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## Justice Courts in Oregon: An Introduction

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GEOFFREY C. HAZARD, JR.\*

## Justice Courts in Oregon: An Introduction

THE FOLLOWING STUDY HAS SOME INTERESTING and provocative suggestions about the justice court, an institution that could be said to rank with the jury in the distinction of its detractors and opponents. The tone of the report is much more sympathetic to justices of the peace than the views that have been expressed by many other observers of the justice court system. On this ground alone, the report is worthy of careful consideration, for in all matters touching the administration of justice, and especially those concerning the institutions through which justice is administered, it is well to remain as open-minded as possible.

Two points advanced in the report seem unassailable. One is that the justice courts should not be abolished simply because they are not fully professional in their staffing or style. Professionalism in the courts is not an end in itself, but a means to the end of assuring better informed and more evenhanded justice. If the kinds of cases before justice courts can be managed by people who lack a lawyer's legal training, and if the alternative is making access to justice significantly less convenient for some citizens, then serious consideration should be given to upgrading the justice court by various supervisory and educational techniques. A second point implicit in the report is that those of us constituting the large majority who live in more or less densely populated areas should not, in our quest for symmetry in the judicial system, overlook the real needs of the minority of our citizens who live in rural areas.

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Given these propositions, it is certainly arguable that something like the present system of justice courts ought to be retained for isolated communities, particularly in eastern Oregon where there are great open spaces and very long distances between settlements. The provision of justice in small cases and preliminary matters, which is what the justice courts now try to provide, could be as well provided through a system called "justice courts" as through a set of tribunals known by some other name. Furthermore, there is no reason to assume that many of the people now serving as justices of the peace could not qualify for further service if needed changes were made in the present system. In short, the problem is not whether "justice courts" ought to be retained, but what are the best practicable arrangements for providing needed judicial service in remote communities throughout the state. The question is one of function, not one of name.

When the problem is looked at functionally, four issues emerge, each of which is touched on in this report. These are:

*Location*: At what places in the state is a tribunal needed to hear small cases and preliminary hearings in felony cases where there is neither sufficient business to justify a full-time court, nor sufficient proximity to a larger center that is accessible with approximately equal convenience?

*Selection and Tenure*: What should be the qualifications of those hearing the matters now coming before justice courts, who should select them, and what should be the tenure of those who are appointed or selected?

*Education*: What technical knowledge should be expected of people performing the office, and what kinds of training should be provided to assure that they have it?

*Supervision*: Should the individuals serving this function be under some sort of supervision and, if so, by what agency?

The findings of the report are very clear concerning the last two points, education and supervision. On the matter of education, the report indicates that a good many present justices are not adequately informed of the law they must deal with in the course of their duties, particularly procedural law. At the same time, it appears that the required knowledge can be made available to someone who is not trained in the law, and that it could be kept current by appropriate refresher courses. Given the complexities of preliminary procedure in criminal matters in today's law, however, such a program of education would have to be quite rigorous and well organized. As to the matter of supervision, the report recommends that the court system supervise the justice courts as an aspect of its administrative authority over courts throughout the state. That is to say, the officers who preside at justice courts ought to be made

part of the judicial system of the state. Precisely how and through whom supervision should be established is perhaps more debatable; modern court administration concepts suggest that ultimate authority in this regard should repose in the supreme court, with appropriately decentralized day-to-day direction in the circuit courts.

More debatable conclusions are reached on the first two matters. As to the location of justice courts, the report seems to assume that there is justification for maintaining justice courts in all localities where justice courts are now maintained. The verdict of practical experience is of course not lightly to be disregarded, and the fact that county commissioners are willing to pay the salary and operating expenses of a justice court is some evidence of its continued need. On the other hand, there are other considerations relevant to the question of location. The report refers to the number of cases the average justice of the peace receives each year—something over 1,100 per year, a not inconsiderable volume. But analysis of the range around this average discloses a number of the justice courts in which the annual filings are very few. Moreover, it is not at all clear that the relevant criterion is the number of filings, which often result in simple defaults, rather than the number of hearings, *i.e.*, cases in which some sort of evidence is taken. Defaults can be handled by mail; the event relevant to convenience is that of hearing, but no real penetration was made of this factor. If this factor were used to determine whether continuation of a court is justified, the number of needed tribunals would be significantly reduced. By the same token, such an analysis could demonstrate the need for a hearing officer in those communities where there is a substantial number of hearings, though a number too small to justify locating a full-time judge in that place. What we do not know is how many places there are in Oregon, and where they are.

This brings us to the matter of selection and tenure. The report says that the people who have been doing the job on the whole have been fairly satisfactory, and no doubt that is true. At the same time, it appears that the principal criterion for selection of a justice in present circumstances is willingness to do the job. It is not clear why that willingness could not be uncovered just as well by some other selection authority than the local voters, for example by the administrative office of the court acting for the chief justice. The alternative suggested in the report, appointment by the circuit court subject to electoral confirmation, is surely worthy of consideration. If the functions of the justice court were performed by officials appointed in such a way, it still would be possible to take account of such factors as willingness to serve, familiarity with the local situation, and convenience of residence, which now constitute the special usefulness of the justice of the peace. At the

same time, that method of selection might enhance the status of the office so that it might be possible to get people to serve who are as well qualified as those presently serving.

In short, the report makes a very substantial case for decentralized justice and for the use of paraprofessionals rather than full-time judges to perform the functions of providing justice in small cases and preliminary matters in those parts of the state where the services of a full-time court are not warranted. That, however, seems to me a case for establishing a system of magistrates as a part of the court system itself rather than perpetuating the present justice court system. On the other hand, if organized programs of training and supervision are provided for the justices of the peace, as suggested in the report, the difference in the end product may be more nominal than substantial.