than three

67. Virginia Code of 1950, § 16-51.

68. Virginia Code of 1950, § 16-55.

69. Virginia Code of 1950, §§ 16-66, 16-12.

70. Virginia Code of 1950, §§ 14-50, 14-51.

71. Sixteenth Annual Report of the Judicial Council of Michigan, 83 (1957).

places were averaging in 1940, only 298 miles of travel per month.⁷² The average figure would no doubt be somewhat higher in Wyoming; however, with careful planning in arranging sessions and consolidating counties under the jurisdiction of a single trial justice, miles traveled could be minimized. Judge J. Calloway Brown, President of the Trial Judges Association, of Virginia, has indicated that at first, there was considerable demand from other localities in the counties for sessions to be held there; however, as the system matured, this demand substantially diminished.⁷³ A tabulation made by the secretary of the Virginia Trial Justices Association showed that in forty counties, the court sat exclusively at the county seat. In 26 counties, one session a week was held away from the county seat. In other counties, sessions were held in two, three, or more places outside the county seat when the amount of judicial business made such sessions convenient and economical.⁷⁴

In Wyoming there are few counties in which there are towns, other than those in which the county seat is located, that would require regular sessions of court. If the system were adopted, it would replace all of the local inferior tribunals with a well-organized court serving a broad area. The trial justice system is not a county court according to the usually accepted meaning of that term. In Wyoming, it would be integrated into the state judicial structure and tied closely to the District Court. The trial justice would not be independent. The system is flexible and each judge would not be rigidly confined to county lines. This flexibility would allow one judge to serve a wide territory, thus making higher salaries feasible. The plan may well be an improvement on the county court; however, some attorneys in answering the questionnaire prepared for J.P.'s indicated that in their opinion, Wyoming is ready for a county court.

2. THE COUNTY COURT PROPOSAL

A county court system is advocated by many state administrators, judges, and attorneys. Before considering whether such a system could be efficiently adopted in Wyoming, it is necessary to view the workability and the effectiveness of the county court system in other states.

In about one-third of the states, local courts are established in each county, usually in addition to the courts of general jurisdiction; and in other states county courts are established in some counties but not in others. The states having such courts do not fall into any geographical or population group, but include both large and small states scattered throughout the country. In Illinois, Missouri, Texas, Nebraska, North Dakota, South Dakota, Colorado, and Oklahoma the state constitution provides that such courts be courts of record.⁷⁵

72. *Id.* at 80.

73. *Ibid.*

74. *Ibid.*

75. *Index Digest of State Constitutions*, 328 (1915).

There is usually one judge for each county court, but some states provide for a greater number of judges. In New York the number of judges in any county may be increased by the legislature as long as the number of judges does not exceed one for each two hundred thousand population in each county.⁷⁶ In West Virginia there are three judges in each county court; and in Missouri the constitution provides that there be one or more judges; but in these states, the county court is an administrative body with no judicial functions.⁷⁷

The constitution in New York provides that there shall be one judge for each county, but the legislature may create districts of two or more contiguous counties in each, in which districts there shall be elected one judge; and in the large counties of the state there is a probate judge as well as a county judge.⁷⁸

The term of county judge is most often four years, but it varies from two years in Arkansas, Oklahoma, Texas, North Dakota, and South Dakota to six years in New York and West Virginia.⁷⁹

The jurisdiction of the county courts shows great variation throughout the country. In Pennsylvania and Ohio, the county courts are courts of common pleas; and in California, the superior courts of each county are courts of general, original jurisdiction.⁸⁰ More often the jurisdiction of the county courts is limited; as in New York⁸¹ and Colorado,⁸² to cases in which the value of the property in controversy does not exceed two thousand dollars.

In North Dakota⁸³ and Oklahoma,⁸⁴ such courts have jurisdiction where the amount in controversy does not exceed one thousand dollars; and in Florida, their jurisdiction extends over civil suits in which less than five hundred dollars is involved.⁸⁵

The jurisdiction of county courts in criminal cases is also limited, and in some states, the county courts have no jurisdiction at all over criminal cases. In Nebraska, county courts do not have jurisdiction in cases in which the punishment may exceed six months imprisonment or a fine of over five hundred dollars.⁸⁶ In North Dakota⁸⁷ and South Dakota⁸⁸ the jurisdiction of the county courts is limited to criminal actions below the grade of felony; and in some special cases their criminal jurisdiction is

76. Wagner, *County Government Across the Nation*, 376-542 (2nd ed. 1946).

77. *Ibid.*

78. N.Y. Const., Art. VI, § 14.

79. *Index Digest of State Constitutions*, 312-314 (1915).

80. *Id.* at 246-249.

81. N.Y. Const., Art. VI, § 14.

82. Colo. Const., Art. VI, § 23.

83. N.D. Const., Art. IV, §§ 111-112.

84. Okla. Const., Art. VII, §§ 12, 13, and 17.

85. Fla. Const., Art. V, § 20.

86. Neb. Const., Art. V, § 16.

87. N.D. Const., Art. IV, §§ 111-112.

88. S.D. Const., Art. V, §§ 20-21.

limited to misdemeanors. County courts usually have appellate jurisdiction over minor courts unless the county courts have completely replaced the minor courts.

In some states, county courts handle extra-judicial functions as well as their judicial duties, while in other states, the duties are mostly non-judicial. In Kentucky⁸⁹ and Tennessee⁹⁰ the county court has administrative as well as judicial functions, as was the general rule in most of the Southern states prior to the beginning of the movement for the reformation of minor court systems. In Georgia,⁹¹ Arkansas,⁹² and Oregon⁹³ the county judge has probate jurisdiction and administrative powers, but has no jurisdiction in civil and criminal cases. In most of the Wisconsin counties⁹⁴ and in North Dakota⁹⁵ the county judge has jurisdiction only in probate matters. In West Virginia⁹⁶ and Missouri⁹⁷ the county court is purely an administrative body, with no judicial functions at all. In Illinois, the county court has jurisdiction over election and tax matters, and in most counties of Illinois, the county court also has jurisdiction over probate functions.⁹⁸ In Mississippi county courts exist only in a few large counties and their creation depends upon a variety of factors including a minimum population and an assessed valuation or, lacking these conditions, a special county election.⁹⁹

In all the instances thus far enumerated, it can readily be seen that no two county court systems are identical. The county court systems in every state and many times in each county within a state are patterned to fit the immediate needs of the county, the extent of the judicial matter for determination which cannot effectively be placed anywhere else, and the erratic moods of the legislative law-makers who established the systems. It is immediately apparent that there is no detailed plan or outline or even a suggestion of uniformity in the county court systems. Even in the face of this identifiable deficiency in the county court systems, many scholars and attorneys strongly advocate the adoption of this system for the "cure-all" of every evil that manifests itself in our present system. In the light of the many and varied irregularities and the wide diversifications in the already existing county court systems, a more appropriate terminology for this system might well be a "catch-all" instead of a "cure-all."

As early as 1909, a committee of the American Bar Association recommended "one great court" with three branches—appellate, district or

89. Wagner, *County Government Across the Nation*, 387-397.

90. *Id.* at 399-499.

91. *Id.* at 441-442.

92. *Id.* at 525-526.

93. *Id.* at 782-783.

94. *Id.* at 292.

95. *Id.* at 637-638.

96. *Id.* at 373-378.

97. *Id.* at 542-543.

98. *Id.* at 280-281.

99. *Id.* at 492.

circuit, and county.¹⁰⁰ The appellate courts and the district courts would have almost exactly the same duties which they now have and the county courts would handle everything else. This recommendation was discussed and developed then and several times since, but has never been considered feasible enough to adopt for two main reasons—the diversification and possibly limitless jurisdiction of the county courts and the strong resistance by many judges and attorneys.

Professor Sunderland recommended the establishment of county courts in Michigan to replace the inferior courts. Thus far, however, the lower court judges have proved themselves so firmly entrenched in the existing system that even minor modifications have been impossible.¹⁰¹

These judges and attorneys were too deeply embedded in the protective parapets of custom and convention of the existing system and felt that a radical change and upheaval, such as this, might well disrupt the entire judicial system which seemed to be operating at a minimum of efficiency already. They felt that it would be easier to put up with a few inadequacies which presently existed than to attempt a permutation which might well create disorder that could never be recitified.

It has been suggested by many who advocate the adoption of county courts, to either supplement the existing system or to replace the minor courts, that their establishment would relieve the district or circuit courts of certain special types of tedious and routine judicial business. The probate of wills, the disposal of estates, and the appointment of conservators are the types of judicial business that frequently are left to the jurisdiction of a separate county court. Juvenile cases, cases involving the insane or feebleminded, commitments to public institutions, and the appointment of guardians would also fall to the county courts. Election cases and cases involving the condemnation of property for public use may lie within their jurisdiction. And, the county court may have general, civil and criminal jurisdiction up to a fixed minimum, and entertain appeals from the justice courts, if the county courts were established as a supplement to the already existing system.

The county court system if adopted at all in Wyoming would have to replace the existing lower court system. The reason for this is evident. If this system were adopted to supplement the present system, it would lessen the load of the judges in the larger counties, but it would create twice as many part-time judges as now exist in the more sparsely populated counties in the state.

Our local courts are already authorized to handle many of the cases which are usually delegated to county courts; and specific authorization

100. Report of Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation, 32 A.B.A. p. 578 (1909).

101. Sunderland, Tentative Draft of an Act to Establish County Courts of Record, 16 Ann. Rep. Jud. Council of Mich. 67 (1946).

could be given to increase the jurisdictional amount and the classes of cases in order to lighten the case load on the district or circuit courts. It would be much easier to delegate more cases to our already existing local courts than to create an entire new system which might do nothing but serve to confuse and disrupt the workability and flexibility which now exists in our present system.

If a county court system were adopted, some of the same deficiencies would result as are now prevalent in our existing system. Many counties would not have enough cases to keep one judge busy and other more largely populated counties would have more cases than one judge could handle. Sunderland suggests that two or more counties might be combined into a single minor court district where the population is very sparse and the case load very trivial.¹⁰²

However, in our present court system, we already have judges who do not have a full schedule and those who are overburdened. The underburdened judges could commute back and forth to help an overburdened judge although heretofore this has not been done.

Another problem that a county court system might correct would be the congestion and delay in the trial of cases. By delegating the routine matters to the county courts, more time would be available in the district courts. But similarly, these delegations could be made to our already existing courts. The real remedy for congestion probably lies elsewhere than in a change in the structure of the courts or an increase in the number of judges though it seems to be agreed that the latter, at least, is a *sine qua non*. A more scientific use of pretrial and discovery procedures, the development of more trial lawyers, this development to be accelerated by insistence on the trial of cases when reached, and more juries sitting in the larger counties, may be among the answers.

The adoption of the county court system would not seem to solve any existing problems but would tend to duplicate them. A revision of our present system, combining small districts and increasing the number of judges in the larger ones, would create the same outcome with much less expense and trouble. By improvement of our present system, more would be accomplished than by creating a new system which would indubitably bring with it an influx of growing pains and a sequence of perplexities heretofore unencountered in our present system.

Unless it could be convincingly demonstrated—which to this date it certainly has not been, if the existing county courts can be used as a guide—that the absorption of the lower courts into a county court would be an effective contribution to more speedy trials, more effective utilization of the judge's time, and a more efficient system; the present division of jurisdiction, which is both logical and practical in operation should be preserved.

102. *Ibid.*

The basic premise of the county court system is sound, in that it envisions the use of law-trained, salaried judges; however, the lack of judicial work in many counties would create another group of part-time judges. Of necessity, salaries would be low. All that would be accomplished is that a county court would take over the work of the inferior tribunals. The remark has been made that inferior tribunals do not attract superior personnel.

Part-time judges are objectionable even if they are attorneys. Judge Uhlenhopp has stated the objections thusly:¹⁰³

That system provides the part-time judge with the opportunity of trafficking in private practice on his title as judge; it tempts him to favor present and prospective clients in his court; it gives him an advantage over lawyers who must appear before him as judge; it entices him to slight his public duties in favor of his private occupation; and it lowers judicial office in the public mind.¹⁰⁴

The judiciary in an ideal court system would be made up of learned men, devoting full time to the business of their court. Can the ideal be achieved in Wyoming?

3. THE UNIFIED TRIAL COURT

The answer to the problem of providing legally-trained, full time judges to handle all cases, lies in the concept of a unified trial court. Judge Harvey Uhlenhopp,¹⁰⁵ chairman of the Committee on Judicial Administration of the Iowa State Bar, has proposed a unified trial court for Iowa to replace the multiple courts of that state.¹⁰⁶

The unified trial court would have original jurisdiction over every case that the District Court Judge, justice of the peace, and police judge presently handle. In essence, the District Court would be expanded to take up the work of our present minor courts. The Iowa plan for a unified court would be something like the Virginia trial justice system, complementing the District Court. However, the Iowa plan envisions a single court with two sets of judges. One set of judges, called associates, would take over the work of the minor courts, while the second set of judges, called trial judges, would devote their time exclusively to large cases. Judge Uhlenhopp suggests that a reasonable division of work would be to give the associate all misdemeanors and civil actions not exceeding \$2,000.¹⁰⁷ To preserve flexibility, the associate would possess the entire jurisdiction of the unified trial court. The suggested division of work would serve merely as a guide.

Some advocates of the unified trial court argue that there is no reason for two sets of judges. Consistent with this thinking, if Wyoming

103. Judge Uhlenhopp is Judge of the Eleventh Judicial District of Iowa.

104. Uhlenhopp, *Judicial Reorganization In Iowa*, 44 *Iowa L. Rev.* 6, 19 (1958).

105. Uhlenhopp, *Judicial Reorganization In Iowa*, 44 *Iowa L. Rev.* 6 (1958).

106. *Id.* at 19.

107. *Id.* at 18.

were to adopt a unified trial court, we would simply add more district judges, and abolish the minor courts. In an ideal system, high judges would handle small cases as well as large. Judge Uhlenhopp argues against a single set of judges.¹⁰⁸ He points out that a judge involved in a major trial would not be able to divert his attention to the prompt disposition of minor matters. Insurance companies do not use their highly paid executives on a \$100 claim. These are left to junior executives. So, taking a lesson from business, the costlier judges should be saved for the big cases, leaving smaller matters to the associates.

If Wyoming considers a unified trial court, it is difficult to say whether we should follow Judge Uhlenhopp's thinking, or, simply add more judges to the existing District Court. It seems a possible compromise for Wyoming would be to provide a very limited number of trial judges, for instance, one in each judicial district, and give the associate trial judge considerably more responsibility than previously suggested. As an example, the associate in Wyoming might be assigned all misdemeanors, cases involving juvenile offenders and divorces, workman's compensation, civil actions involving amounts up to \$2,000, and probate. Such responsibility in the associate position would demand very capable judges. It would seem that the associate's salary should be on par with the present salary for District Judges, with trial judges receiving a somewhat higher salary. This would mean that the earnings of Supreme Court Justices should be increased.

The adoption of a unified trial court would mean that a single judge would have to serve a broad area. It would be financially impossible to have a high salaried resident judge in each town. Of course, there are cities where the amount of judicial business would merit more than one resident judge, as Cheyenne and Casper; however, in smaller towns, periodic sessions would be held. One judge conceivably could serve for example Sheridan and Johnson counties. The real problem lies in counties having a single large town, as Gillette in Campbell County. First, it appears unlikely that there would be enough work to merit the full time of a high salaried resident judge. Although it does not seem unreasonable to require a judge to commute between Buffalo and Sheridan, would it be, for instance, unreasonable to require a judge to commute between Gillette and Newcastle? If this question were answered in the affirmative, the concept of the unified trial court would have to be discarded, unless the legislature would be willing to provide a high salaried judge for almost exclusive use in that community.

Another problem exists with a limited number of judges. How would law enforcement officers secure warrants in outlying areas? What about the person imprisoned in towns having no resident judge? The prisoner is entitled to timely hearing, and, a busy judge could not be expected to

108. Virginia Code of 1950, § 16-129.

drive some distance for the sole purpose of conducting a preliminary hearing. The answer to these problems is not so difficult. Lay commissioners could be appointed throughout the state with power to issue attachments, warrants, subpoenas, and with authority to conduct preliminary hearings and admit persons to bail.¹⁰⁹ However, these commissioners would have no other criminal or civil jurisdiction. That issued by the commissioner would be returnable before a judge of the court.

In considering the disposition of minor criminal matters, our attention is drawn to traffic violations. Statistics show that in Iowa, a large percentage of the cases in minor courts involve traffic violations.¹¹⁰ Questionnaires returned by justices of the peace and police judges indicate that the same is true in Wyoming. Traffic experts have long advocated the adoption of two sweeping changes in the field of traffic law enforcement.¹¹¹ The first calls for a state-wide schedule, setting out uniform fines for traffic violations. Presently, in one town the fine for running a stop sign might be \$2.50, while in the next town, the fine for the same offense might be \$10.00. A uniform fine schedule would facilitate the operation of the second proposal, providing for traffic bureaus where motorists could simply admit and pay the fine in certain minor offenses. In the unified trial court, the clerk of court might be the officer designated to receive the fines. Assistants could be appointed in every municipality to receive fines. In certain offenses, this procedure would be available only to first offenders. The repeater, and person whose offense is more serious, as drunken driving, would be required to appear before a judge. There is a question whether most traffic offenses really belong in criminal court. The practice of herding the minor traffic offender into criminal court is at least questionable. The traffic bureau would make this unnecessary. Finally, in accord with traffic court proposals, when it becomes necessary for a person to appear before a judge, the judge would be capable of teaching. Education of the repeater and those who have committed more aggravated offenses, represents the ideal in traffic law enforcement, as opposed to appearance before the judge who summarily orders certain punishment.

A simple procedure would be provided for small civil claims. This is necessary because the small claim cannot afford detailed procedure. The procedure in the unified trial court could be quite similar to our present claims procedure. In view of inflation, it might be desirable to raise the small claim limit to \$100. A party with a small claim would appear before the clerk of court, pay a small fee, and sign a form on which his claim is briefly stated by the clerk. The defendant would be notified by registered mail, and directed to appear before the judge at an appointed time. The judge would conduct the hearing and decide the matter

109. *Supra* footnote 35, Eighty Eight percent of all cases in Iowa minor courts for the first half of 1957 involved traffic violations.

110. *Id.* at 22.

111. *Id.* at 26.

according to the substantive law.¹¹² The Iowa plan provides for appeal from small claims procedure. The judge would make minutes of testimony, and append exhibits. On appeal, the minutes and original papers would be transmitted to the Supreme Court by the clerk. On review, one justice would decide the case.¹¹³

The efficient operation of the unified trial court would depend upon administrative responsibility vested in the Chief Justice of the Supreme Court, and a trial judge in each judicial district.¹¹⁴ States having a large population and consequently a large number of judges, employ an administrative officer with an administrative staff to assist the Chief Justice. Judges make weekly reports on their case load. A statistician in the administrative office compiles reports indicating the case load of all judges. The court administrator recommends the disposition of judicial personnel to prevent a log jam of cases in the court of any judge. The Chief Justice then informs the chief judges in the judicial districts of the case load of judges within the district. The Chief Justice then makes any transfer of judges necessary between the districts, and the chief judge in each district directs judges that are not crowded to assist those with heavy dockets.

Such a complicated procedure would not be needed in Wyoming in view of the limited number of judges. The judge having supervisory authority in each judicial district could receive sufficient information on caseloads of every judge within his district, and thereby, enable the chief judge to maintain an equal distribution of work within the district. The Chief Justice would only enter the picture to direct the temporary transfer of judges between districts. However, to enable the Chief Justice to direct the most efficient deployment of the states judicial personnel, he would need up-to-date information on the case load of all judges within the state. Because of a small judicial corps, the Chief Justice would probably need only the assistance of a secretary to record case load data, and to make a report on the individual judges and districts.

This concludes a brief resume of the unified court system. Its essential characteristics are: A trained judiciary, devoting full time to the court; unification of all trial courts in one great trial court having jurisdiction over all cases; flexibility in the deployment of judicial personnel, with responsibility for the efficient operation of the court lodged in designated judges. Observe the way it conforms to Dean Pound's guiding principles for court reorganization:

What are the general principles which should govern in the reorganization . . . of our courts? The controlling ideas should be unification, flexibility, conservation of judicial power, and responsibility.¹¹⁵

112. *Id.* at 27.

113. *Id.* at 39.

114. Pound, *Organization of Courts*, 275 (1940).

115. Virginia Code of 1950, §§ 17-222, 17-227.

CONCLUSION

The big case is presently well handled in the District Court; however, it appears that the administration of justice in small causes is breaking down. This is inevitable in minor courts in which the personnel is not trained in the law. The quality of judges who handle minor cases should be improved. Such improvement could be made in the present justice of the peace court by providing higher qualifications for the office, raising the salaries of those judges, and instituting supervision over their personnel and operation. Wyoming could abolish its present minor courts by providing a system of trial justices, or by expanding the District Court to assume jurisdiction over all cases.

A special committee of the Wyoming State Bar, or a Judicial Council¹¹⁶ composed of laymen, judges, and attorneys should undertake study of our present minor courts. It is imperative that experienced men in the profession conduct such a study, for they alone possess the deep insight necessary to make proper evaluations and recommendations. Laymen have proved useful in other states, for they often pose embarrassing questions that cannot go unanswered.

The District Courts play to a limited audience, but it is to the minor courts that the masses come. In the minds of these people, their impression of the law, the courts, judges and lawyers is molded by what they countenance there. If the minor courts are casting a dishonorable reflection upon the profession, it should not be tolerated.

JAMES DALEY
HARRY HARNSBERGER, JR.
FLOYD KING
NETTABELL SODERHOLM
LAWRENCE YONKEE