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NON-LAWYER JUDGES: THE LONG ROAD NORTH

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In the Old West, so the legend goes, after the pathfinders came the cartographers. They mapped true trails and rejected uncertain routes, noted prominent guideposts and omitted obscure signs. Recently, in North v. Russell, the United States Supreme Court could have followed this tradition by mapping a true rule through the arguments surrounding non-lawyer judges. Such guidance would have been welcomed by appellate courts, which for years have been stumbling through this wilderness of history, logic, and policy. In North, however, the Supreme Court drew not a map but a maze. By ignoring the basic questions in favor of de novo trials and trained lay judges, the Court may have led other courts astray.

This article will examine the status of lay judges in the United States after North. It will discuss their history, their advantages, and their disadvantages. Finally, the constitutional arguments surrounding their existence will be explored. As will be seen, the North case, instead of providing answers to state courts grappling with the issues of lay judges and de novo trials, has only raised more questions.

HISTORICAL PERSPECTIVE

American lay judges, hybrids of colonial, frontier, and industrial influences, bear little resemblance to their modern European or ancient Roman counterparts. Yet, to fully appreciate the current legal assault on the American lay judge, knowing the political and legal evolution of the institution is helpful.

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The Romans bequeathed to Europe the conception of a judge as a trained, specialized professional with complete command over and active duties at every stage of the litigation. Yet, paradoxically, throughout its creation and at its zenith Roman law knew no such thing as a professional judge. Indeed, when professional judges began to emerge in the late classical period, the lawyers of that era preferred to ignored them.

For the first 500 years of recorded Roman law, there were no judges for whom judging was in any sense a profession. Until the end of the Republic, all judges were unspecialized laymen. Jurists supplied the lay judge with potential rules of decision. It was the jurist, and not the lay judge, who was the custodian and transmitter of doctrine, the "oracle of the law." During the Middle Ages, the classic Roman division of responsibility between the judge who decided cases and the jurist who kept and transmitted doctrine was maintained. But between 1300 and 1789, almost all continental European countries replaced lay judges with professional judges. In France, for example, lay judges were common in the thirteenth century, but gradually disappeared during the fourteenth century. Professional judges, no matter what their background or training, became responsible for trying and deciding cases.

Among the European countries, only England preserved and expanded the use of lay judges. In Britain, lay justice, best exemplified by the magistrates' courts, remains an integral part of the administration of justice. Ironically, England's early professional judges, by developing an elaborate system of national law, made room for laymen in the judicial system. When Edward III created the office of the justice of the peace early in the fourteenth century, he created an institution which, for centuries, has persisted tenaciously in our jurisprudence.

The office of justice of the peace reflected the active role taken in their own community by laymen of high standing. Although drawn from a circumscribed class, English justices of the peace nevertheless became powerful agents in preserving and extending local self-government. By the sixteenth century, justices of the peace, squires, and, frequently, members of Parliament were administering an increasingly important body of law. In the seventeenth and eighteenth centuries their jurisdiction expanded to include regulatory economic legislation. During the nineteenth century, however,

3. Id.
4. Id. at 29.
5. Id. at 87.
justices of the peace gradually lost authority to administrative bodies and higher courts. Today, English justices of the peace, typically unpaid and untrained in the law, principally hear traffic offenses and other minor violations.  

The authority of lay judges in the magistrates' courts, on the other hand, has not been diminished. In fact, lay magistrates today try more than ninety-eight percent of all criminal cases in England. Although London has approximately fifty full-time professional "stipendiaries" who are retired lawyers, the 20,000 or so magistrates who sit in the rest of England and in Wales are volunteer lay persons. While theoretically almost anyone can become a magistrate (indeed, creating a cross-section of the community on the bench is an important goal), lay volunteers must participate in the compulsory training programs for magistrates which were initiated in 1966.  

This tradition of non-lawyer judges was brought to America by the early English settlers. Although the office of the justice of peace played an important part in colonial government, it, like other colonial institutions, soon evolved away from its English counterpart. American justices of the peace came to hear civil cases and also began to be paid. "With the advent of Jacksonian democracy in the first part of the nineteenth century, most state legislatures provided for popular elections of JPs" and the position "came to be filled by people of humble calling and scant education."  

Since society and commerce were relatively simple, the part-time, lay judge could efficiently administer to the needs of his community. In the early part of our history, there were few lawyers and the laws were simple. In addition, slow transportation among the communities of sparsely populated states made it almost impossible for the handful of attorney judges to cover all the rural areas. But as society became more complex and its legal system more sophisticated, the administration of the law by those lacking any formal legal education was increasingly questioned. 

This questioning had its effect, even though in the early 1900s nearly every state constitution mentioned the justice of the peace as a judicial officer and a majority of state constitutions included it in the list of named judicial officers. Other constitutional amendments included provisions which prohibited a justice of the peace from holding any other office which would interfere with his duties. Although these amendments did not specifically refer to the duties of a justice of the peace, the wording of the amendments was generally apposite. Furthermore, a provision in the constitution of Wisconsin, adopted in 1848, prohibited justices of the peace from engaging in "the practice of law" without a license. Thus, the direct result of a constitutional change in the states was the elimination of the justice of the peace from all judicial work and the appointment of a court to replace him. 

But the 1848 amendment to the Wisconsin Constitution was not the only constitutional provision to deal with the justice of the peace. As the state entered the nineteenth century, the legal profession itself began to question the place in the legal system of the justice of the peace. 

9. See Reichert, supra note 6, at 138.  
10. Id.  
12. Justice Courts in Oregon, supra note 8, at 413.  
courts vested with judicial power. For example, as early as 1920 there was pressure to abolish the justice of the peace courts in Nebraska. One reason given at the time for opposing abolition was simply that one should not replace a piece of judicial furniture that had worn so well in the past, regardless of the contemporary need for it. In 1934 the reformers had one of their first successes when the Virginia legislature stripped their justices of the peace of all trial jurisdiction.

Today, although most states are either abolishing justices of the peace or reducing their power, non-lawyer judges are not facing imminent extinction. They have been remarkably resilient through centuries of dramatic growth and change. Despite the complexities of modern law, many jurisdictions still feel that local justice should be administered by a local justice.

This feeling has been reflected in the reluctance of most states to eliminate their lay judges. Only six jurisdictions currently are, or presently will be without non-lawyer judges. Five other states now permit non-lawyer judges in certain courts pursuant to "grandfather" provisions in their relevant court-organization statutes. Upon their death or retirement, non-lawyer judges in these states will be replaced by lawyer judges. Thus, in only ten states and the District of Columbia have non-lawyer judges been either discontinued or gradually eliminated. Of the remaining forty states, some retain non-lawyer judges only in certain courts under restricted circumstances, while others retain them under generally unrestricted circumstances.

15. See Dolan & Fenton, supra note 13, at 458.
16. The Justice of the Peace in Virginia, supra note 11, at 163.
17. For example, Virginia created a salaried "trial justice" system in which the trial justice, now called the county judge, replaced the justice of the peace as the principal court of limited jurisdiction. Virginia's denying justices of the peace the power to try cases was acclaimed as a progressive step and a desirable solution to the justice of the peace problem. Nevertheless, justices of the peace were not abolished per se; currently there are about 700 to 800 justices of the peace in the state, many of them quite active. Justices of the peace still have the specific powers to issue warrants, attachments, and subpoenas within the jurisdiction of and returnable to the trial justice, and the general power to set bail. See generally, The Justice of the Peace in Virginia, supra note 11, at 163-64.
19. Hawaii, Maine, Massachusetts, Rhode Island, the District of Columbia, and, as of January, 1980, Indiana. See Table A.
20. California's justice courts; Illinois' associate circuit judges; Michigan's probate courts and municipal courts not of record; Minnesota's county courts and justice courts; and New Hampshire's municipal courts. See Table B.
21. For example, Kentucky, North Dakota, Oklahoma, and Wyoming permit non-lawyer judges in certain courts if no lawyers are available. Alaska, Florida, Georgia, Missouri, and Washington permit non-lawyer judges in certain courts in sparsely populated areas of the state. See Table C.
22. For example, in 33 states non-lawyer judges are permitted without restriction in probate, justice, city, municipal, surrogate, county, mayor's, town, family, and district courts.
Colorado and Maryland are among those states which place severe restrictions on non-lawyer judges. For example, the 1962 judiciary amendment to Colorado’s constitution requires all judges to be lawyers except judges of: (1) county courts in counties of low population; and (2) municipal courts. Of the 107 county court judges in the state, approximately twenty-five are not lawyers. The non-lawyer judges handle approximately three percent of all county court cases. Of Colorado’s 168 municipal court judges, 118 are not lawyers. The non-lawyer judges are all part-time and handle primarily traffic cases. Maryland allows non-lawyer judges only in its Orphan’s Court, which is primarily a probate court. Of the state’s sixty-six Orphan’s Court judges, the majority are not lawyers, but they have no power to jail.

In other states, however, the power of non-lawyer judges has not been restricted, and these judges remain a crucial part of the judiciary. In Arkansas, for example, case-load statistics for 1975 reveal that the following cases were handled by judges without legal training: 8,385 juvenile cases filed before county judges; 26,074 cases filed in major’s and police courts, where fines totaling $1.1 million were collected; 6,023 cases filed in justice of the peace courts, where the fines and costs totaling $271,719 were collected; and 364 cases filed before county judges in common pleas court. In addition, eighty-nine municipal courts had 503,725 cases and collected $12.2 million in fines and costs.

THE ROAD TO NORTH

Case Law and Arguments

Given this historical background, not until the late 1960s did litigants dare to challenge lay judges on direct, constitutional grounds. At first, the courts did not take these challenges seriously. For example, in *Melikian v. Avent*, a three-judge federal court unanimously held that the argument that non-lawyer judges were unconstitutional was “unique and of no merit.”

Notwithstanding this categorical language, courts soon were seriously analyzing such allegations. In the wake of *Argersinger v. Hamlin*, the typical challenger of lay judges contended that an accused was deprived of

Table D. Vermont still permits non-lawyers to hear questions of fact. See note 79 and accompanying text infra.

24. Id. at 421.
27. Id. at 519.
28. 407 U.S. 25 (1972) (extending the right to counsel to any defendant facing a possible jail sentence).
his constitutional right to counsel because these judges could not understand legal arguments. The courts developed three basic responses to this contention.

The first response, adopted by the Kentucky Court of Appeals in Ditty v. Hampton, rejected this right-to-counsel argument on the merits. The court reasoned that since the state was certain to use a lawyer, the defense counsel was needed to balance the adversary system. The judge, the court noted, not being an adversary of the defendant, was outside this equation. Since a judge merely chose between two well-presented sides, he need only be fair and impartial.

The second response, articulated by the Supreme Court of California in Gordon v. Justice Court for Yuba Judicial District of Sutter County, accepted the right-to-counsel argument on the merits. The court believed that the increased complexity of criminal law and of criminal procedure made it unlikely that a lay judge could understand the legal issues in a case.

The third response, advanced by the Supreme Court of Utah in Shelmidine v. Jones, ignored the right-to-counsel argument because of the government’s excuse of necessity. The court pointed out that “there are no attorneys resident in five of our counties, one county has only one, three counties have only two, and several others have only three or four attorneys.”

The right-to-counsel argument soon developed its own jurisprudence. Both Texas and New Mexico rejected Gordon in favor of Ditty and found no constitutional problem in using lay judges. Lower courts in New York also refused to apply Gordon. The Supreme Court of Minnesota, in a prescient opinion, decided that lay judges were constitutional given Minnesota’s trial de novo system. Oregon and Wyoming ruled that Gordon was inapplicable to preliminary hearings. In Pennsylvania, a lower court

29. 490 S.W.2d 772 (Ky. 1972), appeal dismissed as moot, 414 U.S. 885 (1973).
30. Id. at 774-75.
32. Id. at 328, 525 P.2d at 75, 115 Cal. Rptr. at 635.
34. Id. at 211.
36. Tsiosdia v. Rainaldi, 89 N.M. 70, 547 P.2d 553 (1976). The court also relied in part on trial de novo.
38. State v. Lindgren, — Minn. —, 235 N.W.2d 379 (1956) (per curiam).
held that Gordon could not be invoked by the prosecutor of a private criminal suit.\textsuperscript{40}

Unfortunately, none of these cases provided a penetrating analysis of the right-to-counsel argument. The courts which rejected the argument failed to meet it squarely. Surely, if judges expressly decided cases without using any laws—if, for example, they decided cases on the color of the plaintiff's eyes—they would certainly deprive the unlucky party of the benefit of counsel. Thus, once it is admitted that a judge can negate the effective assistance of counsel, the question becomes whether a non-lawyer judge necessarily, or even usually, does so.

Similarly, the courts which accepted the right-to-counsel argument were guilty of faulty logic. The steps in the right-to-counsel argument are virtually undisputed. Everything from the right itself to the necessity for counsel to be effective and understood can be supported either by case law or by the United States Constitution.\textsuperscript{41} The crucial assumption in the argument is that somebody who is not a lawyer cannot understand legal arguments. For example, Justice Rose, dissenting in Thomas v. Justice Court of Washakie County,\textsuperscript{42} argued:

If . . . the lawyer is present to call . . . intricate matters to the court's attention, must not there be someone learned in legal matters present to hear the call? Isn't that the other half of giving the defendant the full measure of his due process protection?

It would have done Einstein no good to have explained his theory of relativity to me. I would not have understood it. I am not equipped to understand it. The same, I feel, applies to a layman justice of peace . . . . \textsuperscript{43}

The assumption that a non-lawyer judge cannot understand legal arguments deserves a more thorough analysis than it has received.\textsuperscript{44} Perhaps the courts have not probed more deeply into this assumption because it lies in the grey area of the law's relation to unlearned people. On the one hand, all men are presumed to know the law. But this venerable presumption probably does not reflect reality as much as it preserves the supremacy of law.

\textsuperscript{41} U.S. CONST. amend. VI; Geders v. United States, 425 U.S. 80 (1976) (counsel must be allowed to consult with client during recess); Herring v. New York, 422 U.S. 853 (1975) (counsel must be permitted to make oral summary of the evidence); Argersinger v. Hamlin, 407 U.S. 25 (1972) (right to counsel in any trial involving a possible jail sentence).
\textsuperscript{42} 538 P.2d 42 (Wyo. 1975).
\textsuperscript{43} Id. at 54 (emphasis in original). Justice Rose went on to say that the justices of peace were not at fault, but, rather "the system which places such a heavy burden of responsibility upon untrained people in an area of human relations that demands training and professionalism." Id.
\textsuperscript{44} For example, Justice Rose's analogy is probably too modest. Intelligent laymen are expected to grasp the theory of relativity when it is explained to them. See, e.g., G. Gamow, Mr. Tompkins in Paperback (1961) and I. Asimov, The New Intelligent Man's Guide to Science (1961) 1, 315-23 ("Relativity").
On the other hand, a lay person cannot pretend to be a lawyer. Indeed, a lay person cannot generally practice law even if prospective clients are fully warned of his ignorance.\(^4^5\)

In addition to the right-to-counsel contention, opponents and supporters of lay judges have argued other points. Opponents of lay judges usually claim a deprivation of equal protection. They argue that they would have been tried by a lawyer judge if they had been charged with a different crime or prosecuted in a different place. The courts have either rejected\(^4^6\) or failed to reach\(^4^7\) this contention. Opponents of lay judges have also fruitlessly advanced a straight due process argument, usually supporting it with tales of the bizarre behavior of lay judges.\(^4^8\) At the same time, supporters of lay judges have thrown the following counterpunches: Justices of the United States Supreme Court are not required to be lawyers;\(^4^9\) the Court, in all its right-to-counsel cases, has never mentioned a right to a judge who was a lawyer;\(^5^0\) the Court has approved lay persons deciding some things;\(^5^1\) and finally, members of the legislative and executive branches are not required to be lawyers.\(^5^2\)

All of these arguments are flawed. Those advanced by the opponents of lay judges do not add to their basic right-to-counsel argument. The equal protection point, which assumes the due process argument by maintaining

\(^{45}\) On this point, Faretta v. California, 422 U.S. 806 (1975), may be relevant. In Faretta the United States Supreme Court held that an accused had a constitutional right to defend himself at trial. Does the philosophy of Faretta support non-lawyer judges by reinforcing the presumption that laymen can understand the law? Does Faretta cut the other way by emphasizing the importance of a judge who is learned in the law or does it perhaps turn on a theory akin to assumption of risk?

\(^{46}\) See, e.g., Ditty v. Hampton, 490 S.W.2d 772, 776-77 (Ky. 1972), appeal dismissed as moot, 414 U.S. 885 (1973).

\(^{47}\) See, e.g., Gordon v. Justice Court of Yuba City, 12 Cal. 3d at 327 n.4, 525 P.2d at 74 n.4, 115 Cal. Rptr. at 634 n.4.

\(^{48}\) See, e.g., Gordon v. Justice Court of Yuba City, 33 Cal. App. 3d 230 (opinion deleted), 108 Cal. Rptr. 912, 918 (1973), rev'd, 12 Cal.3d 323, 325 P.2d 72, 115 Cal. Rptr. 632 (1974), cert. denied, 420 U.S. 938 (1975). The "Petition for Alternative Writ of Prohibition and Mandate, for Preemptory Writ of Prohibition and Writ of Mandate, and for Declaratory Relief" filed in Gordon v. Justice Court of Yuba City, Sutter County, No. 210521 (Super. Ct. Sacramento County, Cal., filed Mar. 25, 1971), alleged inter alia in counts: 36(a) "Courtroom practice for one non-attorney judge was to conduct an informal poll for the 'verdict' of the courtroom audience prior to announcing his own decision in a case." Id. at 18; and 37(b) "One lay judge stated that he always practiced 'sniffing' each witness from the bench because he believed he could tell the witness's veracity by the witness's scent." Id. at 19.

\(^{49}\) See, e.g., Gordon v. Justice Court of Yuba City, 108 Cal. Rptr. at 924.

\(^{50}\) See, e.g., Ditty v. Hampton, 490 S.W.2d at 774.

\(^{51}\) Those who made this argument usually relied on Morrissey v. Brewer, 408 U.S. 471, 489 (1972) (parolee entitled to revocation hearing before neutral and detached board whose members need not be judges or lawyers), and Shadwick v. City of Tampa, 407 U.S. 345 (1972) (lay clerks can issue warrants). See, e.g., Gordon v. Justice Court of Yuba City, 108 Cal. Rptr. at 921-22; Ditty v. Hampton, 490 S.W.2d at 775; Thomas v. Justice Court of Washakie County, 538 P.2d at 50. A similar argument dwelt on the tradition of a lay jury in criminal cases.

\(^{52}\) See, e.g., Gordon v. Justice Court of Yuba City, 108 Cal. Rptr. at 919.
that a lay judge differs significantly from a lawyer judge, simply persuades the convinced. A straight due process argument simply restates the right-to-counsel argument that lay judges are supposed to be per se unfair because of their ignorance, and that, at most, their ignorance is due to an inability to understand legal arguments.

The supplementary arguments advanced by the supporters of lay judges are not so much syllogisms as they are debaters' points. Although Justices of the Supreme Court are not required to be lawyers, the Constitution's silence has been of no practical import during this century. The fact that the Court had not mentioned a right to a lawyer judge was meaningless until it was squarely faced with the issue. The Court's approval of lay persons to decide some matters dealt with totally different circumstances. Finally, the legislative and executive branches are irrelevant to the right-to-counsel argument.

The Strange Behavior of Appellate Courts

Courts confronting the constitutionality of lay judges generally have acted peculiarly. Perhaps this strange behavior is prompted by the pragmatic, political problems inherent in this area. For example, some courts appear to have no stomach at all for this issue. The Tennessee Supreme Court resolved to follow Gordon only to decide, over a strong dissent, that the case was moot. The Court of Appeals of Tennessee followed this hint and declared that juvenile-court judges had to be lawyers but was reversed by the Tennessee Supreme Court on the technical ground that the record did not show that the judge in question was not a lawyer. On the other hand, some courts appear eager to reach the issue. The Indiana Supreme Court was moved to issue a sua sponte opinion declaring unconstitutional an act allowing lay judges.

The issue of lay judges has also produced widely varying solutions by the various courts within a single state. For example, the three major cases of Ditty, Gordon, and Shelmidine all reversed lower-court opinions. Thus, great disagreement exists, not only among but within the states.

53. See note 51 supra.
54. Nevertheless, this point may show that non-lawyers can understand laws.
57. State v. Williams (Tenn., Nov. 29, 1976).
Such great diversity on a federal constitutional question should be reconciled by the United States Supreme Court. Nevertheless, for a long time it appeared as though the Court would not hear the issue. *Ditty* was appealed to the Court but dismissed as moot when the appellant was fatally knifed while in jail.\(^{60}\) The Court denied certiorari in *Gordon*.\(^{61}\) Finally, the Court was faced with the case of *North v. Russell*.

North was convicted in a Kentucky Police Court by a non-lawyer judge for driving while intoxicated. He did not exercise his right under Kentucky law to a trial de novo. Instead, North contended on appeal that his trial before a non-lawyer judge violated his due process and equal protection rights. The Kentucky Court of Appeals affirmed his conviction on the basis of *Ditty*.\(^{62}\) North then appealed to the Supreme Court.

Before the Court noted probable jurisdiction,\(^{63}\) it returned the case to Kentucky on the suggestion of the Attorney General of Kentucky that North's conviction could be reversed on state law grounds.\(^{64}\) The Court of Appeals of Kentucky, however, noted that North had appealed only on federal grounds and complained that it found itself "performing an unwilling and not altogether felicitous role in a judicial fan dance."\(^{65}\) The appellate court refused to decide errors which the appealing parties did not complain of and sent the case back to the Supreme Court.

**North v. Russell**

Faced with a case that would not go away, the Supreme Court chose to avoid the substantive issues. The Court first noted that the federal constitution did not expressly require that federal judges be lawyers. It also noted the prevalence of lay magistrates in England and the existence in many states of mandatory or voluntary training programs for lay judges.\(^{66}\) The relevance of these observations is never made clear. The latter seems particularly inappropriate, as Mr. Justice Stewart remarked in his dissent: "Judge Russell testified that he had only a high school education .... This is not a case, therefore, involving a lay judge who has received the kind of special training that several States apparently provide."\(^{67}\)

The Court briefly described the right-to-counsel argument and then stated that it was irrelevant because defendants had a right to a trial de novo

60. 414 U.S. 885 (1973).
62. 427 U.S. at 332.
63. 422 U.S. 1040 (1975).
64. 419 U.S. 1085 (1974).
66. 427 U.S. at 333 n.4.
67. *Id.* at 340 n.1 (Stewart, J., dissenting).
before a lawyer judge. For this argument to hold together, the Court had to overcome three obstacles: first, whether defendants know that they have a right to a trial de novo; second, whether trial de novo sufficiently remedies an unfair trial; and third, whether trial de novo unfairly burdens the defense.

The Court met any doubts about defendants' knowing that they could receive a trial de novo by simply assuming that judges would "recognize their obligation to inform all convicted defendants . . . of their unconditional right to a trial de novo. . . ." The second obstacle, however, raised more complex questions and deserves a more lengthy analysis.

The argument against trial de novo as a remedy for an unfair trial is that a defendant deserves a fair hearing at his first trial. This argument was well supported by Ward v. Village of Monroeville. In Ward the Court had held that trials conducted in an Ohio Mayor's Court were unfair because of financial temptations on the judge to convict. The state argued that any unfairness was alleviated by a subsequent trial de novo. The Court responded:

We disagree. This "procedural safeguard" does not guarantee a fair trial in the mayor's court; there is nothing to suggest that the incentive to convict would be diminished by the possibility of reversal on appeal. Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication. Petitioner is entitled to a neutral and detached judge in the first instance.

Does this language require that a defendant's first trial contain all the relevant due process safeguards? Apparently not, for in North the Court distinguished Ward as "directed at the need for independent, neutral, and detached judgment, not at legal training." Two questions must be asked about the Court's treatment of Ward: (1) how is the discussion relevant; and (2) is the distinction correct?

First, at least on the surface, the Ward discussion seems to contradict the tenor of the Court's opinion. Since Ward is relevant only if a reasonable possibility existed that the first trial was unfair, the Court may be assuming what it purported not to decide—that trials before non-lawyer judges are

68. Id. at 334.
69. Id. at 335.
70. 409 U.S. 57 (1972).
71. Id. at 60. The judge, who was also mayor of Monroeville, personally received neither fees nor fines. Nevertheless, because fees and fines were a substantial percentage of the village's revenues, the Court held that a mayor responsible for these revenues was tempted to convict.
72. Id. at 61-62. The quoted paragraph is the Court's entire analysis on this point.
73. 427 U.S. at 337.
indeed unfair. Even if this analysis did not run through the Court’s mind, the Court has piled hypothesis upon conjecture to reach its decision.

Second, the Court never addressed the point made by Mr. Justice Stewart in dissent that “there can be no meaningful constitutional difference between a trial that is fundamentally unfair because of the judge’s possible bias, and one that is fundamentally unfair because of the judge’s ignorance of the law.” Unless the Court’s answer can be deciphered from other language in the opinion, this attack remains unrefuted.

Of course, on narrow technical grounds, the Court is correct. Ward dealt with interest, not ignorance. Indeed, both of the tests that can be derived from Ward (no lessening of incentive to convict and the right to a neutral and detached judge in the first instance) were phrased to combat bias. Nevertheless, the spirit of Ward runs against the Court’s distinction. From the defendant’s perspective, Justice Stewart is surely right that it makes little difference to one found guilty whether he was convicted out of interest or ignorance.

Perhaps the Court’s distinction can be salvaged, or at least made palatable, by shifting Ward’s focus from the defendant to the judge. If bias is evil, while ignorance is less vicious, then Ward can be justified as an attempt to maintain the dignity of the judiciary, rather than as a personal right of the defendant. Still, this shift is disturbing, primarily because Ward did not allude to the dignity of the judiciary. Further, it would seem strange to argue that the dignity of the judiciary is not harmed by ignorant judges.

The third and final obstacle, whether trial de novo unfairly burdens the defense, was addressed by the Court two days after North in Ludwig v. Massachusetts.75

**THE LAY JUDGE AFTER NORTH**

**The Return of Trial De Novo**

Ludwig is a necessary support for North because, in Ludwig, trial de novo was attacked as unconstitutional. Ludwig had been accused of a driving violation and was given a bench trial in a court of limited jurisdiction. He combined his fifth and sixth amendment rights to claim a right to a speedy jury trial. The Court, noting Ludwig’s absolute right to a jury on trial de novo in the court of general jurisdiction, indicated that he had not proved that he would have received a jury trial any earlier were there only a single trial court in the state. Consequently, the Court rejected Ludwig’s constitutional claim. Although this narrow conclusion seems correct, given

74. Id. at 345.
75. 427 U.S. 618 (1976).
the absence of proof on this issue, the Court was on less stable ground in attempting to justify the policy of trial de novo. Here Mr. Justice Stevens' dissent is persuasive.

Justice Stevens argued that a trial de novo was fundamentally defective and had adverse effects on the defendant. The trial was defective because it was affected by what had happened at the first trial. For example, lawyers and witnesses might be stale at the second trial; tactics might be disclosed; opportunities for impeachment might be lost. Further, the trier of fact could always consider, subconsciously or knowingly, that a defendant already had been found guilty. In addition, being found guilty at the first trial could damage the defendant's reputation. Finally, the defendant might be unable to withstand the financial and psychological burdens of a second trial.

Despite Justice Stevens' policy arguments, it is probable that courts will seize upon trial de novo as the only clear guidepost in North. Three courts have already done so. The Supreme Court of New Hampshire, in a unanimous decision,76 and the Supreme Court of Washington, in a five to four decision,77 did little more than cite North, note that their states offered defendants a trial de novo, and deduce that their lay judges were constitutional.78 The Supreme Court of Vermont went the other way by noting that the state did not offer a trial de novo after a defendant was tried by a three-judge panel of two lay "side" judges and one lawyer judge.79

Two courts have broken this trend. The Supreme Court of Arizona, faced with an interesting variant of the normal claim, ignored the trial de novo guidepost.80 Arizona does not give defendants a trial de novo. The defendant was convicted by a lay judge, and, based on North, claimed a right to a de novo trial. The court denied his petition, arguing that a review of the trial transcript by a lawyer judge was sufficient. Similarly, the Court of Appeals of New York held that a pre-trial removal from a non-lawyer to a lawyer judge is a sufficient safeguard.81

77. Young v. Konz, 88 Wash. 2d 276, 558 P.2d 791 (1977). The dissent would have adopted Mr. Justice Stewart's dissent in North.
78. The court in Young also discounted the distinction that Washington, unlike Kentucky, did not give defendants who pled guilty a right to trial de novo. Id. at —, 558 P.2d at 794.
79. State v. Dunkerley, 134 Vt. 523, 365 A.2d 131 (1976). In Vermont, cases were tried by a panel of three judges: one lawyer and two lay persons, the side judges. Each judge voted on both fact and law. The Supreme Court of Vermont, noting that the lay judges could outvote the lawyer judge on issues of law, concluded that defendants were, in effect, being tried by lay persons. Since Vermont did not have trial de novo, the court, citing North, held that the lay judges could no longer vote on legal issues. Id. at —, 365 A.2d at 132. For a description of a European side-judge system, see Casper & Zeisel, Lay Judges in the German Criminal Courts, 1 J. LEGAL STUD. 135 (1972).
Nevertheless, if Washington, New Hampshire, and Vermont indicate the trend, then courts are going to seize upon trial de novo as the essence of *North*. If this surmise is accurate, several questions are worth asking: (1) is trial de novo a good guidepost; and (2) is trial de novo a good idea?

First, trial de novo only works as a one-way guidepost. A state which offers convicted defendants a trial de novo is assured that its lay judges are constitutional. On the other hand, a state without trial de novo cannot be certain if its lay judges are constitutional. This problem is not merely theoretical because some states that have lay judges do not have trial de novo. Courts in these states could logically divine opposite conclusions from *North*. A court could note the emphasis the Court placed on a defendant’s actual knowledge that he had a new trial available and thus conclude that this emphasis meant trial de novo was crucial to the constitutionality of lay judges. On the other hand, it would be equally logical for a court to note that the Supreme Court actually allowed lay judges to preside at trials and thereby conclude that lay judges must be constitutional.

Using trial de novo as a guidepost also means that the issue of lay judges need never be squarely faced. Whether that consequence is desirable or not depends on one’s philosophy and perspective. Still, use of the trial de novo guidepost does shift the inquiry from the constitutionality and wisdom of having lay judges to the constitutionality and wisdom of trial de novo.

At least one half of this latter inquiry is answered by *Ludwig*. Nevertheless, Justice Stevens’ dissent in *Ludwig* does point to serious flaws in a system relying on trial de novo. Here the Supreme Court is like the Wizard in the movie “The Wizard of Oz.” When Dorothy, the Scarecrow, the Cowardly Lion, and the Tin Woodsman return after having killed the Wicked Witch, they each ask the Wizard for something. “I can’t give you a brain,” the Wizard says to the Scarecrow, “but I can give you something almost as good.” And so saying, he gives the Scarecrow a diploma.

**Certify, Certify**

In *North*, the Court mentioned in passing that some states provide training programs for lay judges. Indeed, it is now generally accepted that

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82. Nevertheless, there may be state constitutional grounds for declaring lay judges unconstitutional. See, e.g., *State v. Williams* (Tenn., Nov. 29, 1976) n.1. Still, state ground may be difficult to apply: if lay judges are expressly permitted by the state’s constitution, then courts may be bound by the canon of construing a constitution so no part overrules another. See *Gordon v. Justice Court of Yuba City*, 33 Cal. App. 3d at —, 108 Cal. Rptr. at 921.

continuing training and education for all judges, and in particular for lay judges, is essential to a competent judiciary. Along with requiring their judges to attend a judicial conference, many states have additional education requirements for their judiciary.\textsuperscript{84} Sometimes, the additional requirement is a single training or orientation session held either prior to or immediately after the judges assume the bench. In a few instances, judges of courts of limited jurisdiction are required to attend training sessions on a regular basis.\textsuperscript{85} Twenty states now have some form of mandatory training for their non-lawyer judges beyond attendance at a judicial conference.\textsuperscript{86}

The Supreme Court in \textit{North} really did not develop this theme of education. Nevertheless, the Supreme Court of Florida has recently decided that an education program could overcome the deficiencies of lay judges.\textsuperscript{87} Similarly, Idaho instituted certification of its lay magistrates after \textit{Gordon} in the hope that such a program will save its system despite the lack of trial de novo.\textsuperscript{88}

Certification does have the virtue of meeting the right-to-counsel argument head on by asserting that a lay judge is indeed qualified to understand legal arguments. Nevertheless, this argument may involve the courts in difficult areas of line-drawing. For example, the Supreme Court of California rejected a certification argument in \textit{Gordon}, noting that the certifying examination was "far less rigorous than the two-and-one-half days State Bar examination required of one seeking to become an attorney."\textsuperscript{89} Thus, courts adopting this argument will have to decide whether the Wizard was correct in asserting that a diploma was almost as good as a brain.

\textbf{CONCLUSION}

The debate over lay judges continues. Little has been done of late either to put this debate to rest or to address the true issues. Much heat has been generated by courts and commentators, but, unfortunately, little light. Recent developments in the subject of lay judges prove that the area is treacherous and the route uncertain.

In \textit{North} and \textit{Ludwig}, the United States Supreme Court had an opportunity either to abolish lay judges and trial de novo or to place them on a sound constitutional footing. Rather than avail itself of this opportunity, the

\textsuperscript{85} Id.
\textsuperscript{86} See Appendix. An asterisk indicates a court requiring training beyond attendance at a judicial conference.
\textsuperscript{87} Treiman \textit{v.} State \textit{ex rel.} Miner, 343 So. 2d 819 (Fla. 1977).
\textsuperscript{89} 12 Cal. 3d at 329-30, 525 P.2d at 76, 115 Cal. Rptr. at 636.
Court abdicated its responsibility. Nevertheless, discussion on these subjects is not foreclosed. By the Court's reluctance to meet these subjects squarely, the issue of lay justice and trial de novo will undoubtedly be faced by state courts in the future. Unfortunately, in the absence of Supreme Court guidance, states must now try to find their own way out of the wilderness.
APPENDIX

INTRODUCTION

Table A lists those states in which all judges must be lawyers. Tables B, C, and D list those courts in which some or all judges can be lay persons. Table B contains courts which have lay judges only through grandfather clauses; Table C contains courts which have lay judges only in restricted areas or under specific circumstances; and Table D contains courts which allow lay judges under most or all circumstances. Because a state may have courts appearing in more than one table, an index has been provided.

Tables B, C, and D also describe the most important jurisdictions exercised by these judges. Certain powers common to most courts have been omitted, e.g., issuing all necessary writs, punishing contempt, and performing marriages. Jurisdiction is original unless otherwise noted. No distinction is made between exclusive original and concurrent original. In discussing dollar limits on jurisdiction, the word "under" has been used indiscriminately to mean both "up to, but not including" and "not in excess of." Venue provisions have been omitted, as have geographic limits on jurisdiction. An asterisk indicates a court requiring judicial training beyond attendance at a judicial conference. See generally B. Franklin, STATE JUDICIAL TRAINING PROFILE (National Center for State Courts, 1976).


A reader desiring an additional description of these courts should consult LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, COURTS OF LIMITED JURISDICTION: A NATIONAL SURVEY (K. Knab ed. 1977).

TABLE A

STATES WITH NO LAY JUDGES

District of Columbia
Hawaii
Indiana (effective January 1980)
Maine
Massachusetts
Rhode Island

TABLE B

COURTS WITH LAY JUDGES ONLY THROUGH GRANDFATHER CLAUSES

California
Justice Court

Civil Jurisdiction: (1) All cases at law under $5,000, except cases contesting: (a) title to or possession of realty, or (b) the legality of any tax, impost, assessment, toll or municipal fine; (2) all actions of forcible entry and detainer with a rental value of under $600 per
month and damages of under $5,000; and (3) all actions to enforce liens under $5,000 on personalty. *Cal. Civ. Proc. Code* § 86 (West Supp. 1977).


**Florida**

**County Court**

**Civil Jurisdiction:** Actions at law under $2,500 except those within the exclusive jurisdiction of the circuit court; landlord-tenant cases under $2,500. *Fla. Const.* art. 5, § 20(c)(4); *Fla. Stat.* § 34.011 (Supp. 1976).

**Criminal Jurisdiction:** Misdemeanors not within the jurisdiction of the circuit court; county and municipal ordinance violations; preliminary hearings. *Fla. Const.* art. 5, § 20(c)(4).

**Georgia**

**Probate Court (counties with more than 196,000 residents)**


**Illinois**

**Associate Circuit Judges**

**Jurisdiction:** Associate judges have the full jurisdiction of the circuit court. The chief judge of the circuit court may assign an associate judge to hear any matter except the trial of criminal cases in which the defendant is charged with an offense punishable by imprisonment for more than one year. Nevertheless, upon a showing of need, the supreme court may authorize the chief judge to make temporary assignments of associate judges to hear any criminal case. *Ill. Rev. Stat.* ch. 110A, § 295 (1975) (Sup. Ct. R. 295).

**Michigan**

**Probate Court**


**Municipal Court not of Record (being replaced by District Court)**

**Civil Jurisdiction:** Cases in which both parties are city residents. *Mich. Comp. Laws Ann.* §§ 730.5, .508 (1968).


NON-LAWYER JUDGES

Minnesota

County Court

Civil Jurisdiction: Actions at law under $5,000 and not involving title to realty; probate; trusts; quieting title to realty; realty foreclosures; divorce; adoption; guardianship; delinquency. MINN. STAT. §§ 487.14, .15, .17, .19 (1974).

Criminal Jurisdiction: Misdemeanors punishable by fine under $300 and/or three months in jail; municipal ordinances and regulations; preliminary hearings. MINN. STAT. § 487.18 (1974).

Justice Courts (being replaced by Traffic Violations Bureau)

Civil Jurisdiction: Uncontested cases. MINN. STAT. § 487.35(d) (1974).

Criminal Jurisdiction: Guilty pleas in ordinance or traffic cases; no power to jail; no preliminary hearings; only lawyers can issue warrants. MINN. STAT. § 487.35 (1974).

Missouri

Probate Court (until January 1979)

Jurisdiction: Probate; guardians. MO. CONST. art. 5, § 16 (1945).

Magistrate's Court (until January 1979)

Civil Jurisdiction: Actions under $5,000; actions against railroads for damage to animals; possessory actions between landlord and tenant. MO. ANN. STAT. § 482.090 (Vernon Supp. 1977), § 524.020 (1949).

Criminal Jurisdiction: Misdemeanors, except as otherwise provided by law. MO. ANN. STAT. § 543.010 (Vernon Supp. 1977).

New Hampshire

Municipal Court* (being replaced with District Court)


New Jersey

Municipal Court


Criminal Jurisdiction: Ordinances violations; motor vehicle violations; offenses below grade of misdemeanor; preliminary hearings. N.J. STAT. ANN. §§ 2A:8-21, 8-23 (West 1952).

Ohio

County Court

Civil Jurisdiction: Cases under $500 including replevin and actions involving realty, except where title is involved. OHIO REV. CODE ANN. §§ 1909.04, .05, .08, .09, .10 (Page 1968).


Criminal Jurisdiction: Motor-vehicle violations; misdemeanors; search warrants. OHIO REV. CODE ANN. § 1907.02 (Page 1968), §§ 2931.02, 2933.21 (Page 1975).
Oregon
Justice Court* (being replaced by District Court)

*Civil Jurisdiction:* Cases under $1,000. OR. REV. STAT. § 51.080 (1975).

*Criminal Jurisdiction:* Misdemeanors punishable by fine under $100 and three months in jail or by fine under $500 and one year in jail, depending on the county. OR. REV. STAT. §§ 51.040, .050, .060 (1975).

Virginia

District Court


Juvenile Court


**TABLE C**

**Courts with Lay Judges Only in Certain Areas or Under Specific Circumstances**

Alaska

District Court Magistrates (less-populous areas)

*Civil Jurisdiction:* Cases under $1,000. ALASKA STAT. § 22.15.120 (1962).

*Criminal Jurisdiction:* Ordinance violations; misdemeanors if defendant consents. ALASKA STAT. § 22.15.120 (1962).

Florida

County Court (counties with fewer than 40,000 residents)

*Civil Jurisdiction:* Actions at law under $2,500, except those within the exclusive jurisdiction of the circuit court; landlord-tenant cases under $2,500. FLA. CONST. art. 5, § 20(c)(4); FLA. STAT. § 34.011 (Supp. 1976).

*Criminal Jurisdiction:* Misdemeanors not within the jurisdiction of the circuit court; county and municipal ordinances; preliminary hearings. FLA. CONST. art. 5, § 20(c)(4).

Georgia

Probate Court (counties with fewer than 196,000 residents)

*Civil Jurisdiction:* Probate; appointment of guardians; permits to carry pistols or revolvers. GA. CODE ANN. § 24-1901 (1971), § 26-2904 (Supp. 1976).

*Criminal Jurisdiction:* Misdemeanor violations of Georgia State Highway Patrol Act of 1937; fish and game law violations; habeas corpus, except in felony or extradition cases. GA. CONST. § 2-4102; GA. CODE ANN. § 45-547 (1974), § 50-103 (1956).

Local Courts of Limited Jurisdiction

*Note:* Qualifications and jurisdiction have never been codified.
Iowa
District Court part-time judicial magistrates* (preference given to attorneys)

**Civil Jurisdiction:** Actions under $3,000; forcible entry and detainer not involving title; juvenile cases with the permission of the chief judge. IOWA CODE ANN. §§ 602.60, 644.2, .12, 748.2 (West 1975).

**Criminal Jurisdiction:** Simple misdemeanors; traffic and ordinance violations; preliminary hearings; search warrants. IOWA CODE ANN. § 602.60 (West 1975), as amended by 1976 Iowa Acts, ch. 4, § 488 (effective Jan. 1, 1978).

Kentucky
Trial Commissioners for Inferior Courts (only if no attorney is available)

**Jurisdiction:** Such judicial duties as assigned by the judge; issue warrants with the permission of the County Court. KY. REV. STAT. § 25.038(2) (Supp. 1976).

Mississippi
Municipal Court (fewer than 10,000 residents or more than 10,000 residents in an area greater than 935 square miles)

**Jurisdiction:** Municipal ordinances; preliminary hearings. MISS. CODE ANN. § 21-23-7 (Supp. 1976).

Missouri
Municipal Court (fewer than 40,000 residents unless municipality does not provide or does not request an association circuit judge—effective January 1979)

**Jurisdiction:** Ordinance violations; traffic cases. MO. CONST. art. 5, §§ 23, 25; SUPREME COURT RULES 37.01-37.115.

New Mexico
Magistrate's Court* (fewer than 100,000 residents)

**Civil Jurisdiction:** Actions under $2,000. N.M. STAT. ANN. § 36-3-3 (Supp. 1975).

**Criminal Jurisdiction:** Misdemeanors; preliminary hearings; bail; warrants; contempt. N.M. STAT. ANN. §§ 36-3-4, -9, 36-23-10, -12, -13, -15, -17, -31, -34 (Supp. 1975).

North Dakota
County Justice Court (if no attorney available)

**Civil Jurisdiction:** Cases under $200 excluding cases involving real estate titles and boundaries. N.D. CENT. CODE § 33-01-04 (1976).

**Criminal Jurisdiction:** Misdemeanors; preliminary hearings; warrants; bail. N.D. CENT. CODE § 33-01-08 (1976).

Municipal Court (more than 3,000 residents if no attorney is available)

**Jurisdiction:** Municipal ordinance violations. N.D. CONST. art. 4, § 113; N.D. CENT. CODE § 40-18-01 (Supp. 1975).

Oklahoma
Special District Judge (if no attorney available)

**Civil Jurisdiction:** Cases under $400. OKLA. STAT. ANN. tit. 20, § 123 (West Supp. 1976).

**Criminal Jurisdiction:** Consent of all parties; misdemeanors punishable by small fines and/or 30 days in jail. OKLA. STAT. ANN. tit. 20, § 123 (West Supp. 1976).

Municipal Court not of Record (fewer than 7,500 residents or no attorney available)
Jurisdiction: City ordinances; supervise juveniles on probation, on parole, or with suspended sentences; lay judges cannot jail and cannot fine over $20. OKLA. STAT. ANN. tit. 11, §§ 958.1, .3, .7(d), .16 (West Supp. 1976).

Tennessee
County Court

Juvenile Court
Jurisdiction: Juvenile cases; paternity suits; contributing to the delinquency of a minor. TENN. CODE ANN. §§ 37-203, -204, -254 (1977).

Court of General Sessions (the 33 districts with the fewest residents)
Civil Jurisdiction: Same as Justice of the Peace Court; injunctive relief; probate in certain counties; juvenile cases in certain counties. TENN. CODE ANN. § 16-1104 (Supp. 1976).


City Courts (except in cities incorporated under TENN. CODE ANN. §§ 6-30 to -36 (1971))
Jurisdiction: City ordinances punishable by $50 fine or 30 days in jail; guilty pleas; warrants; bail; such jurisdiction as granted by the city council. TENN. CODE ANN. §§ 6-2119, -2120, -2122, -3303 (1971).

Texas
County Courts-at-Law (qualifications vary)
Jurisdiction: Since these courts are created to relieve the constitutional court of its judicial burden, jurisdiction varies widely. Some county courts-at-law have jurisdiction limited to a specific subject, such as probate. A 1971 act gave all county courts-at-law civil jurisdiction over cases in which the amount in controversy was greater than $500 and less than $5,000. TEX. REV. CIV. STAT. ANN. art. 1970(a) (Vernon Cum. Supp. 1976-1977).

Juvenile Court (qualifications vary)
Jurisdiction: Provided by the statutes creating these courts; generally limited to domestic relations or juvenile cases. TEX. REV. CIV. STAT. ANN. arts. 2338-3 to -23 (Vernon Cum. Supp. 1976-1977).

Municipal Court (qualifications vary)
Jurisdiction: City ordinances; misdemeanors punishable by a $200 fine. TEX. REV. CIV. STAT. ANN. art. 1195 (Vernon 1963). The Texas Judicial Council estimates that 84% of the cases filed in municipal courts involve traffic offenses.

Washington
Justice Court (fewer than 10,000 residents)
Civil Jurisdiction: Cases under $1,000 excluding cases involving reality. WASH. REV. CODE ANN. § 3.66.020 (Supp. 1976).

Criminal Jurisdiction: City ordinances punishable by a fine of $500 or six months in jail; misdemeanors; gross misdemeanors. WASH. REV. CODE ANN. § 3.66.060 (Supp. 1976).

Justice of the Peace Courts* (fewer than 5,000 residents)
Civil Jurisdiction: If lawyer, in cases under $1,000; if non-lawyer, in cases under $500. WASH. REV. CODE ANN. § 3.20.020 (Supp. 1976).

Criminal Jurisdiction: Misdemeanors and gross misdemeanors pun-
ishable, in first-class counties, by a $500 fine or six months in jail and
punishable, in all other counties, by a $100 fine or 30 days in jail.

Municipal Courts (fewer than 5,000 residents)

Jurisdiction: Municipal ordinances punishable by a fine of $500 or
less, or imprisonment not more than six months, or both; warrants
and bail in some cities; jurisdiction concurrent with superior court in
large cities. WASH. REV. CODE ANN. § 35.20.030 (1965), §§ 35.20.250,
.255 (Supp. 1976), § 35A.20.040 (Supp. 1977), §§ 3.46.030, 3.50.020,

Wyoming

Justice Court* (if no attorney available)

Civil Jurisdiction: Actions under $1,000. WYO. STAT. § 5-91 (1957),

Criminal Jurisdiction: Offenses below felonies punishable by a $100
fine or six months in jail (higher if a violation of a fish or game law);
arrest warrants. WYO. STAT. § 7-409 (Cum. Supp. 1973), § 7-413
(1957).

TABLE D

COURTS WITH NO RESTRICTIONS ON LAY JUDGES

Alabama

Probate Court

Jurisdiction: Probate; appointment of guardians; partition of realty.

Arizona

Justice Court

Civil Jurisdiction: Cases under $1,000; forcible entry and detainer;
landlord-tenant. ARIZ. REV. STAT. § 22-201 (Supp. 1977).

Criminal Jurisdiction: Petty theft; assault and battery committed
neither on a public officer discharging his duties nor with felonious
intent; breach of the peace; willful injury to property; misdemeanor
and criminal offenses punishable by a $300 fine and/or six months in
jail; arrest warrants; preliminary hearings. ARIZ. REV. STAT. §§ 22-
301, -311 (1956).

City Court

Civil Jurisdiction: Actions by the city to recover a penalty or forfei-
ture. ARIZ. REV. STAT. § 22-406 (1956).

Criminal Jurisdiction: City ordinances; concurrent jurisdiction with
the Justice Court; bail; bail schedule for non-fatal traffic offenses.

Arkansas

County Court

Jurisdiction: The County Court spends most of its time on administra-
tive or legislative duties: it controls county taxes, the spending of
county funds, and the payment of claims against the county. The
County Court also hears cases concerned with the internal im-
provement and local concerns of the county. ARK. CONST. art. 7, § 28.
Court of Common Pleas

**Jurisdiction:** Civil cases not involving title to realty. Jurisdictional limits range from $500 to $1,500 and are set by the local acts establishing the court. See Compiler's Note following Ark. Stat. Ann. § 22-615 (1962 & Supp. 1975).

Municipal Court


Justice of the Peace Court

**Civil Jurisdiction:** Contract actions under $300; recovery of property under $300; damage to personalty under $100; no jurisdiction where a lien on, title to, or possession of land is involved. Ark. Const. art. 7, § 40.


City (Mayor's) Courts


Police Courts


Colorado

County Court*

**Civil Jurisdiction:** Civil actions under $1,000; forcible entry and detainer under $1,000 not involving boundaries or title to realty. Except where specifically authorized, no jurisdiction over probate, mental health cases, title to realty, divorce, juvenile cases, injunctions. Colo. Rev. Stat. § 13-6-104 (Supp. 1976), § 13-6-105 (1973).

**Criminal Jurisdiction:** Misdemeanors except those involving minors; warrants; preliminary hearings; bail. Colo. Rev. Stat. § 13-6-106 (1973). The bulk of the County Courts' caseloads are traffic violations.

Municipal Court

**Jurisdiction:** Ordinances. Colo. Rev. Stat. § 3-10-104 (1973). Most of the cases are traffic violations.

Connecticut

Probate Court

Delaware
Justice Court

Alderman's or Mayor's Court

Georgia
Justice of the Peace Court

Idaho
District Court Magistrates*
Civil Jurisdiction: Action for money damages under $1,000; forcible entry and detainer; probate; juvenile proceedings (only magistrates who are attorneys may hear child-custody cases); such matters as assigned by supreme court rule. Idaho Code §§ 1-2208, -2210 (Supp. 1976).
Criminal Jurisdiction: Misdemeanors; quasi-criminal actions; warrants; preliminary hearings; bail. Idaho Code § 1-2208 (Supp. 1976).

Kansas
District Court Magistrate

Louisiana
Justice of the Peace Court
Civil Jurisdiction: Actions under $300; no jurisdiction in probate nor when a successor is defendant nor when the state or political subdivision is defendant nor when title to realty is involved. La. Rev. Stat. Ann. § 13:2584(A), (B) (West Supp. 1977).

Mayor's Court
Maryland
Probate Court


Mississippi
Justice of the Peace Court*

*Civil Jurisdiction*: Actions under $200 for the recovery of debts, damages or personalty. MISS. CONST. art. 6, § 171; MISS. CODE ANN. § 9-11-9 (1972).

*Criminal Jurisdiction*: Crimes punishable by a fine and imprisonment in the county jail. MISS. CONST. art. 6, § 171; MISS. CODE ANN. § 99-33-1 (1972).

Montana
Justice Court*

*Civil Jurisdiction*: Contract and damage actions under $1,500. MONT. REV. CODES ANN. § 93-408 (Supp. 1975).

*Criminal Jurisdiction*: Assults; thefts under $150; misdemeanors punishable by a $500 fine or six months in jail. MONT. REV. CODES ANN. § 93-410 (Supp. 1975).

City Court


Nebraska
Associate County Court Judges*

*Civil Jurisdiction*: Probate; guardianship; adoption; actions under $5,000; juvenile cases in counties without juvenile courts. NEB. REV. STAT. § 24-517 (1975), § 43-202 (1974).

*Criminal Jurisdiction*: Crimes punishable by a $1,000 fine and/or one year in jail; ordinances if no municipal court. NEB. REV. STAT. § 24-517 (1975).

Nevada
Justice Court*

*Civil Jurisdiction*: Prescribed proceedings under $300. NEV. CONST. art. 6, § 8; NEV. REV. STAT. § 4.370 (Supp. 1973).


*Criminal Jurisdiction*: Misdemeanors punishable by a $500 fine and/or six months in jail; petit larceny; assault and battery; breach of the peace; willfull injury to property. NEV. REV. STAT. § 4.370 (Supp. 1973).

Municipal Court

*Civil Jurisdiction*: Actions under $300 to which the city is a party. NEV. REV. STAT. § 266.555 (Supp. 1973). Municipal Courts in "charter cities" have such civil jurisdiction as may be provided by the city charter.

*Criminal Jurisdiction*: Ordinances including vagrancy and disorderly conduct; misdemeanors punishable by a $500 fine or six months in jail. NEV. REV. STAT. § 5.050 (Supp. 1975).
New Jersey
Surrogate Court
Jurisdiction: These judges are essentially bonded probate-officers of
the County Court. They are only authorized to admit routine, uncon-

New Mexico
Probate Court
Civil Jurisdiction: Probate. The state constitution authorizes the legis-
lature to grant probate courts jurisdiction over actions under $3,000
but the legislature has not yet done so. N.M. CONST. art. 6, § 23;
N.M. STAT. ANN. § 16-4-10 (Supp. 1975).
Criminal Jurisdiction: The state constitution authorizes the legislature
to grant misdemeanor jurisdiction to the probate court but the legisla-
ture has not done so. N.M. CONST. art. 6, § 23.
Municipal Court*
Jurisdiction: Municipal ordinances punishable by a $300 fine and/or
90 days in jail; warrants. N.M. STAT. ANN. § 37-1-2 (Supp. 1975), §
38-1-3 (1972).

New York
Town or Village Court*
Civil Jurisdiction: Action under $2,000; all summary landlord-tenant
cases. N.Y. UNIFORM JUSTICE CT. ACT §§ 201-214 (McKinney Supp.
1977).
Small-claims Jurisdiction: Under $500. N.Y. UNIFORM JUSTICE CT.
Criminal Jurisdiction: All offenses under felonies; preliminary hear-
ings. N.Y. CRIM. PROC. LAW §§ 10.10, .30 (McKinney 1971); N.Y.

North Carolina
District Court
Civil Jurisdiction: Actions under $5,000; divorce; custody and child
support; juvenile cases. N.C. GEN. STAT. §§ 7A-243, -244 (1969), §§
Criminal Jurisdiction: Misdemeanors; preliminary hearings; war-
District Court Magistrates*
Jurisdiction: Civil cases under $500 upon plaintiff’s request; war-
rants; preliminary hearings; worthless check cases; guilty pleas for
misdemeanors punishable by a $50 fine or 30 days in jail. N.C.
CONST. art. 4, § 10; N.C. GEN. STAT. § 7A-211 (1969), §§ 7A-210, -273,

North Dakota
County Court*
Jurisdiction: Probate; appointment of guardians. N.D. CONST. art. 4,
§ 111; N.D. CENT. CODE § 27-07-02 (Supp. 1975).

Ohio
Mayor's Court
Jurisdiction: Municipal ordinances; traffic offenses. OHIO REV. CODE
ANN. § 1905.01 (Page 1968); as amended by 1975 Ohio Legis. Bull.
252-53.
Oregon
Municipal Court*
Jurisdiction: Municipal ordinances; traffic offenses except felonies; state liquor-control laws. OR. REV. STAT. §§ 221.350, 471.990, 484.030 (1975).

County Court

Pennsylvania
Justice of the Peace Court (District Judge)*
Civil Jurisdiction: Cases under $1,000 in contract and trespass. 42 PA. CONS. STAT. ANN. § 1515(3) (Purdon Supp. 1977).

Philadelphia Traffic Court*

South Carolina
Probate Court
Magistrate's Court
Criminal Jurisdiction: Only in counties without county courts; "minor" offenses punishable by a $100 fine or 30 days in jail; preliminary hearings; warrants; bail. S.C. CODE §§ 22-3-510, -540 to -590, -710 (1976).

Municipal Courts

South Dakota
Lay Magistrates*
Criminal Jurisdiction: Warrants; preliminary hearings; set bond from bond schedule; guilty pleas; sentence if punishment under a $100 fine and/or 30 days in jail. S.D. COMPILED LAWS ANN. § 16-12A-13 to -16 (Supp. 1977).

Tennessee
Probate Court

Justice of the Peace Court
Civil Jurisdiction: Actions at law under $3,000; equity cases under $250; recovery of personality under $7,500; forcible entry and detainer. TENN. CODE ANN. § 19-301 (Supp. 1976).
Criminal Jurisdiction: "Small offenses" punishable only by $50 fine; preliminary hearings; warrants; bonds. In counties with a court of general sessions, the justice only exercises the latter two powers. TENN. CODE ANN. §§ 19-312 (Supp. 1976), 40-304, -416 (1975).
Texas
County Court

Civil Jurisdiction: Exclusive jurisdiction where matter in controversy is less than $500; concurrent jurisdiction with district court in cases where matter in controversy is greater than $500, but less than $1000; probate. TEX. REV. CIV. STAT. ANN. arts. 1949, 1950, 1961 (Vernon 1964).

Criminal Jurisdiction: Misdemeanors punishable by a fine over $200 or by jail, except in counties with a district court; de novo appellate jurisdiction of cases tried in the municipal and appellate courts; forfeiture of bonds; habeas corpus, except in counties where such jurisdiction was conferred on the district court. TEX. REV. CIV. STAT. ANN. arts. 1960-1 to -4 (Vernon Cum. Supp. 1976-1977).

Justice of the Peace Court*

Civil Jurisdiction: Cases under $200. TEX. CONST. art. 5, § 19.

Criminal Jurisdiction: Crimes punishable by a fine under $200; warrants; preliminary hearings. TEX. CONST. art. 5, § 19; TEX. CRIM. PROC. CODE ANN. arts. 2.09, 16.01, 45.18 (Vernon 1966).

Utah
Justice Court*

Civil Jurisdiction: Under $300. UTAH CODE ANN. § 78-5-2 (1953).

Criminal Jurisdiction: City ordinances if no city court; misdemeanors punishable by a $300 fine or six months in jail; preliminary hearings; warrants. UTAH CODE ANN. §§ 77-57-1, -3 (1953), 78-5-3, -4 (Supp. 1976).

Vermont
Superior Court Judges

Civil Jurisdiction: Actions not cognizable by the district court or superior court; appellate jurisdiction "of causes appealable to the court." VT. STAT. ANN. tit. 4, § 113 (Supp. 1974).

Criminal Jurisdiction: Offenses in the county; appellate jurisdiction "of causes appealable to the court." VT. STAT. ANN. tit. 4, §§ 113, 114 (Supp. 1974) but see notes 22 and 79 and accompanying text supra.

Virginia
District Court Magistrates


West Virginia
Magistrate's Court*


Municipal Court

Jurisdiction: Municipal ordinances. W. VA. CONST. art. 8, § 11.

Wisconsin

Municipal Court

Civil Jurisdiction: Civil warrants; inspection warrants. WIS. STAT. ANN. § 300.18 (West Supp. 1977).

Wyoming
Municipal Court*


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