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## THE NEW NORTH DAKOTA COUNTY JUSTICE COURT:

### Positive Progress in Judicial Reform

JAMES P. WHITE\*

“Long ago lawyers abandoned all hope of describing the duties of a justice of the peace in any methodic fashion and the alphabet has become the one connecting thread.”<sup>1</sup>

#### INTRODUCTION

The legislative assembly of North Dakota in 1959 abolished the office of justice of the peace and created in its place the office of county justice.<sup>2</sup> This change becomes effective on July 1, 1961. The framers of the Constitution of North Dakota apparently envisioned the abolition of the present justices of the peace since they provided that “The legislative assembly shall have the power to abolish the office of justice of the peace and confer that jurisdiction upon judges of the county courts, or elsewhere”.<sup>3</sup>

Justice of the peace courts stem from 1358 in the reign of Edward III.<sup>4</sup> The justice of the peace in medieval England exercised local jurisdiction over both petty crimes and minor civil matters. In this exercise of jurisdiction the justice of the peace was the local representative of the crown.

With the colonization of America, the English form of county and township government was created in most of the colonies. With the exception of those states having a basic Spanish background in their early governmental institutions, the English form of county government spread across the continent. While initially the justice of the peace exercised a fair amount of authority, both civil and criminal, in the United States, his authority has steadily declined since the middle of the nineteenth century.

At the end of the nineteenth century, the township or county justice of the peace possessed only two basic responsibilities. One

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1. MAITLAND, *JUSTICE AND POLICE* 84 (1885).

2. N.D. Sess. Laws 1959, c. 268. Note that justices of the peace will be elected in the 1960 election to serve until July 1, 1961. At that time the present office of justice of the peace is abolished automatically, irrespective of whether the county commissions choose to create the office of county justice within a particular county. Election and Service of Justice of Peace, Ops. Att’y Gen., April 25, 1960.

3. N.D. Const. art. IV, § 112. Note, however, Section 113 which confers ex officio justice jurisdiction upon police magistrates. This section seems to preclude the legislative assembly from abolishing the justice function of police magistrate courts. Section 85 provides that “. . . other courts may be created by law . . .” which apparently provides the constitutional basis for the legislative assembly’s action.

4. Statute of Edward, 1358, 34 Edw. 3, c. 1360.

of these was the handling of petty criminal and civil matters. The other area of responsibility was supervision of road maintenance.

With the advent of the twentieth century, there appeared a mechanical invention which was to change the course of destiny for the justice of peace courts. This invention was of course the automobile. The justice of the peace court became the logical law enforcement tribunal to assume jurisdiction at a local level of minor infractions of the traffic laws, rules and regulations, and jurisdiction was tendered it.

While the automobile signaled the slow decline of county government because of the greater mobility of persons living in areas formerly more hourly separated, culminating in such results as the 1959 action of Connecticut in abolishing county government and its functions being absorbed by the state government,<sup>5</sup> and the 1957 act of Iowa providing for some consolidation of county government,<sup>6</sup> the automobile did not signal the decline of the justice of the peace court. Rather, with the rapid increase in the number of engine driven mechanical vehicles of all types, there has been a correspondingly rapid increase in the number and variety of traffic infractions and a corresponding increase in the traffic court work load of the justice of the peace court.

In an attempt to alleviate this pressure upon a court never designed to cope with traffic problems, states have created police magistrate courts, superior courts, municipal courts and traffic courts.

The creation by the thirty-sixth legislative assembly of North Dakota of the county justice court is an attempt to remedy this situation.<sup>7</sup>

### COUNTY JUSTICE COURT

What is the relationship of the new county justice court to the other courts of a state? The 1959 session of the legislative assembly defined magistrates as officers of courts which exist in three classes. The first are the judges of the supreme court which have authority to act as magistrates throughout the state. The second class contains judges of the district courts, which have authority to act throughout the judicial districts for which they are elected.<sup>8</sup> The third class is defined as follows:

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5. Connecticut Public Acts 1959, P.A. 152.

6. Iowa Acts 1957, which Provides for consolidation by two or more counties of the office of county superintendent of schools.

7. N.D. Sess. Laws 1959, c. 268

8. *Id.* § 6.

"As limited by law directing the place of exercising their jurisdiction and authority, county justices, police magistrates, and, when authorized by law, the judges of the county courts, including those with increased jurisdiction, with authority each to act as magistrates throughout the county or the judicial subdivision in which the county, city or municipality for which he is elected or appointed is located."<sup>9</sup>

Consequently the new county justice court operates on the same or concurrent level as the county court of increased jurisdiction and the police magistrate court.

The legislative assembly further provided that the criminal jurisdiction of the new county justice is "to prevent the commission of public offenses, to institute searches and seizures, to require the arrest and detention of persons charged with crime, to require and accept bail, and otherwise to act as magistrate in matters of crime.— Each county justice has jurisdiction and authority coextensive with his county to hear, try, and determine every criminal action in which the offense charged is punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment, and every other criminal action in which jurisdiction is conferred specially by law."<sup>10</sup>

Thus the county justice will have in addition to the jurisdiction and powers formerly vested in the justices of the peace, the jurisdiction to hear and determine all cases of misdemeanor arising from crimes committed in the county for which the county justice sits.

The county justice court may be created by resolution of the board of county commissioners of any county. Thus the creation of a new county justice court is not automatic nor is action mandatory on the part of the county commissioners. Its creation is a discretionary matter reposing with the county commissioners, to be manifested only if positive need for a county justice court is deemed to exist. The county justice is to be elected<sup>11</sup> but in the event that the office of county justice, when created, is not filled by election, the board of county commissioners have the power to appoint a qualified person to the office. The term of office is two years.

Unlike the present justices of the peace, the county justice must be licensed to practice law in this state. The requirement that a

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9. *Ibid.*

10. *Id.* § 28 at 446.

11. *Id.* § 5.

county justice must be a licensed lawyer reflects an increasing concern in America with the norms of petty justice courts and a manifestation of a desire to improve these norms.<sup>12</sup> While undoubtedly some non-lawyer justices in current justice courts are performing their judicial duties in a competent manner, the fact that the justice under the new county justice law in North Dakota is required to be a member of the bar will increase the probability of efficient judicial operation of this office.

An interesting statutory provision in the prospective North Dakota law provides that the county justice need not be an elector of the county which he serves.<sup>13</sup> It is probable that this provision was enacted in recognition of the paucity of attorneys in many of the more sparsely populated counties of the state. Thus an attorney from Grand Forks county could serve as county justice in Nelson county. A county justice may also be elected or appointed by more than one county.<sup>14</sup> Thus an attorney from Bowbells in Burke county might only not be county justice in Burke county but might also serve as the county justice for Divide county and Mountrail county. The concept of the circuit riding justice of the early days of statehood can be operative in a modern sense in 1961.

In conjunction with the concept that a county justice may serve more than one county, the problem of salary should be discussed. The Legislative Assembly abolished the fee system which is presently operative for justices of the peace, and established in lieu of the fee a fixed salary for the county justice.<sup>15</sup> The annual salary of a county justice may not exceed \$3,600 plus reasonable travel expenses. This salary of a county justice may not exceed \$3,600 per year irregardless of the number of counties which a county justice serves. It may be anticipated that if a county justice serves more

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12. For example, Ohio in 1957 created the county court as a substitute for the then existing justice of peace court in the Ohio Rev. Code § 1907.11 (Baldwin 1958). The Ohio Legislature further stipulated in Section 1907.051 that "beginning with January 1, 1963, every county court judge shall have been admitted to the practice of law in the state for at least one year prior to his election or appointment. The requirements relative to the admission to the bar of the state and the practice of law in the state do not apply to any judge holding office on November 1, 1962, and who is subsequently a candidate to succeed himself".

See also Alaska Sess. Laws 1959, c. 184, §§ 12, 16 which create the supplementary office of district magistrate, who must be an attorney and who is appointed by the presiding judge of the superior court in each judicial district.

Connecticut which became the first state to abolish county government, retained the office of justice of the peace, but transferred all legal matters which they formerly handled to the state circuit courts under Connecticut Public Acts 1959, P.A. 28.

13. N.D. Sess. Laws 1959, c. 268, § 5.

14. *Ibid.*

15. *Ibid.* See Ill. Rev. Stat. c. 58, § 59.1 (1959) (which makes the justice of the peace a salaried county officer rather than a fee township officer, the salary of which may vary from \$600 to \$12,000 per year); Note, *Making the New J. P. System Work*, 48 Ill. B.J. 504 (1960).

than one county, an agreement will take place between the counties, both as to the total salary to be paid the justice and the share of the salary to be assumed by each county. The share of the salary of the county justice which each of two or more counties might assume would be based upon the total of a particular county's work load in proportion to the total work load of the county justice.

Appeal from a criminal conviction in the new county justice court shall be in the same manner as appeal from justice of the peace courts.<sup>16</sup> Appeal may then be taken within thirty days following conviction and is taken to district court, or a county court of increased jurisdiction, if such court is operative within a particular county. The law provides that this appeal "duly perfected, transfers the action to the district court for trial anew regardless of any ruling or decision of the justice. The defendant may move to dismiss the complaint on the ground that the justice did not have jurisdiction of the defense. He may also move to dismiss the complaint because more than one offense is charged therein or because the facts stated do not constitute a public offense. If the defendant does not object to the complaint for the causes above specified, or if the objections are overruled, he must be required to plead as to an indictment or information without regard to any plea entered before the justice. In other respects the proceedings shall be the same as in criminal actions originally commenced in the district court and judgment shall be rendered and carried into effect accordingly."<sup>17</sup>

It is further provided by statute which will apply to the new county justice court that, "No appeal from the judgment of a justice of the peace [which may be transposed to a justice of a county court] in a criminal action shall be dismissed. If the appeal is not taken in time or if the defendant fails to appear in the district court when his presence is required, the judgment of the justice shall be affirmed summarily and entered as the judgment of the district court and carried into effect as such."<sup>18</sup>

### POLICE MAGISTRATE COURTS

The legislative assembly of North Dakota provided in 1959 that the police magistrate within a city or village shall have exclusive

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16. N.D. Sess. Laws 1959, c. 268, § 5.  
17. N.D. Rev. Code § 33-1240 (1943).  
18. *Id.* § 33-1241.

jurisdiction of, and shall hear, try and determine, all offenses against the ordinances of the city or village, as the case may be. The criminal jurisdiction and related powers vested in the justices of the peace are hereby conferred concurrently upon police magistrates of cities and villages.<sup>19</sup> The law as it now exists gives the police magistrate exclusive jurisdiction over traffic offenses which are purely a violation of a local ordinance. The law as amended gives concurrent jurisdiction to justices of the peace and hence after July 1, 1960, to county justices and police magistrates of criminal offenses. Hence it appears that a traffic violation which violates a state rule, regulation, or law as distinguished from a local law or ordinance, may be prosecuted in either police magistrate court or in the new county justice court. The law further provides that all trials before a police magistrate for misdemeanors arising under the laws of this state shall be governed by the criminal law applicable to justices' courts in like cases.<sup>20</sup>

A police magistrate has the power to enforce his orders and judgments. He may fine or imprison for contempt offered to him while holding court, or to process issued, or orders made by him, in the same manner and to the same extent as is provided by the laws of the state pertaining to a county justice. Again, a desirable provision has been enacted providing for uniformity in both county justice court and police magistrate court.<sup>21</sup>

### CONCLUSION

The improvement of justice, both the agencies of operation and the ultimate result, must be the continuous task of the legal profession. The late Arthur A. Vanderbilt has stated, "At every point of the law there must be a calm review to achieve the greatest possible individual freedom consistent with the requirements of society as a whole, and a painstaking reform of the law to eliminate outmoded technicalities and to assure the orderly preservation of human rights."<sup>22</sup> The new county justice court which will be initiated in the North Dakota judicial system on July 1, 1961 is an attempt to fulfill the above objectives.

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19. N.D. Sess. Laws 1959, c. 268, § 4.

20. *Id.* § 20.

21. *Ibid.*

22. Vanderbilt, THE CHALLENGE OF LAW REFORM 184 (1955).