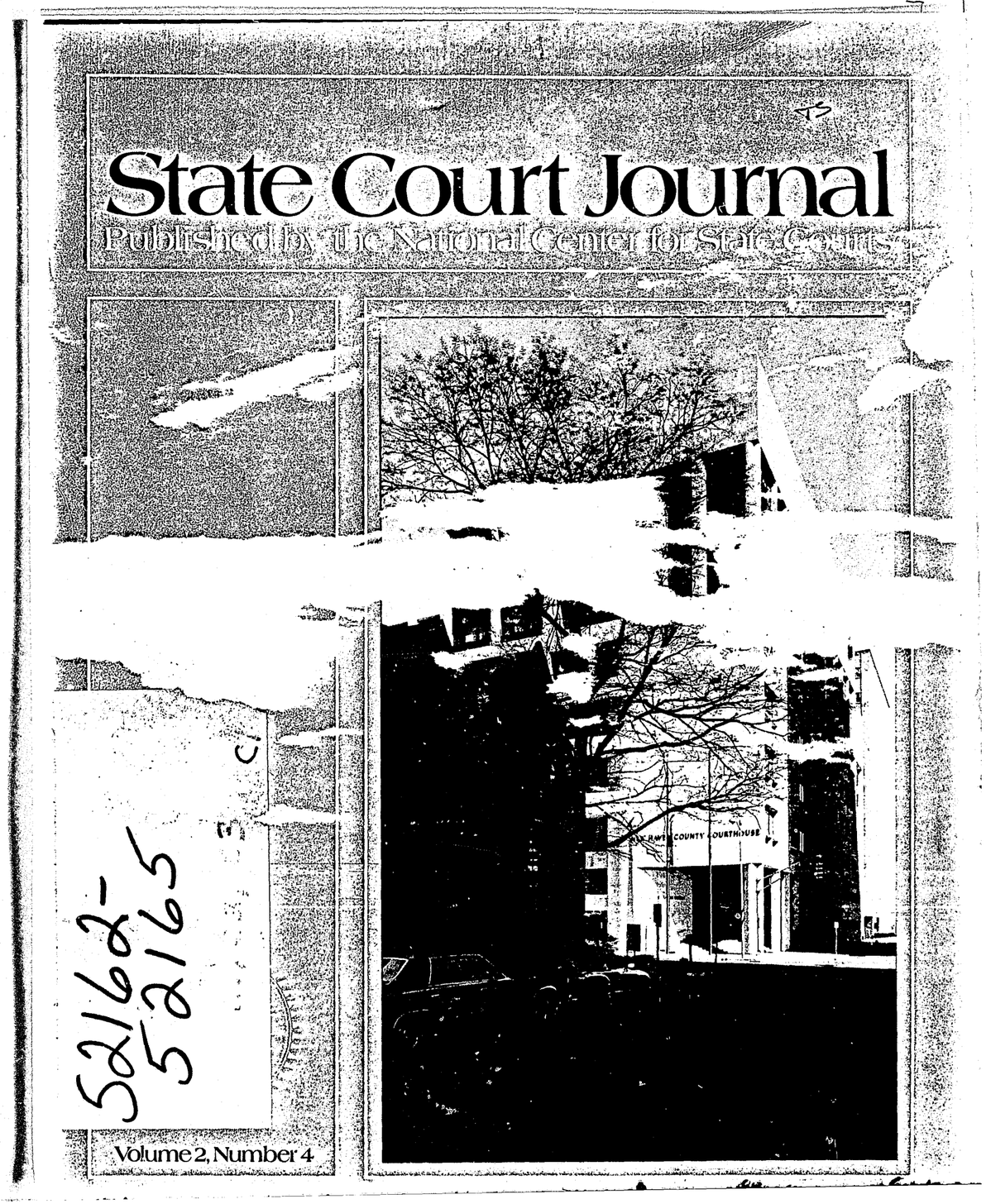

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Contents

New Haven County Courthouse Building
Architect: William S. Peterson & Associates
Photographer: Allan Greenburg

A History of the Lay Judge

by Theodore J. Fetter

and statutory provisions concerning lay judge courts; a memorandum detailing the current legal status of lay judges in the United States; a survey of education and training programs for lay judges; and an essay on international models in using a lay judiciary. The study also included a number of site visits to lay judge courts to interview several lay judges about their duties, functions, and own attitudes and perceptions regarding the use of lay judges. The project concluded with a seminar, at which the results of the study were presented. The final report is currently in preparation.

In conjunction with its basic data collection tasks, the project focused on several questions:

1. Can the traditional explanations for the continued use of lay judges, specifically a lack of attorneys who are willing to serve as judges in rural areas coupled with a desire for local dispute resolution, be justified today?

2. Do lay judges provide a particular or specialized input to the judicial process that attorney judges cannot duplicate?

3. Are there particular geographic areas where the need for lay judges is greater?

4. What legal problems are encountered by the use of lay judges? Are the existing procedures for appeal sufficient to protect the rights of litigants who appear in lay judge courts?

5. Can training and continuing education compensate for lack of a formal legal education?

6. Do lay judges fulfill a mediating/quasi-judicial function in their communities?

The following is an excerpt from the historical essay, prepared by Theodore J. Fetter of the National Center. The conclusions and recommendations of the project staff will be summarized in a subsequent issue of the Journal.

INTRODUCTION

In May 1977, the Institute of Judicial Administration and the National Center for State Courts jointly undertook a national study of lay judges. This project, funded by the Law Enforcement Assistance Administration, sought to compile baseline data about non-attorney judges in the United States. The study was prompted by Chief Justice Warren E. Burger, who, during the Supreme Court's deliberation of North v. Russell *[427 U.S. 328, (1976)], expressed concern over the absence of any recent systematic survey of the functions and responsibilities of these judicial officers.*

Professor Linda Silberman, of the New York University School of Law, for the Institute of Judicial Administration, and Elizabeth Prescott, for the National Center for State Courts, served as project co-directors.

The project consisted of several discrete tasks: the compilation of an annotated bibliography, summarizing the current status of information on lay judges; a history of the lay judge; a census; a survey of the constitutional

American courts have always had a sizable number of nonlawyer judges. In the earliest colonial times, few trained lawyers inhabited the English settlements. By the time colonial society was mature, the citizenry found that well-respected and educated laymen made acceptable and sometimes outstanding judges. The impulse away from nonlawyer judges dates from the Progressive Era. The increased professionalism of the law in the late 19th century and the progressive belief in efficiency raised doubts about the layman's ability to resolve disputes; and throughout most of this century, the major court improvement forces have worked to abolish lay judges. In recent decades, the campaign has met with a great deal of success, but within the past few years a strong countervailing opinion has developed that emphasizes a return to a neighborhood level of organization and a reliance on local personnel. The lay judge is now at a decisive point: within a relatively few years, the position will either practically cease to exist or it will be raised to a new position of respect.

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It is important to point out at the outset that the debate over the nonlawyer judge has always been a product of other forces and developments. There have seldom been abstract debates over the ability of nonlawyer judges. The English system of the justice of the peace began as a means for centralizing authority; the American experience developed from environmental necessity and later was challenged by the growth of the legal profession. Still today other factors seem decisive. The new movement for the lay judge seems to grow largely from a devotion to community resolution of disputes and not from an antipathy to the law and an accompanying desire for commonsense justice not based on legal precedent. And the possibility of replacing all lay judges with lawyers comes partly from an enlarged number of law-trained professionals.

The English Background

The English justice of the peace system developed from the 12th to the 15th centuries, and it was the model for the system of justice established in the English-speaking colonies in North America. In England, it was a vehicle for maintaining the central governmental authority of the Crown. In English feudal law, the monarch had a large measure of responsibility for the protection of society and for the reduction of private jursidictions and irregular procedures. The king's peace prevailed over the domains of the feudal lords. England had feudal courts controlled by local lords as the Continent did, but their power never dominated law enforcement.[1]

Fully developed in the 15th century, the justice of the peace system was a critical element of English government, and the justice of the peace was a key official for both judicial and executive decision making. Most justices came from the local gentry, particularly the new classes of merchants and businessmen who owed their allegiance to the Crown and not to the landed nobility.

The English settlements in North America had to improvise a legal system.

In 1327 and again in 1344, a majority in the House of Commons specifically urged that justices come from the gentry and not the nobility and that they not be lawyers. Local communities identified lawyers with royal inquests and wanted justices who would represent their own interests as well as the king's.[2]

The jurisdiction of the justice of the peace grew throughout these centuries. Government required more complex administration. The Plague that struck in 1349 was a major social upheaval, and it led to a significant increase in the role of government. The justices of the peace enforced regulations of wages, prices, and labor conditions and supervised the greater police control. When eras of weak kings led to royal officials who were incompetent or corrupt, the justices, as local officials allied with the Crown, grew more important. Finally, the first Tudor king, Henry VII, relied upon the justices of the peace to execute the laws at the local level, and their success in doing so helped Henry to establish his reign. A manual published in 1660 gives an example of the responsibilities and duties of the justice of the peace in the period of the English Civil War. Entitled *The Justice of Peace: His Clerks Cabinet: or A Book of Precedents, or Warrants, fitted and made ready to his hand for every case that may happen within the compass of his Master's Office. For the ease of the Justice of Peace, and more speedy dispatch of Justice,*[3] this volume includes sections on a wide range of subject matter, several examples of various procedures, and a reference of standard forms. A partial list of chapter titles follows:

—How to File a Warrant
—How to Question Witnesses
—Jurisdiction Without a Grand Jury
—How to Keep the Peace and Observe the Lord's Day
—About Felony
—About Riot and Forcible Entry
—Grand Jury Selection and Compensation
—About Warrants to Bind Over
—About Misdemeanors
—About Recognizances, Bail, and Mainprise
—About Supersedeas
—About Licensing
—About the Poor
—About the Paternity
—About the Peace and Good Behaviour
—About Witnesses
—About Watch and Ward
—About Alehouses, Alehouse Keepers, and Drunkards
—About Masters, Servants, Labourers, and Apprentices
—About the Charge of Carrying a Prisoner to Jail
—About Rogues
—About the Plague
—About Swearing of Constables
—About Highways and Bridges

The above list is a remarkable catalogue of the range of duties of the English justice of the peace. The justice was usually a part-time officer without formal legal training, but with a royal commission and high regard from most within the district. One must remember, however, that the English monarchs did not use the lay judge as the result of conscious policy. The Normans faced the political necessity of instituting a strong central government with a minimum of full-time personnel. By recruiting local knights, they were able to do the job and strengthen their support among the knights at the same time. As prominent men of commerce appeared, the Crown garnered their support partly by justice of the peace appointments.[4] The result was a local judiciary of capable and industrious persons who depended on the central government for resources and authority.

From the Progressive Period on, lawyers have condemned the lay judiciary without arousing a great deal of concern among nonlawyers.

The Early American Experience

The English settlements in North America began with few lawyers. They had to improvise a legal system. No lawyers landed at Plymouth with the Pilgrims in 1620, and, for the first few years, the entire community heard both civil and criminal matters. From 1629 to 1635 the governor and his assistants made up both the legislature and the court of the Massachusetts Bay Colony. After 1635 all free men of Massachusetts Bay sat on the General Court, which functioned as both legislature

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and court. Not until 1660 did the colony establish a fully separate court.[5]

Many colonists considered lawyers and the legal profession to be one of the reasons they left England, and they sought to limit the stature of the law in their new settlements. At least three colonies—Pennsylvania, New Jersey, and Virginia—prohibited attorneys for hire during the 17th century.[6] Describing the Pennsylvania settlement for English readers in 1690, Gabriel Thomas said:

> "Of Lawyers and Physicians I shall say nothing, because this country is very peaceful and healthy: Long may it so continue and never have occasion for the tongue of one nor the pen of the other—both equally destructive of men's estates and lives."[7]

As a result of the shortage of trained lawyers and frequent disregard for the profession, colonial courts most often had nonattorney judges. Even at the highest levels, the pattern held. In the early and mid-18th century, only three of the 23 associate justices of the Massachusetts Supreme Judicial Court had legal training. The first lawyer chief justice of the province, Paul Dudley, came to the bench in 1745. Other chief justices were merchants, clergymen, physicians, and teachers. In Virginia most of the high court judges were gentlemen farmers. As late as 1818, a member of Rhode Island's highest court was a blacksmith. While formal legal training was not the rule, however, most judges were well educated, and they were familiar with legal principles and practice in their colony. They represented the leaders of colonial society.[8]

Through the 18th century, the caliber and number of lawyers in the colonies increased. More Americans received training in England and at the growing number of centers of higher learning in the colonies. The Revolutionary generation included a number of outstanding lawyers such as George Wythe, Alexander Hamilton, Oliver Ellsworth, and John Dickinson. The inclusion of a lay judge on the appellate courts became less frequent during the Revolutionary era. Lawyer Nathaniel Chipman joined the Vermont Supreme Court in 1787, and he soon dominated his four lay colleagues. In Virginia in 1788, all five members of the high court were lawyers.

Standards for legal practice in the United States date from the late 18th century. States in New England and the Middle Atlantic region began to set qualifications in terms of studies, clerkships, or examinations. The southern and frontier states had fewer standards. This regional disparity may have demonstrated a lower regard for lawyers among the leaders in society of the South and West. Or, legal training may have been more important in those states in which commerce and manufacturing created greater interdependence among the citizens.

The lower courts in the colonial and early national period left little mark in history. Local gentry doubtless occupied the judgeships, and their qualifications and relationships to colonial and state governments probably varied a great deal. While the justices of the peace symbolized centralization in England, they quickly came to represent local control in America. As a rule they were cut off from the central government and set their own procedures, terms of court, and grounds for judgment.

Jacksonian Democracy

The rise of Andrew Jackson to the presidency coincided with social, economic, and political developments that have long fascinated historians. Among a large number of other events, the Jacksonian period marked a decline in

continued on page 35

Lay Judges *cont'd*

society's deference to its leaders. The landed gentry and men of commerce who dominated public life in earlier periods now had to accommodate the pressure for increased popular participation if they or their representatives were to continue to hold public office. The trained professional and the leading citizen could no longer command influence; they had to contend with the Common Man.

In the area of the courts, the most visible development occurred in the methods of judicial selection and the patterns of tenure. Terms of office became shorter and many judgeships became elective offices. In 1816, Indiana and Michigan began to elect some judges, and in 1832 Mississippi adopted an election system. In the 1840s and 1850s, many states passed such laws in the name of reform, democracy, and open government. By 1861, 19 of the 34 states elected their judges. In most others, the legislators, as the representatives of the voters, selected judges. In addition, 21 states limited judicial tenure to terms of either four or six years.[9]

In the Jacksonian period several states passed laws that reduced the authority and prestige of the judiciary and the bar. Judges were limited in their ability to comment on the evidence and instruct the jury. Educational requirements for the practice of law vanished in some states, and the power of the bar to organize and act as a political pressure group was restricted.[10] In short, the period saw a resurgence of the layman's position in the law. While the state supreme court justices were always lawyers (and some, like Lemuel Shaw and Isaac Parker of Massachusetts and Chancellor James Kent of New York were outstanding men of the law), there were no successful attempts at instilling professionalism and educational requirements in the judiciary of the lower courts.

The reaction against legal education for the judiciary extended to at least one member of a state supreme court. Extolling the virtues of judicial education that stressed general arts and letters rather than the detailed study of the law, Justice Hugh Henry Brackenridge of Pennsylvania said in the mid 19th century:

> "Talk of your Cokes and Littletons, I had rather have one spark of the ethereal fire of Milton, than all the learning of all the Cokes and Littletons that ever lives."[11]

The Professionalization of the Bar

The Progressive Era in American history began about 1880 and continued well into the 20th century. Many critical events and developments occurred in these decades, and historians have offered countless explanations, but Robert H. Wiebe has tied many disparate and potentially contradictory events together. Wiebe characterized Progressivism as a collection of ideas of continuity and regularity, functionality and rationality, administration and management. It was a time of greater efficiency and of optimism. America was developing from a land of isolated island communities into one of more specialization, hierarchy, and central authority. Persons identified themselves more by skill and occupation than by their family or their neighborhood.[12]

The leaders of society in the new age were members of a new professional class. Mostly urban, Wiebe's "new middle class" included professionals in medicine, law, economics, administration, architecture, and social work, and specialists in business and labor. These groups were devoted to their respective fields of endeavor. They formed local, state, and national associations, and they worked hard to improve their career areas. The associations formed a national system and encouraged interaction among the professionals. "The shared mysteries of a specialty allowed intimate communion even at a long range."[13]

The professionals in the law had to resurrect the reputation of the legal field. Following the relaxation of standards for qualification and practice of law earlier in the 19th century, the public regarded most lawyers with suspicion. To improve this image, a group of the most highly respected lawyers founded the American Bar Association in 1878. Many state and local associations sprang up soon afterwards. In 1880 there were 16 state and local bar associations; in 1916, there were 671.[14] Legal education was transformed during these decades to conform to the growing professionalization of the field. Christopher Columbus Langdell, the first dean of the Harvard Law School, developed the case method of teaching law. He saw law as a logical science whose principles were established in the cases. Lawyers needed rigorous formal training in order to practice. This legal training was self-reinforcing, since it encouraged lawyers and judges who received it to cite cases in their arguments and opinions. But it reserved the law to the specialist. "Everyman could not be a lawyer or judge; he was ignorant of legal science."[15]

This cohesion within the field, however, helped to widen a gap between the members and the nonmembers and between the city and the small town. Lawyers talked more among themselves and less with the lay public. While the legal professionals began to seek reform in the courts, they attracted little public support, largely because they seldom sought it. From the Progressive Period on, lawyers have condemned the lay judiciary without arousing a great deal of concern among nonlawyers.

The castigation of the lay judges sometimes appeared in appellate court opinions. The higher courts sought to restrict the authority and jurisdiction of the lay justice of the peace. In 1884, the Georgia Supreme Court ruled in *Bendheim Brothers and Co. v. Baldwin*[16] that a particular justice of the peace overstepped his role in his instruction to the jury:

> The law does not require a justice of the peace to charge the jury at all. His ignorance of the law, as well as propriety, would seem to demand that he should not, but if he undertakes to instruct the jury, he must do it correctly and in accordance with law . . . Who has not seen the gaping, listening crowd assembled around his honor, the justice, on tiptoe to catch the words of wisdom as they fell from his venerated lips? Instructions given in this case exercised an undue and unwarranted influence upon the jury.

At the end of the Progressive Period, with somewhat more seriousness, if less wit and verve, the United States Supreme Court ruled that a fee system for payment of the justice of the peace was unconstitutional if the fee accrued to the justice only when the defendant was found guilty.[17] Chief Justice William Howard Taft wrote the opinion for a unanimous court, which cited English practice as far back as 1388 in favor of a regular salary for justices of the peace.

> It deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.

In addition to the court cases, discussions of the lay judge appeared in a number of books explaining the American judicial system. These books, written by authors such as Roscoe Pound and Arthur Vanderbilt, have dominated the field of judicial administration to this day. Each of these volumes criticized the justice of the peace, citing a litany of problems with the office:

—Lack of legal training
—Part-time service
—Compensation by fee
—Inadequate supervision
—Archaic procedures
—Makeshift facilities[18]

Treatises on American law in the first decades of the 20th century, at least those written by lawyers, always criticized the nonlawyer judge. In discussing the organization of state courts, Simeon E. Baldwin described the justice of the peace courts as follows:

> The weakest point in this system of judicial organization is the vesting of jurisdiction of small civil cases in justices of the peace. Some may be lawyers. None need be, and few are. Any one of them can try cases . . . Justices of the peace can be trusted to dispose of petty criminal prosecutions and to conduct preliminary examinations into charges of any offense for the purpose of determining whether there is ground for holding the accused for trial before a jury, although even here mischief often results from their ignorance of law, and the sufferers have little means of redress.[19]

Clarence N. Callender followed with another volume in 1927. He described the procedure in justice courts in somewhat more detail, characterizing the informal procedures with some pointed comments:

> At the time fixed (or an hour or two later) the plaintiff and defendant, with their lawyers, if any, line up before the bar of the justice's court. The justice will, if he is courteously inclined, request the parties to proceed. More probably he will say in a raucous tone, "Well, what's this all about?" The plaintiff will then be asked to place his right hand on the Bible and the judge will say, "You do swear to tell the truth, the whole truth, and nothing but the truth, so help you God." The plaintiff nods his head and says, "I do." Should a witness place his left hand on the Bible or anyone keep his hat on during the ceremony, the justice is apt to be severe in his condemnation of the offender."[20]

In sum, the late Progressive attitude toward the justice of the peace was almost uniformly negative.[21] Progressives thought the position grew out of rural, frontier society when lawyers were unavailable and distances were great. As a result, every hamlet needed a part-time court. Since modern society was urban, complex, and interrelated, the effective delivery of justice required full-time, salaried, and legally trained judicial officers. Progressives pointed to the fee system as one of the most serious faults; since the justice's income depended on deciding the case one way or another, many persons wrote that "j.p." could stand for "judgment for the plaintiff." Further, the justice courts kept no records, had procedural problems, and displayed little understanding of the law. Finally, Progressives feared the strong position of the justice of the peace in local politics. The justices' influence over local government and state legislators made any change in their situation extremely difficult.

The Modern Era of Court Reform

In 1915, the constitution of 47 of the 48 states specifically provided for justices of the peace. Clearly the task ahead for court reformers was formidable. An institution so well entrenched could not easily be dislodged.

Reformers pointed to one major success in the early years of the century. Chicago bar leaders wanted to replace the justice of the peace with a municipal court. Since the Illinois constitution prohibited local legislation, the proposal to change the justice of the peace provision required statewide approval. In 1890, the effort failed because of voter apathy outside of Cook County. In 1904, however, a constitutional amendment passed that permitted a special reorganization of the Chicago courts. Shortly thereafter, the Chicago municipal court was established, and the justice of the peace position was abolished.[22] In other cases, the drive to reform the justice courts had remarkably little success in the first decades of the century.

Statutory and constitutional changes to replace or render ineffective the justice of the peace system began to occur in the 1930s. Virginia replaced justice courts in 1936 with a system of trial justices. The trial justice was salaried, usually law-trained, and supervised by the circuit court. Tennessee, Indiana, and Maryland also reformed their justice of the peace courts in the 1930s.[23]

Missouri and New Jersey passed major constitutional and legislative changes in the 1940s. Missouri became the first state to abolish all justice of the peace courts, in 1945, establishing a system of law-trained, full-time, salaried magistrates to replace the justice of the peace. New Jersey abolished all of their limited jurisdiction courts in 1947, creating new courts supervised by the state supreme court and staffed by salaried judges admitted to the practice of law.

Many states enacted some reforms affecting the lay judge in the next 20 years, including California, Minnesota, Louisiana, New Hampshire, Oklahoma, Alaska, Hawaii, Wisconsin, Virginia, Connecticut, North Dakota, Idaho, Maine, Washington, Kansas, Kentucky, Illinois, Colorado, North Carolina, Michigan, New York, and Delaware. Not all of these states abolished the justice of the peace. Some reduced the jurisidiction, others changed the method of selection or established training programs, and still others provided for increased supervision of the justice of the peace by the state court system. One of the most frequent courses of action was to establish a separate limited jurisdiction court such as a municipal court, magistrate, or county court, to give it concurrent jurisdiction with the justice of the peace, and to allow the justice court to decline from lack of use.

By the mid-1960s, while the position of justice of the peace survived in the constitutions of 40 states, the traditional power of the office had withered in most. The justice of the peace court actually did not exist in 16 states, and, in at least six others, the judicial role of the justice of the peace had substantially declined. In 25 of the other 28 states, the Institute of Judicial Administration saw evidence of significant reform either accomplished or underway.[24]

In 1971, the Council of State Governments published a table showing the time periods in which states had abolished the justice of the peace or effectively withdrawn all judicial functions:[25]

Time period	Number of States
1935-1939	1
1940-1944	0
1945-1949	2
1950-1954	1
1955-1959	8
1960-1964	10
1965-1969	6
Total	**28**

The drive to eliminate the lay judge reached a peak in 1974 with the decision of the California Supreme Court in *Gordon v. Justice Court.*[26] The court held that a defendant charged with an offense carrying a possible jail sentence has a right to a trial before a law-trained judge. In accordance with the decision, California has adopted a system of legally trained lower court judges throughout the state.[27]

Today court reformers have almost accomplished the elimination of the justice of the peace. The wisdom of a system of full-time, law-trained, salaried lower court judges seems to be accepted throughout the country. The allied movement to consolidate different courts and place them under a central administrative authority added impetus to the campaign to replace the lay judge. At a time when the number of lawyers is growing rapidly and professionals in many fields are considering careers away from the major cities in smaller and more rural communities, it is possible to foresee the end of the lay judge in the United States. As lawyers become available and with the established desire to have law-trained judges, it may be only a matter of time.

The Nonlawyer Judge at the Crossroads

The United States Supreme Court did not take the same position as the California court had when *North v. Russell* came before it in 1976.[28] Other state courts have also declined to rule unconstitutional the nonlawyer judge. Just as their demise seems possible lay judges may be getting a reprieve.

Many of the proposed alternative techniques of dispute resolution involve nonlawyer officials to settle disputes. As one gets away from adversary litigation based on precedent and rules of evidence, the arguments in favor of legal training for judges become less important. Systems of arbitration, mediation, and conciliation frequently call for

subject-matter expertise—for example, medicine or family relations or labor relations—as much as legal expertise. And much of the rationale for alternatives to adjudication involves community involvement. The prime experiments currently in the United States are the "neighborhood justice centers," where dispute resolution might take place on a local and more informal basis. This approach to resolving disputes, to state it much too broadly, emphasizes commonsense, practical problem solving more than a solution imposed upon contending parties by the dictates of the received law. Clearly such a method involves nonlawyers to reflect community norms and desires.

The movements for alternative methods of dispute resolution and greater community involvement call for a new level of respect to be accorded to the nonlawyer. Society definitely wants responsible and intelligent judicial officers, but if the system is no longer dependent only upon legal procedure and interpretation, a formal legal education is less necessary to achieving such a goal. In the future, laypersons may hear other kinds of disputes in other kinds of forums than law-trained judges, but they could be respected judicial officers, demonstrating either subject matter expertise or community participation. Those who would like to preserve a responsible place for the lay judge must define the particular roles and duties the nonlawyer is best able to carry out within the expanding range of dispute resolution systems. □

NOTES

[1]Two works were the main sources for the section on the English justice of the peace: Charles A. Beard, "The Office of the Justice of the Peace in England," *Studies in History, Economics and Public Law*, Vol. 20 (New York: Columbia University Press, 1904); and John P. Dawson, *A History of the Lay Judge* (Cambridge: Harvard University Press, 1960).

[2]Dawson, pp. 136-37.

[3]London: D. Maxwell, 1660.

[4]Dawson, p. 274ff.

[5]Anton-Hermann Chroust, *The Rise of the Legal Profession in America* (Norman: University of Oklahoma Press, 1965), pp. 65-66.

[6]Chroust, p. 147.

[7]Quoted in Richard B. Morris, *Studies in the History of American Law* (Philadelphia: Joseph M. Mitchell, 1959), p. 43.

[8]Francis R. Aumann, *The Changing American Legal System: Some Selected Phases* (Columbus: Ohio State University Press, 1940), *Selected*

[8]Francis R. Aumann, *The Changing American Legal System: Some Selected Phases* (Columbus: Ohio State University Press, 1940), pp. 34-39. See also Lawrence M. Friedman, *A History of American Law* (New York: Simon and Schuster, 1973) pp. 109-111.

[9]See Aumann, pp. 185-7; Friedman, pp. 323-25; and Hurst, *Growth*, pp. 104-107. See also Maxwell Bloomfield, "Law vs. Politics: The Self-Image of the American Bar," 12 *American Journal of Legal History* 306-23 (1968), p. 307.

[10]Bloomfield, pp. 308-10.

[11]Chroust, p. 41.

[12] Robert H. Wiebe, *The Search for Order* (New York: Hill and Wang, 1967).

[13]Wiebe, pp. 111-113. Quote at p. 113.

[14]Wiebe, pp. 116-17.

[15]Friedman, pp. 530-36, 541.

[16]73 Georgia 594, quoted in Ben W. Palmer, "The Vestigial Justice of the Peace," 47 *American Bar Association Journal* 381-2 (1961).

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

[18]The list of faults in the lay judge system comes from a 1965 report: Institute of Judicial Administration, *The Justice of the Peace Today* (New York: IJA, 1965).

[19]Simeon E. Baldwin, *The American Judiciary* (New York: The Century Company, 1920).

[20]Clarence N. Callender, *American Courts: Their Organization and Procedure* (New York: McGraw-Hill Book Co., 1927), p. 58.

[21]See also Chester H. Smith, "The Justice of the Peace System in the United States," 15 *California Law Review* 118 (1927).

[22]Hurst, *The Law Makers*, pp. 89-90.

[23]The review of court reform successes is taken from the IJA report, pp. 4-12, and from Kenneth E. Vanlandingham, "The Decline of the Justice of the Peace," 12 *Kansas Law Review* 389 (1964).

[24]IJA report, p. 2.

[25]Council of State Governments, *The Book of the States, 1970-1971* (Lexington: Council of State Governments, 1971).

[26]12 Cal. 3d 323, 525 P. 2d 72 (1974).

[27]See Ralph N. Kleps, "Contingency Planning for State Court Systems," 59 *Judicature* (August-September 1975) 62-66; and Kleps, "Crisis Planning for Court Reorganization," 60 *Judicature* (January 1977) 268-71.

[28]427 U.S. 328, 96 Sup. Ct. 2709 (1976).