WE MUST IMPROVE OUR JUSTICE OF THE PEACE COURTS

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1. INTRODUCTION

The need for an adequate system of petty courts to hear and determine comparatively simple but frequently occurring disputes among the ordinary citizens is self-evident. The purpose of the petty courts is to provide readily accessible tribunals to dispense justice speedily and inexpensively. It is in these courts that the average citizen may learn either a respect or a disrespect for our legal institutions. When he finds that the petty courts are not only slow and expensive but that many of their judgments defeat the fair promises of the rule of law, his confidence in our entire legal system is naturally undermined. Since it is the peculiar duty of every lawyer to foster a respect for law and order, and since legal institutions that *command* respect will do more in this regard than any amount of sermonizing, it follows that no greater responsibility rests upon the legal profession than the provision of an adequate and effective system of petty courts.

The typical petty courts in American states are the justice of the peace courts generally presided over by lay justices who are elected periodically by their fellow-citizens. These courts are usually provided on a township or village basis in order that such localization may contribute to their ready accessibility. Designed as they are for a predominantly rural civilization, in which they may be presumed to work tolerably well, it is common knowledge that their operation has broken down under industrial conditions in modern cities. Space prohibits a review of the various factors contributing to this; and perhaps such a review would be a delineation of the obvious. Suffice it to cite two very able articles: one by former Dean Roscoe Pound of the Harvard Law School, entitled, *The Administration of Justice in the Modern City*,[1] and published as early as 1913; the other by

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1. (1913) 26 Harv. L. Rev. 302.

Chester H. Smith, entitled, *The Justice of the Peace System in the United States*,[2] and published in 1927. In these two articles the complex factors in the social and economic life of modern cities which cause the failure of the justice of the peace courts are carefully analyzed.

Yet the statutes of Missouri continue at this late date to provide for metropolitan centers, such as St. Louis, a system of justice courts that closely follows the rural pattern.[3] In lieu of townships as the basis for their decentralization, the cities of Missouri over three hundred thousand in population are divided into convenient districts for the selection of justices of the peace and the administration of their courts. Except for a slightly enlarged jurisdiction, an increase in the number of officers attached to each court, and an increase in the compensation of the justices and their clerks and constables, these urban justice of the peace courts are practically indistinguishable from their country cousins. It is only natural, therefore, that by common repute the justice of peace courts in St. Louis are as ineffective and inadequate as they have been found to be upon investigation in other large American cities.[4]

Nevertheless, when the St. Louis Bar Association in 1938, under the leadership of its then president, Mr. Roscoe Anderson, determined to meet its responsibility in this regard, it recognized the need for precise, factual data on the local situation in order to support any recommendations it might make for the improvement of the justice of the peace courts. Consequently, it authorized President Anderson to appoint a committee to investigate the actual conditions in the justice courts of St. Louis, to report its findings and to make recommendations. The committee[5] appointed carried on its investigations, as the time of its members and its funds for a staff permitted, during the next several years. In 1941 it submitted a report of its findings and recommendations[6]; and the St. Louis Bar Association, in approving and adopting them, voted to continue the existence

2. (1927) 15 Calif. L. Rev.118.
3. R. S. Mo. 1939 §§2780 *ff.*
4. Report of Special Committee to Investigate Justice of Peace Courts in St. Louis, 1941, pp. 9, 10.
5. The personnel of the committee was as follows: A. B. Frey, Chairman, R. Forder Buckley, Tom Curtis, Sam Elson, Robert D. Evans, J. A. McClain, Jr., William A. Stolar, Fred Switzer, and Israel Treiman.
6. This report has been summarized in (1941) 12 Mo. Bar. Jour. 103.

of the committee and instructed it to prepare a bill to be introduced in the General Assembly at its next regular session which should implement these recommendations. Initial drafts of the bill, submitted by the committee's draftsman, Professor Elmer E. Hilpert of the Washington University School of Law, have been frequently reviewed and revised by the committee in the intervening year and a half; and the bill is now in tentative form for final revision and approval by the Executive Committee of the St. Louis Bar Association. When finally approved, it will be introduced in the General Assembly at its next regular session in 1943.

It is the purpose of this article to review briefly the committee's principal findings and recommendations and to indicate the chief features of the proposed bill whereby it is thought the many matters complained of may be remedied.

2. THE COMMITTEE'S FINDINGS OF FACT

Many of the defects of the justice of the peace courts in St. Louis are matters of common knowledge, especially among members of the legal profession. Yet it was thought important to gather the exact statements of lawyers with extensive practices in the justice courts and to ascertain any specific grievances that had come to the attention of members of the general public. The committee, therefore, sent detailed questionnaires to selected law firms, and by public announcement invited the comment of other lawyers, public officials, civic and business groups, and citizens generally. The completeness of the response was gratifying. It indicated a widespread interest in the problem and a realization of its importance. The complaints made against the existing system were many and specific. A check indicated that the complaints of the laity and the members of the legal profession tended to corroborate one another. And the further corroborative testimony from other communities, which the committee had meanwhile been gathering by correspondence, indicated that the inadequacy of the justice of the peace courts lies in their unsuitability to modern urban conditions and is not peculiar to Missouri or to St. Louis.[7]

While all such data confirmed the common reputation of the justice courts in St. Louis, the committee, nevertheless, pro-

7. See the Report of the Special Committee, op. cit. supra, note 4.

ceeded to make a firsthand investigation of these courts in actual operation. Cost and accounting data was sought but found unavailable or incomplete for a variety of reasons.[8] The sessions of many of the courts were observed by trained investigators. Merely one striking example need be cited in detail to indicate how completely the actual observation of the courts supported the general opinion of them among the members of the public and the profession. The eleven separate and distinct justice of the peace courts were observed over an eighteen day period to determine just how long they were in session during that period. The results of the observation were:

Court Observed	Hours in Session	Minutes in Session
No. 1	3	9
No. 2	5	16
No. 4	11*	
No. 5	20*	
No. 6	11	12
No. 7	13	33
No. 8		4
No. 9	2	28
No. 10	2	20
No. 11	7	6

When the data from questionnaires, official records, and actual observation of the courts in session was deliberated on by the committee, it was found that the chief weaknesses in the justice of the peace courts might be summarized as these:

1. The lay justices of the peace are incompetent to render correct judgments on either facts or the law in the vast majority of suits submitted to them for trial.
2. Their courtrooms are located in inconvenient places and are in many instances unsuitable for the holding of trials under proper conditions.
3. The very decentralization of the several courts, under the district system, is a disadvantage in a large city.
4. The courts generally neither appreciate nor use business-like methods.
5. There is no uniform or adequate system of costs or accounting.
6. For lack of central supervision, the practices of the courts vary widely;
7. a few of the courts are not convened more than once or twice a month;

8. See the Report of the Special Committee, pp. 16-19.
* Approximate.

8. and many of these courts open late and hold court for an inadequate period.
9. Costs are increased through the unnecessary use of special constables.
10. As a special aspect of these weaknesses, may be noted the too frequent taking of cases under advisement and then holding the same under advisement over long periods of time without deciding them.

In addition to these principal defects there were found, of course, numerous other related ones, most, if not all, of which would be eradicated were those listed above eliminated.

3. THE COMMITTEE'S RECOMMENDATIONS

The committee's chief recommendation may be summarized under the following heads:

A. Qualifications of the justices.
B. Selection of the justices.
C. Centralization of the courts into one court.
D. Supervision of the court.
E. Improved business and accounting methods.
F. Reduced Costs.
G. Improved Service.

A. Qualifications of the Justices

Under existing law the justices are not required to be members of the Bar. It is the considered opinion of the committee, approved by the St. Louis Bar Association, and approved as well by the investigators in other metropolitan areas, that this lack of professional training is one of the most important factors contributing to the failure of the justice courts. Accordingly, the proposed bill would require that justices of the peace, in addition to being and remaining citizens and residents of the city, be "lawyers who have been admitted to the Bar of the State of Missouri and who shall have practiced law in the State of Missouri for at least five years next preceding the date of their appointment and who shall be and remain members of the Bar in good standing."[9]

In order to attract men of competence to the office of justice of the peace the bill provides that the salaries of the justices shall be increased from the present $3,000 per year to $5,000 per year for the associate justices and to $5500 per year in the

9. Tentative Bill, §2.

case of the presiding justice.[10] That such increases in salary would be justified will be apparent when one considers the improved administration of justice that will ensue in these courts if the entire scheme proposed is adopted; and, as will be pointed out later,[11] such increases in salary will not increase the over-all costs of administration of the justice courts.

B. Selection of the Justices

To remove one of the worst features of the existing system—the political influences in the justice courts—as well as to insure the selection of more competent lawyers—the proposed bill provides that the justices of the peace shall be appointed by the mayor, or other chief executive officer of the city, for terms of four years each.[12] But to avoid the objection that the appointment by chief executive officers does not remove justices from the political arena, it is further proposed in the bill that the mayor, or other chief executive officer, shall appoint each justice of the peace from a list of names of three persons submitted by a committee of five persons, four of whom shall be lawyers and one of whom shall be a layman.[13] The committee is to be chosen in the following manner:[14] Two lawyers are to be chosen by a majority vote of the circuit court judges of the city; two additional lawyer members are to be elected by "the licensed attorneys who maintain law offices and regularly engage in the practice of law in the city,"[15] and the fifth member of the committee, a layman, is to be selected by the four lawyer members of the committee. It is thought that this procedure will lead to a selection of candidates upon a basis of relative merit, will sufficiently safeguard against political or other improper influences in appointment, and yet will allow the mayor some range of choice in making his appointments.

C. Centralization of the Courts into One Court

The proposed bill provides for the establishment of "one justice of the peace court, consisting of five justices of the peace."[16] It is provided that such court "shall be located, and

10. Tentative Bill, §7.
11. See infra, p. 30.
12. Tentative Bill, §2.
13. Tentative Bill, §3.
14. Tentative Bill, §§3, 4.
15. Tentative Bill, §3.
16. Tentative Bill, §1.

shall transact its business, at such place in the city as shall be designated by the board of aldermen, or other legislative authority of the city."[17] The court will sit in five divisions, each presided over by one of the justices.[18] This provision alone, it is thought, will do much to eliminate the inconveniences and inefficiencies due to the present decentralization, many of which have been observed and noted.[19] Such centralization should not only make it more easy for the proper agencies to supervise the court but will bring the court visibly into the public eye, which itself will have a salutary effect.

D. Supervision of the Court

As indicated above, a first step toward providing an opportunity for adequate supervision of the court is to unify its operations and to settle its location in one building. Additionally, the bill provides for the designation of one of the justices as the presiding justice[20] and provides generally and specifically for his direction of the court's administrative functions. For example, the presiding justice, besides being given general supervisory power,[21] must countersign all salary and other expenditure vouchers drawn by the court's fiscal officer;[22] the presiding justice is empowered to direct the routine of the court's officers —the chief constable, the chief clerk, and the cashier.[23] In brief, his position will be that of a typical chief, or presiding, justice of a trial court.

Similarly, the administrative staff of the court is centralized and supervision is provided for it.[24] The justices by majority vote are to appoint, and may in like manner remove, the chief constable, the chief clerk, and the cashier.[25] These officers in turn may appoint and remove such deputies as may be authorized by the justices, within the limitations fixed in the bill.[26] In brief, the business of the court is confined to a single office, which will be susceptible to effective supervision. What this will mean in

17. Ibid.
18. Ibid.
19. See supra, pp. 25-26.
20. Tentative Bill, §1.
21. Ibid.
22. Tentative Bill, §16.
23. Tentative Bill, §11.
24. Tentative Bill, §9.
25. Ibid.
26. Ibid.

the more effective collection, custody, and disbursement of funds, the keeping of various records, the summoning of parties, witnesses, jurors, and the myriad other administrative affairs of the court will be at once apparent.

But perhaps even more effective for the supervision of the work of the justices themselves is the provision in the proposed bill empowering the judges of the circuit court of the city in general term, after giving him notice and granting him an opportunity to be heard, to remove any justice for misfeasance, or nonfeasance in office, or for public conduct tending to bring shame or contumely upon the administration of justice, or when he is incapacitated by reason of illness.[27] Since the bill requires each justice of the peace to "devote his time not less than five days a week, for not less than eleven months of the year, to the duties of his office,"[28] this removal power should itself eliminate one of the worst of the present abuses in the justice courts if the general improvement in the quality of the justices and the opportunity for improved administration of the court do not. To avoid hardship and injustice it is provided that "failure by a judge to discharge the duties of his office by reason of illness, not amounting to incapacity for office, shall not be deemed a violation"[29] of the Act; and it is expected that "illness, not amounting to incapacity for office" will be given a reasonable construction by the judges of the circuit court.

E. Improved Business and Accounting Methods

The mere fact that the justice of the peace courts will be unified into a single court, with a presiding justice having supervisory powers and duties, and the mere fact that such a single court will have a single, central chief constable, chief clerk, and cashier are enough to indicate the improvements that may be looked for under this head. Moreover, the very improvements in the quality of the justices, which may be expected from the impact of the provisions discussed above,[30] will in turn insure increased competency of personnel in the constable's, clerk's, and cashier's offices. Additionally, the requirements for periodic accounting with the city treasurer's office,[31] the provision for

27. Tentative Bill, §8.
28. Tentative Bill, §6.
29. Ibid.
30. See supra, pp. 26-27.
31. Tentative Bill, §14.

the disbursement of certain items through the city treasurer's office,[32] and the provision for a comprehensive schedule of costs by city ordinance[33] will all contribute to improved accounting and business methods.

F. Reduced Costs

The first reduction in costs to be noted is the reduction in the total number of justices of peace from the present number of eleven to five. While the present salary of $3000 per year is to be increased to $5000 and, in the case of the presiding justice, to $5500, this would require only a total of $25,500 annually, for judicial salaries as compared to a present total of $33,000. Although the annual saving here is relatively insignificant in amount, the reason for increasing the present salaries—to attract abler men to office—has already been developed[34] and seems wholly warranted.

But a very considerable additional saving will result from the establishment of a single constable's, clerk's and cashier's office to replace the comparable officers now attached to each of the existing justice courts. The proposed bill contemplates a maximum of fifteen deputy constables, two deputy cashiers, and eight deputy clerks.[35] This office force, particularly when the special constables now so frequently employed are considered, will constitute a reduction in the staff of court attachés without any impairment—indeed it is hoped, with an improvement—in service.

Less apparent, but no less certain, will be the saving to litigants and the public resulting from the better office and accounting methods that will obtain in a centralized court with a centralized constable's, clerk's, and cashier's office. The establishment by ordinance of a comprehensive schedule of costs,[36] centrally assessed and collected, the abolition of special constables,[37] the requirement that trials by jury be demanded within a reasonably limited time or be deemed waived,[38] and the provision for suits *in forma pauperis*[39] should all aid in the

32. Tentative Bill, §15.
33. Tentative Bill, §13.
34. See supra, pp. 26-27.
35. Tentative Bill, §9.
36. Tentative Bill, §13.
37. Tentative Bill, §11.
38. Tentative Bill, §21.
39. Tentative Bill, §13.

attainment of the ideal of inexpensive justice in the simple litigation of the ordinary citizen.

G. Improved Service

The objective of all the recommendations discussed thus far is to improve the serviceability of the court. A competent judicial personnel, selected in a manner to free it of political influence, provides the greatest single step in that direction. The requirement that the justices devote their full time to the duties of their office will of itself eliminate one of the sources of delay and expense.[40] The increased administrative efficiency of the court officers, besides reducing costs, should contribute its part to promoting the speed with which justice is administered in the proposed court; and the requirement for seasonable demands for jury trials[41] should eliminate yet another present source of delay. In addition to the present system for selecting jurors in the justice of the peace courts the proposed bill would permit any justice or any party litigant to request the jury commissioner, who prepares the jury lists for the circuit court, to furnish a list of available jurors for the trial of causes in the justice court.[42] And with this prospect, the jurisdictional amount for the court has been increased to $1500 in order to attract a greater volume of business and to provide a convenient tribunal for a greater number of people.

4. Conclusion

In the recent election of justices of the peace in St. Louis most of the incumbent justices were defeated for re-election. The committee of the Bar Association on justice of the peace courts has valid reason to assume that its report, which was given splendid support in the press, contributed to this in a fair measure. This is believed to be strong evidence that the public is ready and willing for the suggested reform. Indeed, governmental reform in Missouri seems to be presently in the air. The writer, and for that matter, most members of the Bar, hope that the proposed bill, when it is introduced in the General Assembly in January, 1943, will have the ardent support of business men, civic groups, and of all citizens. A new legislature

40. Tentative Bill, §6.
41. Tentative Bill, §21.
42. Tentative Bill, §20.

has been elected; and it has been elected on an up-surge of popular indignation with current political abuses. Among those it should rectify is the revealed weaknesses of our justice of the peace courts. The members of the Bar have done their part in promoting the investigation and preparing the bill. As citizens, as well as members of the Bar, they will sponsor the bill in the legislature. But the time has arrived for the average citizen to help. When the bill is finally approved, copies will be obtainable. It should be read and studied. If in the voters' opinions it promises to attain the claims here made for it, there is open to each of them the time-honored and truly American right to petition the legislature, in person or by letter, for a "redress of grievances," and it is hoped they will avail themselves of it.

It is feared that some well-meaning opposition to the proposed bill may be based upon the argument that, in the stress of the current war, no reform measures ought to be undertaken. This contention is more formidable emotionally than its merits justify. In the first place, the enactment of the bill need not occupy any considerable amount of legislative time and effort (and more of such time and effort have recently been lavished upon less worthy objectives). Secondly, the rectification of the justice of the peace system in metropolitan communities can securely be carried out without having any practical effect upon the services essential to the prosecution of the war. Thirdly, the reduced costs of operation of the courts under the proposed plan will provide a very desirable saving of municipal expenses in cities where the Act applies. Lastly, the justice of the peace system is, in a very real sense of the words, the only or at least the principal source of justice for the poorer classes. Only by a fair and just administration of these courts can the confidence of those classes in the social and economic system for which we are fighting be upheld.

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