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Courts of Limited Jurisdiction in North Dakota

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COURTS OF LIMITED JURISDICTION IN NORTH DAKOTA

INTRODUCTION

THE study of the courts of limited jurisdiction in the State of North Dakota has been undertaken as part of the comprehensive study of the highway safety problems directed by the North Dakota Legislative Research Committee under authority of House Resolution No. 5 of the Thirty-Third Legislative Assembly. Immediate supervision of this overall study was assigned to the Automotive Safety Foundation of Washington, D. C. acting through its Vice-President, Norman Damon, who is serving as Director.

It was recognized that good court administration of traffic law is important. Consequently, a review of court administration of traffic law from the standpoint of statutory and administrative responsibility was considered desirable. Some evaluation of the quality of court enforcement and an appraisal of the state of conviction reporting are included in the report.

Among the matters studied in the preparation of this report, the following received consideration:

1. The number, location, and types of courts with jurisdiction to try traffic offenses below that of the district courts.
2. The authority for their existence and means by which they were established.
3. The jurisdiction, both subject matter and territorial, conferred upon such courts.
4. The manner of selection, terms, number, qualifications, and compensation of the judges thereof.
5. The provisions made regarding financial support and disposition of revenue.
6. The administration, procedure, personnel, and physical facilities of such courts.

Because most cases for violations of the traffic laws are tried in justice of the peace courts and in the police magistrate courts established in various cities and villages throughout the state, the survey and study of courts were confined largely to those courts. The use of the words "courts limited jurisdiction" is not intended to suggest that such courts are less important than other courts. In fact, they are the very foundation of our legal system. The average citizen comes in contact with them more often than with

any other court, and it is reasonable to suppose that he forms a good part of his opinion of law, our legal system and judiciary from that contact. Whatever he sees there of injustice, incompetence, or inefficiency instills in him disregard for the law and all courts; whatever he sees of competent, impartial administration of justice inspires in him respect for and pride in the law and the judiciary.

Improvement in traffic law enforcement can be aided by improvement in the administration of justice in traffic cases by courts of limited jurisdiction. It is evident that there is a very close connection between the enforcement of traffic laws and the administration of justice in the courts wherein violations of those laws are prosecuted.

ORGANIZATION

The Constitution of the State of North Dakota provides for a Supreme Court, district courts, county courts, justices of the peace and such other courts as may be established by law for cities, incorporated towns and villages. It further permits counties with a population of 2,000 or more to establish county courts of increased jurisdiction.

Legislation under the constitutional power has been exercised to establish police magistrates for cities and to provide for the election of city justices of the peace, village justices of the peace, township justices of the peace and county justices of the peace. This represents the basic framework of the judicial structure which presently exists for the processing of most of the traffic offenses and other judicial matters in North Dakota. The only court completely excluded from any jurisdiction over traffic cases is the county court which is not a county court of increased jurisdiction. Also the Supreme Court's contact with these cases is confined to its appellate jurisdiction.

Justices of Peace and Police Magistrates—Under the present law each of the 53 counties is entitled to have four justices of the peace or a grand total of 212. A special report from county clerks requested by this study reveals that only 117 justices of the peace have qualified to serve in the county level.

The aforesaid counties are divided into 1936 townships, but only 1398 of these completed their organization as a township. Upon organization as a township, they were permitted to elect two township justices of the peace. If each exercised its rights there would be 2796 township justices of the peace—but the special report of

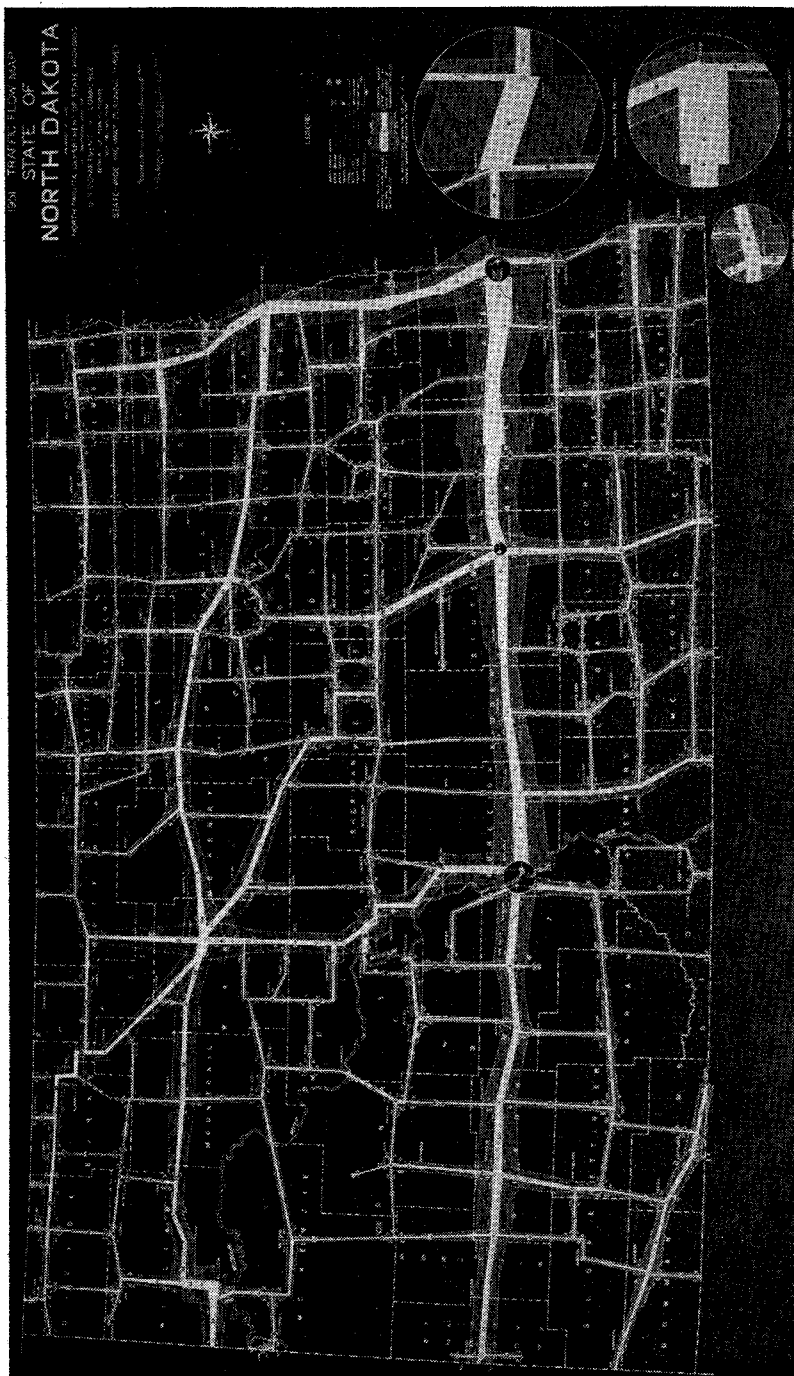
the county clerks indicates that not more than 470 had qualified to serve in this capacity. The unorganized townships are served primarily by the county justices of the peace as well as by the other justices of the peace but the residents may petition the county auditor for the privilege of electing two justices of the peace to serve them.

In the municipalities, one justice of the peace may be elected by each village, one justice of the peace for each city, and one police magistrate for each city who also has concurrent jurisdiction with justices of the peace in the county in which the city is located. The League of North Dakota Municipalities advises that there are 349 cities and villages. Examination of the most recent municipal directory available listed 209 villages and 140 cities. If the full number of city and village justices of the peace were elected there would be 349 in addition to the police magistrates. The county clerks listed 89 city and village justices of the peace as having qualified. The directory also set out the names of 94 police magistrates actually elected or appointed.

The blue print for a judicial system provided by law for courts of limited jurisdiction in North Dakota sets up almost six times the actual number of positions filled by persons complying with the statutory requisites for qualification after election or appointment. To ascertain the causes, if any, for this wide gap between theory and practice, it is necessary to consider many aspects of the judicial needs of the state.

Some 620,000 persons reside in the state. It is approximately 400 miles from east to west and slightly over 200 miles from north to south. Its boundaries form almost a perfect rectangle with some 70,000 square miles of territory. Thirty-nine villages and six cities have not indicated that they have elected any justice of peace or police magistrate. An examination of a North Dakota Highway map shows that most of these are off the "beaten track." They are away from the main traveled roads in most instances.

A close examination of the population distribution will show that the counties with greater population will be found along the two principal U. S. Highways—2 and 10—running east and west across the state and the two main traveled U. S. Highways—81 and 83—running north and south. Approximately 27% of the state's population will be found in the nine counties through which U. S. Highway 10 is located. Another 24% of the state's population is



located in the nine counties served by U. S. Highway 2. Along the state's eastern boundary will be found U. S. Highway 81 serving the two most populous counties—Cass and Grand Forks and four other counties. Twenty-six per cent of the state's population live within these six eastern counties. U. S. Highway 83 serves 16% of the state's population.

The state's terrain is flat in the eastern half while it gradually becomes rolling from the center and into the western half. Consequently, there are no problems presented by the geography of the state inasmuch as all parts of the state are readily accessible. This accessibility is further increased through the more than 70,000 miles of highway which serve the state as rural state highways, municipal state highways, county and township roads and city and village streets. In addition to this there are roads and trails which account for another 44,000 miles more or less.

All of these roads serve both residents and non-residents but the heaviest travel is along the four principal U. S. Highways 2, 10, 81 and 83. The latest available chart on the traffic flow in the state is for the year 1951 and is inserted herein as Table Four.

It is important in considering the adequacy of the judicial structure to consider the size of each county to ascertain whether the county unit is suitable for consideration as the foundation unit of the judicial structure.

The North Dakota counties are divided as follows with respect to size and population:

TABLE FIVE

<i>County Area</i>	<i>Number of Counties</i>
over 2,500 sq. miles	1
2,000-2,500 sq. miles	5
1,500-2,000 sq. miles	10
1,000-1,500 sq. miles	23
under 1,000 sq. miles	14
<hr/>	
Total	53

It is apparent from the foregoing table and from other information that the average distance from the county seat to the borders of each of the North Dakota counties rarely exceeds 50 miles. In other words, any person required to attend court at the county seat in most instances will not be required to spend more than one hour to an hour and a half going to court from any part of the county. This, of course, would also be true of non-residents, apprehended

for any traffic violation within the county. Accessibility—from a time and convenience standpoint—is present if the county is used as a basis.

Professor Keith W. Blinn has ably pointed out in the October 1950 volume of North Dakota Bar Briefs that the population figure in each county probably does not justify more than one judge in any county under 20,000. According to Table VI below there are only five counties over 20,000 in population which may require more than one judge.

TABLE SIX

<i>County Population</i>	<i>Number of Counties</i>
over 50,000	1
25,000-50,000	3
20,000-25,000	1
15,000-20,000	6
10,000-15,000	10
5,000-10,000	25
under 5,000	7
	<hr/>
	Total 53

The justice of peace courts at the time of Professor Blinn's study, according to incomplete reports for the fiscal year ending June 30, 1949, show that only 790 civil cases and 3,725 criminal cases under state laws were processed by these courts. A subsequent check undertaken for the purposes of this report (set out more fully in the section dealing with case load) for the fiscal year ending June 30, 1953, shows that the total civil and criminal judicial business of all county and township justices of the peace was 3,868. This total augmented by the judicial business handled by all other justices of peace and police magistrates was only 19,948. Therefore, it is obvious that the amount of judicial business handled by the existing justice of the peace and police magistrate courts does not justify the present number of judicial officers.

County Courts of Increased Jurisdiction—There are seven county courts of increased criminal jurisdiction which are located in the counties of Benson, Cass, LaMoure, Ransom, Stutsman, Ward, and Wells. A county court of increased criminal jurisdiction may be established in any county having a population of 2,000 or over whenever a majority of the voters of said county desire to increase the jurisdiction of the county court above the general probate jurisdiction provided for in the Constitution. The county court of in-

creased jurisdiction has concurrent jurisdiction with the district court in all civil actions where the amount in controversy does not exceed \$1,000.00 and in all criminal actions below the grade of felony. The establishment of a county court of increased jurisdiction removes from the police magistrates any jurisdiction to try cases of misdemeanor arising under the state law. The said county courts of increased jurisdiction shall also have concurrent jurisdiction with the district court in appeals from all final judgments from justices of peace and police magistrates and shall in general possess the same power and authority which a judge of a district court possesses in any action or proceedings where the jurisdiction is concurrent. The population of the counties adopting this type of court is listed as follows:

TABLE SEVEN

<i>County</i>	<i>Population</i>
Benson	10,675
Cass	58,877
LaMoure	9,498
Ransom	8,876
Stutsman	24,158
Ward	34,782
Wells	10,417

Only three of the aforesaid counties are among the ten largest counties in population which indicates that there has been no desire to adopt the county court of increased jurisdiction as the solution to better judicial work in the more populated counties. The addition of criminal jurisdiction to the county court is not compatible with the probate jurisdiction presently exercised by the county court. The two types of cases are quite dissimilar. Although it has generally been regarded that existing experience in these courts has been satisfactory, doubt exists that this is the ultimate solution for the improving of the judicial structure.

District Courts—There are six district courts which have been established by the Legislature. During the fiscal year ending June 30, 1953, they tried traffic offenses consisting of the following: (1) Operating motor vehicle under the influence of liquor—230; (2) aggravated reckless driving cases—18; (3) reckless driving—27; (4) overloading cases—14; (5) manslaughter cases involving motor vehicles—9; (6) cases involving driving without drivers license or while under suspension—10; (7) other traffic cases—18,

for an aggregate total of 326 traffic cases. In addition, the district courts tried 626 other criminal cases of a non-traffic nature. Their civil case load for this period totaled 4,647 cases. It is apparent from information available in the later portion of this report that a good number of traffic cases within the district court jurisdiction are not being filed in that court.

In view of the foregoing, the Legislature should exercise its constitutional authority to abolish all justice of peace courts and transfer their entire jurisdiction to a new court. It is recommended that a county magistrate court be established with one magistrate for each county on a full time basis in all counties over 20,000, that this new court, in counties having established a county court of increased jurisdiction, have concurrent criminal jurisdiction and also concurrent jurisdiction in civil matters up to \$500.00, and that a study be initiated for the purpose of determining the elimination of police magistrate courts and village justices of the peace by granting unto the county magistrate court concurrent jurisdiction in all city and village ordinance cases.

It is further recommended that all courts of limited jurisdiction be fully integrated into the state court system.

JURISDICTION

Justice of the Peace Courts—The criminal jurisdiction of justices of the peace extends to every criminal action in which the offense charged is punishable by a fine of not more than \$100.00 or by imprisonment in the county jail for not more than 30 days, or by such fine and imprisonment. They also have jurisdiction in every other criminal action in which jurisdiction is conferred specially by law. Justices of the peace and their courts have civil jurisdiction in all civil actions when the amount in controversy, exclusive of costs, does not exceed \$200.00. In any county which contains unorganized territory, a justice of the peace may exercise his civil and criminal jurisdiction in such unorganized territory.

In the seven counties in which county courts with increased criminal jurisdictions have been established, the justices of the peace are barred from exercising their powers to try and determine any criminal action brought under the state law. As to all other crimes, the justices of the peace act as committing magistrates.

A township justice of the peace has the same power and jurisdiction in the county in which the township is located as the county

justice of the peace. However, a person convicted of violating a township law may not be confined for more than ten days.

The city justice of the peace shall have the same jurisdiction and power as a county justice of the peace including jurisdiction to sit as a committing magistrate within the county wherein the city is situated.

A village justice of the peace has similar authority within his village and he shall exercise the powers and jurisdiction of a county justice of the peace in the county wherein the village is located. The village justice of the peace, however, in the enforcement of violations of the village by-laws and ordinances, cannot assess a fine or penalty which exceeds \$50.00 and costs of prosecution and the imprisonment shall not exceed 5 days for any one offense.

On the other hand, police magistrates (ex-officio justice of the peace) may enforce the violation of any ordinance, resolution or regulation of the city by a fine or penalty which does not exceed \$100.00 and the imprisonment does not exceed 3 months for any one offense.

The police magistrate and the village justice of the peace have exclusive jurisdiction to try and determine all offenses against the ordinances of the city or the village as the case may be.

Consequently, the police magistrates and the village justices of the peace have jurisdiction of all traffic offenses arising under the ordinances of the city or village. They also have concurrent jurisdiction with the county justice of the peace for offenses against the laws of the state and this includes most of the traffic offenses arising under the State law concerning the use of highways by vehicles. The exceptions are manslaughter, leaving the scene of an accident in which death or personal injuries are involved, driving while under the influence of intoxicating liquor, second and subsequent offense of reckless driving within one year and second and subsequent offense within one year of all other state traffic offenses.

The general penalty provision (section 39-0706 of the Motor Vehicle Laws) provides that for a second conviction within one year after the first conviction of a state traffic offense, that the court shall assess a fine of not more than \$200.00 or by imprisonment in the county jail of not more than 20 days or by both fine and imprisonment. For a second or subsequent offense within one year after the first conviction, such person shall be punished by a fine

of not more than \$500.00 or imprisonment in the county jail for not more than six months, or by both fine and imprisonment. All of these cases are in the district court.

As a practical matter, most charges are brought into the justice of the peace courts as if they were first offenses.

During the calendar year 1953, the State Highway Patrol made 2,797 arrests under the state traffic law. Most of these cases were disposed of in the justice of the peace courts where the traffic offense occurred within the limits of the city or village in which such court was located.

Some cities and villages have enacted ordinances on the subject of driving while under the influence of liquor and reckless driving and have provided for penalties in excess of those permitted to be used by justices of the peace but within the permissible limits and jurisdiction of police magistrates.

There should be no difference in the penalty provisions applicable in the police magistrate court and the justices of the peace. It is recommended that penalty provisions for these courts be made uniform.

County Courts of Increased Jurisdiction—The seven counties with county courts of increased jurisdiction handle all state traffic law violations to the exclusion of all justices of the peace. In these counties, the city and village traffic ordinance offenses continue to be within the jurisdiction of the police magistrate and village justice of peace.

Traffic Offenses—In a state which has a comparatively small population and which, because of geographical reasons, needs more judges than are required to economically and efficiently dispose of the case volume it is imperative from the standpoint of traffic law enforcement that all traffic cases with the exception of manslaughter, be tried before the same court and the same judge. It is, therefore, recommended that the jurisdiction be increased so that all traffic offenses other than manslaughter may be tried in such courts.

Juvenile Courts—The District Courts have been designated Juvenile Courts and have power and authority to hear and determine all matters concerning any person under the age of 18 years. Consequently, all traffic offenses charged against traffic violators

under the age of 18 years must be tried in District Court sitting as a Juvenile Court.

It has been held that the Juvenile Court may permit a juvenile 14 years of age or over to be proceeded against in accordance with a city or village ordinance but only the Juvenile Court can waive its jurisdiction in form of police magistrate courts and justice of peace courts. Juvenile commissioners may be appointed by the Juvenile Judge. Frequently these are justices of the peace or police magistrates.

North Dakota issues operator's licenses to all persons 16 years of age or older if qualified. Under special conditions and upon recommendation of the county judge, a junior operator's license may be issued to persons 14 years of age and under 16 years of age.

The juvenile courts have jurisdiction over traffic violation committed by these operators and retains jurisdiction over them until their 18th birthday.

It has been considered advisable that the courts which try the traffic cases of adults should also try the traffic cases of juveniles who have reached driver license age—or in North Dakota 16 years of age. There have been many reasons advanced for this method but all of them seek to secure greater compliance with traffic laws by juveniles. It is recommended that police magistrate courts and justice of peace courts or the proposed county magistrate court be given jurisdiction over traffic violators who are 16 years of age or over. It is further recommended that juvenile traffic violators who are also a behavior problem should be transferred to the Juvenile Court.

PROCEDURE

With the exception of the guarantees provided by the Declaration of Rights, the Constitution of North Dakota contains practically no provisions concerning procedure relative to the trial of criminal or traffic cases in the trial courts of limited jurisdiction. Section 97 of the Judicial Article requires that the style of all process shall be in the name of "The State of North Dakota" and conclude "against the peace and dignity of the State of North Dakota".

The Supreme Court, however, has been given "a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law."

The legislature has provided that "the Supreme Court of this state may make all rules of pleading, practice and procedure which it may deem necessary for the administration of justice in all civil and criminal actions, remedies and proceedings in any and all courts of this state . . .".

This rule making power shall not abridge, enlarge or modify in any manner the substantive rights of any litigant.

An unusually clear set of legislative restrictions on the method of promulgating rules or amendment to rules, providing for notice and hearings, the entry, filing and publication of the rule adopted and establishment of the effective date have all been brought up to date by the 1953 amendments.

Rules of Criminal Procedure—In spite of this authorization there have been no rules of criminal procedure promulgated for the trial courts of limited jurisdiction. Until the Supreme Court exercise its rule making power, these courts must be governed by the procedure contained in the Justice of Peace Chapter on Criminal Procedure.

Although this code is considered to be fairly complete and workable it is, nevertheless, advisable that it be suspended by a set of uniform rules on criminal procedure with special attention devoted to the procedural aspects of traffic cases.

It is recommended that the Supreme Court of North Dakota exercise its authority to promulgate uniform rules of criminal and traffic procedure for all trial courts of limited jurisdiction.

Enforcement by Police of Traffic Offenses—Police officers shall arrest any person whom they shall have good reason to believe guilty of any felony or any person charged with either of the following offenses:

- a. Causing or contributing to an accident resulting in injury or death of any person;
- b. Driving while under the influence of intoxicating liquor or a narcotic drug.

Under the recent 1953 amendment to Section 39-0709, a police officer, acting within his discretion, may also arrest whenever he deems it inadvisable to release such person upon his promise to appear when arrested and charged with either of the following offenses:

- a. Reckless driving;
- b. Driving in excess of speed limitations established by the

state or by local authorities in their respective jurisdictions. The arresting officer forthwith shall take any person, not released upon his promise to appear, before the nearest or most accessible magistrate.

All other persons charged with the commission of a traffic offense set out in Chapter 8 to Chapter 13 of the Motor Vehicle Act, come within the purview of Sections 39-0707 and 39-0708 of the North Dakota Revised Code of 1943 which read as follows:

39-0707. ARRESTING PERSON FOR VIOLATING TRAFFIC REGULATIONS; DUTY OF OFFICER ARRESTING.—Whenever arresting for the violation of any of the provisions of chapter 8 to chapter 13, inclusive, of this title, the officer arresting such person, except as otherwise provided in section 39-0709, shall:

1. Take the name and address of such person;
2. Take the license number of his motor vehicle; and
3. Issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice.

39-0708. HEARING UPON ARREST; TIME OF; PROMISE OF DEFENDANT TO APPEAR; FAILURE TO APPEAR.

The time to be specified in the summons or notice provided for in section 39-0707 shall be at least five days after such arrest unless the person arrested shall demand an earlier hearing, and if the person arrested desires, he may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four hours. Such hearing shall be before a magistrate of the township, municipality, or county in which the offense was committed. Upon the receipt from the arrested person of a written promise to appear at the time and place mentioned in the summons or notice, such officer shall release him from custody. Any person refusing to give such written promise to appear shall be taken immediately by the arresting officer before the nearest or most accessible magistrate. Any person willfully violating his written promise to appear shall be subject to the penalty prescribed by section 39-0706 regardless of the disposition of the charge upon which he originally was arrested.

Under these provisions, there will be relatively no difficulty occasioned when the violator is a local resident with respect to the place of the violation or the location of the court in which he is

required to appear for trial. A citation issued to him usually insures his presence. Should he fail to appear he can be reached through the usual warrant process.

However, this is not likely to be true with non-residents out of state or residents of distant parts of North Dakota who have been charged with traffic violations. It is in these cases that the officer has reason to believe that they will not appear in court for trial and ignore their written promise to appear. Under the present law, too many violators, when there is no bail at stake to compel court appearance, may ignore any written promise to appear. Experience of law enforcement agencies indicates that such provisions are inadequate and must be strengthened.

It is recommended that section 39-0708 of the Motor Vehicle Law be amended to provide that when an officer has reasonable grounds to believe that a person apprehended for a traffic violation will not appear for trial upon charge, he shall have the option to take such person before the nearest magistrate having jurisdiction of such offense, instead of having to release the violator upon his written promise to appear.

Uniform Complaints and Traffic Citations—At the present time, the State Highway Patrol uses a stiff card type of ticket which is perforated into four parts and entitled "Notice To Appear". One portion is delivered to the violator, another mailed to the central office of the Highway Patrol, a third portion is mailed to the safety responsibility section after appearance before the magistrate and also contains the written promise to appear, and the fourth portion is the patrolman's stub.

The use of this form requires writing the name and address and other pertinent information required at least three different times—a duplication of effort. Inquiry developed that there was very little uniformity with respect to the forms used in the issuance of traffic citations among the cities and villages. It further developed that different forms of complaint for traffic offenses were used in the various courts of limited jurisdiction throughout the state. There was no information furnished that any enforcement agencies were using a combination traffic citation and complaint form.

An examination of the provisions of the North Dakota law pertaining to criminal complaints indicates that there are no unusual formalities contained therein to prevent the use of the model form. Section 33-1203 of the Justice Court Act states that a "complaint

in a criminal action in a justice court must be in writing and must state the facts constituting the offense in ordinary and concise language with special certainty and such particulars as time, place, person and property as will enable the person of common understanding to know what is intended”.

The American Bar Association, the Conference of Chief Justices, the President's Highway Safety Conference and other national organizations interested in Traffic Safety and in the improvement of justice in traffic courts have recommended the nation-wide use of a uniform traffic citation with one copy thereof to be in the form of and used as a sworn complaint. (See Exhibit A—Resolutions of Conference of Chief Justices.)

The suggested form of traffic citation uses the first copy thereof as a complaint which may be used in all courts trying traffic cases within the State of North Dakota. The model form may be readily adapted for use and the complaint set out in section 33-1204 of the Justice Court Act can be readily integrated into the complaint portion of the aforesaid model.

The American Bar Association model has been patterned after forms used state-wide by all enforcement agencies in New Jersey and in 142 Michigan cities, seven Michigan counties and two state police districts of Michigan and in 28 other jurisdictions elsewhere in the United States.

Through the adoption of the uniform traffic citation and complaint much duplication in clerical work by police officers and judges will be eliminated. The offender will be enabled to know in greater detail with what he is charged and assist the justice in determining the seriousness of the offense charged and the dangerousness of the conditions under which the violation was committed.

It is therefore recommended that the North Dakota Highway Patrol and all cities and villages use this form of traffic citation and complaint and that this step should be undertaken without waiting for any possible uniform rules of procedure to be promulgated by the Supreme Court to make the use of a uniform citation mandatory.

Sessions of Court—There are only a few courts of limited jurisdiction in which regularly scheduled sessions are held for the trial of criminal cases, particularly, traffic offenses. There are more police magistrate courts which hold regularly scheduled court sessions

than justices of the peace under the North Dakota law. A justice court is deemed to be open always and the sittings of every court in the state shall be public. The courts shall not be open on Sundays or legal holidays except for the purpose of instructing a jury or receiving a verdict.

It is further provided, however, that in criminal cases, on Sundays and legal holidays, any magistrate may exercise his jurisdiction in criminal cases to preserve the peace or to arrest offenders and to admit persons arrested to bail.

The needs of proper administration of justice require that there should be regularly scheduled court hours for the justices of peace and police magistrates. Once these hours have been established, most persons having business with the court will conform to the requirement. This should prevail in all cases including traffic cases except perhaps in those instances where non-resident violators passing through a community should receive special consideration in order that they shall not be unnecessarily delayed in their trips; but if a special session is conducted for the non-resident violators, it, nevertheless, can be a formal session of court.

In most instances, courts of limited jurisdiction have no valid reason for not conducting regularly scheduled sessions for the trial of the average traffic cases and with all the procedure and dignity as that given courts of record.

It is therefore recommended that all courts of limited jurisdiction establish, in so far as possible, regular sessions for the trial of criminal cases, particularly, traffic cases. The public and all enforcement officers should be notified of such procedure by appropriate publicity and the prominent posting of copies of pertinent court orders on this subject in the courtroom.

Separation of Traffic Cases—An examination of the judicial statistics available at this time on the case load of the various courts of limited jurisdiction indicates that there is no court which has sufficient judicial business to justify the establishment of a separate traffic court.

The City of Grand Forks for the fiscal year ending on June 30, 1953, reported a case load of 6,640 cases of which 5,521 were traffic. Under national standards, separate traffic courts should not be established until the case load has reached the sum of 7,500 traffic cases of all kinds exclusive of parking, standing, and other non-moving violations.

However, it is recommended that all courts of limited jurisdiction throughout the state should establish, in so far as possible, separate sessions for the trial of traffic cases. These separate sessions may be the designation of a particular day or days or a particular hour daily or on certain days for the trial of traffic offenses. It is important that, wherever possible, traffic cases should be separated from other criminal business of the courts of limited jurisdiction. Traffic violations do not partake of the same characteristics common to other criminal cases. Furthermore, the kind of person who is involved in traffic violations will not be of the class associated with drunks, petty thieves and others usually appearing as defendants in criminal cases.

Traffic Violations Bureau—As recognized by the Conference of Chief Justices, traffic court violations bureaus provide a means for disposing of traffic offenses which are predicated on laws designed to promote public convenience rather than traffic safety. They eliminate parking, standing, and non-moving violations from the judges' docket and therefore, permit the judge to exercise more thorough judicial consideration of the traffic cases which arise out of violations of the rules of the road and other moving violations concerned with traffic safety.

The establishment of a traffic violations bureau enables the court to treat non-moving offenses in an informal manner before the bureau, place a fixed predetermined fine on those violations and permit the payment of the fine by the violator upon signing a written plea of guilty and a waiver of trial.

At the present time, there are no traffic violations bureaus in operation in the State of North Dakota. There will be need for the establishment of such a bureau in some of the police magistrate courts. There may be need for utilizing this judicial agency in the cities of Fargo, Grand Forks, Minot, Bismarck and Jamestown which are presently operating under the bail forfeiture system.

It is considered advisable to use the traffic court violations bureau technique in the cities in order to secure a finality of the judicial proceedings instituted under the ordinance violation inasmuch as the bail forfeiture in and of itself, does not terminate the proceeding.

Until such time as the Supreme Court of North Dakota shall promulgate the uniform rules of procedure for the handling of

traffic cases, it is recommended that the legislation be adopted to permit the establishment of a traffic violations bureau in cities, villages, townships and counties by justices of the peace and police magistrates and that said legislation should provide for the necessary physical and clerical facilities required thereby.

Uniform Bail and Fine Schedules—Inconsistent policies as to bail and fines used by justices in adjacent communities within the same county and between justices in adjacent counties do more to reduce respect for traffic court justice than any other single action on the part of the courts.

It is important that bail schedule should be uniform at least between justices of the peace and police magistrates within the same county. It is doubly important that all justices in all counties operate on the same uniform bail schedule. This will insure certainty and consistency in this area of the court's work and eliminate the varied and inconsistent policies which presently exist between the justices of the several courts which have been reviewed by this study.

A uniform bail schedule could be the subject of a uniform rule to be promulgated by the Supreme Court of North Dakota. However, it is recommended, that pending action by the Supreme Court, the justices of the peace and police magistrates in each of the individual counties should meet as promptly as possible and agree upon a county-wide uniform bail schedule. If opportunity permits, this uniformity should be spread to all the counties within each of the six judicial districts and later state-wide through voluntary action.

The limitations on the amount of money fine and the number of days in jail which can be imposed, have acted as a tempering influence upon the courts of limited jurisdiction, but nevertheless, there is still a definite lack of consistency on the penalties assessed against traffic offenders in the various courts of limited jurisdiction throughout the state.

Although some justices dislike being bound to a definite schedule of fines and penalties, there is need for greater uniformity in understanding between justices on what is an appropriate and average minimum fine for any particular offense.

The establishment of this type of standard does not interfere with

judicial discretion but only affords the justices an opportunity to use it as a yardstick from which to go up or down in assessing the appropriate corrective penalty.

Adoption of the uniform traffic citation and complaint will facilitate the establishment of an average minimum uniform fine schedule to be used as guides by justices of the peace and police magistrates in their corrective penalization process.

The model form will give them a foundation upon which to assess the seriousness of the violation and to determine whether the conditions at the time of the violation increase the danger and hazard thereof.

There are many other factors that must be taken into consideration before arriving at the proper penalty for each individual case.

To achieve greater understanding and agreement on policies of penalization, it is necessary that periodic county-wide conferences be held of justices of the peace and police magistrates for the purpose of establishing uniform bail and minimum fine schedules as guides to better penalization.

Use of Records of Prior Convictions in Traffic Cases and Reports of Convictions—Under the Motor Vehicle Act, section 39-0711, every magistrate in the State of North Dakota must keep a complete and full record of every case in which a person is charged with a violation of the chapters in the Motor Vehicle Act dealing with driving while under the influence of intoxicating liquor or narcotic drugs, reckless driving, leaving the scene of an accident in which death or personal injury or property damage has occurred, speeding, rules of the road, equipment regulations, size, width and height restrictions and traffic signs and signals. The magistrate must report convictions to the Registrar of Motor Vehicles within ten days in all convictions of reckless driving, driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs or leaving the scene of an accident involving injury or death to any person. The restricted area in which reports of convictions must be made to the Registrar is considerably hampering traffic law enforcement in North Dakota.

According to information received from the Safety Responsibility Division of the State Highway Department convictions reported for the offenses listed above resulted in the number of suspensions and revocations set out in Table Eight.

TABLE EIGHT

	1950	1951	1952	1953
Reckless Driving	93	126	101	132
Driving while under the influence of intoxicating liquor	958	1113	1144	1070
Leaving the scene of an accident	8	5	9	7
Total convictions reported under Statute	1059	1244	1254	1209
Additional Suspensions:				
Unlicensed Driving	319	370	475	441
Manslaughter	4	2	7	1
All others	2103	1575	184	167
Total Suspensions and Revocations	3485	3191	1920	1818

In comparing the above table with the arrests made in 1953 by the State Highway Patrol, it is found that there were 630 arrests for reckless driving and 13 arrests for aggravated reckless driving or a total of 643 reckless driving charges. Under section 39-0610 of the Motor Vehicle Laws, the judge may suspend or revoke the operator's license of any person convicted of two charges of reckless driving within the preceding twelve months whether such conviction is under state law or municipal ordinance. Apparently only 132 persons fell within this section during 1953 as repeaters of reckless driving violations. This may represent a much smaller percent of the total number of the reckless driving experience inasmuch as there are no available figures on the number of reckless driving convictions under municipal ordinances.

On the other hand, with respect to charges of driving while under the influence, the state highway patrol reports for 1953 that they made 325 arrests with 250 arrests for having an open bottle in a motor vehicle and 148 arrests for being drunk in a public place—for an aggregate total of 723 violations involving drinking. The number of arrests for this offense by cities and villages under ordinances is not known. Nevertheless, there were 1070 driver's licenses suspended or revoked in 1953 for drunken driving. This indicates that more attention is given by judges to conviction reporting on this charge than to reckless driving.

The State Highway Patrol activity for 1953 shows 33 arrests for leaving the scene of an accident, yet the suspensions or revocations

for this offense only number 7. Either the convictions were low or they were not reported as required.

It is apparent that not only is there need to increase the reporting of convictions under the existing law but that it is imperative to expand the scope of the law to include all hazardous moving violations.

To achieve effective deterrents, it is necessary that repeaters or habitual violators be ascertained in order that increased penalties can be imposed by judges upon any subsequent convictions. This necessarily requires that the duty to report convictions of traffic violations be broadened to include all hazardous moving violations, that they be reported to the central file and in turn that these central files containing the history of prior convictions be made readily available to justices of the peace and police magistrates so that they will be able to assess adequate penalties as well as corrective penalties.

It is therefore recommended that the Motor Vehicle Law be amended to require compulsory reporting of convictions of all hazardous moving violations by all courts in North Dakota, that an increased central file of drivers' records be maintained by the Registrar of Motor Vehicles and that prior records of convictions be readily available for use at the time of trial by every justice of the peace and police magistrate. It is suggested that these records of prior convictions must not be used by justices of the peace and police magistrates until after the case has been heard, a finding of guilty has been entered and before the assessment of the appropriate penalty.

Formal Ceremonies and Conduct of Court Sessions—An individual's concept of the administration of justice may depend upon the manner and method in which a justice of the peace or police magistrate's court is conducted while he is present as a party, witness or visitor. The average citizen's contact with court usually comes through association with some aspect of judicial proceeding arising out of a traffic offense. It is therefore of the utmost importance that all courts of limited jurisdiction should be conducted with dignity and that decorum should prevail throughout the entire sessions.

Section 33-0103 of the Justice Court Act of North Dakota authorizes a justice of the peace to "hold a court" and "maintain order and

decorum". This same act further outlines the procedure to be followed in arraigning defendants.

It is therefore highly important that every justice of the peace and police magistrate use formal openings and closing ceremonies in his court. It takes very little time to observe these formalities.

All of the elements with respect to arraignment should be carefully observed by reading the complaint to the defendant, inquiring as to whether or not he has been named properly, informing him of his right to secure counsel, that proper evidence must be presented in an orderly manner, that the accused will have the right to cross-examine the witness testifying against him, that he has the right to secure process to compel the attendance of witnesses on his behalf without cost to him and that at the proper time that he may present his defense.

The dignity and decorum presented by the judge in conducting his court will be reflected in the actions and attitudes of court attaches, defendants, witnesses and others who have business before the court.

It is recommended that formal opening and closing ceremonies be used by all courts throughout the state.

It is further recommended that special attention be given to general opening remarks on traffic safety in those courts holding regularly scheduled sessions where at least 15-25 defendants are present.

ADMINISTRATION

The operation of a judicial system entails more than adhering to principles of sound judicial performance. There are many "non-judicial" administrative aspects which require consideration. Some of these have already been included in other parts of the report. Special emphasis will be devoted to court records in this section of the report. To serve the judicial system properly, records must be carefully kept and reviewed periodically in order that they may produce the following results:

1. An inventory as to the business of the court.
2. A basis for evaluating the court's effectiveness.
3. A basis for evaluating police traffic law enforcement effort.
4. A basis for a statistical report to the public outlining the work carried on by the court.

Dockets—Every justice of the peace court and police magistrate court must keep a docket in accordance with the detailed require-

ments of section 33-0112 of the Justice Court Act. The docket must contain an alphabetical index. Some of the dockets examined during the course of this study contained all civil and criminal cases without separation. It was difficult, therefore, to obtain any immediate information as to the number of civil, criminal, non-traffic and traffic cases which appeared in each docket. This situation prompted a request to the Legislative Research Committee to send out a special questionnaire for information from all of the justices of the peace and police magistrates. It is evident from the reports which have been returned that there could be greater uniformity in keeping of dockets and their maintenance. Some of the dockets which were examined contained rather complete information of every step occurring in the case, while others only contained a minimum number of entries concerning the number of individual cases.

It is therefore recommended that uniform dockets be devised for all courts of limited jurisdiction in the state after adequate study has been made to simplify the existing dockets and to facilitate their use.

It is further recommended that separate dockets be provided and maintained for civil cases, traffic cases and other criminal cases.

Monthly and Quarterly Reports—All justices of the peace are required to make a full report on the first Monday in January, April, July and October of each year to the County Commissioners under section 33-0119 of the Justice Court Act. The quarterly report form presently in use in Burleigh County is 14" x 17" and in its preprinted form provides space for the report on three cases per page.

Although it complies with section 33-0120 of the Justice Court Act, nevertheless it is a cumbersome report and is based on a statute which has been in existence according to information received, since 1877. This report must be submitted to the Board of County Commissioners although it is usually delivered to and filed with the County Auditor.

Police magistrates are also required to file monthly reports with the City Auditor accounting for all fees collected by him during the preceding month and showing the actions in which fees were collected. This requirement is exacted of all police magistrates who are paid salaries.

The quarterly reports require all actions and proceedings to be

recorded while the monthly report of police magistrates are only concerned with those in which fees have been collected.

The monthly reports do not require any report with respect to the cases in which there have been acquittals and dispositions by other means than conviction and payment of the fines and costs.

Failure to make quarterly reports or refusing the County Commissioners or any of them the right to examine his records in regard to such matter will subject him to a penalty of not less than \$10.00 or not more than \$100.00 to be recovered by the county in a civil action. This provision should be reexamined in the light of the experience obtained during this study with respect to missing quarterly reports by some of the justices of the peace to determine whether this provision and the penalty provided is adequate to enforce compliance.

In order to obtain a true picture of the number of traffic cases handled by the courts each year, the number of particular offenses charged, their dispositions, the effectiveness of the courts as a whole and individually in handling them, and the effectiveness of traffic law enforcement generally, a revised system of monthly, semi-annual, and annual reports for the courts of limited jurisdiction must be developed. This should be done so that, as part of their reporting system, such courts will furnish current statistical summaries on the dispositions of traffic cases.

Audit Procedure—There should be a state-wide audit procedure established for courts of limited jurisdiction. It should provide for more than a review of the financial operation of these courts.

Primarily, there should be a better system for reporting the case volume of the courts in the handling of traffic citations. There should be a provision for a master traffic citation control record of the issuance and disposition of each citation written by the North Dakota State Highway Patrol.

Municipalities should be required to establish similar master citation control and disposition ledgers. Municipalities should require receipts for all traffic citation books issued to individual police officers and these should be made available for subsequent audit. Monthly and quarterly reports of issuance and disposition of traffic citations should be made by the local police departments and the courts of limited jurisdiction to provide a periodic check on the number of traffic citations issued and outstanding by each

of the enforcement agencies. A uniform system of reporting on traffic citations should be required.

It is recommended that a manual of accounting for justice of peace and police magistrate courts be prepared to serve as a guide in keeping a uniform set of financial and case volume records and to set up a system of audits for each court.

CASE VOLUME ANALYSIS

County and Township Justices of Peace—A county by county request was made for information with respect to the number of cases tried by the various justices of the peace courts and police magistrates. Approximately 77 reports were received from county and township justices of the peace and 145 reports from city, village, justice of the peace and police magistrate courts.

The 77 reports from the county and township justices of the peace represent a small percentage of 117 county justices of the peace who have qualified to serve. However, on the basis of their financial report on fines, forfeitures and costs they probably represent most of the active county and township justices of the peace. Table Nine shows the total case load for the fiscal year ending June 30, 1953 and for the first quarter of the next fiscal year:

TABLE NINE

Case Load of County and Township Justices of Peace

	July 1, 1952 June 30, 1953	July 1, 1953 Sept. 30, 1953
Total Civil and Criminal Cases	3,868	1,058
Total Traffic Cases	2,059	577
Percent of Total Represented by Traffic Cases	53.6%	54.1%

Professor Blinn's report contained comparable statistics for the fiscal year beginning July 1, 1948 and ending June 30, 1948. These show a civil case load of 790 and a criminal case load of 3,725 or a total of 4,515 cases—or 647 more cases than were handled in 1952-1953 fiscal year. This does not assist us with reference to the number of traffic cases but does not indicate that the case load as to these courts is fairly static—so that suggestions for improvement may be made with greater certainty as to the trend in future years.

Only ten courts reported having a total case load over 100 for the fiscal year ending June 30, 1953. These were as follows: Grand Forks (Bathgate, J.P.)—221; Grand Forks (Alphson, J.P.)—122; Riverdale—262; Devils Lake (McDonald, J.P.)—172; Rolla—145; Dickinson (Thiess, J.P.)—171; Jamestown—366; Hillsboro—123; Grafton—236 and Williston—331. An aggregate total of 2,149 cases out of the total reported by all 77 justices of the peace of 3,868. Traffic matters represented 1,163 of the case load of these ten justice courts.

In further examining these reports it is found that 13 of these courts handled more than 50 cases but less than 100 cases. The other fifty-four courts handled less than 50 cases per year and of this group 28 courts reported 10 or less cases for the entire year. The case load figures for the first quarter ending on September 30, 1953 indicate that the case load trend is about the same.

City and Village Justices of Peace and Police Magistrates—A large percentage of the 183 qualified city and village justices and police magistrates submitted reports on case volume handled. On the basis of the 145 reports it was ascertained that more than three times as many cases were filed in these courts. A more complete picture can be obtained from Table Ten which follows:

TABLE TEN

*Case Load of City and Village Justices of the Peace
and Police Magistrates*

	July 1, 1952 June 30, 1953	July 1, 1953 Sept. 30, 1953
Total Civil and Criminal Cases	16,080	4,487
Total Traffic Cases	11,115	3,050
Percent of Total Represented by Traffic Cases	69.9%	68.3%

It is easy to come to the conclusion that traffic cases constitute the major portion of the court's work. However, the distribution of the case load is uneven throughout the state. Four counties contributed approximately 80% of the total case load. They are Grand Forks—6,640; Williams County—2,463; Cass County—2,127

and Stark County—1,908. Burleigh County was next in line with 641 cases exclusive of 14,312 parking cases. The next seven counties were Barnes—313; Stutsman—294; Morton—264; Ramsey—230; Richland 173; McLean—169; and Mountrail—111. All the rest of the counties were under 100 cases for the fiscal year ending June 30, 1953. The first quarter of the following year indicates that the same ratio will continue as to distribution of the case load.

From the foregoing analysis there is ample justification for the recommendation that the four classes of justices of peace courts and the police magistrate courts be abolished and, in lieu thereof, establish an integrated system of county magistrates. In more populous counties where the heavier case loads are reported it may be desirable to have a second or third judge as circumstances warrant.

Certainly the few judges of these courts who are devoting a major portion of their time to judicial duties will be suitable for consideration as magistrates of the proposed court.

County Courts of Increased Jurisdiction—Inadequate information was received to make a detailed analysis of the seven courts in this group. However, Professor Blinn's study furnishes comparative case load figures for the fiscal years ending in 1942 and 1949 of the Cass County Court and these may be compared in Table Eleven with a recent examination of that court's work for the fiscal year ending June 30, 1953.

TABLE ELEVEN

Cass County Court of Increased Jurisdiction

	1941-1942	1948-1949	1952-1953
Civil Cases	311	244	349
Criminal Cases	442	514	867
Non-Traffic	-----	-----	372
Traffic	-----	-----	495

This court has the largest case load of any of the courts in this category and handles approximately 50% of all the work passing through these courts. Professor Blinn's study contained the following tabulation as to the case load of these seven courts—herein out as Table Twelve:

TABLE TWELVE

County	Number of Civil Cases Docketed		Number of Criminal Cases Docketed	
	1948-49	1941-42	1948-49	1941-42
Benson	1	19	87	98
Cass	244	311	514	442
La Moure	5	16	43	17
Ransom	45	134	23	19
Stutsman	16	25	0	35
Ward	13	58	127	244
Wells	12	28	33	35
TOTAL	336	591	827	888

On the basis of the Cass County comparison, it should be fair to assume that there has been a similar experience as to case load in the other six counties. Certainly the suggestion for a county magistrate court would be compatible with the experience as to judicial business in these counties.

District Courts—The total case load of these courts for the fiscal year ending June 30, 1953 is best presented through Table Thirteen.

TABLE THIRTEEN

North Dakota District Courts
July 1, 1952-June 30, 1953

	July 1, 1952		Jan. 1, 1953		TOTAL	
	Dec. 31, 1952	2482	June 30, 1953	2165	July 1, 1952	June 30, 1953
<i>Civil Cases</i>	---	---	---	---	---	4647
Motor Vehicle ...	155	---	196	---	351	---
<i>Criminal Cases</i>	---	508	---	444	---	952
Non-Traffic	---	313	---	313	---	626
Traffic	---	195	---	131	---	326
Operating Motor Vehicle Under Influence of Liquor	140	---	90	---	230	---
Aggravated Reckless Driving	12	---	6	---	18	---
Reckless Driving	22	---	5	---	27	---
Overload	5	---	9	---	14	---
Manslaughter ...	5	---	4	---	9	---
Without License or under suspension	3	---	7	---	10	---
Other	8	---	10	---	18	---

It can readily be seen that the recommendation to increase the jurisdiction of the proposed county magistrate court to include all of the traffic offenses listed in the aforesaid table except manslaughter will not work a hardship on the District Courts. It certainly won't overtax the projected case load of the future for the proposed new court.

Juvenile Courts—No information was requested as to the case load of these courts nor as to the number of juvenile traffic offenders. However, discussions with juvenile commissioners indicated that a serious problem exists with the young traffic violators that do appear before them. Although small in numbers, they, nevertheless, should be given special attention and it is recommended that the North Dakota State Bar Association study this problem and submit suggestions for legislation. This committee should consider the recommendation of the Governors Safety Conference to the effect "that the laws relating to juvenile courts be reviewed and amended with a view to more effective control of the operation of motor vehicles by persons under the age of eighteen years by empowering juvenile judges and juvenile commissioners to suspend or revoke the driver's licenses of juvenile persons found guilty of violations of the traffic laws after due hearing, and directing such juvenile courts to make a report of such violations to the State Highway Patrol in the same manner and with the same effect as in the case of adults convicted of such violations".

The extent of the juvenile violator problem may be gauged by the 16,748 junior operators licenses issued up to December 15, 1953 for persons between the ages of 14-16. The number in the 16-17 age group are included in the 260,909 driver licenses issued up to December 15, 1953.

Future Case Load—In the event that police traffic law enforcement is stepped up to approach recognized standards as to quantity and quality, it can be assumed that the traffic case load of the courts will increase. With fully trained officers in state, county, and municipal levels, and with complete accident investigations, it is believed that the total traffic case load should reach 60,000. This would be triple the present judicial business but would not hamper the proposed new county magistrate court. In fact, it would be helpful in increasing the effectiveness and the economy of operation of that court.

FINANCIAL ASPECTS

Revenue of Courts—Source—Fines imposed for violations of the state laws such as the Motor Vehicle Law, game and fish laws, and others provide the main source of the revenue of these courts. Forfeiture of bail, many times used in lieu of fines and costs imposed by statute are also another source of revenue from the operations of the justice of peace courts. Similarly penalties prescribed by city and village ordinances produce revenue for the courts of the municipalities. The courts under study produced revenue from fines, penalties and forfeitures in the amount of \$106,837.54 for the fiscal year ending June 30, 1953.

The total sum of \$106,837.54 is less than the amount reported as being received by the state treasurer for the same fiscal year which was \$109,590.58, and probably includes receipts from other courts. In 1950-51 the court fines, penalties and forfeitures amounted to \$79,923.40 and in 1951-1952—\$107,026.72.

County Justices of Peace and Township Justices of Peace

The reports received from county justices of the peace and township justices of the peace show revenue of \$77,664.51. Table Sixteen accounts for the percentage of revenue which can be traced to traffic violations.

TABLE SIXTEEN

*County Justices of Peace and Township Justices of Peace**Fines and Costs Reported*

July 1, 1952-Sept. 30, 1953

	Fines	Costs	Total
Traffic	\$39,397.76	\$10,922.42	\$50,320.18
Non-Traffic	18,937.83	8,406.50	27,344.33
Total	58,335.59	19,328.92	77,664.51

The table shows that two-thirds of the revenue from June 1, 1952 to September 30, 1953, was derived from fines and penalties assessed in traffic cases. It is believed that if it were possible to examine all the reports from the county and township justices of the peace that this percentage would prevail. It is therefore stated that the fines, penalties and forfeitures paid on traffic violations approximate two-thirds of the total revenue received by the State.

City Justices of Peace, Village Justices of Peace and Police Magistrates—The fines and costs reported by city and village justices of the peace and police magistrates have been appended to

this report as Appendix C. From this a tabulation was made to ascertain the extent of traffic and non-traffic revenue derived from the operation of these courts which is Table Seventeen.

TABLE SEVENTEEN

*City Justices of Peace and Village Justices of Peace**Fines and Costs Reported**July 1, 1952 to Sept. 30, 1953*

	Fines	Costs	Total
Traffic	\$110,139.17	\$10,056.11	\$120,195.28
Non-Traffic	41,735.32	7,769.95	49,505.27
	<hr/>	<hr/>	<hr/>
	\$151,874.49	\$17,826.06	\$169,700.55
Add: Dickinson Report which does not show a breakdown			8,561.75
			<hr/>
Total			\$178,262.30

From the overall picture it appears that traffic violators are contributing a substantial share of the revenue received by the courts of limited jurisdiction. However, again it must be stated that a few cities produce the greater portion of this revenue and that many of the courts in the smaller cities produce less than \$1,000.00 from the operations of the court.

Cities reporting revenue over \$2,000.00 are as follows:

City	Revenue from Fines and Costs
Williston	\$35,054.50
Grand Forks	25,669.50
Bismarck	25,339.00
Fargo	15,669.50
Montpelier	9,741.60
Dickinson	8,561.75
Mandan	6,938.25
Valley City	6,167.40
Wahpeton	5,276.75
Devils Lake	5,127.75
Garrison	4,632.60
Bottineau	2,289.00
Parshall	2,079.70

Eight cities reported revenue between \$1,000.00 and \$2,000.00. All of the other cities and villages reported revenue under \$1,000.00. Missing from the above are the cities of Minot and Jamestown because of incomplete reports.

This financial picture does not present a picture which would indicate that the court revenue is of any considerable importance to any of the municipal budgets of the smaller cities and villages. Elimination of the courts in those cities should not present any serious problem so long as safeguards were imposed which would insure that the fines and costs from ordinance violations would go to the city or village instead of to the state.

Distribution of Fines, Etc.—All fines, forfeitures and pecuniary penalties for violation of state laws are paid into the County Treasurer to be added to the State School Fund. (Section 12-0113 of the North Dakota Revised Code).

Police magistrates, city and village justices of peace are required to pay all fines, forfeitures, pecuniary penalties and costs received from ordinance violations to the city or village treasury.

The only sums that may be withheld are fees payable to the justice of peace or to a police magistrate when not serving on a salary.

To eliminate any difficulties over the distribution of revenue from the proposed county magistrate, it is recommended that the above distribution be unchanged.

Cost of Operation of Courts—In view of the operation of the fee system, there are no accurate statistics in North Dakota on which to predicate any estimate as to the present cost of the operation of the present courts. A reduction in the number of courts with salaries substituted for fees will result in an increased cost of courts. However, it will not be an increase which cannot be justified. It would serve no useful purpose to cite figures on the cost of operation of courts in other states because there is no comparable basis to serve as a guide. It must be remembered that cost of administering justice is a very small price to pay for making justice available to everyone.

PHYSICAL FACILITIES

Under section 33-0101 of the Justice Court Act, every justice of the peace "shall keep his office and hold his court at a place by him selected, which must be within the county, civil township, city or village, as the case may be, in which he may be elected or ap-

pointed". However, there appears to be no provision which requires that the governmental unit served by the justice of the peace shall be required to provide and furnish said courtroom.

Such provision appears with respect to the county judge in section 27-0714. An examination of some of the courtrooms presently used in the larger cities by police magistrates and justices of the peace indicated a woeful lack of appreciation for the necessity for having dignified and impressive courtrooms and surroundings for the courts of limited jurisdiction. The Board of County Commissioners of each county and the officials of each city and village should furnish and maintain adequate courtrooms and facilities for each court of limited jurisdiction within their confines.

To assist the judges in this endeavor, it is recommended that legislation be enacted to authorize the judges of courts of limited jurisdiction to select their courtroom and be given authority to provide adequate and suitable facilities and that the cost thereof shall be county or city charges where county or city officials have failed to furnish the same.

It is nearly impossible for a judge working under existing conditions to make the proceedings appear orderly and dignified. Every effort should be exerted to improve courtrooms wherever possible. Too few recognize that improved surroundings, within certain well recognized standards, will exert a tremendous influence on the attitude of judges toward their work. A judge's morale, pride, self-respect, and respect for the judicial position are improved, and unconsciously reflected by those who appear before him. The improved decorum and respectful attitude of the latter, particularly traffic law violators, assist materially in the better disposition of cases tried before him.

SELECTION AND QUALIFICATION OF JUSTICES OF THE POLICE AND POLICE MAGISTRATES

Selection and Term of Office—All justices of the peace and police magistrates are elected, but the term of office varies. County justices of the peace, police magistrates and city justices of the peace in commissioned cities serve for a four-year term. Police magistrates in mayor council cities, city justices of the peace and township justices of the peace serve for two years. Village justices of the peace are elected annually.

Villages may be established where there are one hundred or

more inhabitants qualified to vote, and cities may be incorporated where there are two hundred or more inhabitants. Each village has been authorized to elect a village justice of the peace and each city a police magistrate and a city justice of the peace.

It is recommended in the first instance that there be greater uniformity in the method of selecting justices for courts of limited jurisdiction, that provisions be made for their selection on a non-partisan basis, and that the term of office for all justices be uniform for at least a four-year term.

Qualifications—There are no qualifications prescribed for justices of courts of limited jurisdiction. Although they perform important duties in civil, criminal and traffic cases and submit periodic reports to municipal, county or state agencies, there are no educational standards prescribed. Assuming that they possess the desired qualifications of the character, good morals, adequate education and ability, it is, nevertheless, unreasonable to expect the average layman to understand the administration problems of the court without some specialized training in the subject. This is particularly true with reference to the trial and determination of traffic cases which comprise a substantial majority of all the cases tried in such courts.

In addition to a fundamental knowledge of the law and its method of administration, there should be some knowledge of the traffic policing and engineering and an understanding of the objectives of preventive traffic law enforcement. A justice should be able to evaluate and utilize accident statistics, the principles of selective enforcement, the enforcement index, spot maps, and a host of other traffic engineering and law enforcement data. His purpose is not primarily to enforce regulations as such, but rather to administer the law so that the man or woman leaving his court will not continue consciously to break traffic laws. No judicial officer is in a position to render more valuable services to his community, day in and day out. Relatively few justices or members of the public apparently appreciate this.

During the course of this study, the specific complaints received with respect to the justices of the peace and their work were directed primarily to the judge's lack of knowledge of court procedure, training with respect to the fundamentals of law or its administration and lack of appreciation for the objectives to be obtained with traffic law enforcement.

One of the most serious and widespread complaints against courts of limited jurisdiction in North Dakota and other states is that the judges of such courts are not lawyers. Because every justice in order to intelligently administer the law in his court should have legal training and knowledge, at least in the fundamentals, it is contended that he should be a lawyer. While procedure in such a court is often relatively simple, it has many technical features which cannot be eliminated. Rules of evidence are as important in that type of court as in the District Courts and they cannot be understood or properly administered by anyone without some legal training. The questions of substantive law which often arise in small cases are no less difficult than those arising in large cases. They can be resolved best by a person trained in the law—preferably a lawyer.

As the Conference of Chief Justices resolved in September, 1951: "Judges of local courts of first instance should be members of the bar especially trained in traffic matters".

Statistics received from the North Dakota Bar indicate that there are thirty-one counties in which there are five or less attorneys in active practice. There are sixteen counties in which the legal population numbers from six attorneys to not more than nineteen attorneys. In the six counties with the greatest legal population the count is as follows: Cass—114; Burleigh—68; Grand Forks—53; Ward—41; Morton—21; Williams—21. In these six counties there are 318 attorneys. In the other 47 counties there are 275 attorneys.

It would appear, therefore, that there would be difficulty in finding enough attorneys in each county to fill the judicial positions available. Under the present system it would be impracticable to require justices of courts of limited jurisdiction to be lawyers in more than half of the counties of the State.

It is recommended, therefore, that persons to be eligible for the office of judge of a court of limited jurisdiction shall either be members of the bar or pass a qualifying examination prepared for that purpose. Such examinations should be prepared and given by the Supreme Court of North Dakota or the Judicial Council.

To further increase the effectiveness of new judges, it also is recommended that a justice of the peace manual on procedure be prepared by the North Dakota Bar. A copy should be given to each new justice before assuming office and should serve to in-

struct him—whether lawyer or layman—as to the duties of his office, his responsibilities, and approved court procedure.

Furthermore, periodic schools or conferences should be conducted on a statewide basis for prosecutors and judges of such courts for the discussion of current problems and their solutions and for study of fundamentals.

Salaries—The fee system for compensating judges of courts of limited jurisdiction should be eliminated and a salary system substituted in lieu thereof. The fees chargeable by the justices of the peace are set out in 33-0123 of the North Dakota Revised Code. This complicated method of determining compensation is no longer justified.

The legislature has seen fit to allow cities to pay salaries to police magistrates. However, the fees chargeable and allowable by law must be collected and paid into the city treasurer at the end of each month. Insofar as the public is concerned, the cities are still operating under the fee system. No effort was made to obtain information as to the salaries paid by cities to police magistrates. The subject is of sufficient importance that it is recommended that a statewide survey be made with respect to the subject of salaries of police magistrates, and that standards be established for fixing them on a more uniform basis not only as to population but also to actual and potential case loads and other pertinent factors to provide adequacy and equity.

It is further recommended that a similar study be undertaken for the purpose of eliminating the fee system and prescribing minimum salaries for all justices of the peace.

PROSECUTORS

Any successful traffic safety program is a cooperative operation, and every link in the chain must therefore be strong. Good police work can be and often is nullified by a poor judge who tries traffic cases. On the other hand, the best traffic judge cannot carry out a successful program without the cooperation of intelligent and conscientious police officers. Likewise, good or bad work on the part of a prosecuting attorney has a direct and substantial influence upon the effectiveness of the program.

The functions of the prosecutor in the trial of the more serious traffic violation cases are too often inadequately performed in North Dakota. Upon the vigor and quality of the prosecutor's per-

formance rests, in large measure, the thoroughness of case preparation, maintenance of safeguards against improper disposition of cases, and effective prosecution of cases in court.

Obviously, the trials of many routine traffic offenses in courts of limited jurisdiction do not require the services of a prosecutor. But specially qualified traffic prosecutors should be available to such courts when needed, particularly in the trial of the more serious traffic offenses, such as reckless driving, driving while under the influence of intoxicating liquor, and leaving the scene of an accident. The prosecutor's functions cannot be neglected or transferred in part to the police and in part to judges without adversely affecting the administration of justice and, more importantly, without serious impairment to the traffic safety program.

State attorneys and city prosecutors should be provided additional assistants, so that prosecutors will be available and will assist in the prosecution of traffic cases in courts of limited jurisdiction when called upon by the police or justices.

CLERICAL AND OTHER COURT PERSONNEL

Except for the county courts of increased jurisdiction, there appear to be no provisions for providing either full or part-time clerical assistance to any of the police magistrates or justices of the peace in the state.

It is recommended that a state-wide plan on clerical assistance for courts of limited jurisdiction be formulated and that counties and cities be required to furnish clerical assistance wherever warranted. A determination should be made as to whether such assistance should be furnished by full or part-time clerks, their selection, qualification, training and the amount of salaries to be paid.

Bailiffs—There are practically no persons serving as bailiffs in the courts of limited jurisdiction in North Dakota. In some instances, police magistrates have arranged for a police officer to serve in this capacity when needed. It is recommended that wherever and whenever it is feasible that courts of limited jurisdiction follow the practice of utilizing police officers in the capacity of bailiffs during the formal session of the court.

APPEALS

All appeals from the justice of peace courts and police magistrates are heard by the District Courts except in those counties with County Courts of Increased Jurisdiction. The trial is *de novo*.

With the proposed county magistrate court there should also be a formal declaration that it is a court of record, and that all appeals should be on the record to the District Court.

SUPERVISION

At the present time, the Supreme Court of North Dakota does not exercise supervisory power over the courts of limited jurisdiction, nor does it require any reports from these courts. No one has been designated to serve in the capacity of an administrator of the state courts. A Judicial Council has been established by statute, but no provision is contained therein for the inclusion of any justices of the peace or police magistrates.

The Judicial Council is required to make a court study of the operation of the judicial system of the state in order that procedure may be simplified, business expedited and justice better administered. It has power to organize a bureau of statistics relating to criminal and civil litigation, and it can request reports from practically any person serving in any capacity in the judicial system. The power to request reports contained in Section 27-1507 in the Chapter of the Judicial Branch of the Government of North Dakota Revised Code is broad enough to include justices of the peace and police magistrates. However, the judicial council has not seen fit to receive any reports from any other courts other than the district courts. Judicial conferences are provided for the judges of the Supreme and District Courts but none for the courts of limited jurisdiction.

There are no other legislative provisions prescribing any general supervision over the courts of limited jurisdiction. Other than attempts of financial control through the monthly and quarterly reports required of the courts to be filed with the county or city treasurers, few attempts are made by any state or local governmental agencies to check the operation or effectiveness of these courts. A few states attorneys have exercised some supervision over them, but generally most courts of limited jurisdiction are operated without any outside supervision or control.

An important consideration in the effective and efficient execution of a public office is the provision made for its supervision. This is particularly true in the case of courts of limited jurisdiction scattered, as they are, throughout the state and enforcing, as they do, the laws of the state. Some agency should deal with their sins of omission and commission, if any.

In considering supervisory agencies for a judicial office it is necessary to stress the desirability of avoiding any breach of the doctrine of separation of powers and duties which underlies the government. Subjecting a system of courts to the control of the executive arm of government creates a situation fraught with danger to its independence. This reasoning is as applicable to justices of courts of limited jurisdiction as to any other court.

Courts of limited jurisdiction have an importance not present in connection with other judicial tribunals for reasons stated earlier. As courts of law they are an arm of the State and an important part of the judicial system. Under its inherent powers and those granted to it by the legislature, the Supreme Court of North Dakota has the authority to supervise and regulate all courts within the state.

It is recommended that the North Dakota Supreme Court establish an administrative office of that court; that an administrative officer on a part-time basis be placed in charge and that his duties, among others, shall include the proper and adequate supervision of all courts of limited jurisdiction within the state.