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JUSTICES OF THE PEACE AND MAGISTRATES IN VIRGINIA AND WEST VIRGINIA

BY

KRISTA UNTERZUBER

A THESIS
SUBMITTED TO THE GRADUATE FACULTY
OF THE UNIVERSITY OF RICHMOND
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PREFACE

The issue involved in this work concerns a change in the administration of justice at the local level -- the abolition of the office of justice of the peace and the creation of the magistrate system. Although many states have undertaken such reforms, I have selected Virginia and West Virginia for specific study and emphasis. These two states serve as examples of why and how the systems were changed and what was accomplished by the changes.

Researching, organizing, and writing a thesis presents a challenge and involves more individuals than the writer alone. I had the opportunity to contact many people who were knowledgeable in the justice of the peace and magistrate systems. Most were gracious in giving their time and expertise and I am grateful to them for their help. I am particularly indebted to Dr. John W. Outland and Dr. Arthur B. Gunlicks for their assistance and counsel in the preparation of this thesis, and to Frances D. Mann for typing the completed paper. A special thanks goes to my family and friends for their support and encouragement. This work is mine. I take full credit for its strengths and its weaknesses.

Krista Unterzuber

INTRODUCTION

The justice of the peace system has long been a part of the judicial process in the United States. The system originated in Great Britain and was transferred to the British colonies in the seventeenth century. Through the years the duties of the justice of the peace increased in number and importance. In recent years the powers of the office have declined and criticism of the system has mounted. As a result some state governments have eliminated the justice of the peace system entirely and instituted the magistrate system. Two states which have taken such action are Virginia and West Virginia.

This study deals with the recent revisions in the laws relating to the justice of the peace system in the states of Virginia and West Virginia. The purpose of this study is to evaluate the effectiveness or the ineffectiveness of the justice of the peace system and the effectiveness or ineffectiveness of the magistrate system in these two particular states.

Within the last three years the General Assembly in Virginia has enacted legislation which has abolished the justice of the peace system and created the magistrate system. These modifications

were the end product of gradual changes in judicial administration over a period of years. A similar process has taken place in West Virginia. However, the magistrate system was enacted in that state only during the recent 1976 legislative session. Prior to these changes in the West Virginia laws, a constitutional amendment for judicial reform had been passed by the voters in the general election of 1974.

Included in the study is a look at the historical development of the justice of the peace system in Great Britain and the United States and a review of the major assets and defects of the system. Careful examination of the laws of the states of Virginia and West Virginia both prior to and following the enactment of the recent statutes of revision has been undertaken. The new magistrate systems of both states have been compared and contrasted with one another and with the abolished justice of the peace system. This inquiry into and the study of the abolition of the justice of the peace system and the creation of the magistrate system serves as a means of determining the effectiveness of the administration of justice at the lowest local level.

The data from which conclusions were formed has been gathered from several sources. Books, law review articles, legal documents, and the like have

been utliized extensively. Practical information concerning the justice of the peace systems and the magistrate systems was obtained through correspondence and interviews with persons who have been actively involved in the system, such as legislators who helped create the magistrate system, administrators who supervise the operation of the present system, and persons who serve as magistrates. By combining the material gained from all sources a number of conclusions have been reached regarding the relative value and effectiveness of the justice of the peace and magistrate systems in Virginia and West Virginia.

CHAPTER 1

The Early History and Development of the Office of the Justice of the Peace

The justice of the peace systems in Virginia and West Virginia can trace their origin to the English concept of conservators of the peace. The basic duty of the conservator was to insure the maintenance of the king's peace. Prior to the development of the king's peace, order in society depended largely upon the physical strength of the individual. The stronger a person was the more likely he was to be safe from attack.[1] However, the king's peace changed this dependence upon physical and brute strength and created a means by which society could become more stable.

At first the king's peace only applied to and protected the king, his family, and his lands. Lawlessness and offenses committed against the king were a violation of the king's peace and were punishable. Eventually this was extended to the king's servants, the churches, widows and orphans. Finally the entire country was included in the king's peace.[2]

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[1] Charles Austin Beard, *The Office of the Justice of the Peace in England* (New York: Columbia University Press, 1904), p. 11.

[2] *Ibid.*, p. 14.

William the Conqueror (1066-1087) was the first king of England to proclaim that the entire country was to be protected by the king's peace. Later Henry I (1100-1135) and Henry II (1154-1189) carried on this practice and strengthened the idea of the king's peace. Nevertheless, peace was still not an established certainty. A great deal depended upon the king himself, his abilities, and his personality. Upon a king's death, the peace was suspended until it was reaffirmed by the successor. A strong king could maintain order, a weak king could not. As a result, crime and lawlessness increased during the reign of a weak king.[3]

During his reign Henry II attempted to centralize authority in the crown and to make the state supreme. He enacted laws which favored royalty and he fought for control over the church. The king could not succeed in these endeavors without help. The solution appeared to be in the creation of a royal administration which would be dependent upon the king for its power and appointment. The task of the officers in this administration would be to maintain and enforce the acts and laws established by the crown.[4]

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[3] *Ibid.*, pp. 15-16.

[4] *Ibid.*, pp. 15-16.

However, it was not Henry II but Richard I (1189-1199) who is credited with the establishment of the forerunner of the office of the justice of the peace. In 1195 Richard I's Archbishop Hubert Walter issued a decree which required all men fifteen years of age and older to appear before certain knights appointed by the king. Each man was to swear to the appointed knight that as an individual he would obey the laws and commit no acts offensive to society. Besides declaring that he would not be a thief or a transgressor, each man had to declare that he would join in the pursuit of persons who committed unlawful acts and upon capturing the outlaw, would turn him over to the knight.[5]

The knights to whom the oaths were given were called conservators of the peace. Their duties as listed in the decree issued by Archbishop Walter included the administering of the peace-keeping oath and the turning over of captured criminals to the sheriff. These knights had the right to hear accusations, arrest and hold persons for trial, but they had no power to try cases.[6]

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[5]John T. Appleby, England Without Richard 1189-1199 (New York: Cornell University Press, 1965), p. 180.

[6]Ibid., pp. 180-181.

Through the years the office of conservator of the peace gained and lost in significance and importance depending upon who was king. John (1199-1216) chose not to use the conservator to any great extent. His son Henry III (1216-1272) increased the usage of the office and the knights appointed as conservators were once again a part of the administration of local justice throughout the British Isles. In an act of 1252 knights were appointed to travel the county and hear oaths that those men fifteen years old and over would arm themselves "according to the amount of their lands and chattels." [7]

Edward III (1327-1377) and his government expanded the duties of the conservator. In 1344 the conservator was given the power to try the accused. The so-called justice of the peace act was passed in 1361. This act firmly established the office and "ordered that in every county there be assigned 'one lord and with him three or four of the most worthy,' who were to act as 'justices' in administering the king's laws and in arresting and punishing offenders."[8]

Various social problems and conditions were

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[7]Beard, op. cit., p. 19.

[8]Warwick R. Furr, "Virginia Justices' of the Peace Manual" (Charlottesville: the University of Virginia Institute of Government, 1967), p. 11.

the basic impetus behind Edward III's actions regarding the conservators who were now able to try cases and were renamed justices of the peace. The Black Plague had swept through England in 1348-1349. Much of the population had been killed and an extreme manpower shortage resulted. Another factor which contributed to disorder and lawlessness was the war with France. While the lords were away fighting, the lower classes left at home engaged in local quarrels and arguments. At times civil war seemed imminent.[9] However, some semblance of order was maintained in England throughout both the Plague and the war by using as justice of the peace officials who were appointed by and responsible to Edward III and the central government. From this point on the justice of the peace had a prominent place in English government.

In order to be appointed a justice of the peace by the ruling monarch, one was usually of the developing middle class which was composed of the landed gentry. Certain property qualifications had to be met in order to secure an appointment as a justice of the peace. If it was impossible to find someone in a specific county

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[9] Beard, op. cit., pp. 33-34.

who possessed the required amount of property, the Chancellor would select a responsible, but poor soul to serve. Most of the justices of the peace could read and had a knowledge of Latin which was the language used in laws, acts, and decrees.[10]

The monetary gains from serving as a justice of the peace were minimal. A fixed or regular salary was never awarded. Sometimes compensation was granted for the performance of official duties and for holding court. This money was taken from fines collected. Justices were also allowed to keep a certain percentage of the goods and money they seized from the lawless.[11] Apparently this lack of a guaranteed income did not lessen the desire for an appointment as a justice of the peace. The office was a source of both political and economic influence, and, as such, it was quite an achievement and honor to be chosen to serve.

Upon appointment to the office, each justice of the peace received a commission issued by the Chancery. The Commission was composed of several parts. Mention was made of the power to arrest persons, to halt riots, to set bail and to punish those guilty of breaking the laws.

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[10] Ibid., pp. 144-145.

[11] Ibid., pp. 150-151.

Secondly the commission instructed justices on how to conduct court sessions. Two or more justices were to hear cases and one of those justices must be of the *Quorum*,[12] or in other words, one who had legal training or knowledge of legal matters.[13] If there was any doubt in the minds of the justices of the peace concerning the necessary action to be taken in a case, they were to do nothing until a justice from the King's Bench was present.[14]

The commission also contained the procedures to be followed by the *Custos Rotulorum* or the Keeper of the Rolls. The *Custos Rotulorum* was both a justice of the peace and a member of the *Quorum*. It was his responsibility to attend court sessions in person or send a representative, and to appoint a Clerk of the Peace to do the general clerical work for the court.[15]

A justice's authority and power extended throughout the county in which he lived. Sometimes under special circumstances, a commission was given to a justice which allowed him to act not only in his home

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[12] *Ibid*., p. 142.

[13] *Ibid*., p. 146.

[14] *Ibid*., p. 143.

[15] *Ibid*., pp. 156-157.

county, but also in other counties or shires.[16] Within his assigned jurisdiction a justice could hold general court sessions, petty sessions and discretionary sessions as provided by the law.[17] Appeals from these courts could be taken to a higher court, the Privy Council, the Star Chamber or the Chancery.[18]

The crown and the king's peace were the earliest beginnings of the justice of the peace system. In England the process was begun by the Plantagenets[19] and was more fully developed by the Tudors.[20] At his peak of influence the English justice of the peace administered laws, licenses beggars, ran prisons, determined public wages, supervised public works and held court.[21] The system declined in England after the eighteenth century,[22] but until that time the justice of the peace played an important and vital part in the administration of justice at the local level.

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[16]Ibid., p. 147.

[17]Ibid., p. 158.

[18]Ibid., p. 154.

[19]Ibid., p. 11.

[20]Ibid., p. 59.

[21]Donald Dale Jackson, Judges (New York: Atheneum, 1974), p. 43.

[22]Furr, op. cit., p. 12.

Virginia

During the colonization period, the justice of the peace system was brought to Virginia. Its form was somewhat modified, but the basic purpose was like that of the English system. The structure of the government and the judiciary during the earliest colonial years in Virginia had been of a quasi-military nature. Jamestown had been the center of activity. However, colonists moved on to other areas and by 1634 the country was divided into eight sections known as shires. The shires were James City, Henrico, Charles City, Elizabeth City, Warwick River, Warrosquyoake, Charles River, and Accomack.

Along with these organizational changes, other steps were taken to establish a more civilian government and system of administering justice. Commanders of plantations served as judges at first, but were succeeded by commissioners. Through an act of 1662, the commissioners became known as justices of the peace. Earlier the monthly courts which the commissioners had been required to hold had evolved into the county courts.[23]

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[23]Edward Ingle, "Justices of the Peace in Colonial Virginia 1757-1775," Bulletin of the Virginia State Library, Vol. XIV (April - July, 1921), p. 50.

The county courts were composed of four or more justices, one justice being of the Quorum. The court's jurisdiction extended to all cases "except (1) those criminal causes wherein the judgment, upon conviction, should be for the loss of life or limb, (2) the prosecution of causes to outlawry against person or persons, and (3) all causes involving less than 25 shillings sterling or 200 pounds of tobacco."[24] The General Court held in Williamsburg heard the first two classes of cases. Cases in the third class were those which could be heard by only one justice.[25]

A justice of the peace was appointed by the Governor and his Council. An exception to this practice was made in Virginia between 1652 and 1658 when the House of Burgesses elected the justices. After 1658 the appointing power was returned to the Governor and there it remained.[26]

The number of justices varied depending upon the person doing the appointing and the finding of persons willing to serve. With the increase in Virginia's population there was also an increase in the number of justices. Usually the number in each county

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[24]Ibid., p. 52.

[25]Ibid., p. 52.

[26]Ibid., p. 50.

ranged from eight to twenty. The commissions that these justices of the peace were given were similar to the ones issued to their English counterparts.[27]

The roster of persons having received commissions as justices of the peace in colonial Virginia included such names as George Wythe, Thomas Jefferson, Francis Lighthorse Lee, Richard Bland, Carter Braxton and John Randolph.[28] These men adequately filled the requirement presented in the act of 1662 that justices should be " 'of the most able, honest and judicious persons of the county.' "[29]

The justice of the peace had rather extensive powers and duties. In Richard Starke's 1774 guide for justices entitled <u>The Office and Authority of a Justice of the Peace</u>, the topics range from homicide to weights and measures and from forgery to fruit trees. The justice was also supposed to inspect beef, pork, and flour.[30] As with the English system, the monetary gains were meager for a colonial justice of the peace

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[27]Arthur P. Scott, <u>Criminal Justice in Colonial Virginia</u> (Chicago: University of Chicago Press, 1930), p. 43.

[28]"Justices of the Peace Colonial Virginia, 1764-1775," Virginia State Library.

[29]Ingle, <u>op</u>. <u>cit</u>., p. 55.

[30]Richard Starke, <u>The Office and Authority of a Justice of the Peace</u> (Williamsburg: Purdie and Dixon, 1774), p. 54.

could accept neither money nor rewards of any type for performing his required duties.[31]

The American Revolution and the resulting independence from England did little to change the office of the justice of the peace. Virginia's constitution of 1776 provided that the justices were to be appointed by the Governor with the recommendation of his Council. The term of office was to be for life.[32] The justice's duties were still

> extensive and varied, ranging from the trial of criminal cases to the supervision of building and warehouses and courthouses, the licensing of ferries, the regulation of the legal and medical progessions, and of prices charged by inn-keepers.[33]

For a number of years few changes were made in the office and its duties. If any modifications did occur, William Waller Hening kept the justices of the peace advised of them through his work The Virginia Justice which appeared in three separate editions. The first was published in 1795. The second was available in 1809 and was necessary because of the formation

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[31] Ibid., p. 155.

[32] "Justice of the Peace in Virginia: a neglected aspect of the Judiciary," Virginia Law Review, January, 1966, p. 157.

[33] Furr, op. cit., p. 13.

of a state penitentiary system. The last edition appeared in 1820 and conformed to the Revised Virginia Code of 1819.[34] Essentially the justice of the peace system remained the same throughout the first half of the nineteenth century.

According to the state constitution of 1851 the justice was made an elected and salaried official. Many of his powers and duties were given to other state officers and the circuit court which had been reorganized. A rather drastic change in the system occurred during the period of Reconstruction. The new county court was established and the justice of the peace now

> became a petty trial official, exercising concurrent criminal jurisdiction with the county court over minor offenses and civil jurisdiction over claims of from twenty to 100 dollars.[35]

This new county court was found to be ineffectual and was abolished in 1902. The Virginia constitution was rewritten that same year. In the revised document the instructions concerning the office of the justice of the peace were amended to read that " '(T)he General

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[34]William Waller Hening, The New Virginia Justice (Richmond: J and G Cochran, 1820), preface.

[35]"Justice of the Peace in Virginia," Virginia Law Review, pp. 157-158.

Assembly shall provide for the appointment or election and for the jurisdiction of such justices of the peace as the public interest may require.' "[36] Thus the justice of the peace was restored to power as an elected official although he was no longer salaried. Most importantly he was once again an integral part of the administration of local justice. The justice of the peace was able to maintain this position of prestige until 1934, when the justice of the peace system in Virginia began its decline.

West Virginia

The early history and development of the justice of the peace system in West Virginia is the same as that of Virginia, for West Virginia did not become a separate state until the War Between the States. The western section of Virginia decided not to join the Confederacy, but chose to remain with the United States. The area was granted admission to the Union on June 20, 1863, and as a separate state West Virginia wrote a constitution and passed her own laws.

In the constitution of 1863 each county in West Virginia was to have no fewer than three nor more than ten townships. Each township was to elect a justice

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[36] *Ibid.*, p. 158.

of the peace. However, a township was allowed two justices if the white population was greater than twelve hundred. The term of office was four years and a justice could only serve in the township in which he was elected. A justice of the peace only had jurisdiction in civil cases if the amount of damages did not exceed one hundred dollars. The constitution did not grant any jurisdiction in cases of a criminal nature,

> but county-wide criminal jurisdiction could be provided by law if the prescribed fines did not exceed $10.00 or the imprisonment did not exceed 30 days.[37]

West Virginia revised and ratified the constitution in 1872. At that time no major changes were made in the laws controlling the justices of the peace. The amount of damages allowed in civil cases was raised to three hundred dollars and the area of territorial jurisdiction was extended from the township to the entire county. A county could have no less than three nor more than twenty justices. Again, a township having a population larger than twelve hundred could elect two justices.[38]

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[37]Claude J. Davis, Eugene R. Elkins, Paul E. Kidd, "The Justice of the Peace in West Virginia" (Morgantown: West Virginia University Press, 1958), p. 2.

[38]*Ibid.*, p. 3.

West Virginia has attempted over the years to modify its state laws relating to the justice of the peace. In 1929 efforts were made to establish summary courts and relieve the justice of some of his power. A constitutional amendment to abolish the office entirely was put before the voters in 1940.[39] Both of these measures were defeated. However, one improvement did occur in 1935 when the Legislature enacted a new system of compensation for the justices.

The development of the justice of the peace system in Virginia and West Virginia began to differ after 1863, when West Virginia gained statehood. The basic difference still exists today, even though both states have abolished the justice of the peace courts and have established magistrate courts. The Virginia Constitution of 1902 removed the justice of the peace as a constitutional officer and granted the power to the General Assembly to control the justice of the peace. Thus, the General Assembly could pass measures to extend, curtail, or abolish justices and their jurisdiction.[40]

In West Virginia the office of justice of the peace was and has remained a constitutional position.

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[39]Davis, op. cit., pp. 3-4.

[40]Furr, op. cit., p. 6.

Changes in the office could occur only through a constitutional amendment which would permit the legislature to act in a specific manner and in a particular instance. As a result, any major change in the justice of the peace system, such as total abolition of the office, could only be accomplished by a constitutional amendment. This was done in November, 1974 with the adoption of the Judicial Reorganization Amendment.

After originating in England and being transplanted to the colonies, the office of the justice of the peace flourished until the 1930's. At that time throughout the United States, criticisms of the system began to mount and lawmakers began attempts to reform the institution. In Virginia and West Virginia the system also began its decline and efforts to improve the situation proved to be unsuccessful.

CHAPTER 2

Criticisms of the Justice of the Peace Systems in the United States

The justice of the peace system in the United States has been criticized for a variety of reasons. Basically there are four areas on which critics have

focused their attention. The major controversy stems from the use of the fee system as a method of monetary compensation for justices. Other areas of concern include the procedure used in the selection of justices, the qualifications required of persons serving as justices, and the lack of supervision exercised by a central authority over justices.

One of the earliest critics of the justice of the peace systme was Roscoe Pound. In a speech before the American Bar Association in 1906 he pointed out that state court structures were becoming inadequate and that "a main source of the public's discontent with the judicial structure was its inability to assure prompt dispensation of justice."[1] By 1909 Pound was proposing, according to James Gazell,

> a state wide uniform set of county (or lower) courts with minor criminal and civil jurisdiction, which would absorb the jurisdiction of justices of the peace and their counterparts.[2]

Pound's criticisms and suggestions were generally ignored and the justice of the peace system continued with all of its weaknesses.

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[1]"Justice of the Peace in Virginia: a Neglected Aspect of the Judiciary," Virginia Law Review, January, 1966, p. 151.

[2]James A. Gazell, "A National Perspective on Justices of the Peace and Their Future: Time for an Epitaph?" Mississippi Law Journal, Vol. 46, No. 3 (1975), p. 799.

In 1927 Chester H. Smith presented a call for reform in an article which appeared in the California Law Review. This prompted the 1931 National Commission on Law Observance and Enforcement (the Wickersham Commission) to advocate changes in the system. However, for unknown reasons, the entire issue of reform of the justice of the peace system was pushed into the background until the early 1960's.

Beginning in 1962 efforts to reform the office of the justice of the peace were renewed. In that year both the American Judicature Society and the American Bar Association began to speak not only of reform, but also of the possibility of total abolition of the office. The question of reform was considered throughout the remainder of the decade by organizations such as the National Municipal League, the Institute for Judicial Development, and the President's Commission on Law Enforcement and Administration of Justice. In 1973 the National Advisory Commission on Criminal Justice Standards and Goals issued the following statement:

> A first step for those states without formal plans for court reorganization and unification would be to abolish the justice of the peace and minicipal courts in metropolitan areas and to replace them with unified county or multi-county systems ... staffed by full-time judges with law degrees who are members of the bar ... (and)

> centralized in administration in each metropolitan area, under the guidance of a chief judge who in turn is subject to the direction and supervision of the chief justice of the State supreme court.[3]

These criticisms and the efforts to reform the justice of the peace courts have raised the question of the importance of an effective and efficient system. Most critics maintain that the majority of the citizens in the United States have little, if any contact with the judicial system. However, if they do, it usually occurs at a lower level and often in the justice of the peace court. The results of their encounter with this court often determine the amount of respect for the entire judiciary.[4] Thus, it is reasonable to assume that if the judicial system is to be held in high regard, then reforms necessary for a fair and equitable justice of the peace court should be made.

The Fee System

The use of the fee system by justices of the peace has been the major area of concern among critics and reformers. By the year 1915 constitutions in forty-seven states mentioned justices of the peace. At the same time there existed five types of fee systems.

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[3] Ibid., p. 795.

[4] Chester H. Smith, "A Justice of the Peace System in the United States," California Law Review, XL, January, 1927, p. 131.

Each system had either evolved or had been created by law.

A simple fee system was one in which judges were compensated entirely or partly by monies collected from fines and costs that resulted from criminal convictions. In the alternative fee system compensation was received from both fees collected from convicted defendants and money paid by the government in acquittals. A variation of this system was the limited alternative fee system in which the government placed a maximum limit on its payments. The fourth type of fee system was the salary fund. Here judicial salaries were paid from a fund of accumulated costs and fines. Finally there was the

> penalty fund (or competitive) fee system, which compensated justices of the peace through funds collected previously from levies against acquitted as well as guilty defendants and which created rivalries among these officials to handle as many actions as possible ...[5]

With the use of the fee system, justices tend to convict the defendant in order to obtain cash immediately and also with the hope of gaining more business. The President's Crime Commission Report of 1967 contends that criminal complaints are usually made by persons having police powers. Such persons

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[5]Gazell, *op. cit.*, pp. 798-799.

wish convictions and tend to take their cases to the justice who is most likely to find a defendant guilty rather than the justice who protects the rights of the defendant.

> It is very common in all states where justices ... compete for business, to find instances where the sheriff's office, or the state police, or any other agency engaged in enforcing the criminal law, take most or all of their cases to certain justices notwithstanding the fact that other justices may be more conveniently accessible. In such cases it is difficult not to conclude that the favored justice renders service acceptable to the officers who bring in the business ...[6]

The competition for business among the justices of the peace can be fierce and the number of convictions numerous. Because of such occurrences, the initials "J. P." have been said to stand for "judgment for the plaintiff." Nevertheless, there is an advantage to the fee system. In order for a justice to collect a fee, he must be available to hear cases. Thus, under the fee system, persons serving in the capacity of a justice are in reality full-time employees rather than part-time, especially if they intend to make any money.

The fee system originated at a time when the concept of state and local governments was not as developed as it is today. Taxation was practically

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[6]President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, (Washington: Government Printing Office, 1967), pp. 34-35.

nonexistent. As a result, fees were assessed to cover the cost of the trial and to pay the justice for his services. To gain the maximum possible in monetary compensation the justice usually had to find the defendant guilty as charged. Eventually the correlation between money and guilty verdicts became apparent to observers of the judicial process in the lower courts. In 1926 the practice was challenged in the courts.

The United States Supreme Court ruled in the case of Tumey v. Ohio that a defendant on trial in a criminal case which involves his freedom or property cannot be brought before a judge who has a direct, personal interest in finding the defendant guilty. Such actions are a denial of due process, and the system of payment for services to an inferior judge "has not become so customary in the common law or in this country that it can be regarded as due process ..."[7]

"This opinion caused a great stir and was hailed as the death sentence of the fee system... ."[8] However, the fee system continued to be operative in the states. The states declared that procedural

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[7]Tumey v. Ohio 273 US 510 (1926), p. 510.

[8]George Warren, Traffic Courts (Boston: Little, Brown, 1942), p. 213.

safeguards existed which would allow the defendant his right to due process. Included in these safeguards were the right to trial by jury or a new trial on appeal, the right to change of venue before a salaried judge, minimal fee, and the payment of fees on acquittals as well as convictions.[9] Besides the states' disregard for the Tumey decision, the Supreme Court weakened their stance in 1928 in Dugan v. Ohio.

In the Dugan case the mayor served as a justice of the peace and as a member of the city council. He was one of five persons governing the city with a city manager as the chief executive. The mayor's salary was paid from a general fund rather than directly from the fees collected in complaints. Money from violations of the law were used as revenue for the city. The United States Supreme Court ruled that due process was not denied the defendant in this situation, for the mayor received no direct personal gain from the outcome of his judgments.[10]

Virginia's Supreme Court of Appeals considered the same question in Brooks v. Town of Potomac in 1928. Alfonso Brooks was convicted of speeding, tried before Mayor Kleysteuber and found guilty. The conviction was

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[9]Gazell, op. cit., p. 802.

[10]Ibid., p. 802.

appealed on the grounds that the defendant's right to due process had been denied because the mayor-judge had a special pecuniary interest in the case. The State Court ruled that Brooks' rights had not been violated since an appeal could be made to the circuit court. The Court also noted that none of the conditions of the Tumey case appeared here as Brooks was granted an appeal to a higher court, whereas Tumey had no recourse for an appeal. The opinion of the Court also contained the following recommendation:

> We think the Virginia statute (section 3504 of the Code) should be so amended that the justice, police justices, and mayors of towns will receive in all cases charging a violation of a town or city ordinance, or state law the same fees where the defendant is acquitted that they receive where he is convicted. We respectfully refer this suggestion of the General Assembly of Virginia for such action as they deem wise in the premises.[11]

The method used by West Virginia to pay justices in instances of acquittal was declared unconstitutional by the state Supreme Court of Appeals in 1935 in Williams v. Brannen. Before this decision, each justice had a personal fund created from fines collected from each conviction. A justice was allowed to pocket the court cost, but had to hand fines over to the sheriff. The sheriff then credited the amount of the fines to the

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[11]Brooks v. Town of Potomac 141 SE 249 (1928), p. 252.

justice's personal account. In cases of acquittal, the justice submitted a bill to the sheriff to be paid out of the fund accumulated from previously collected fines. If the fund was empty, the justice went unpaid. Therefore, a justice had to manage a certain number of convictions in order to assure his payment in non-conviction cases.[12] After the Williams ruling, this practice ended.

At that time the West Virginia Legislature amended, but did not abolish, the fee system. Fines collected by justices were now deposited by the sheriff into a general school fund or a justice fine fund, as it was often called. In cases resulting in acquittal, a justice of the peace could now draw from these monies for payment. If the general school fund was depleted, payment could come from the general county fund by order of the county court. The lawmakers maintained that the fee system was monetarily self-sustaining and compensation was equal to the amount of work performed.[13] Thus, it was beneficial to the state to retain the system in some form or another.

Throughout the United States various forms of the fee system continue to be used. However, the Tumey

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[12]George Lawson Partain, "The Justice of the Peace: Constitutional Questions," West Virginia Law Review, Vol. 69 (1966-67), footnote pp. 315-316.

[13]Ibid., p. 317.

decision was broadened in 1972 by the United States Supreme Court. Ruling in Ward v. Village of Monroeville, the Court held that a mayor was not an impartial judge if the fines he collected from traffic violations made up a large part of the village treasury. Although the mayor's pecuniary interest in the outcome of the case was not direct, it was substantial. Therefore, his concern for the finances of the village created a violation of the defendant's due process.[14]

Attention has continued to be directed toward the use of the fee system. Most critics consider it the worst feature of the justice of the peace system. Restructuring the fee system might rid the justice of the peace courts of some of the inequities, but there are other areas which contribute to the weaknesses and faults found in the lowest level of local courts in the United States.

Qualifications, Selection, and Supervision

One of the most frequent complaints registered against the justice of the peace system is that the qualifications required of a justice are lax particularly in the area of education and training. In the 1920's

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[14]Gazell, op. cit., p. 803.

only one state mentioned the justice's educational abilities in its statutes. Louisiana noted that those persons serving as justices must have a command of the English language.[15] The laws in other states did not list any educational requirement, but dealt only with the usual residency and citizenship considerations.

In recent years the fact that a justice can try cases, yet is not trained in legal procedure and law, has become a major issue in the widespread desire for reform. Although the justice of the peace court is a court not of record, and appeals are in most instances automatically allowed to a higher court, critics insist that only lawyers should be justices of the peace. The President's Crime Commission Report of 1967 lists thirty-four states which do not require the justice of the peace to be a lawyer.[16] Some states do require persons serving as justices to attend training sessions in order to obtain an understanding of methods and proper legal procedures to follow in their courts. These workshops seldom last more than a couple of days and provide only limited guidelines for the justices.

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[15] Smith, op. cit., pp. 122-123.

[16] President's Commission on Law Enforcement, op. cit., footnote p. 35. The thirty-four states are Alabama, Arkansas, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

The California Supreme Court has considered the question of a non-legally trained person serving as a judge in cases which involve possible jail sentences. Defendants have charged that due process is violated when the justice is not a lawyer, because the legal questions before the court are too complicated for the untrained to comprehend. In Gordon v. Justice Court the California high court ruled that in criminal cases that could result in a jail sentence the judge must be an attorney unless the defendant waives such a right. This should not be construed to mean that all justice of the peace systems violate due process by not having legally trained judges. The United States Supreme Court ruled in Colten v. Kentucky (1972) that the right to appeal protects due process. However, in Argersinger v. Hamlin (1972) the United States Supreme Court did declare that the accused has a right to legal counsel in any trial that might result in a jail term. This decision has not been extended to include the idea that all judges must be lawyers.[17] The Court has allowed the states some leeway in managing their own justice of the peace systems.

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[17]Robert A. Kimsey, "The Justice of the Peace System Under Constitutional Attack - Gordon v. Justice Court," Utah Law Review (1974), pp. 861-866.

The American Civil Liberties Union recently attempted to bring the issue of legally trained justices before the United States Supreme Court. In Frierson v. West (1975), a case which originated in South Carolina, the ACLU presented the following consideration:

> Whether appellants must show actual harm as an element of standing to contest the constitutionality of trial before lay magistrates in criminal cases which could result in sentences of imprisonment, where such magistrates are not required to have any level of legal knowledge or degree of training or experience.[18]

However, the Court did not grant certiorari and the question remains unanswered.[19]

J. D. Herron, a justice of the peace in Weirton, West Virginia, believes that being trained in law is not necessary in order for one to decide cases. He refers to his type of justice as common-sense justice and calls his court the little man's court because the poor can receive a fair hearing without having to pay a high-priced lawyer.[20] A similar opinion was expressed on the CBS program "60 Minutes" by Paul Foster, a justice of the peace in South Carolina. Mr. Foster

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[18]Frierson v. West, No. 75-1799, United States Fourth Circuit Court of Appeals, June 14, 1976.

[19]Statement by Laughlin MacDonald, Director, Southern Regional Office ACLU Foundation, Inc., telephone conversation, September 8, 1976.

[20]Donald Dale Jackson, Judges (New York: Atheneum, 1974), p. 41.

stated that "any competent layman can handle the job. All he needs is the code of laws and common sense."[21] On the same program, when asked if the Supreme Court of the United States might better serve the people if non-lawyers were appointed, Justice of the Peace James Arthur Bishop replied, "You've got to use common sense in everything. And...I believe if they had, like I feel, that I got the people at heart and think about the people in all my decisions, it might be a little different ... ."[22]

Throughout the United States two basic methods are used in the selection of persons to serve as justices of the peace. Most often the justices are elected, but in some states the Governor appoints them with the advice and consent of the Senate. The election of justices by partisan ballot has been severely criticized as it might "seriously impair judicial independence and that party-acceptability and vote-getting abilities are qualities not necessarily required of a competent justice.[23] Suggestions for changing the selection methods were made by the

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[21]CBS, "60 Minutes" (February 22, 1976), Vol. VIII, No. 11, p. 3.

[22]*Ibid.*, p. 7.

[23]Claude J. Davis, Eugene R. Elkins, Paul E. Kidd, "The Justice of Peace in West Virginia" (Morgantown: West Virginia University Press, 1958), p. 12.

American Bar Association in 1937. The ABA proposed a plan by which the chief executive of the state would make appointments to the office from a list submitted by an agency made up of private citizens and persons in the judiciary. The voters of the state would be allowed to vote on the appointee and his record after a certain period of time. The plan was adopted only in Missouri and then only for judges above the trial court level.[24] Virginia did alter the justice of the peace system in 1936 by creating a trial justice appointed by the circuit judges with the approval of the county board of supervisors. From that time on the justice of the peace in Virginia could no longer try cases.

Observers note that once a justice obtains the office, either by election or appointment another weakness of the system becomes operative: the lack of supervision by a central agency which leaves the justice on his own and unaccountable to a higher authority. Questionable practices in the areas of judgments, fees, and court locations often go unnoticed. In some states the tax department is required to perform audits of the justices' accounts. However, due to the large numbers of officeholders and the amount of time

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[24]Ibid., p. 12.

the auditors have, it is practically impossible to maintain a close check. The disorganization of the system does not allow for uniformity in the justice of the peace courts. The justices act on an individual basis and may hold their court anywhere they choose. Some justices hear cases in their homes, some at their place of business, and some in special offices. This lack of supervision makes reforms and improvements in the system almost impossible. More importantly, there is no one central agency able to provide a justice with assistance upon his request.

Reforms in the States

The justice of the peace system developed in the United States when the country was basically rural oriented. Today the focus has changed to the urbanized area. The justice of the peace court did provide a means to settle petty claims quickly and without the problems involved in a higher court. At present the system is under attack, as some critics believe it no longer operates effectively.

Although the elimination of the justice of the peace system was preferred, the President's Crime Commission Report of 1967 offered recommendations to maintain a system of fair and equitable justice. First,

the fee system should be replaced by the salary system. Second, persons serving as justices should be trained in the law or complete a graining program prior to taking office. Lastly, each state should provide a means of supervision for the justice of the peace courts. Records should be kept and administrative help should be provided through the statewide court system.[25]

Because of the growing concern over the inequities of the system, some states have taken action to eliminate the justice of the peace system entirely. The statistics show that most of the reform has taken place since 1960, although a few states did abolish the system prior to that time. The chart on the following page lists the states and the dates the systems were abolished.

(See Table 1, p. 44)

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[25]President's Commission on Law Enforcement, *op. cit.*, p. 36.

TABLE 1

ABOLITION OF THE JUSTICE OF THE PEACE SYSTEMS IN THE UNITED STATES [26]

STATE	DATE	STATE	DATE
Alabama	1972	Missouri	1945
Alaska	1958	Nebraska	1972
California	1950	New Hampshire	1957
Colorado	1962	New Jersey	1945
Deleware	1965	New Mexico	1969
Florida	1973	North Carolina	1965-70
Hawaii	1959	North Dakota	1961
Idaho	1971	Ohio	1957
Illinois	1962	Oklahoma	1969
Iowa	1973	South Carolina	1965
Kansas	1969	South Dakota	1975
Kentucky	1977	Virginia	1974
Louisiana*	1956	Washington	1961
Maine	1961	West Virginia	1974
Maryland	1971	Wisconsin	1966
Michigan	1969	Wyoming	1975

* Abolished in cities of over 5,000 population.

Several states have modified or have attempted to abolish their justice of the peace systems. As early as 1937 Tennessee established general sessions courts throughout most of the state. However, due to senatorial request, six counties were permitted to retain their justices of the peace. Minnesota eliminated the justice of the peace as a constitutionally required

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[26]Letter from National Center for State Courts, July, 1976 and Kenneth E. Vanlandingham, "The Decline of the Justice of the Peace," Kansas Law Review, Vol. 12 (1963-64) pp. 389, 401, 403 and James A. Gazell, "A National Perspective on Justices of the Peace and Their Future: Time for an Epitaph?" Mississippi Law Journal, Vol. 46, No. 3(1975), p. 812.

office in 1956. It is now controlled by the legislature and is used extensively in rural areas. The situation is much the same in New York where the use of the justice of the peace system is optional in all counties outside New York City.

A legislative study began in Mississippi in 1970 while Georgia began the task of locating and counting both active and inactive justices in 1975. No actions toward amending or abolishing the justice of the peace system have been taken in either state. In 1969 Arkansas halted the accrual of fees by justices in criminal cases. The Vermont lawmakers revoked all judicial duties and functions of the justices of the peace in 1974. Efforts to abolish the justice of the peace courts and replace them with county courts by 1978 met with defeat in Indiana. The 1974 Texas legislature tried, but failed to pass a proposed constitutional amendment providing for supervision of justices of the peace. In 1972 the electorate in both Montana and Nevada voted down a constitutional amendment that would have eliminated the office of justice of the peace. Arizona, Connecticut, Massachusetts, Oregon, Pennsylvania, Rhode Island, and Utah still have justices of the peace and have made no moves to reform or abolish that practice.

The abolition of the systems in Virginia and

West Virginia was a direct result of the general criticisms leveled against the justice of the peace. Both states utilized the fee system for monetary compensation, allowed unqualified persons to serve, and exercised no centralized supervision over the justices. In the succeeding chapters the abolition of the justice of the peace systems and the establishment of the magistrate systems in Virginia and West Virginia will be discussed in detail.

CHAPTER 3

The Creation of the Magistrate Systems in Virginia and West Virginia

The justice of the peace system had existed in Virginia and West Virginia since the colonial period. Throughout the years the system had undergone amendments, revisions, and reforms. Finally in the early 1970's, actions were taken by the legislatures of both states to abolish the justice of the peace system and to create in its place a magistrate system.

The Beginnings of Change

Virginia

The office of justice of the peace in Virginia was "created by implication in the constitution of 1776."[1] At that time provisions were made for the appointment of justices of the peace by the Governor with the advice of his Privy Council. The revised constitution of 1830 retained the office of the justice of the peace, but the General Assembly was granted the power to give the justices "such jurisdiction as it thought necessary."[2]

More complete instructions were given concerning this particular office in the Virginia constitution of 1850. Each county was to be divided into districts with four justices of the peace from each district. Justices were now elected for terms of four years, and each justice had to reside in the district from which he was elected. The constitution stated that monthly meetings of the county courts must be held with three to five justices sitting at once.

No mention was made of the justice of the peace in the 1870 constitution. However, county courts were to be presided over by someone learned in the law. By

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[1]A. E. Howard, Commentaries on the Constitution of Virginia (Charlottesville: University Press of Virginia, 1974), footnote 17, p. 749.

[2]Ibid., p. 747.

this action the office of the justice of the peace was no longer a constitutionally established one and "the powers of the office were in the process of being continually circumscribed."[3] In the constitution of 1902 the actual existence and the jurisdiction of the office of the justice of the peace was left entirely to the legislature. The Judiciary Article of the present constitution of the state allows the General Assembly to

> provide for other judicial personnel, such as judges of courts not of record and magistrates or justices of the peace, and may prescribe their jurisdiction and provide the manner in which they shall be selected and the terms for which they shall serve.[4]

A recommendation for reform in the justice of the peace system came from the state Supreme Court of Appeals in Brooks v. Town of Potomac in 1928. In its opinion the Court suggested that the General Assembly should consider making fees received independent of the outcome of a case.[5] The 1931 Report of the Commission on County Government to the General Assembly of Virginia concluded that the justice of the peace system was "generally unsatisfactory and incompetent... ."[6]

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[3] Ibid., footnote 17, p. 749.

[4] Constitution of Virginia, Article VI, section 8.

[5] "Justices of the Peace in Virginia: a Neglected Aspect of the Judiciary," Virginia Law Review, January, 1966, p. 162.

[6] Ibid., footnote 92, p. 163.

With these and other such comments in mind, the General Assembly passed a Trial Justice Act in 1934 which provided for the appointment of salaried trial justices in each county. These trial justices replaced the justices of the peace in the exercise of many of their former functions even though the justices of the peace continued to exist. The newly appointed trial justices had exclusive jurisdiction in all misdemeanors except State Corporation Commission offenses and in all civil actions involving two hundred dollars or less. They shared jurisdiction with the circuit court in cases involving amounts up to one thousand dollars and also had the same civil powers as a justice of the peace.[7] The Trial Justice Act curtailed the authority of the justice of the peace by terminating his right to try cases.

The 1936 Trial Justice Act more fully explained the organization of the new system. With the enactment of this law, the justice of the peace was left with little authority except issuing warrants, attachments, and subpoenas and admitting persons to bail or to jail. Nevertheless, the office of justice of the peace continued to be an integral part of the judicial

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[7] *Ibid.*, p. 163.

hierarchy in the state.

It has been said that by the passage of the Trial Justice Act "Virginia was the first state to inaugurate thorough-going reform in the traditional justice of the peace system."[8] Although Virginia laws no longer permitted a justice of the peace to try cases, problems still existed. Criticism launched against the justice of the peace system throughout the United States were often applicable to Virginia, for the state authorized compensation by the fee system, maintained no centralized supervision, and allowed untrained persons to serve as justices.

No actions for reforming the justice of the peace system in Virginia were taken from 1936 until the 1960's. At the 1964 annual meeting of the Judicial Conference of Virginia,[9] a resolution was adopted which called for a committee to study the problems of the justice of the peace system. A

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[8]Kenneth E. Vanlandingham, "The Decline of the Justice of the Peace," Kansas Law Review, Vol. 12 (1963-64), p. 397.

[9]The Judicial Conference of Virginia is composed of the Chief Justice and Justices of the Virginia Supreme Court of Appeals, all judges of Courts of Record, and all retired judges and Justices of such courts. Besides these active members there are some honorary members. The Conference meets annually to discuss the administration of justice in the state. Provisions for the Conference are presented in the Virginia Code.

five-member committee headed by Judge Rayner V. Snead[10] was formed. In May, 1965 the committee reported its findings to the Judicial Conference. At that time the following nine recommendations to upgrade the justice of the peace system in Virginia were presented.

1. The justices should be appointed for terms of four years by the circuit court judges.
2. The Commonwealth's Attorney should advise and assist the justice rather than the arresting officer or county judge.
3. The county court should supervise and regulate the activities of the justice of the peace when such actions affect the county courts, especially bail schedules and warrant returns.
4. Training schools should be instituted to give the justices an explanation of their duties.
5. Justices of the peace should be given copies of the laws and regulations which apply to them.
6. A manual should be prepared to provide basic guidelines.
7. References in the Virginia Code which concern the justice of the peace, but are no longer needed should be deleted.
8. A code of ethics for the justice of the peace should be developed.
9. The study of the justice of the peace system should be continued.[11]

Before arriving at these specific recommendations the committee had asked that the Association of

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[10]The members of the study committee appointed by the Chief Justice of the Virginia Supreme Court of Appeals, John W. Eggleston, were Judge Rayner V. Snead, Chairman, Judge Edmund W. Hening, Jr., Judge Ligon L. Jones, Judge Robert S. Wahab, Jr., and Judge Earl L. Abbott.

[11]Judicial Conference of Virginia, "Report of the Committee on Justices of the Peace," May 5, 1965, pp. 83-84.

Justices of the Peace in Virginia offer suggestions for the improvement of the system. The Association, which had been organized in 1955, replied by requesting that justices be appointed, be supervised, and be required to attend training sessions before taking the oath of office. Also, the Association wanted justices to be able to write all warrants and bonds (a duty which they shared with the county court), to be included in Social Security, to have fees increased, to be allotted office space, and to be provided with sections of the Virginia Code dealing with the justice of the peace.[12] The committee did not consider the requests for inclusion in the Social Security program and the increase in fees. Of the remaining suggestions, all were approved except the one concerning the writing of warrants.

Many of the committee's recommendations such as the preparation of a manual, could be implemented without legislative approval. On the other hand, some recommendations, such as the method of selection of justices, would require action by the General Assembly, but no constitutional revision. However, no immediate legislation was enacted which incorporated the committee's recommendations into the laws of the state.

In 1967 the <u>Virginia Justices' of the Peace</u>

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[12] <u>Ibid</u>., Appendix, p. 1.

Manual by Warwick R. Furr, II was distributed to the justices throughout the state. The publication was sponsored jointly by the Association of the Justices of the Peace of Virginia and the Institute of Government of the University of Virginia. Funds for the project were provided by the state. The Justice of the Peace Study Committee of the Judicial Conference offered assistance and advice.

The manual contained a code of ethics for justices of the peace and a brief history of the development of the office. More importantly, the duties of a justice of the peace were listed and the proper procedure for carrying out these responsibilities was outlined. Information obtained from the Virginia Code, the state constitution, the Supreme Court of Appeals, and the opinions of the attorney general was utilized in organizing the explanations and instructions in the manual.

The 1968 Virginia General Assembly passed legislation which was "to revise, rearrange, amend, and recodify ... the general laws of Virginia, relating to justices of the peace... ."[13] With the enactment of Senate Bill 1, Title 39 of the Code of Virginia was repealed and was replaced by Title 39.1. Provisions of

[13] Senate Bill 1, Virginia General Assembly, April 5, 1968.

this bill included:

1. The court of record exercising criminal jurisdiction over a specific geographical area appointed justices of the peace to four year terms.
2. Cities with charters requiring certain methods of appointment or cities whose councils elected or appointed justices could continue such practices.
3. A justice could issue search warrants, arrest warrants, subpoenas and attachments and commit persons to jail or admit them to bail throughout the town, city, or county for which he was appointed. He was paid through the fees collected for performing these services.
4. The appointing judge and the Commonwealth's Attorney were to supervise and aid the justices in carrying out their prescribed duties.
5. Special or issuing justices could be elected and paid by town councils wishing to do so.

The passage of Senate Bill 1 was not the only action taken by the 1968 Virginia General Assembly regarding judicial reform. By Senate Joint Resolution No. 5 the legislature created the Virginia Court System Study Commission. Its purpose was "to make a 'full and complete study of the entire judicial system of the Commonwealth... .'"[14] The Resolution called for a fifteen member commission composed of five delegates appointed by the Speaker of the House, five state senators appointed by the President of the Senate, and five persons appointed by the Governor

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[14]House Document No. 6, "The Report of the Court System Study Commission to the Governor and the General Assembly of Virginia," 1972, p. 1.

from the public at large. The Governor was also allowed to select a chairman from his five appointees.[15]

Originally, the Commission's report was to have been completed and given to the Governor and the General Assembly by November 1, 1969. However, only a preliminary report, Senate Document No. 12, 1970, was available at that time. A request for an extension was granted to the Commission by the legislature through Senate Joint Resolution No. 27. The Commission members continued their research and study on the Virginia judicial system until the final report, House Document No. 6, was presented to the 1972 General Assembly.

In one section of the report, the Commission dealt with the justices of the peace. After acknowledging the criticisms against the system, the Commission offered several proposals for reform. One of these suggestions concerned a change in name.

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[15]The Commission members appointed by Governor Mills Godwin were Supreme Court Justice Lawrence W. I'Anson, Chairman, Joseph C. Carter, C. Hobson Goddin, Judge Kermit V. Rooke, and Judge Rayner V. Snead. The Speaker of the House appointed John N. Dalton, C. Harrison Mann, Jr., Julian J. Mason, Garnett S. Moore, and C. Armonde Paxson. The President of the Senate appointed Herbert H. Bateman, Edward L. Breeden, Jr., J. C. Hutcheson, M. M. Long, and William E. Stone.

> Justices of the peace should be redesignated magistrates (a) to escape the history of criticism and confusion that has characterized the public's opinion of these judicial officials and (b) to reflect the fact that their role has changed and the reforms recommended in this report.[16]

According to the Commission, each city or county should have at least two magistrates appointed by the chief district judge and supervised by the district judges. Appointments would be made for terms of four years. The Commission emphasized the fact that all magistrates would be appointed as "(T)he present system of electing and appointing justices of the peace has contributed to having an excess of justices and to the difficulty of providing proper judicial procedure...."[17] A major criticism of the justice of the peace system in Virginia was that the number of justices grew continually, but few were qualified to carry out their official duties properly. Under the new plan, magistrates would receive training, information, and supplies from the Executive Secretary of the Supreme Court of Appeals. Also, all financial reports from the magistrates would be filed with the Executive Secretary.

Another proposal for the improvement of the justice of the peace system was to abolish fees as the

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[16] House Document No. 6, op. cit., p. 39.

[17] Ibid., p. 40.

means of monetary compensation and to institute a salary method. Salaries would be based on a magistrate's workload and his territory. The state would pay the salaries which could range from three hundred dollars to ten thousand dollars per year. A committee composed of the chief district judges would decide the individual salaries. All fees collected by the magistrates would be utilized by the state for payment of the salaries. However, because of the variance in pay, magistrates would not be included in the state's retirement system.

In Arlington, Alexandria, and Fairfax the practice had been for special justices to be appointed by the court of record. These special justices were paid salaries by the cities they served. The Commission felt that Virginia's laws should be amended so that any locality could institute a special magistrate system, if the local governing body and the circuit judges chose. It was noted that this system would work best in areas which had a formal violations bureau. Advantages of this system included payment by salaries, supervision by the appointing judges, and participation in the local retirement programs.

The final recommendation made by the Commission concerned the issuance of summonses and warrants. Clarification of the code and uniformity in the laws would allow judges to try most cases on summonses and

eliminate the need for the issuance of a warrant by a justice of the peace. Reciprocal agreements should be made with other states, so that summons for out-of-state traffic violations could be issued and cash bonds would no longer be needed.

The Court System Study report was the basis for the court reorganization legislation begun in 1973. The state was divided into thirty circuits for courts of record and into thirty-one districts for courts not of record. The Commission recommended that the magistrate system not be instituted until 1974 at which time the district courts would be more firmly established.

West Virginia

The justice of the peace has been a constitutionally established office in West Virginia since the ratification of the state's first constitution in 1863. In Article VII of that document, one justice was to be elected from each township within a county. Two justices could be elected from any township having a white population greater than twelve hundred. Each county had no fewer than three nor more than ten townships. A justice's term of office was four years and his authority did not extend beyond the boundaries of the township from which he was elected.

Civil jurisdiction was limited to situations involving one hundred dollars or less. However, the constitution did grant the legislature the right to increase the civil jurisdiction of the justices within the townships. No specific criminal jurisdiction for justices of the peace was written into the constitution of 1863. Provisions did exist for possible county-wide criminal jurisdiction if the penalties were restricted to fines no greater than ten dollars and imprisonment for no longer than thirty days. Defendants in a justice of the peace court could have a jury of six persons in civil cases involving over twenty dollars and in criminal cases involving fines of over five dollars or imprisonment. Appeals to the circuit court could be made in cases resulting in imprisonment or in those in which claims or damages exceeded ten dollars.

The ratification of a new constitution in 1872 did little to change the original structure of the office of the justice of the peace. His authority was no longer limited to the township from which he was elected, but extended throughout the county. A justice had to reside in the township from which he was elected. His civil cases could now involve sums, claims, and damages of three hundred dollars or less. The constitution once again provided few details concerning a justice's

jurisdiction in criminal cases except to state that "powers in criminal cases ... may be prescribed by law."[18]

These provisions remained the same when the state's judicial system was reorganized and Article VIII was rewritten by a constitutional amendment in 1880. At the same time a second amendment was ratified which firmly established the number of jurors at six in a justice of the peace court trial. This had been the case in the 1863 constitution, but no right to trial in such a court had been permitted the the constitution of 1872. A 1902 amendment increasing the size of the state Supreme Court of Appeals from four to five judges was the last amendment to the judicial article to be ratified until 1974.

From 1902 to 1974 there were two unsuccessful attempts to amend or abolish the office of justice of the peace in West Virginia. A proposal to alter the system was presented to the Legislature by the Constitutional Commission of 1929. The Commission, which had been appointed by Governor William G. Conley, developed a plan requiring the establishment of summary courts in all counties with populations greater than twenty thousand. In these counties, the justice of the peace would have no civil jurisdiction. It would be

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[18] Constitution of West Virginia, 1872, Article VIII, Section 28.

left to the Legislature to decide what authority the justices could exercise within the limits outlined in the constitution. The number of justices of the peace in each county would also be determined by the Legislature with no county having less than two.

The Commission believed that "justice could be more efficiently rendered through a summary court in the more densely populated counties than through the ... justice of the peace system."[19] In counties with populations of less than twenty thousand, the justice of the peace was to be retained and have "concurrent jurisdiction with the circuit courts in civil actions where the damages claimed would not exceed two hundred dollars."[20] The Commission suggested that any smaller county desiring to do so should be allowed to establish summary courts. If such a situation did occur, the county had to follow the rules and procedures regarding justices of the peace serving in the larger counties.

The West Virginia Legislature took no action on these particular proposals put forth by the Constitutional Commission of 1929. However, in 1939 the

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[19]Claude J. Davis, Eugene R. Elkins, Paul E. Kidd, "The Justice of the Peace in West Virginia" (Morgantown: West Virginia University Press, 1958), pp. 4-5.

[20]*Ibid.*, p. 4.

Legislature passed House Joint Resolution No. 1, a proposed constitutional amendment which would permit judicial reorganization. If voted on favorably by the state's citizens in the general election of 1940, the office of justice of the peace would be abolished and summary courts would be established in each county.

The amendment provided for the election every four years of summary court judges. The number of judges in each county would be determined by the Legislature. According to the amendment, each summary court judge was to be at least twenty-five years old and a resident of the county for which he was elected. He did not have to be a lawyer. Each county was to pay its judge or judges a salary "as may be fixed by law."[21] The summary court judge would have criminal jurisdiction in misdemeanor cases and civil jurisdiction in cases involving five hundred dollars or less. His authority would extend throughout the county. Any justice of the peace serving at the time this amendment might be adopted could remain in office until December 31, 1942.

This Judiciary Amendment was voted on in November, 1940. Prior to that election the National Municipal

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[21]House Joint Resolution No. 1, West Virginia Legislature, Article 8, Section 13, Feb. 9, 1939.

Review wrote that the proponents of the measure felt

> such reforms instituted through the adoption of their proposal would give West Virginia a unified and efficient system for the administration of justice that might well serve as a model for other states.[22]

Nevertheless, the proposal was defeated 300,979 to 133,256. This loss "has been ascribed to the 'organized opposition of the justices of the peace and the popular demand for the retention of the People's Court.' "[23] With the defeat of the Judiciary Amendment of 1939, there were no major legislative attempts to reform the justice of the peace system until 1974.

Through a series of decisions beginning in 1935 with Williams v. Brannen and ending in 1974 with Shrewsbury v. Poteet, the West Virginia Supreme Court of Appeals gradually declared the justice of the peace system unconstitutional due to the use of fees as a means of compensation. After Williams v. Brannen (1935), the West Virginia Legislature had to revamp the justice fee fund so that justices would be guaranteed payment in cases resulting in acquittal. Both State ex rel. Moats v. Janco (1971) and State ex rel. Reece v. Gies (1973) dealt with the question of a justice's

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[22]"Amendment Would Abolish Peace Justices in West Virginia." National Municipal Review, September, 1940, p. 622.

[23]Davis, op. cit., p. 6.

pecuniary interest in the outcome of a case. The Court held that the requiring fees for detainers, bonds, and transcripts, which were collectable only if the defendant was convicted, violated due process.

The office of justice of the peace as it had been known in West Virginia was brought to an end in State ex rel. Shrewsbury v. Poteet (1974). The Court ruled that a state law permitting a five dollar entering and trying fee in any civil suit in a justice of the peace court created a pecuniary interest on the part of the justice. Therefore, the guarantee of due process of law as provided by both the state and federal constitutions was not upheld. Furthermore, the statute in questions encouraged "justice for sale."[24] Article III, Section 17 of West Virginia's constitution prohibits such action. Thus, the Court's decision dictated that change would be made in the state's justice of the peace system.

The need for reform had been acknowledged by the justices themselves ina1958 research project entitled "The Justice of the Peace in West Virginia." In this study conducted by Claude J. Davis, Eugene R. Elkins, and Paul E. Kidd for the Bureau of Government Research

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[24] State ex rel. Shrewsbury, et. al. v. Poteet, 202 SE 2nd 628 (1974).

at West Virginia University, questionnaires had been sent to the 380 justices of the peace in office at that time. Although only 144 completed questionnaires were returned, it was evident that the justices felt their positions could be improved. A majority of the respondents favored the payment of salaries and a reduction in the number of justices in the state. Some other suggestions for the improvement of the system included inservice training programs, specific educational requirements for justices, and supervision by an administrative authority.

The Governor's Committee on Crime, Delinquincy and Correction held a series of meetings in 1968 to discuss the criminal justice system in West Virginia. The Committee developed a forty-point program which became part of the Criminal Justice Plan for the fiscal year 1969. One of these proposals was to abolish the office of justice of the peace and to establish a system of regional courts throughout the state. No action was taken on this particular recommendation during 1969.

Serious consideration for amending the Judicial Article of the state constitution did not come about until 1974. A few years earlier a citizens group sponsored by the West Virginia State Bar, the West Virginia University School of Law, and the American Judicature Society drafted such an article. This

draft prepared in 1968 was delivered to the House of Delegates' Constitutional Revision Committee. The proposed article contained some ideas concerning the replacement of the justice of the peace system. However, the entire amendment was ignored.

During the 1974 session of the West Virginia Legislature a resolution calling for amendments to the Judicial Article was introduced. Senate Joint Resolution No. 6 was adopted on March 9, 1974, and was presented to the voters of the state in the general election in November. The proposal appeared on the ballot as Amendment No. 2 and was often referred to as the Judicial Reorganization Amendment. The general purpose of the amendment was summarized in an article by Thornton G. Berry, Jr., a justice of the West Virginia Supreme Court of Appeals, as follows:

> TO AMEND THE STATE CONSTITUTION TO PROVIDE A UNIFIED COURT SYSTEM WHICH ASSURES THE PROMPT AND EFFICIENT ADMINISTRATION OF JUSTICE IN WEST VIRGINIA.[25]

All levels of the state judicial system from the Supreme Court to county organizations were dealt with in the proposal. The amendment was ratified by a vote of 217,732 to 127,393.

The Judicial Reorganization Amendment rewrote

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[25]Thornton G. Berry, Jr., "A Proposed New Judicial Article for West Virginia," West Virginia Law Review, Vol. 76(1974), p. 487.

Article VIII of the constitution replacing sections one through thirty with sections one through fifteen. Although the powers and duties of magistrates and their courts are outlined in several sections of the article, it is left to the Legislature to determine exactly how to organize and implement the new system. Justice Thornton G. Berry, Jr. commented on this procedure by stating

> In the revision of state constitutions, either by adoption of new constitutions or amendments to the existing constitutions, there should be contained only basic principles, with all other matters left for the statute books. While it is true that many reforms and modernizations in this State can be accomplished by statute, it is much better that the basic principle be contained in an amendment of the entire judicial article to the constitution leaving the refinements to be enacted into law by the Legislature.[26]

The new article deals with magistrates in the following manner:

> 1. Section three grants supervisory control to the Supreme Court of Appeals with the Chief Justice as administrative head aided by an administrative director who is appoimted and paid by the court.
> 2. Section seven requires magistrates to be state residents, establishes compensation by salary, and permits a magistrate, if a lawyer, to practice his profession during his term of office.
> 3. Section ten creates magistrate courts in each county and gives magistrates terms of four years with their powers extending throughout the county. Civil jurisdiction is permitted in cases involving sums not

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[26] *Ibid.*, p. 482.

> exceeding fifteen hundred dollars. Criminal jurisdiction is granted in "matters as may be prescribed by law, but no person shall be convicted or sentenced for a felony in such courts."[27] Jury trials require six qualified persons serving as jurors.
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> 4. Section fifteen terminates the office of justice of the peace on January1, 1977. All provisions unless otherwise noted are in effect from the date of ratification of the Judiciary Reorganization Amendment.

Interim laws which provided a system of salaries and a method of administrative supervision for the justices of the peace were enacted by the Legislature in 1974 and 1975 and they remained in effect until the statewide magistrate courts were established in January, 1977.

In organizing a system for payment by salary, the Legislature divided the counties in the state into classes according to their populations based on the 1970 census. Then maximum dollar amounts were placed on salaries in each of the categories. Table 2 shows the classes of counties and the salary limits.

(See p. 69 for Table 2)

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[27]Constitution of West Virginia, 1872, Article VIII, Section 10, as amended, 1974.

TABLE 2

INTERIM CLASSIFICATION OF COUNTIES AND
MAXIMUM SALARY LIMITATIONS

CLASS	POPULATION	MAXIMUM YEARLY SALARY
I	200,000 or more	$17,500.00
II	100,000 or more, less than 200,000	$15,000.00
III	70,000 or more, less than 100,000	$12,500.00
IV	30,000 or more, less than 70,000	$10,000.00
V	20,000 or more, less than 30,000	$ 7,500.00
VI	10,000 or more, less than 20,000	$ 6,250.00
VII	less than 10,000	$ 5,000.00

The county commission of each county could decide upon the salary of its particular justices. Salaries of justices serving within a county could vary, except in counties with populations of one hundred thousand or more. In those counties, all full time justices were to be paid equally. Besides a salary, a justice of the peace could be reimbursed for certain expenditures, such as office rental, stationery supplies, and equipment. All requests for reimbursement had to include documentation by vouchers and sworn statements. Both salary and expenses were to be paid to the justices of the peace by the county commission from the general county fund. Justices' salaries were to be paid in equal monthly installments.

The county commission was to be assisted in the salary deliberations by a justice of the peace

advisory board. Membership on the board consisted of the clerk of the county commission, the circuit court clerk, and two appointed members. These two appointees were to be selected by the county commission and could not belong to the same political party.

Supervision of the justices of the peace was accomplished through audits by the chief inspector of public records, monthly reports to the county commission, and regulation by the circuit court judge. The circuit court judge or chief circuit judge, if a circuit had two or more judges, could determine a justice's office and telephone service hours, his office location, and his workload. If necessary, the judge could also require a justice to serve temporarily in another location.

The Creation of the Magistrate Systems by Statute

During the 1973 session of the Virginia General Assembly steps were taken to reform the justice of the peace system. With the passage of House Bill 267 on March 20, 1973, Title 39.1 of the Code was repealed and Chapters 16 and 17 were added to Title 19.1. Chapter 16 consisted of six articles which abolished the justice of the peace system and established the statewide magistrate system. Chapter 17 outlined

the position of and appointment procedures for special magistrates. This legislation was to become effective January 1, 1974, but full compliance with the new law did not actually occur until July 1, 1974. Because Virginia's criminal procedural law was rewritten in 1975 in House Bill 1166, magistrates and special magistrates are now dealt with in Title 19.2, Chapters 3 and 4 respectively.

A special provision of House Bill 267 permitted justices of the peace and issuing justices who were still in service on December 31, 1973, to retain their positions until their present terms expired. All would then be eligible for appointment as a magistrate at some future date. Their powers, duties, and compensation would remain as those prior to December 31, 1973.

According to the new law, magistrates have "all the authority, duties and obligations vested ... in the office of justice of the peace."[28] The chief circuit judge appoints magistrates to four year terms. Originally, two magistrates were to be appointed from each city or county in a chief judge's circuit. However, if two justices of the peace remained in office, this would fulfill the requirement and no magistrates would

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[28]House Bill 267, Virginia General Assembly, Article 3, S.19.1-381, March 20, 1973.

be selected at that time. Now by virtue of House Bill 104 from the 1976 session of the General Assembly, only as many magistrates as are "necessary for the effective administration of justice..."[29] are to be appointed with "at least one magistrate appointed who resides in each county or city in the judicial district."[30] If a vacancy occurs during a four year term, the chief judge appoints someone to complete the unexpired portion of the term. All magistrates serve at the will and pleasure of the chief circuit judge.

If more than one magistrate is appointed for a county or city, the chief circuit judge may designate one as the chief magistrate. The person so designated is to help organize and operate the magistrate system within the judicial district. He accomplishes this by maintaining schedules, aiding in training programs, and overseeing the work of the other magistrates.

The West Virginia Legislature organized their new magistrate court system within the limits set forth in the Judicial Reorganization Amendment of the

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[29] House Bill 104, Virginia General Assembly, S.19.2-34, March 23, 1976.

[30] Ibid., S.19.2-34.

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[29] House Bill 104, Virginia General Assembly, S.19.2-34, March 23, 1976.

[30] Ibid., S.19.2-34.

state constitution. House Bill 1087, passed March 13, 1976, created a magistrate court in each county of the state with the first magistrates being elected to a four year term in the general election of November, 1976. Magistrates were to take office the first day of January of the year following their election.

If a vacancy occurs in the office of magistrate before the completion of a full term, the judge of the circuit court, or the chief judge, if there is more than one judge of the circuit, appoints someone to serve until the next general election. The appointee remains in office until his successor is elected and is qualified. The newly elected magistrate does not serve for four years, but only for the unexpired portion of the previously elected magistrate's term.

In each county a chief magistrate may be appointed by the judge of the circuit court or the chief judge if there is more than one circuit court judge. The chief magistrate is "responsible for all of the administrative functions required of the magistrate court in each county by this code and as required by the rules and regulations of the Supreme Court of Appeals."[31] Included in these duties are supervising the court clerks in maintaining a centralized docket, submitting

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[31]House Bill 1087, West Virginia Legislature, S.50-1-7, March 13, 1976.

all required reports, and advising the circuit court judge of the need for additional magistrates. All chief magistrates serve at the will and pleasure of the appointing circuit court judge.

In Virginia the determination of the necessary number of magistrates is done by the Committee on District Courts, which was at one time called the Committee on Courts Not of Record. Included in the membership of the Committee are the chairmen of the House and Senate Courts of Justice Committees and two members from each of those committees appointed by their respective chairmen. Also, the Chief Justice of the Supreme Court of Appeals appoints one judge each from a circuit court, a general district court, and a juvenile and domestic relations court. Other duties of the Committee are fixing salaries, arranging vacation and sick leave compensation, and appointing the two member Magistrates Advisory Committee, which makes recommendations concerning administrative practices and procedures of the district courts.

The population of each county as recorded by the latest federal census determines the number of magistrates to serve in a county in West Virginia. Changes in the number of magistrates per county are to be made only at the general election after the publication of the census. At present counties with a

population of less than thirty thousand shall have two magistrates. Counties with thirty thousand or more but less than sixty thousand persons shall have three magistrates. Four magistrates shall serve in counties having sixty thousand or more in population, but less than one hundred thousand. In counties with populations of one hundred thousand or more, but less than two hundred thousand, seven magistrates shall be elected. Any county having a population of two hundred thousand or more shall have ten magistrates. McDowell County with a population in the thirty thousand to sixty thousand range is an exception to this population and magistrate formula. Because of claims that the county has many inaccessible areas and more magistrates are needed to adequately serve the people and because of political maneuvering,[32] the Legislature gave McDowell County four magistrates.

Qualifications for the office of magistrate are listed in the laws of both Virginia and West Virginia. A Virginia magistrate must be a citizen of the United States and must reside in the city or county for which he is appointed. His spouse cannot be a law enforcement officer in the state, nor a clerk of

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[32]Statement by Edwin Flowers, Justice of the West Virginia Supreme Court of Appeals, interview, April 23, 1976.

a court not of record, or an employee of that clerk, the police or the sheriff's department in the same city or county that the magistrate serves. No magistrate is permitted to issue any warrant or complaint process of his relatives. Another restriction was added in 1974. A person is ineligible to be appointed a magistrate if it would "create a parent-child, husband-wife, or brother-sister relationship between a district court judge and such person serving within the same judicial district."[33] A more recent requirement was passed by the General Assembly in 1976. A magistrate cannot be "chief" executive, or a member of the board of supervisors, town or city council, or other governing body for any political subdivision of the Commonwealth."[34] Once these qualifications are met and a person is selected to serve, he must post a five thousand dollar bond before the circuit court clerk in his locality. This bond guarantees that the magistrate will faithfully execute his duties and obligations.

In West Virginia a magistrate must be at least twenty-one years old, have a high school education or its equivalent, and live in the county from which he is elected. He must have no felony convictions or

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[33] House Bill 1166, Virginia General Assembly, S.19.2-37, March 22, 1975.

[34] House Bill 104, op. cit., S.19-2-37.

misdemeanor convictions involving moral turpitude. Immediate family members, defined in the law as a father, mother, sister, brother, child, or spouse, cannot serve in the same county. If more than one member of an immediate family is elected to the office of magistrate within a county, the one who received the highest number of votes will be permitted to serve. As provided in the constitutional amendment, the Legislature cannot require that magistrates be lawyers, and any person serving as a justice of the peace on November 5, 1974 and who serve one year immediately prior to that time shall be qualified to run for magistrate in the county in which he resides.

After the November election and before he assumes office on January 1, a West Virginia magistrate is required to attend and complete "a course of instruction in rudimentary principles of law and procedure."[35] The course shall be under the direction of the Supreme Court of Appeals, which has general supervisory power over the magistrate courts. Continuing education courses of this nature are to be conducted at least once every other year. Magistrates failing to attend without good reason will be charged with neglect of duty. Programs and conferences for magistrates in Virginia

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[35] House Bill 1087, op. cit., S 50-1-4.

are planned and conducted by the Executive Secretary of the Supreme Court, but attendance is not compulsory.

With the abolition of the justice of the peace system, the Virginia General Assembly and the West Virginia Legislature also abolished the fee system as a means of monetary compensation. Both states instituted salary systems. Annual salaries for Virginia magistrates are fixed by the Committee on District Courts and are based on the workload, population, and territory served by a magistrate. All salaries arepaid by the state on a semi-monthly basis. Fee collected by a magistrate are paid to the clerk of the general district court. The amount of fees to be charged by magistrates in both civil and criminal cases are contained in the Code. Any justice of the peace serving on December 31, 1973 could, if he chose, continue using the fee system for the remainder of his term. The Auditor of Public Accounts may audit magistrates' records upon the request of the chief district judge serving the judicial district in which the magistrates are located. By May 1 of each year, a magistrate must report his monetary transactions to the Executive Secretary of the Supreme Court. This information shall be on forms provided by the Executive Secretary and shall be used in the preparation of reports for the Governor and the courts of record.

In 1975 the General Assembly included a new item in the fees and compensation section of the laws dealing with magistrates. Each full-time magistrate is to be provided with office quarters, furniture, and equipment by the county or city which he serves. However, only those cities and counties having a general district court or juvenile and domestic relations district court are required to comply with this particular law.

West Virginia magistrates receive monthly salaries paid by the state. Salary amounts are based on the number of persons each magistrate serves. This number is determined by dividing the number of magistrates authorized for a county into the total population of the county. Annual salaries range from seven thousand dollars to eighteen thousand dollars and are listed in Table 3.

TABLE 3

1977 SALARY SCALE FOR WEST VIRGINIA MAGISTRATES

ANNUAL SALARY	POPULATION SERVED
$ 7,000.00	5,000 or less
$10,000.00	more than 5,000, less than 10,000
$14,000.00	10,000 or more, less than 15,000
$18,000.00	15,000 or more

There are two general categories of magistrates. To be classified as a full time magistrate, one must

serve a population greater than five thousand. Magistrates who serve five thousand persons or less are classified as part time magistrates. It is the responsibility of the circuit court judge or the chief circuit judge, if there is one, to determine the amount of time each of the part time magistrates must devote to his duties. The circuit court judge is also designated to divide the workload as evenly as possible among the magistrates in a county.

All magistrates in West Virginia must follow a code of judicial ethics as adopted by the Supreme Court of Appeals. Failure to comply with the provisions in the code will result in a charge of official misconduct and a possible misdemeanor conviction and fine. According to this code no magistrate shall

> (a) Acquire or hold any interest in any matter which is before the magistrate court;
> (b) Purchase, either directly or indirectly, any property being sold upon execution issued by the magistrate court;
> (c) Act as agent or attorney for any party in any proceeding in any magistrate court in the state; or
> (d) Engage in, or assist in, any remunerative endeavor, except the duties of his office, while on the premises of the magistrate court office.[36]

One of the reasons for the establishment of a magistrate system was to provide adequate supervision and control over the magistrates. The lack of a

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[36]*Ibid.*, S 50-1-12

centralized authority had allowed the justices of the peace a great deal of independence. As a result, the laws and procedures were not interpreted or enforced uniformly.

Virginia's General Assembly eliminated this weakness with the enactment of House Bill 267. After the appointments were made by the chief circuit judge, the chief general district judge, the Commonwealth's Attorney, and the Executive Secretary of the Supreme Court of Appeals were to share the supervisory powers. The chief general district judge was to oversee all aspects of the magistrates' activities within the district. It was his responsibility to arrange the time and place of court sittings. This system was amended in 1974. Presently the chief circuit judge may retain full supervisory power over the magistrates if he wishes. If not, he grants the authority to the chief general district judge, who then exercises administrative control over the magistrates. In all instances the Commonwealth's Attorney is charged with giving legal advice to those magistrates living in his city or county. The Executive Secretary of the Supreme Court organizes and dispenses information and materials needed for the efficient operation of the office of magistrate. In addition, annual reports can be required of the magistrates by the Secretary, but only with the approval of the chief justice.

The West Virginia Supreme Court of Appeals and its Administrative Director have general supervisory control over the magistrate courts in that state. The Magistrate Court Act, House Bill 1087, grants to the chief circuit judge certain powers, as appointing chief magistrates and magistrate court clerks. Magistrate court clerks are appointed in those counties having three or more magistrates. Their duties are

> to establish and maintain proper dockets and records in a centralized system for the magistrate court, to assist in the preparation of reports..., and to carry out on behalf of magistrates, or chief magistrate, if a chief magistrate is appointed, the administrative duties of the court.[37]

They are also allowed to issue all types of civil process in magistrate courts. Additional duties may be given to the clerks by the Supreme Court of Appeals of the circuit court judge.

If a county has fewer than three magistrates, a clerk may be appointed or the judge may choose to have the clerk of the circuit court perform the required duties. Magistrate court clerks serve at the pleasure of the appointing judge and receive monthly salaries paid by the state. Although clerks' salaries are based upon the same formula used to compute the magistrates' pay scale, only maximum amounts are set for each category. It is the appointing judge's

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[37]Ibid., S 50-1-9.

perogative to establish each clerk's salary within the prescribed limits. Magistrate court clerks may be paid up to two hundred and fifty dollars per month if they aid magistrates serving five thousand persons or less; up to four hundred and fifty dollars per month if they aid magistrates serving more than five thousand, but less than ten thousand persons; up to five hundred and fifty dollars per month if they aid magistrates serving more than ten thousand, but less than fifteen thousand persons; and up to six hundred and fifty dollars per month if they aid magistrates serving more than fifteen thousand persons.

Each magistrate is permitted to appoint a magistrate assistant. The person selected must reside in the county in which he serves and cannot be a member of the magistrate's immediate family. He must have no felony convictions against him nor misdemeanor convictions involving moral turpitude. The assistant serves at the pleasure of the appointing magistrate. His duties include any clerical or other work assigned to him by the magistrate, preparing civil action summons, collecting fees and the like that have been paid to the court, and submitting funds, accounts, and required reports to the proper authorities. Assistants are paid monthly salaries by the state. The pay scale is the same as the one for the magistrate court clerk.

In this instance it is the appointing magistrate who determines the assistant's salary within the limits established by law. All of the assistants and magistrate court clerks are required to take an oath of office, post a bond, and follow the code of judicial ethics.

There are other services and expenses provided for the magistrate in House Bill 1087. The administrative director of the Supreme Court of Appeals is to loan to each magistrate a copy of the state Code. Each magistrate is to have at least one office in a location determined by the judge of the circuit court or its chief judge. In some counties because of geography and population concentrations, more than one office per magistrate might be needed and must be established. Office furniture, equipment, and supplies will be paid for by the state. The county is required to cover the cost of office rent, telephone service, and utilities. All magistrates' offices within a county are to be of similar quality.

West Virginia magistrates have jurisdiction in certain civil and criminal cases. Their powers and authority extend throughout the county in which they serve. They have civil jurisdiction in cases involving damages or values of not more than fifteen hundred dollars, but not in equity cases, real estate title disputes, or matters of eminent domain, false

imprisonment, malicious prosecution, slander, and libel. Criminal jurisdiction is granted in all misdemeanor offenses committed within the county. They may also conduct preliminary examinations on felony warrants, issue arrest warrants in all criminal cases, issue warrants for search and seizure, and set and admit to bail except in capital offense cases. Magistrates, magistrate court clerks, and magistrate assistants all have the authority to take affidavits or depositions, and acknowledgments of deeds.

All regulations governing procedures, continuances, jury trials, subpoenas, appeals, records, and costs are contained in House Bill 1087. Civil costs may be collected in advance, but criminal costs may not. Fines, forfeitures, and penalties collected in criminal proceedings in a magistrate court are paid monthly to the magistrate court clerk who then forwards the money to the county sheriff. Costs collected in civil and criminal actions are also paid monthly to the magistrate court clerk. The clerk deposits the costs into a special county fund. This fund is created during each fiscal year and may contain "a sum equal to ten thousand dollars multiplied by the number of magistrates authorized for each county."[38] Any excess monies collected are to

[38] Ibid., S 50-3-4.

be paid to the state. The magistrate court fund is to be used to help defray the expense of bailiffs, process services of the sheriff, office rental, telephones, and utilities of magistrates' offices, and other miscellaneous expenses of a county's magistrate court.

The duties of a Virginia magistrate are somewhat limited, because he cannot try cases, either civil or criminal. He can only exercise the powers listed in the Code and then only in the judicial circuit for which he has been appointed. Magistrates can issue subpoenas and arrest and search warrants, admit persons to bail or commit them to jail. Other powers include issuing civil warrants directing a sheriff to summon a defendant to the district court, administering oaths and taking acknowledgments, and acting as a conservator of the peace.

A system of substitute magistrates was created by the 1974 Virginia General Assembly and incorporated in House Bill 458. Sometimes due to vacations, illness, or death, magistrates are not available to serve in a particular judicial district. At such times, substitute magistrates can be appointed by the chief judge of the circuit court. The Committee on District Courts determines the number of substitute magistrates to be appointed. These temporary magistrates have all the powers and duties given to the regular magistrates.

The term of office for the substitute magistrate is specified at the time of appointment, and compensation is on a per diem basis as established by the Committee on District Courts.

West Virginia does not provide for substitute magistrates. However, in special situations the Chief Justice of the Supreme Court of Appeals or the circuit judge or its chief judge if one exists, may assign a magistrate to serve temporarily at locations other than at the magistrate's regular office. These locations may either be in the same county as the one from which the magistrate is elected or in any other county within the judicial circuit. Temporary assignments exceeding sixty days in a calendar year cannot be made without the transferred magistrate's approval.

A particular feature of the Virginia magistrate laws is the continuing provision for special magistrates. These magistrates can be appointed by the chief circuit judge for four year terms. Qualifications, powers, and duties are the same as those required of regular magistrates. If a court violations bureau exists in a city of county, "then such special magistrates shall be employees of such county or city, for the purpose of performing the duties and functions of such bureau... ."[39]

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[39] House Bill 1166, op. cit., Chapter 4, S19.2-50.

Special magistrates are treated as local government employees and are paid salaries by the local governing body. Collected fees are to be paid into the city or county treasury and are to be used to pay the salaries of the special magistrates. If a city or county is served by a special magistrate, no regular magistrate is appointed by the chief circuit judge for the same area.

Conclusions

Both Virginia and West Virginia have recently created magistrate court systems as successors to their justice systems. It has been suggested that these reforms came slowly because lawyers and judges, professionals whose work is often based on precedent, are involved and because of the absence of an obvious leader.[40] Most branches of government have a specific person or persons in charge. The executive branch follows the chief executive, the legislature follows whips, majority leaders, etc. However, the justices of the peace lacked such leadership and supervision.

As noted in Chapter 2, widespread reform of the justice of the peace system began throughout the nation in the 1960's and the 1970's. At that time a

[40]Flowers, _op. cit._

general trend to upgrade the judicial process as a whole occurred. Organizations such as the American Bar Association, the American Judicature Society, and the National Municipal League recommended that the justice of the peace be abolished or reformed. Many states realized that improvements should be made and took appropriate action to amend their systems.

Changes in Virginia came about after much research and study by judges, legislators, and justices of the peace themselves. The Virginia laws regarding justices of the peace were amended by statutes passed by the General Assembly during a period of statewide court reorganization. In West Virginia changes occurred in response to complaints from citizens' groups, suggestions from state agencies, and decisions from the state Supreme Court of Appeals. The process of revising the West Virginia laws was more complicated than that which took place in Virginia. The state constitution had to first be amended so that the Legislature could rewrite the laws dealing with justices of the peace. Although there are variances in the civil and criminal jurisdiction of the Virginia and West Virginia magistrates, these newly established systems are similar in many respects. The magistrates in both states are now supervised, salaried, and trained. Table 4 provides a comparison of the magistrate

laws in Virginia and West Virginia.

Abolishing the justice of the peace and originating the magistrate courts presented a difficult task. However, the success or failure of any new system often depends not only upon its basic structure, but also on the methods used in its implementation.

TABLE 4

A COMPARISON OF VIRGINIA'S AND WEST VIRGINIA'S MAGISTRATE LAWS

Date of Passage:	VA.: March 20, 1973. W. Va.: March 13, 1976.
Effective Date:	VA.: 1-1-74. W. VA.: 1-1-77.
Selection Method:	VA.: Appointed by chief circuit judge. W. VA.: Elected in partisan elections.
Term of Office:	VA.: Four years. W. VA.: Four years.
Number of Magistrates:	VA.: Decided by Committee on District Courts. W. VA.: Based on population of counties.
Qualifications:	VA.: Must be U. S. citizen and reside in the county or city for which appointed. W. VA.: Must be 21 with a high school education or equivalent and reside in the county from which elected.
Training:	VA.: Conferences held by Executive Secretary of the Supreme Court, attendance not compulsory. W. VA.: Conference held by Supreme Court of Appeals, attendance compulsory.
Salaries:	VA.: Established by Committee on District Courts. W. VA.: Established by law.
Supervision:	VA.: Executive Secretary, chief circuit judge, general district judge. W. VA.: Supreme Court of Appeals, the Administrative Director, circuit judges.
Jurisdiction:	VA.: Throughout judicial district. W. VA.: Throughout county.
General Duties:	VA.: Issue subpoenas, arrest and search warrants, admit to bail, commit to jail, administer oaths, take acknowledgments, act as conservator of peace. W. VA.: In civil cases not exceeding $15,000, criminal jurisdiction in all misdemeanors, conduct preliminary examinations in felony warrants, issue arrest, search and seizure warrants, set and admit bail except in capital offenses, try limited civil and criminal cases.

CHAPTER 4

The Implementation of the Magistrate Systems in Virginia and West Virginia

Implementation of the new magistrate systems began in Virginia in 1974 and in West Virginia in 1977. As might be expected, neither state has fully developed all of the standard procedures to be followed by the magistrates in their work. Virginia has the more advanced methods of implementation, while West Virginia has only a basic operational outline that has yet to be actively persued.

Virginia

The task of making the Virginia magistrate system work belongs in part to the Office of the Executive Secretary of the Supreme Court. This office was first established in 1952 and had a two-member staff. Today there are twenty-seven employees who serve between 1350 and 1400 persons involved in the judicial branch of state government. Included in this group are the circuit court judges, the district court judges, magistrates, and all court personnel except the circuit court clerks. The general duties of the Executive Secretary are to "plan and project in matters

concerning the state judiciary,"[1] so that the needs of the citizens are adequately met.

The Committee on District Courts assists in the administration of the magistrate system. Provisions for this particular committee are found in the state Code. Its membership is composed of the Chairmen of both the House and Senate Courts of Justice Committees, two members from each of those Committees, a general district court judge, a juvenile and domestic relations court judge, and a circuit court judge. One function of the Committee on District Courts is to prepare and maintain a salary schedule for the magistrates.

Each year the Office of the Executive Secretary of the Supreme Court prepares and publishes an annual report on the workings and activities of the state judicial system. A section devoted entirely to the magistrates appeared for the first time in 1975. All of the statistics for that year were supplied by the magistrates in the Magistrate Quarterly Report. However, the Quarterly Report did not provide a uniform method of recording data, and as a result discrepancies appeared in the type and amount of information prepared by each magistrate. To alleviate this problem, the

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[1]Statement by Fred Hodnett, Jr., Assistant Executive Secretary, Office of the Executive of the Supreme Court, Richmond, Virginia, interview, December 2, 1976.

Magistrate Log System was devised by the Committee on District Courts and put into use in January, 1976.

The log system is a rather formal method for recording a magistrate's workload and "marks the beginning of an organized professional approach to rendering magistrate services."[2] All persons serving as magistrates are required to complete both daily and weekly logs, like those shown on the following two pages. A clear, concise, and permanent record of all activities is provided through the listing in designated columns of "the nature of the business transacted," "the number of processes issued," and "the amount of monies collected." Other information placed on the log sheets shows the length of time each magistrate spends in fulfilling his prescribed duties and the mileage travelled in the performance of these duties.

A magistrate completes the righthand section of the log sheet, or the tear-off as it is called, and sends it to the chief magistrate of the district. At that point, all of the information is summarized by the chief magistrate who then forwards a monthly report to the Committee on District Courts. This procedure allows the individual magistrate to retain data needed

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[2] State of the Judiciary Report, Office of the Executive Secretary of the Supreme Court, Richmond, Virginia, 1975, p. 212.

FIGURE 1

S.C.M. FORM 1 (1/76)

MAGISTRATE DAILY LOG

PART I

NAME ____________

LOCATION ____________

ON DUTY ______ (DATE) AT ____ : ____ am pm

OFF DUTY ______ (DATE) AT ____ : ____ am pm

NATURE OF TRANS-ACTION	PROCESS ISSUED: INSTRUMENT NUMBER	DEFENDANT'S NAME	DELIVERED TO	BOND AMOUNT SET	CASH AMOUNT	COLLECTED: RECEIPT NUMBER	DATE REMITTED	REMARKS
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								

TOTAL THIS PAGE

TOTAL THIS DAY

NATURE OF TRANSACTION TYPES:

A - ARREST
B - BOND
SW - SEARCH WARRANT
CW - CIVIL WARRANT
C/R - COMMITTAL/RELEASE
OTHER - PLEASE SPECIFY

MILEAGE TRAVELED ____________

TEAR OFF SECTION

PART II

NAME ____________ PAGE ___ OF ___

MO DY YR | DIST | LOCALITY

	CHECK ONE	TOTAL DUTY	HOURS OF ACTIVITY
AVAILABILITY			
SHIFT			

MILEAGE TRAVELED ____________

	NATURE OF TRANSACTION: A	B	SW	CW	C/R	OTHER-SPECIFY	PROCESS ISSUED: AW P	AW M	BOND P	BOND M	S	SW
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
19												
20												

	A	B	SW	CW	C/R	OTHER	AW-P	AW-M	B-P	B-M	S	SW
TOTAL THIS PAGE												
TOTAL THIS DAY												

SIGNATURE OF MAGISTRATE ____________

TEAR OFF SECTION

FIGURE 2

S.C.M. FORM 3 (1/76)

MAGISTRATE WEEKLY LOG

PART I

PAGE ___ OF ___

NAME ______________________

LOCATION ______________________

DATE	ON DUTY AT:	OFF DUTY AT:
______	___ : ___ am pm	___ : ___ am pm
______	___ : ___ am pm	___ : ___ am pm
______	___ : ___ am pm	___ : ___ am pm
______	___ : ___ am pm	___ : ___ am pm
______	___ : ___ am pm	___ : ___ am pm
______	___ : ___ am pm	___ : ___ am pm
______	___ : ___ am pm	___ : ___ am pm

PART II

NAME ______________________ PAGE ___ OF ___

MO DY YR - MO DY YR DIST LOCALITY

	CHECK ONE	TOTAL HOURS OF DUTY ACTIVITY
AVAILABILITY		
SHIFT		

MILEAGE TRAVELED ______

	DATE	NATURE OF TRANSACTION	PROCESS ISSUED: INSTRUMENT NUMBER	DEFENDANT'S NAME	DELIVERED TO	BOND AMOUNT SET	CASH AMOUNT	COLLECTED: RECEIPT NUMBER	DATE REMITTED	REMARKS	A	B	SW	CW	C R	OTHER-SPECIFY	AW F	AW M	BOND F	BOND M	S	SW	
1																							1
2																							2
3																							3
4																							4
5																							5
6																							6
7																							7
8																							8
9																							9
10																							10
11																							11
12																							12
13																							13
14																							14
15																							15
16																							16
17																							17
18																							18
19																							19
20																							20

	CASH AMOUNT
TOTAL THIS PAGE	
TOTAL THIS WEEK	

	A	B	SW	CW	C R	OTHER	AW-F	AW-M	B-F	B-M	S	SW
TOTAL THIS PAGE												
TOTAL THIS WEEK												

NATURE OF TRANSACTION TYPES:
A - ARREST
B - BOND
SW - SEARCH WARRANT
CW - CIVIL WARRANT
C/R - COMMITTAL/RELEASE
OTHER - PLEASE SPECIFY

MILEAGE TRAVELED ______

____
SIGNATURE OF MAGISTRATE

for research and audits and also provides the chief magistrate with the material necessary for arranging supervision, scheduling, and various other magisterial services and functions.

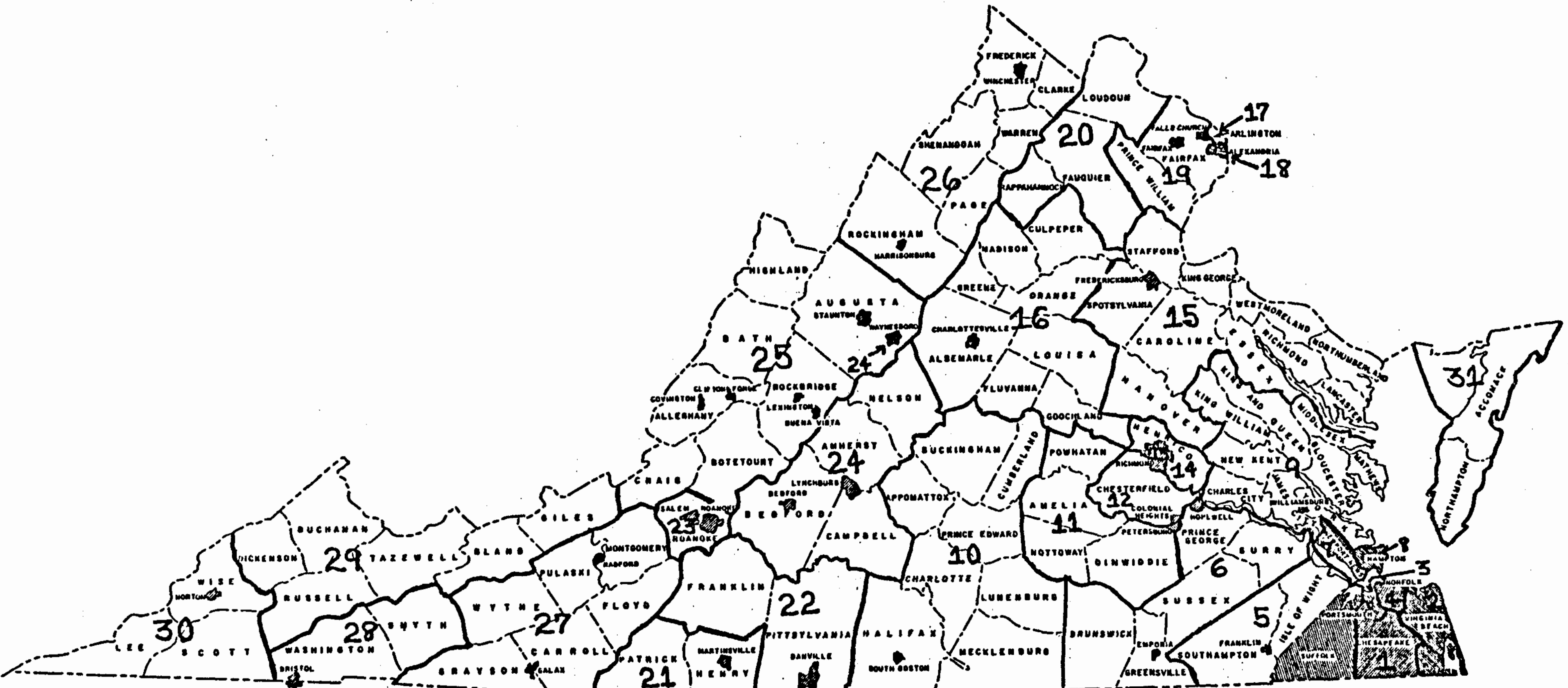
Magistrates governed by the state system serve in twenty-eight of the thirty-one magistrate districts. A map showing the state's magisterial districts appears on the next page. Districts thirteen, seventeen, and eighteen (the cities of Richmond, Arlington, and Alexandria) are not part of the statewide magistrate system, but have special magistrates who are paid by the cities themselves. FallsChurch, Fairfax County, and Fairfax City in district nineteen have special magistrates, while Manassas, Manassas Park, and Prince William, areas which are located in that same district, participate in the state system.

The number of magistrates in each district varies although the law requires that at least one magistrate be appointed from each county or city in a judicial district. District fifteen has the largest number of magistrates with thirty-six and district thirty-one has the fewest with only four. Today there are 426 magistrates authorized by the state system. Originally only 384 magistrates were authorized by the Committee on District Courts, but with the expiration of the terms of the last fee paid justices of the peace

FIGURE 3

VIRGINIA'S MAGISTERIAL DISTRICTS

(in 1974)



in December, 1975, this number was increased to compensate for the decrease in manpower.[3]

There are two types of magistrates within the statewide system: full-time and part-time. Most magistrates serving in the cities and urbanized areas are full-time and work a forty-hour week. Magistrates operating in the rural county areas of the state are part-time or "availability magistrates"[4] who are on call during specific scheduled hours, but are not actually performing magisterial duties.

Approximately one year after the magistrate laws became effective throughout Virginia, the Committee on District Courts instituted a classification system for the purpose of providing "a more uniform and objective procedure... in fixing salaries for the magistrates."[5] This personnel salary scale was devised after careful examination and study of the magistrates' workload patterns. Six separate classifications were developed on the basis of the weekly availability hours and activity hours or that time spent in actual performance of magisterial duties. Part-time availability magistrates are classified I, II, or III and full-time magistrates are incorporated in classifi-

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[3]Ibid., p. 215.

[4]Hodnett, op. cit.

[5]State of the Judiciary Report, op. cit., p. 211.

TABLE 5

NUMBER OF MAGISTRATES IN VIRGINIA BY CLASSIFICATION[6]

1975

Dist.	MAGISTRATE I	II	III	IV	V	VI	CHIEF MAGISTRATE I	II	Total by District
1						8		1	9
2						12		1	13
3						5		1	6
4						11		1	12
5			1	5	3			1	10
6		7		11	2			1	21
7						5		1	6
8						4		1	5
9	5	7	2	4			1		19
10	10	10	4	5			1		30
11		3	5		1	4		1	14
12			4			6		1	11
13	SPECIAL MAGISTRATE SYSTEM								
14						9		1	10
15	13	4	1	17				1	36
16	10	1	10			4		1	26
17	SPECIAL MAGISTRATE SYSTEM								
18	SPECIAL MAGISTRATE SYSTEM								
19*			2			7		1	10
20	3		2	4			1		10
21	1	1	2	3	1		1		9
22			2	4	1	4	1		12
23**	3	1	1		5	4			14
24	7			3	5	4		1	20
25	9	6	2	12	1			1	31
26	2	2	9	6			1		20
27	5	5		11	3		1		25
28	1	3		6			1		11
29	7	2	1	8			1		19
30	4	3	1	4			1		13
31	1	1	1				1		4
TOTAL BY CLASS	81	56	50	103	22	87	11	16	426

*Special magistrate system in Fairfax Co. and City; Falls Church. State magistrate system in Prince William Co., Manassas and Manassas Park.

**No Chief Magistrate, but do have a magistrate coordinator.

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[6] *Ibid.*, p. 217.

cations IV, V or VI. Chief magistrates are grouped separately and may be categorized as chief magistrate I or II.

Compensation for activity hours is figured at a rate equal to the amount paid to the district court clerk located in the same area in which the magistrate serves. Availability hours are converted to activity hours with each availability hour equal to .03238 of an activity hour. The lowest salary paid at present is $1,337.00 for a part-time magistrate who receives no insurance and retirement benefits. The highest part-time salary with no benefits is $6,479.00. A regular full-time magistrate's salary is $14,445.00 plus benefits. Chief magistrates earn the largest salaries as they have extra duties and more travelling to do. In Virginia the highest salary possible is that of a chief magistrate, classification II and is $16,574.00 with benefits.[7]

According to the law, magistrates are supervised within their districts by the chief judges of the circuit courts. However, if the circuit judge wishes to do so, he may grant the supervisory position to the chief judge of the general district court. Of the

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[7]Hodnett, op. cit.

TABLE 6

NUMBER OF MAGISTRATES, TOTAL SALARY EXPENDITURES, AND SUPERVISING JUDGES FOR EACH MAGISTERIAL DISTRICT IN VIRGINIA[8]

DISTRICT	NUMBER OF MAGISTRATES 1975	1975 SALARY EXPENDITURES* BY THE STATE	SUPERVISING JUDGE
1	9	$ 41,000.00	General District
2	13	$140,000.00	Circuit
3	6	$ 66,000.00	General District
4	12	$112,000.00	Circuit
5	10	$ 64,000.00	Circuit
6	21	$106,000.00	General District
7	6	$ 66,000.00	General District
8	5	$ 55,000.00	General District
9	19	$ 44,000.00	General District
10	30	$ 62,000.00	Circuit
11	14	$ 84,000.00	Circuit
12	11	$ 82,000.00	Circuit
13	SPECIAL MAGISTRATE SYSTEM		
14	10	$118,000.00	General District
15	36	$ 68,000.00	General District
16	26	$ 94,000.00	General District
17	SPECIAL MAGISTRATE SYSTEM		
18	SPECIAL MAGISTRATE SYSTEM		
19**	10	$ 83,000.00	Circuit
20	10	$ 30,000.00	General District
21	9	$ 39,000.00	General District
22	12	$ 67,000.00	General District
23	14	$ 88,000.00	General District
24	20	$114,000.00	General District
25	31	$116,000.00	Circuit
26	20	$ 82,000.00	General District
27	25	$104,000.00	General District
28	11	$ 47,000.00	General District
29	19	$ 64,000.00	Circuit
30	13	$ 36,000.00	General District
31	4	$ 13,000.00	Circuit
TOTAL	426	TOTAL $2,084,000.00	

*All salary expenditures are rounded off to the nearest thousand.

**Special magistrates in Fairfax City and County and Falls Church.

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[8]*State of the Judiciary Report*, *op. cit.*, compiled from information on pp. 210 and 221.

twenty-eight districts participating in the state magistrate system, ten are supervised by the chief circuit court judge and the remaining eighteen are managed by the chief general district court judge.

The chief magistrates submit summarized reports of work hours and transactions for all magistrates serving within their districts to the Committee on District Courts. This material which appears in Table 7 (page 103)[9] was compiled and included in the 1975 annual Report of the Judiciary. It should be noted that magistrates in urban areas work in shifts in order to maintain continuing office hours. On the other hand, rural magistrates work on an availability basis and therefore do not have offices opened twenty-four hours each day.

State magistrates are assisted in the performance of their duties by the Association of Magistrates in Virginia. This organization, formerly the Association of Justices of the Peace of Virginia, has approximately 75% of eligible magistrates as members.[10] Its publications include manuals, newsletters, handbooks, and code indexes. Presently the Association is involved in writing new canons of ethics and conduct

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[9] Ibid., p. 224.

[10] President's Newsletter, Virginia Magistrates Association, December, 1976.

TABLE 7

SUMMARY OF ACTIVITY FOR VIRGINIA MAGISTRATES[9]

1975

District	WORK HOURS		PROCESSES ISSUED						
	Hrs. of Duty	Hrs. of Activity	Arrest Warrants	Summonses	Search Warrants	Bail Bonds	Committals	Civil Warrants	Total
1	7,298	7,298	2,972	5	76	2,589	---	8,359	14,001
2	28,117	27,312	9,486	449	502	3,839	2,271	11,261	27,808
3	14,254	14,254	7,959	---	368	4,626	1,664	13,104	27,721
4	21,407	21,407	39,247	405	554	11,448	---	27,966	79,620
5	34,617	11,795	6,092	6,518	184	7,540	1,853	3,654	25,841
6	104,521	32,012	14,962	655	126	14,030	2,045	490	32,308
7	9,236	9,236	16,529	2,095	812	9,201	8,428	17,398	54,463
8	9,231	9,232	13,373	1,641	275	6,079	611	12,018	33,997
9	124,295	12,923	4,241	14	121	2,247	1,015	3,321	10,959
10	109,732	13,260	6,736	742	83	4,744	2,115	2,719	17,139
11	78,108	18,056	11,128	600	120	5,606	3,346	283	21,083
12	18,731	12,707	7,767	48	85	5,483	2,342	---	15,725
13	SPECIAL MAGISTRATE SYSTEM								
14	16,914	16,914	17,354	11,193	134	10,726	2,999	3,934	46,240
15	71,308	13,656	8,572	38	31	6,015	2,024	134	16,814
16	78,691	21,134	15,264	13,058	317	6,830	4,674	7,249	47,392
17	SPECIAL MAGISTRATE SYSTEM								
18	SPECIAL MAGISTRATE SYSTEM								
19*	15,508	15,508	11,638	55	41	12,985	2,790	814	28,323
20	16,788	6,104	3,108	110	38	1,431	1,023	---	5,710
21	26,422	14,141	7,253	1,840	49	4,080	2,861	3,573	19,656
22	25,991	16,641	7,942	2,081	158	4,866	5,257	6,659	26,963
23	24,935	16,282	13,628	1,530	128	8,520	10,401	---	34,207
24	69,047	26,148	11,211	5,360	157	7,191	2,240	831	26,990
25	86,392	24,891	15,646	3,202	64	9,836	4,038	182	32,968
26	66,312	16,816	10,586	1,264	91	7,336	5,419	856	25,552
27	70,242	26,489	12,827	1,273	77	7,117	4,281	3,847	29,422
28	40,887	14,313	9,956	660	56	6,111	6,019	366	23,168
29	70,630	26,380	12,100	2,940	123	8,716	3,008	3,158	30,045
30	30,031	12,116	5,965	427	54	3,864	2,341	1,495	14,146
31	26,968	3,949	6,430	26	42	1,904	514	1	8,922
TOTAL	1,296,604	461,975	309,972	58,229	4,866	184,960	85,584	133,672	777,283

*Nineteenth District has Special Magistrate System in Fairfax County, Fairfax City and Falls Church City.

which they hope will eventually become part of the Virginia Code.[11] Perhaps the most important function of the Association is serving as liaison between the magistrates and their administrative supervisors, the Executive Secretary of the Supreme Court and the Committee on District Courts.

Working together the Association and the Executive Secretary's Office are able to produce informative and up-to-date training programs. Orientation manuals and eight hours of videotaped instruction are available for newly appointed magistrates. Continuing education conferences are held twice yearly for all magistrates. Further assistance in providing guidelines to magistrates is supplied by the Attorney General's Office through a federally funded newsletter, _The Virginia Magistrate_. Included in each monthly bulletin are messages and opinions of the Attorney General, notices of meetings of interest, and information on court cases of concern to the magistrates.

Until now funds for implementing the magistrate system in Virginia have been readily available. The General Assembly had granted the Executive Secretary a sum sufficient budget so that an effective magisterial program could be instituted. Now in compliance with

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[11]Statement by David A. Lyon, III, Secretary-Treasurer, Association of Magistrates of Virginia, Petersburg, Virginia, interview, February 19, 1977.

Governor Mills Godwin's directive, the budget must be reduced by 5%.[12] Such action will curtail the experimentation that is often necessary in the development of efficient procedures and practices within a new system.

West Virginia

West Virginia's magisterial system began operating in January, 1977 when the newly elected magistrates took office. Since that time some methods for developing an organized and adequate system have been instituted. Fortunately a few of the problems encountered by those involved in implementation in Virginia were of no concern to the supervising authorities in West Virginia. Salaries and the number of magistrates per county had already been determined by the Legislature and had been incorporated in the Magistrate Court Act, House Bill 1087.

Responsibility for implementation rests with the Supreme Court of Appeals and its Administrative Director. Their first major project was to prepare a training course for the magistrates. A ten day program conducted by the American Academy of Judicial

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[12] Hodnett, op. cit.

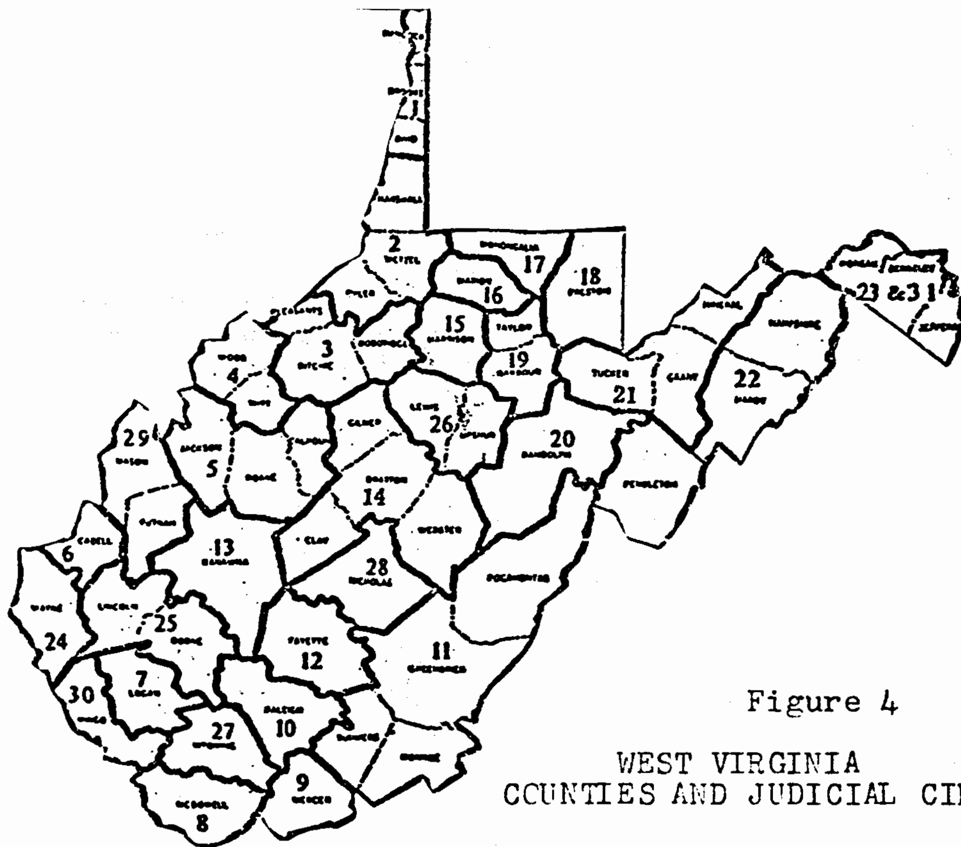

Figure 4

WEST VIRGINIA
COUNTIES AND JUDICIAL CIRCUITS

CIRCUITS	COUNTIES AND NUMBER OF AUTHORIZED MAGISTRATES
1st	Brook(2), Hancock(3), Ohio(4)
2nd	Marshall(3), Tyler(2), Wetzel(2)
3rd	Doddridge(2), Pleasants(2), Ritchie(2)
4th	Wirt(2), Wood (4)
5th	Calhoun(2), Jackson(2), Roane(2)
6th	Cabell(7)
7th	Logan (3)
8th	McDowell(4)
9th	Mercer(4)
10th	Raleigh(4)
11th	Greenbrier(3), Monroe(2), Summers(2), Pocahontas(2)
12th	Fayette(3)
13th	Kanawha(10)
14th	Braxton(2), Clay(2), Gilmer(2), Webster(2)
15th	Harrison(4)
16th	Marion(4)
17th	Monongalia(4)
18th	Preston(2)
19th	Barbour(2), Taylor(2)
20th	Randolph(2)
21st	Grant(2), Mineral(2), Tucker(2)
22nd	Hampshire(2), Hardy(2), Pendleton(2)
23rd and 31st	Berkeley(3), Jefferson(2), Morgan(2)
24th	Wayne(3)
25th	Boone(2), Lincoln(2)
26th	Lewis(2), Upshur(2)
27th	Wyoming(3)
28th	Nicholas(2)
29th	Mason(2), Putnam(2)
30th	Mingo(3)

Education was held in Charleston after the November election. The magistrates were given general information about the duties and functions of the office and were taught basic civil and criminal procedures. Continuing education programs are required at least once every two years, but the Administrative Director plans to have yearly conferences.[13]

A second duty of the Administrative Director is to prepare and maintain an accurate payroll listing for magistrates, magistrate court clerks, and magistrate assistants. All salaries are paid by the state on a twice monthly basis. Magistrate personnel participate in the state's retirement and insurance programs.

Annual reports are to be compiled by each magistrate. These reports are to be submitted to the Administrative Director on March 1 of every year. To date a reporting procedure has not been properly established.

A magistrate in West Virginia can obtain assistance from the chief magistrate of the county in which he serves, from the circuit court judge or if there is one the chief circuit court judge of the judicial circuit in which the magistrate's county belongs, and from the Administrative Director's office.

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[13]Statement by Forest J. Bowman, Administrative Director, Supreme Court of Appeals, Charleston, West Virginia, interview, January 14, 1977.

Various manuals, as the Bench Book for West Virginia Magistrates, the Manual of Evidence for West Virginia Magistrates, and Rules of Civil Procedure for the Magistrate Courts of West Virginia, have been provided to aid the magistrate in carrying out his duties properly. In addition to these publications, each magistrate is lent a copy of the West Virginia Code to keep in his local office.

West Virginia's magistrate system has not been in effect long enough to have the specific problem areas emphasized. The basic plan is to begin operation and then to locate the weaknesses and correct them. However, the Administrative Director of the Supreme Court of Appeals sees two possible sources of trouble. One is the lack of adequate personnel on his seven member staff to oversee the system and to handle all of the necessary paperwork. A second cause for concern is the lawmakers. "There is a tendency on the part of the Legislature to tinker with a new system before it has had time to be firmly established."[14] Already an exception has been made in the organization of the magistrate system by permitting McDowell County to elect four magistrates.

Although implementation began three years

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[14] Ibid.

earlier than in West Virginia, the Virginia magistrate system is still in its beginning stages. Workable methods of reporting activities, arranging salaries, and providing training and assistance have been developed. The biggest problem now concerns the budget--what programs can be eliminated and in what areas costs can be reduced.

In both states after the magistrate court legislation was adopted, the difficult task of implementation remained. Virginia and West Virginia are presently involved in instituting and developing efficient, well-run, and effective magistrate systems. By achieving these goals, both states hope to improve the quality of the judicial process at the lowest local level.

CHAPTER 5

Conclusions of the Study

Throughout the United States the administration of justice at the local level has often been accomplished by the institution known as the office of the justice of the peace. Several states have recently abolished this office and replaced it with a magistrate system. This study has focused specifically on the actions taken in this area by the states

of Virginia and West Virginia. By changing from justices of the peace to magistrates both states were attempting to provide their citizens with a more effective judicial system. Therefore, the issue at hand is to determine whether such goals were actually achieved. Did the recent abolition of the justice of the peace systems and the creation of the magistrate systems in Virginia and West Virginia result in a more effective administration of justice at the local level?

In order to judge the effectiveness of the justice and magistrate systems, certain determining criteria have to be established. The basic criteria used in this study are as follows:

> Is the system organized and structured?
> Is the system managed and maintained by competent, qualified personnel?
> Does the system provide fair and equitable treatment for all involved?

By answering these three questions some judgments can be made about the question of the effectiveness of the systems implemented.

The justice of the peace system in Virginia and West Virginia was unorganized and unstructured and "not really an integral part of the court system...."[1] The large number of justices serving in these two states had no centralized authority to provide them with

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[1]Mario J. Palumbo, West Virginia Senate, Charleston, West Virginia, correspondence with writer, February 11 to March 1, 1977.

necessary forms of aid and assistance. This lack of supervision resulted in a lack of uniformity in the methods used by justices of the peace in the performance of their duties. In addition "(N)o rules, regulations or other judicial procedure governed justices of the peace...."[2]

Persons serving as justices were untrained and obtained their expertise through experience during their terms of office. Educational programs were not required by law, but conferences were sometimes held under the auspices of the Minor Judiciary Association of West Virginia, Inc., and the Association of Justices of the Peace of Virginia. Although programs of interest were presented, attendance at these sessions was poor.

The justice of the peace system did not provide fair and equitable treatment for all persons involved. Justices were compensated on a fee basis and were paid only for those warrants they issued. As a result, "the justice of the peace went right along side the policeman... ."[3] Because justices of the peace in West Virginia could try certain civil and criminal cases and conduct preliminary hearings, the need for competent personnel was perhaps greater than in

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[2]Bench Book for West Virginia Magistrates, Charleston, West Virginia, 1975.

[3]Statement by David A. Lyon, III, Secretary-Treasurer, Association of Magistrates of Virginia, interview, February 19, 1977.

Virginia, where justices had been prohibited from trying cases since 1934. However, laymen served as justices and often were not impartial in deciding cases "because they were the bill collectors of the plaintiffs and the employees of the litigants."[4]

The abolition of the justice of the peace system in Virginia and West Virginia occurred after much discussion and research. Professor Willard Lorensen of West Virginia University College of Law urged that any change in the system should not ignore "'the good the JP does, the local knowledge he has, and his flexibility.'"[5] Virginia State Senator William F. Parkerson, Jr. felt that the justice of the peace served

> an essential function in the judicial process, having the duty of making a determination as to the issuance or nonissuance of a warrant... . The reason for going to the new system was to remove an obvious conflict of interest in the old justice of the peace system which depended upon the issuance of a warrant for the justice of the peace to receive a fee for his services.[6]

Although the magistrate replaced the justice of the peace, the duties, functions, and responsibilities of the office remained essentially the same in both

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[4]Statement by Edwin Flowers, Justice of the West Virginia Supreme Court of Appeals, interview, April 23, 1976.

[5]Donald Dale Jackson, Judges (New York: Atheneum, 1974), p. 48.

[6]William F. Parkerson, Jr., Virginia Senate, Richmond, Virginia, correspondence with the writer, February 10 to February 21, 1977.

Virginia and West Virginia. However, the change was necessary, according to Fred Hodnett, Jr., Assistant Secretary, Executive Secretary of the Supreme Court of Virginia.

> The stigma of the fee system is gone. Through administrative controls, there is now a handle on the system. The quality of the magistrates can be upgraded through education and the system also pays for itself as revenue is collected.[7]

The magistrate systems are highly structured and well organized. Both Virginia and West Virginia have definite magisterial districts. In Virginia there are thirty-one such districts, while each of the fifty-five counties in West Virginia serves as a magisterial district. Circuit court judges are granted supervisory powers over the magistrates serving in districts within their particular circuits. The number of authorized magistrates is controlled by law in West Virginia and by the Committee on District Courts in Virginia. The general administration of the magistrate system belongs to the Executive Secretary of the Virginia Supreme Court of Appeals and the Administrative Director of the West Virginia Supreme Court.

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[7]Statement by Fred Hodnett, Jr., Assistant Executive Secretary, Office of the Executive Secretary of the Supreme Court, Richmond, Virginia, interview, December 2, 1976.

The personnel serving as magistrates whether elected as in West Virginia or appointed as in Virginia must attend orientation programs and continuing education conferences. West Virginia requires that all persons qualifying as magistrates must have a high school education or its equivalent. Some persons involved in the operation of the magistrate system in West Virginia are concerned about the lack of legal training for magistrates. Forest J. Bowman, Administrative Director of the Supreme Court, feels that the training sessions conducted this past November will be of some help in aiding non-lawyer magistrates to follow proper procedures in trying civil and criminal cases. On the other hand, some persons, as Darrell McGraw, Justice of the West Virginia Supreme Court, believe that use of lay magistrates is advantageous:

> The lay magistrate is not trained in the heavily structured thought process that often denies comfortable justice. If justice is not comfortable, then there is really no justice at all.[8]

No matter what position one has concerning lay magistrates, the West Virginia educational system does assist in providing more competent magistrates. In Virginia the training programs have created a more

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[8]Statement by Darrell McGraw, Justice of the West Virginia Supreme Court of Appeals, interview, January 14, 1977.

professional and capable group of persons to issue properly written warrants.[9]

According to information collected in the researching of this paper, most individuals involved believe that the magistrate system is more equitable than the justice of the peace system ever was. Various reasons were given for this belief, but none could be confirmed by actual evidence. Justices of the peace had not been required to maintain detailed records of their activities, and the magistrate system has not yet produced enough specific data for making such a determination. Nevertheless, it was noted generally that with the abolition of the fee system and with the establishment of compensation by salary, magistrates are not as quick to write and issue warrants. They are also more likely to be impartial when hearing complaints and deciding cases, as "the magistrate system on a salaried basis provided for a great deal more objectivity... ."[10]

One of the more interesting aspects of this study was the apparent lack of political infighting among the various factions--legislators, judges, justices of the peace, and the general public. In

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[9]Statement by Nathan H. Miller, Virginia Senate, interview, February 15, 1977.

[10]Parkerson, _op_. _cit_.

both Virginia and West Virginia in accordance with the national trend, there appeared to be a consensus that change would be beneficial. No mention was made by any person interviewed or contacted nor in any article on the subject that the justice of the peace system should not be reformed. Furthermore, only once was mention made concerning dissension among the legislators during the process of creating the magistrate system. This occurred in West Virginia during the assigning of the authorized number of magistrates per county. In this particular instance, the chairman of the Senate Finance Committee used his influence to obtain four rather than three magistrates for McDowell County. Seemingly, it was of utmost importance to the many persons involved that the magistrate courts be of a high caliber for the "magistrate court is the only court that many...will encounter during the course of their lifetime... ."[11] All indications are that the lawmakers, judges, and magistrates in both Virginia and West Virginia will "provide continued interest in the judicial process at this beginning level"[12] and will continue to amend and improve the system if necessary.

The basic rationale behind the abolition of

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[11]Palumbo, op. cit.

[12]Parkerson, op. cit.

the justice of the peace system and the creation of the magistrate system was to provide a more effective administration of justice at the local level. In reality the new magistrate systems in Virginia and West Virginia have neither existed nor actually operated for a sufficient length of time to gather all data necessary for a final evaluation. However, if judged by the three-fold criteria established by the author of this paper, this goal has already been achieved. In addition, in the theory and in the writing of the new magistrate laws, the structure, the organization, the supervision, and the competence of the system have been upgraded and improved. Therefore, by considering all of the information available at this time, it is my opinion that the establishment of the magistrate system should result in a more effective administration of justice at the local level.

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