THE JUSTICE OF THE PEACE COURTS IN OKLAHOMA: A POLITICAL STUDY

BY

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PREFACE

The justice of the peace is an English institution which was brought to America in the colonial era, survived the Revolution, and has continued to flourish in most of the United States.

Oklahoma, a relatively new state with a strong agrarian background, has relied heavily on the justice of the peace courts for the settlement of minor civil and criminal matters. These courts, which for the most part have been staffed by justices with little or no professional legal training, have often been referred to as the 'poor man's courts'. For sometime, however, the justice of the peace courts in Oklahoma have been the object of a great deal of criticism. Sufficient pressure for a change in the justice of the peace courts was generated by 1965 that the Oklahoma Legislature considered replacing them with a system of general sessions courts in which the judges would require a legal background. Even though an extensive legislative effort was made to enact the reform, no legislation resulted.

It is the purpose of this study to ascertain as accurately as possible why the measure to abolish the justice of the peace courts within the state passed the state Senate, yet failed in the House of Representatives. In order to answer this primary question, several subsididary questions must be posed, analyzed and answered. They include such questions as: (1) What were the factors that brought about the introduction of the bill in the first place? (2) What criticisms were made in regard to the prevailing system? (3) What groups supported and what groups were

opposed to abolishing the justice of the peace courts? (4) What were the motivations and approach of each of the groups and how effective were they? and (5) What was the attitude of the leadership in the State Senate and the House of Representatives concerning the measure?

The method employed to answer the primary and subsidary questions set forth consists first of all of analysing the origin and the development of the institution of justice of the peace. The second chapter of the study deals extensively with the constitutional and statutory basis of the institution as it is found in Oklahoma. The third chapter of the study deals with the operation of the Oklahoma justice of the peace courts and the most salient criticisms of their operation. Finally the study describes the politics of the bill that would abolish the justice of the peace courts in the Oklahoma Senate and House of Representatives. It is the hypothesis of this study that the bill to abolish the Oklahoma justice of the peace system and replace it with a system of general sessions courts passed the State Senate, yet failed in the House of Representatives, because of the difference in the attitude of the leadership of the Senate from that of the House of Representatives. This difference in attitude between the leadership of the two bodies was a direct result of the degree of effectiveness of the political pressure that was exerted on each.

The chief sources used in the preparation of this study include the Constitution and the statutes of the State of Oklahoma, articles dealing with the justice of the peace system, and responses to interviews by the spokesmen of various interest groups and by those members of the 1965 Oklahoma Legislature who were concerned with the bill to abolish

to abolish the justice of the peace system and replace it with a system of general sessions courts.

I would like to express my appreciation to the members of my thesis committee and especially to my major advisor, Dr. Guy R. Donnell, for assisting in the preparation of this work.

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CHAPTER I

THE ORIGIN AND ESTABLISHMENT OF THE OFFICE OF JUSTICE OF THE PEACE

The development of the office of justice of the peace is a long and interesting process. Like the birth of almost any political institution, this office did not have a beginning until a particular combination of multiple causal factors were present. Thus, in order for such an institution to originate, there had to be a particular environment made up of certain political, social, and economic conditions. In addition to this, there had to be a need for such an institution as well as the facilities for developing it. All of these causal factors were present during the Anglo-Saxon and early Norman periods; consequently, the office came into full bloom as an established English institution during the reign of Edward III.[1]

To properly analyze the origin of this office, one must look at the different stages of development. They are (1) the King's Peace, (2) the extension of the King's Peace, and (3) the Conservator of the Peace.

The King's Peace

The first factor having a directive influence on the birth of the office of justice of the peace in England was the King's Peace. The

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[1]Bryce Lyon, A Constitutional and Legal History of Medieval England, (New York: Harper and Brothers, 1960), p. 622.

establishment and development of the notion of a King's Peace provided a basis for social and legal control.[2]

In the early Anglo-Saxon society, every man who was the head of a household enjoyed the position of king within his particular house. He was the supreme authority, the ultimate protector and decision-maker.[3] Within his household he possessed mund peace, and no wrongdoer could break a man's mund peace without being liable for punishment.[4] An example would be: A commits a wrong within B's household. A has broken B's mund peace. B is at liberty to punish the wrongdoer, A. The only guarantee that one possessed for the security of himself as well as that of his family was his own physical strength. The state or the political order did not provide protection nor dole out punishment for wrong doing.[5]

The social structure changed in the later Anglo-Saxon period and kinship ties developed. An individual did not exist outside his clan. With these close ties of kinship came collective, rather than individual responsibility for public order and redress of wrongs. Therefore, if A committed a wrong against B, A's entire clan was collectively

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[2]Frederick William Maitland, The Constitutional History of England, (Cambridge: Cambridge University Press, 1908) p. 107.

[3]Frederic Pollock and Frederic William Maitland, The History of English Constitutional Law, (Cambridge: Cambridge University Press, 1898), II, pp. 240-244.

[4]Maitland, op. cit., p. 108.

[5]Pollock and Maitland, op. cit., pp. 242-243.

responsible to B's entire clan. The result was that indiscriminate private vengence abounded.[6]

On the eve of the Norman Conquest, the law of wrongs was made up of four essential elements. They were (1) outlawry, (2) blood feuds, (3) tariffs of wer, wite and bot, and (4) pleas of the crown.[7]

Outlawry. Each community was an island of peace and only within the community could one receive the protection of the community. If one committed a wrong, he was sent outside the community and he was then considered an outlaw and was free game for anyone. He was like a wild beast whom anyone could slay.

This notion of outlawry was developed to protect one community against destruction by another community because a member of the first committed a crime against the second. The community within which the wrongdoer lived would banish him so that they would not be held collectively responsible for his crime.[8]

Blood Feud. The blood feud was also an attempt to discourage indiscriminate private vengence. There were certain rules and regulations prescribed by the blood feud. If a man committed a wrong against one of another community, the community of which the wrongdoer was a member would not try to protect the wrongdoer while the relatives of the

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[6]A. K. R. Kiraley, Potter's Outlines of English Legal History, (London: Sweet and Maxwell, Limited. 1958), p. 153.

[7]Pollock and Maitland, II op. cit., p. 449.

[8]Kiraley, op. cit., p. 154.

injured man sought to obtain vengance. The wrongdoer as a result of committing an evil lost the protection of his community.[9]

Tariffs of Wer, Wite and Bot. In the final stages of the development of Anglo-Saxon law the idea of tariffs of wer, wite and bot were incorporated into the notion of outlawry and blood feuds. Under the tariffs of wer, wite and bot, compensation was given by the wrongdoer, or his family, to compensate the evil done. Wer, wite and bot were the value of a man's life which meant compensation to his family for the wrong committed. The value varied with a man's rank. Therefore, the value of a member of the royal court would exceed that of a village craftsman. Wer was the amount that was to be paid by the wrongdoer or his family to the kinfolk of a slain man. Wite was a penal fine payable to the king and bot was used to connote compensation of any kind.[10]

Pleas of the Crown. Pleas of the crown were offenses against the King and it was through these pleas that royal jurisdiction was extended throughout the realm. If one committed a wrong that was considered to be a plea of the crown, he was directly responsible to the King and subject to punishment by him. The pleas were the first pronouncement of the King's Peace. That is to say that heretofore, the King like any other man who was head of a household enjoyed mund peace. Now, however, the royal household is extended to include other parts of the realm. Pleas of the crown included violation of the King's personal peace, attacks on peoples' houses, assault, and neglect of military

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[9]Ibid., p. 154.

[10]Ibid., p. 154.

service. The King also enjoyed a special peace that was in force everywhere. However, it only included violence done to persons. His peace existed not only in certain instances and places, but also to particular times. Special seasons such as Easter were especially protected by royal power.[11]

With the development of these four factors the stage was set for the broad and sweeping extension of the King's Peace. The extension went much farther than the first provided by the pleas of the crown. This extension was the culmination of the notions developed in outlawry, blood feud, tariffs of wer, wite and bot, and pleas of the crown.

Extension of the King's Peace

The King's Peace was extended to all areas of the entire realm. No longer was mund peace needed for the King's Peace protected the individual and his household. No longer was the individual's own physical strength the only guarantee he had against outside interferences, as he was not under the protection of the King.[12]

The extension of the King's Peace was the method by which centralization of power and authority in the crown was carried out. Now all were subject to the authority of the King rather than being responsible to the head of the clan.[13]

The extension of the King's authority presented numerous problems. English society had become more complex and unwielding so the King

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[11] Ibid., p. 155.

[12] Maitland, op. cit., pp. 108-109.

[13] Ibid., pp. 108-109.

alone was not able to enforce his authority. Consequently, he developed a host of administrative offices specifically for the task of local administration. These offices included the Sheriff, Courts Leet, Hundred and County Courts, and Central Elements of Itinerant Justices.[14]

The organization that the King had established was not, however, a lasting one, for by the end of the 12th century the growth of English society had put such a strain on the structure of government that without some reform it could not have long endured. An office on the local level with strong power and authority that could co-ordinate the activities of other county officials was needed. The King realized the necessity for such an office, and as a result he developed the office of conservator of peace.[15]

The Conservator of the Peace

The office of conservator of the peace, which is the germ of the office of justice of the peace, was established under the reign of Richard I.[16] The new institution went through a series of changes, which had the effect of making it a strong arm of the King.[17] The conservator was the King's representative on the local level and was appointed and served at the grace of the King.[18] The final establish-

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[14]Charles Austin Beard, The Office of Justice of the Peace in England, (New York: Burt Franklin, 1904), p. 16.

[15]Ibid., pp. 16-17.

[16]Dudley Julius Medley, English Constitutional History, (Oxford: B. H. Blackwell, 1913), p. 422.

[17]Ibid.

[18]Ibid.

ment of the office came in the reign of Edward II.[19] However the powers and duties of the office changed considerably under different administrations.[20]

The Conservator of the Peace Under Richard I. The office of Conservator of the Peace began its development under Richard I.[21] In 1195, Archbishop Hubert issued an official proclamation for the preservation of peace in the realm. He required that all men in the realm sign an oath stating that they promise to observe the King's Peace and to assist in the capture of those who broke the peace.

> Knights, especially assigned for the purpose, were instructed to summon before themselves, all men of fifteen years of age and over, and cause them to swear that they would not be outlaws, robbers, thieves, or receivers and abetters of such and furthermore, that they would make pro toto posse suo whenever hue and cry was raised, and deliver all offenders to the knights assigned to receive them.[22]

The appointment of knights by the crown to receive oaths is the beginning of the office of conservator of the peace, later justice of the peace.[23]

The Conservator of the Peace Under Henry III. With the advent of Henry III to the throne came an increase in the scope of authority and functions of the conservator. They retained their sweeping police and

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[19]Beard, op. cit., p. 29.

[20]Thomas Pitt Taswell-Langmead English Constitutional History, (London: Sweet and Maxwell, Limited, 1946), p. 142.

[21]Ibid., p. 17.

[22]Ibid.

[23]Ibid.

administrative responsibilities and were given the authority to hear offenses committed in the realm.

> The King said that it was his will that quick justice should be done throughout the realm, and that offenses which had been committed in the county in his time, no matter who had committed them, should be reported to the four knights whom he had assigned the task of hearing them.[24]

The conservator was, for the first time, assuming a judicial function.

In the final years of the reign of Henry III, the administration of the realm passed into the hands of Simon de Montfort. One of his first tasks, like those before him, was to issue writs announcing the establishment of peace within the realm. He assigned conservators of the peace custodians for the task. The custodians, "were publically and firmly to forbid homicide, incendiarism, robbery, extortion, bearing of arms without a license, and to repress all other offenses against the peace under the pain of disinheritance and peril of life and members."[25] They also assumed the responsibility for taking indictments of felonies and misdemeanors and were granted the authority to arrest all law breakers and to hold them in custody until they received instructions from the crown.[26]

Conservator of the Peace Under Edward I and Edward II. During the reigns of Edward I and Edward II the office of conservator of the

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[24] Ibid., p. 20.

[25] Ibid., p. 20.

[26] Ibid., pp. 29-30.

peace reached the apex in its development.[27] The conservator by this time was no longer appointed by the Crown, but elected by the county court.[28] The conservators were to reside in the county and to visit any and all parts of the area in order to preserve the peace.[29]

The conservators assumed new functions such as the policing and maintenance of equal weight and standards of coin.[30] They were ordered by the Crown to "enquire by the oaths of good and lawful men concerning disturbances and other outrages against the peace within the franchises and without, and all persons against whom indictments were found, or who were suspected notoriously were to be kept in custody by the Sheriff."[31] They were required to make monthly reports to the Council of Westminister regarding the nature of their proceedings and the names of the persons involved. They were given the authority to fine and punish in accordance with their best judgment. They also exercised control over the sheriff and other county officials.[32]

This analysis of the origin of the office of justice of the peace indicates the complexity and multiplicity of the causal factors relevant to the birth of the institution. The King's Peace provided a basis for social and legal control and the expansion of the King's Peace produced a more highly centralized system of government. As a result of

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[27] Ibid., p. 23.

[28] Ibid., p. 22.

[29] Ibid., p. 28.

[30] Ibid., pp. 28-29.

[31] Ibid.

[32] Ibid., pp. 38-39.

increased authority in the hands of the King, a large bureaucracy of administrative officials developed. The conservator of the peace gradually became the center of local administration and control. The office was conceived under Richard I, greatly expanded in power and authority under Henry III, Edward I, and Edward II, and was transformed into the office of justice of the peace under Edward III.

The Establishment of the Office of Justice of the Peace.

Like the origin of the justice of the peace, the establishment of the office into a formalized english political institution was a long and complicated process. Beard attributes the establishment to the pressure of social conditions. During the reign of Edward III, according to Beard, England moved into a period of disorganization and chaos. The war with France gave rise to perplexing social problems, the Black Death in 1348 added weight to the already weak social order, and the breakdown of the manor system did away with all remnants of social control.[33]

The reaction to the breakdown of the social order by the governing administration was the establishment of more powerful instruments for local control. The old office of conservator of the peace was replaced by the new office of justice of the peace.[34]

Steps in the Expansion of the Office of Justice of Peace. In the first parliament under Edward III, a special provision for the

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

[34]Kiraley, op.cit., p. 73.

preservation of peace was enacted. It stated: "For the better keeping of the peace, the King wills, that in every county good men and lawful, which be in the county, shall be assigned to keep the peace."[35] In accordance with this statute, the King and council commissioned two or three men in each county as justices of the peace who were responsible for maintaining the peace.[36] In addition to this action, the office was given additional judicial power for it assumed the position of a court of record.[37]

The action by the first parliament was not sufficient to halt the degeneration of the social order. Consequently, the governing body began to enact legislation giving the new office sweeping judicial and administrative powers.[38] The justices of the peace were given the authority to inquire into defaults and then to report them to the King.[39] Justices of the peace began to punish those who resisted or defied their order.[40]

In 1344, justices of the peace were given the authority to "head and determine felonies and trespasses done against the peace in the same counties, and to inflict punishment reasonable according to law and reason and the manner of the deed."[41]

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[35]Beard, op. cit., p. 73.

[36]Ibid., quoted from Pat. Rolls, 1327-1330, pp. 88-90.

[37]Ibid., p. 35.

[38]Ibid., p. 39.

[39]Ibid., p. 36.

[40]Ibid., p. 36.

[41]Ibid., p. 40, quoted from 18 Edward III, s. 2, c. 2.

Much of what was done up to this time seemed to be a series of desperate attempts to control the breakdown of the social order. As a result many of the statutes seemed to have been poorly written and the laws thereby ill administered. According to Beard, the King and parliament became disenchanted with what they had accomplished, and they decided to culminate all the previous action by the enactment of a new and powerful statute. They enacted the statute of 1360 which "firmly established the office of justice of the peace as a permanent police and administrative institution."[42] It provided

> That in every county of England shall be assigned for the keeping of the peace, one Lord and with him three or four of the most worthy in the county, with some learned in the law, and they shall have power to restrain the offenders, rioters, and all other barators, and to pursue, arrest, and take and chastise them according to their trespass or offense; and to cause them to be imprisioned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do their descretions and good advisement; and also to inform them, and to enquire of all those that have been pillars and robbers in the ports beyond the sea, and be now come again, and go wondering, and will not labor as they wont in times past; and to take and arrest all those that they may find by indictment, or by suspiciaon, and to put them in prison; and to take of all them that be (not) of good fame where they shall be found, sufficient surety and mainprise of their good behavior towards the King and his people, and the other duly to punish; to the intent that the people be not by such rioters or rebels troubled nor endamaged, nor the peace blemished, nor merchants nor other passing by the highways of the realm disturbed, nor (put in the peril which may happen) of such offenders; and also to hear and determine at the King's suit all manner of felonies and trespasses aforesaid; and that writs of oyes and determiners be granted according to the statutes thereof made, and that the Justices which shall be thereto assigned be named by the court and not by the party. And the King will that all general inquiries before this time granted within any seignories for the mischiefs and oppressions which have been done to the people by such inquires, shall cease utterly and be repealed; and that fines which are to be made before Justices for a trespass done by any person be

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[42] Ibid.

> reasonable and just, having regarded to the quantity of the trespass and the causes for which they may be made.[43]

The establishment of the office of justice of the peace was the result of a long series of experiments which were carried out by the King and parliament in an attempt to establish an institution on the local level that could help restore social order. First, the King and parliament replaced the old office of conservator of the peace with a new office, the justice of the peace. From this point they gradually increased the power and the authority of the new office. The climax of the effort came in 1360 when the office of justice of the peace was firmly established as an English political institution.

From 1360 until the time of the American revolution there was very little change in the institution. What few changes that were made, according to Beard, served to increase the scope and power of the institution. The most outstanding example was the administration of the Elizabethan Poor Laws by the justices of the peace.[44]

Establishment as an American Institution . American legal heritage is essentially English. The colonist in coming to the New World brought from England all sorts of legal precepts, notions, and ideals. For all practical purposes it seems that one might say that the English legal system was simply transplanted in the New World. Since the system was transplanted almost in totality, the office of justice of the peace became an American institution.

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[43]Ibid., pp. 40-41, quoted from 34 Edward III., c. 1.

[44]Traswell-Langmead, op. cit., p. 768.

> Although generalities are impossible for the thirteen colonies over the period of 175 years they were subject to England, a few observations can be made. English practice was followed in many ways. For instance, the colonies retained the local judiciary known as justices of the peace, or magistrates. In many colonies, justices of the peace sat a few times each year as minor criminal courts known as Courts of Quarter Sessions. As in England, they were not required to be learned in the law.[45]

This brief analysis of the metamorphosis of the institution of justice of the peace in Great Britain and its transplantation in the New World should be sufficient background for an analysis of the institution as it presently exists in Oklahoma.

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[45]Frederick G. Kempin, Jr., Legal History: Law and Social Change, (New Jersey: Presntice-Hall, Inc., 1963), pp. 21-22.

CHAPTER II

THE CONSTITUTIONAL AND STATUTORY BASIS OF THE OKLAHOMA OFFICE OF JUSTICE OF THE PEACE

The office of justice of the peace, like all other institutions found in the judicial fabric of Oklahoma government, derives the basis for its existence from the constitution of the state and from statutory enactments. An analysis of these legal prescriptions is necessary if one is to develop an understanding of the operation of the system. Such an understanding is a mandatory precondition to an analysis of the system as it actually operates, as well as an analysis of the attempt by the Oklahoma State Legislature to abolish the system. The scope of this chapter is a scrutinization of the relevant portions of the state constitution and the statutes of the state.

The Constitutional Basis

Political scientists agree generally with the idea that a written constitution should only prescribe a broad outline or a basic framework necessary for governing, thus leaving specific or particular prescriptions to statutory enactments. The Oklahoma constitution violates this rule, for the document in many instances not only sets down a general outline, but also prescribes specific and minute details. A good example of this violation is found in Article VII which deals with the office of justice of the peace and the office of constable. The Article prescribes such things as the establishment of the office, its

jurisdiction, procedure for appeals, the number of justices for each county, and the designation of justices of the peace as conservators of the peace.

Establishment of the Office. Constitutional provisions that provide for the establishment of the office of justice of the peace are found in Sections I and 18 of Article VII. Section I provides for the establishment of the entire judicial structure of the state and points out that:

> the judicial power of this state shall be vested in the Senate, sitting as a court of impeachment, a Supreme Court, District Courts, County Courts, Courts of Justices of the Peace, Municipal Courts, and other such courts, commissions or boards, inferior to the Supreme Court, as may be established by law.[1]

Section 18 deals specifically with the establishment of the office of justice of the peace. It states that, "The office of Justice of the Peace is hereby created . . . ."[2]

Jurisdiction. Section 18, in addition to establishing the office, also specifically defines the criminal and civil jurisdiction of the justice of the peace court and specifies that the court shall be denied jurisdiction in certain cases.

The first portion of that section provides for jurisdiction in all felony cases. The provision states that ". . . . Courts of Justices of the Peace shall have, co-extensive with the county, jurisdiction as examining and committing magistrates in all felony cases . . . ."[3] The

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[1]Oklahoma Constitution, Article VII, Section 1.

[2]Oklahoma Constitution, Article VII, Section 18.

[3]Ibid.

courts also exercise jurisdiction in certain misdemeanor cases for the constitution stipulates that the justice of the peace courts shall have

> . . . . concurrent jurisdiction with the County Court in all misdemeanor cases in which the punishment does not exceed a fine of two hundred dollars or imprisonment in the county jail for not exceeding thirty days, or both such fine and imprisonment. . . . [4]

In 1947 there was some question as to what the legislature intended to be the interpretation of jurisdiction that was "co-extensive with the county". The Oklahoma Court of Criminal Appeals answered the question by saying

> . . . . a justice of the peace must transact all of his business within the district for which he is elected or appointed, but that he may issue process while acting within his district for service on persons residing in the county but outside of the justice of the peace district of the justice of the peace who issues the process. [5]

The constitution also prohibits the justice of the peace courts from taking jurisdiction in libel and slander cases[6] and stipulates that they shall enjoy civil jurisdiction that is concurrent with the County Court as long as the amount involved does not exceed $200, exclusive of interest and costs. [7]

Appeals. The justice of the peace court is a court of original jurisdiction only. This means that no case can be appealed from other courts to this court and that only cases that begin in the justice of the peace court can be adjudicated there. Section 14 of Article VII of the

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[4] Ibid.

[5] Kutz v. State, 83 Okl. Cr. 324 (1947).

[6] Oklahoma Constitution, Article VII, Section 18.

[7] Ibid.

Oklahoma constitution provides for the procedure for appeals from the justice of the peace courts to courts of higher jurisdiction. The section states that

> Until otherwise provided by law, the County Court shall have jurisdiction of all cases on appeals from judgments of the justices of the peace in civil and criminal cases; and in all cases, civil and criminal, appealed from justices of the peace to such County Court, there shall be a trial de novo on questions of both law and fact.[8]

Number of Justices of the Peace. The final portion of Section 18, Article VII deals with the number of justices of the peace who are to be elected in certain cities and states that, "In cities of more than two thousand and five hundred inhabitants, two Justices of the Peace shall be elected."[9]

Justices of the Peace as Conservators of the Peace. The State constitution provides that the justices of the peace within the State shall perform the functions of conservators of the peace. According to Section 19, Article VII, "All judges of the courts of this State, and Justices of the Peace shall, by virtue of their office, be conservators of the peace throughout the State."[10]

In summarizing the constitutional provisions concerning the office of justice of the peace in Oklahoma, it can be pointed out that these provisions are found in three different sections of Article VII. One of these sections deals with the establishment of the entire judicial structure of the state and the other two deal specifically with the justice of

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[8]Oklahoma Constitution, Article VII, Section 14.

[9]Oklahoma Constitution, Article VII, Section 18.

[10]Oklahoma Constitution, Article VII, Section 19.

the peace courts. Provisions are also made for both jurisdiction as well as a general procedure for appeal.

The Statutory Basis

All necessary rules regarding the operation of the office of justice of the peace are not provided in the state constitution. In order to find the bulk of the provisions that regulate the system, one must look at the relevant statutory enactments. A comprehensive analysis of the statutes will include (1) the selection of the justices of the peace, (2) the jurisdiction of the justice of the peace courts, (3) the duties, powers, and responsibilities of the justices of the peace, and (4) the fee system.

The Selection of the Justices of the Peace. Justices of the peace in Oklahoma, like most other state officials, secure their position by popular election. When justices of the peace are elected they must, according to the statutes, possess certain minimum qualifications such as age, residence and citizenship. They are elected for set terms from previously designated election districts. The interesting thing to note concerning the statutory requirements relating to this office is not what the statutes specifically mention, but rather what they omit. An example of this omission is the absence of any educational or professional requirements.

Legal Qualifications. The legal qualifications necessary to qualify one to be a candidate for the office of justice of the peace are minimal. The primary requirement is that the person be a legal voter of the district, township, city or town for which he is to be elected or appointed.[11]

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[11]Oklahoma Statutes, Title 39, Section 3.

Legal voters in Oklahoma according to Article III, Section 1, of the state constitution are:

> . . . . citizens of the United States, citizens of the state, including persons of Indian descent (native of the United States), who are of the age of twenty-one years and who have resided in the state at least six months, in the county two months, and the election precinct twenty days next proceeding the election at which such elector offers to vote. No person shall be a qualified elector of this state who is adjudged guilty of a felony, who is detained in a penal or correctional institution for mental retardation, or who has been committed, by judicial order, to an institution for mental illness.[12]

The justice of the peace must reside and keep his office in the justice of the peace district for which he was elected or appointed.[13]

Justices of the peace, like many other state officials, are elected for short terms. The terms of the justices of the peace are for two years and at the end of the term, if the justice wishes to retain the position, he must submit his candidacy to the electorate of his district. The term of office begins on the first Monday in January following the election and expires when a successor is elected and qualified.[14]

Election Districts. The statutes, in addition to stipulating the qualifications for office, also provide for the division of all the counties and some cities into justice of the peace districts. Section I of Title 39 specifies that the board of county commissioners of each county shall have the responsibility of establishing the justice of the peace districts.

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[12]Oklahoma Constitution, Article III, Section 1.

[13]Oklahoma Statutes, Title 39, Section 6.

[14]Oklahoma Statutes, Title 39, Section 2.

The statutes require that the board in each county divide the county into at least six justice of the peace districts.[15]

> Provided, that in any county, where public necessity requires, the said board of county commissioners may provide such additional justice of the peace districts as they may deem expedient; not to exceed one justice of the peace and one constable for each voting precinct.[16]

The foregoing provision allows for the establishment of justice of the peace districts in towns and cities, the justices of which are called town justices of the peace. The statutes also provide guide lines for counties that have a population in excess of one hundred eighty-five thousand. The statutes stipulate that in such counties the board of county commissioners must divide the county into not more than five justice of the peace districts, exclusive of incorporated towns and cities.[17]

Section 4 of the same Title specifically prescribes the number of justices of the peace that are to be elected in cities and towns.

> Each incorporated city or town, having more than one thousand five hundred inhabitants shall constitute a justice of the peace district; and there shall be elected therefore, as provided in Article I, one justice of the peace and one constable . . . .[18]

The section goes on to say that in cities of more than twenty-five hundred inhabitants, two justices of the peace are to be elected. In cities with an excess of twenty-five thousand inhabitants:

> there is to be elected an additional justice. For each fifty thousand inhabitants there shall be elected an additional justice of the peace, and an additional constable for each

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[15]Oklahoma Statutes, Title 39, Section 1.

[16]Ibid

[17]Oklahoma Statutes, Title 39, Section 25.

[18]Oklahoma Statutes, Title 39, Section 4.

> fifty thousand inhabitants, or major fractional part thereof in excess of said seventy-five thousand (75,000) inhabitants according to the last Federal Census; provided that in cities having a population in excess of ninteen thousand five hunfred (19,500) inhabitants and less than twenty thousand two hundred (20,200) inhabitants according to the last preceding Federal Decennial Census or by any succeeding Federal Decennial Census, three justices of the peace and three constables may be elected.[19]

Section 26 of Title 39 provides the guide line for the division of larger cities into justice of the peace districts.

> Each incorporated city or town, having a population in excess of one hundred ninety thousand (190,000) inhabitants and less than two hundred thirty thousand (230,000) inhabitants as shown by the last preceding Federal Decennial Census, or any succeeding Federal Decennial Census, and having a net assessed valuation in excess of one hundred thirty-five million dollars ($135,000,000) as certified to the County Excise Board in 1944, and as may be shown by any succeeding biennial net assessed valuation shall constitute a Justice of the Peace district; and there shall be elected therefore as provided in this Article one (1) Justice of the Peace and one (1) Constable; provided that in all cities of more than five thousand (5,000) inhabitants, two (2) Justices of the Peace and two (2) Constables, shall be elected; and provided further, that in cities of more than twenty-five thousand (25,000) inhabitants there shall be elected an additional Justice of the Peace and an additional Constable for each forty thousand (40,000) inhabitants in excess of the first twenty-five thousand (25,000) inhabitants, according to the last Federal Census; provided, however, that in no event shall there be more than five (5) Justices of the Peace in cities of more than twenty-five thousand (25,000) inhabitants.[20]

Title 39, Section 28 of the Oklahoma Statutes provides for division of cities with an excess of three hundred thousand population by stipulating that in such cities six districts are to be established and that six justices of the peace are to be elected.

Jurisdiction of the Justice of the Peace Courts. The constitution of the state makes some provisions regarding the jurisdiction of the

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[19] Ibid.

[20] Oklahoma Statutes, Title 39, Section 26.

justice of the peace courts; in as much as the constitutional provisions alone would not suffice, statutes have necessarily been enacted making more specific the jurisdiction of the justice of the peace courts. A methodical discussion concerning the jurisdiction of the Oklahoma justice of the peace courts should include (1) general jurisdiction, (2) civil jurisdiction, (3) criminal jurisdiction, (4) jurisdiction of the town justices of the peace, and (5) the areas in which the justice of the peace courts are specifically prohibited from assuming jurisdiction.

General Jurisdiction. The Oklahoma judicial system is a complex structure ranging from the State Supreme Court to the courts of first instance such as the justice of the peace courts. (See Appendix A)

The Oklahoma Court of Criminal Appeals held that statutes regarding the jurisdiction of these courts of first instance are to be strictly construed. A question concerning the jurisdiction of these courts came before the high court in 1939. The Court said that

> Justice of the peace courts are courts of limited jurisdiction, and statutes conferring jurisdiction upon them are to be strictly construed, and are not to be aided or extended by implications beyond their express terms.[21]

Civil Jurisdiction. The jurisdiction of the justice of the peace courts in civil matters in all counties with less than one hundred eighty five thousand population is co-extensive with the county in which they are elected.

> Provided, that in all actions against two or more defendants jointly or jointly and severally liable, such actions may be brought before any Justice of the Peace of the county wherein either of the defendants shall reside or may be summoned; and such Justice shall have the power and is hereby authorized to issue a Summons directed to the Sheriff or any other county

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[21]Harrington v. State of Oklahoma, 66 Okl. Cr. 310 (1939).

> for service to bring in all co-defendants who may be served in such county and upon service of such summons the justice, before whom the action is pending, shall have as full jurisdiction as to all defendants as he would have in cases where all the defendants reside in the county where the action is brought.[22]

The statutes also make jurisdictional provisions for counties that have an excess of one hundred eighty-five thousand population. In all such counties, according to the statutes, the civil jurisdiction is co-extensive with the district or the township in which the justice was elected.[23]

In addition to jurisdiction based on area, the statutes also base civil jurisdiction on the amount of money involved. Justices of the peace have original jurisdiction in civil action only for the recovery of money and in such action the amount involved is not to exceed $200, exclusive of interest and cost.[24]

Criminal Jurisdiction. The criminal jurisdiction of the justice of the peace courts, according to the statutes, is determined by the type of offense committed and by the territory in which the act was committed. Justices exercise original jurisdiction over public offenses which are less than felonies committed within their respective counties. They can only take jurisdiction in such cases if the fine involved does not exceed $200 or if the penalty does not exceed imprisonment in the county jail for more than thirty days, or by both such fine and imprisonment.[25] Such

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[22]Oklahoma Statutes, Title 39, Section 81.

[23]Ibid.

[24]Oklahoma Statutes, Title 39, Section 82.

[25]Oklahoma Statutes, Title 39, Section 491.

jurisdiction is co-extensive with the county in which the justice is elected.[26]

The jurisdiction of the justice of the peace court in both civil and criminal cases is co-extensive with the county in which the justice of the peace court is located. This general statement is true except in regard to the civil jurisdiction of justice of the peace courts in counties of more than one hundred eighty-five thousand population. The State Supreme Court has held, however, that a justice of the peace must be personally present in his own district or township before he can perform his official acts. ". . . . a justice of the peace is without jurisdiction to sit, hear, and determine any action outside the township where he is elected . . . ."[27] The Court goes on to point out that the Oklahoma statutes regarding the justice of the peace courts were taken verbatim from Kansas statutes and then it goes on to cite a Kansas case in order to support its decision.

> A justice of the peace is a township officer, under the Constitution, and cannot be a county officer or a state officer. It is true that justices of the peace are in some sense justices of their respective counties and also in the state. It is true that a justice of the peace may, within his own township, perform the duties of an examining magistrate in cases or hear cases arising in any part of his county; and it is also true that he may, within his own township, issue criminal process to be served in any part of the state; but it does not follow from these powers given that he may go into any part of the state and perform official acts. He can perform his official acts only in his own township. Criminal complaints must be taken to the justice, and not the justice to the criminal complaints. If for any reason it is more desirable to commence a criminal prosecution in one township than in another, it must be commenced before some justice of the peace of that township; but, if it is preferable to commence

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[26]Oklahoma Statutes, Title 39, Section 492.

[27]Leiber, Justice of the Peace v. Argaubright, 25, Okl. 177(1909).

> before some particular justice, then the parties must go to that justice, and not transport him into some other township. His office is not migratory.[28]

Jurisdiction of the Town Justice of the Peace. The town justice of the peace, as established by Title 39, Section 4, of the Oklahoma statutes, enjoys jurisdiction in more matters than does the justices located in other parts of the county. The town justice of the peace shall enjoy "concurrent jurisdiction with all other justices in all civil cases and all criminal cases for offenses against the laws of the State, committed within the county where such town is situated . . . ."[29] In addition to this concurrent jurisdiction, the town justice of the peace enjoys exclusive jurisdiction to hear and determine all cases involving abridgments of city ordinances.[30]

Cases of No Jurisdiction. The statutes specify some types of cases in which the justice of the peace courts are not allowed to assume jurisdiction. First, the justice of the peace courts can not take jurisdiction to recover damages for assault or assault and battery; second, in action against other justices of the peace or other officers for misconduct, third, in any action of malicious prosecution, libel or slander; fourth, in action for the specific performances of contracts for the sale of real estate; fifth, in actions concerning attempts to recover titles of real estate; and sixth, in which money judgment is sought against any school district, city, town, county or other municipal corporation.[31]

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[28]A.,T. and S.,F. Railroad Company v. Rice, 36 Kansas 593 (1887).

[29]Oklahoma Statutes, Title 39, Section 51.

[30]Ibid.

[31]Oklahoma Statutes, Title 39, Section 88.

Duties, Responsibilities and Powers of the Justice of the Peace. The duties, responsibilities and powers of the Oklahoma justices of the peace are numerous and varied. For the purpose of discussion they can be classified into three general groups: administrative, judicial, and general.

Administrative Activities. The Oklahoma justice of the peace must perform some activities which are administrative rather than judicial. The most significant of these activities include: (1) filing an oath and making bond, (2) making quarterly reports amd payments of money collected, (3) appointment of a clerk and (4) keeping the civil and criminal docket.

Filing Oath and Making Bond. Justices of the peace, like some other state public officials, are required upon entering the duties of office to take an oath of office and post a bond. A justice who has been elected is required, according to the statutes, to take an oath of office within twenty days after he is notified of his election.[32] He is also required by law to execute an instrument in writing with two or more sufficient securities which must be approved by the board of county commissioners. The instrument is as follows:

> I, ... chosen justice of the peace, in the . . . . district of . . . . County, State of Oklahoma and A . . . . B . . . . and C . . . . D . . . ., his sureties do hereby jointly (and) severally agree to pay on demand to each and every person who may be entitled thereto, all sums of money as the said justice may become liable to pay, on account of any moneys which may come into his hands, by virture of his office.
>
> Dated at . . . ., this . . . . day of . . . . A . . . . D . . . .,
> Signed, A . . . . B . . . . C . . . . D . . . .[33]

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[32]Oklahoma Statutes, Title 39, Section 11.

[33]Oklahoma Statutes, Title 39, Section 9.

All justices of the peace in first class cities are required before entering office to enter into bond by a surety company in any amount fixed by the board of county commissioners.[34]

Justice's Quarterly report and Payment of Moneys Collected. Justices of the peace are required by law to file a report of their activities as well as pay over to the county all moneys collected in behalf of the county or state. According to the statutes any justice of the peace who fails to file such a report shall be guilty of a misdemeanor and any justice that fails to turn over moneys collected shall be guilty of embezzlement.[35] The records and books of each justice of the peace court in the state are to be audited by the State Examiner and Inspector.[36]

On the first Monday of January, April, July, and October of each year, each justice of the peace must file with the county commissioners of his county a full report of all his proceedings in all actions of interest to the county or in which the county or state is a party.[37] The report must include

> the names of the parties to the action or proceeding, a statement of all orders made by said justice, whether the defendant be bound over or otherwise, the judgment, whether of dismissal or imprisonment, or for a fine and costs, or either; if for imprisonment, the extent thereof and costs; if for a fine, the amount thereof and costs, the amount of fine and costs paid, if any, and the disposition thereof; an itemized account of the fees of said justice, and of all officers and witnesses, and the names of each.[38]

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[34]Oklahoma Statutes, Title 39, Section 10.

[35]Oklahoma Statutes, Title 39, Section 16.

[36]Oklahoma Statutes, Title 19, Section 171.

[37]Oklahoma Statutes, Title 39, Section 13.

[38]Oklahoma Statutes, Title 39, Section 14.

The justices of the peace must make periodical payment of moneys collected. At the time of making each quarterly report, the justices of the peace must pay to the county treasury all fines and moneys collected by them in behalf of the county or state. However, at any time a justice of the peace accumulates two hundred dollars he must immediately pay the amount to the county treasury.[39]

Appointment of a Clerk. Only justices of first class cities may appoint a clerk. Such clerk holds his position at the pleasure of the justice of the peace who appointed him and he is paid by that justice rather than by the county or the state.[40] All action in which the justice of the peace might take jurisdiction may be filed with the clerk.[41] He has the power to administer oaths, issue processes of all kinds and approve bonds to the same extent as does the justice of the peace himself.[42]

Judicial Activiites. Since justices of the peace are judges who are empowered by the constitution and by State law to hear cases duly instituted before them they possess certain duties and responsibilities directly related to adjudication. For the purpose of analysis of the most important of these duties and responsibilities, one can make a basic distinction between civil and criminal activities.

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[39]Oklahoma Statutes, Title 39, Section 15.

[40]Oklahoma Statutes, Title 39, Section 21.

[41]Oklahoma Statutes, Title 39, Section 23.

[42]Oklahoma Statutes, Title 39, Section 22.

Civil Action. The Oklahoma justices of the peace have certain responsibilities in regard to the adjudication of civil cases that fall under their jurisdiction. These responsibilities include such things as: (1) the commencement of action which includes setting the time of trial and issuing summons, (2) receiving the bill of particulars, (3) issuing subpoenas, (4) impaneling the jury, and (5) conducting the trial.

Commencement of Action. The statutes prescribe the procedure for the commencement of civil action. Section 101 of Title 39 says that civil action is commenced by summons issued by the justice to the litigants or by the appearance and agreement of the parties without summons. In actions where all summons may be issued to defendants residing in the county where the action was commenced " the summons must be returnable not more than twelve days from its date, and must, unless accompanied by an order of arrest, be served at least three days before the time of appearance."[43] In situations where all defendants cannot be served in the county in which the action was commenced the summons

> shall be returnable not more than thirty days from its date, and must, unless accompanied by an order of arrest, be served at least twenty days before the time of appearance, by delivering a copy of the summons with the endorsement thereon certified by the constable or person serving the same to be a true copy of the defendant, or leaving the same at his usual place of residence with some member of his family over fifteen years of age.[44]

Bill of Particulars. In civil action before the case can come to the court, the plaintiff and the defendant must file a bill of particulars with the justice of the peace who is to hear the case.[45] The bill must

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[43]Oklahoma Statutes, Title 39, Section 104.

[44]Ibid.

[45]Oklahoma Statutes, Title 39, Section 131.

state in plain language the facts constituting the action and the claims to be made.[46]

Change of Venue. Justices of the peace have the power to grant a change of venue in any case under their jurisdiction. One change may be granted by the justice of the peace scheduled to hear the case to either party to the suit by one party filing an affidavit stating that (1) the justice of the peace scheduled to hear the case is a material witness for either party, (2) the justice of the peace scheduled to hear the case is prejudiced and, (3) the case could not be fairly decided by any jury that could be impaneled to hear the case.[47]

Subpoena and Arrest of Witnesses. All justices of the peace have the power to issue subpoenas to witnesses in order to compel their attendance to any trial pending before them.[48] If the witness refuses to attend after he has been properly subpoened, the justice has the power to arrest the offender and punish him for his disobedience.[49]

Impaneling the Jury. In all civil actions either party to a suit may demand a jury trial which shall be composed of "six good and lawful men, having the qualifications of jurors in the district court, unless the parties shall agree on a less number."[50] The justice of the peace must provide a list of eighteen names of persons in the county who are qualified jurors. From this the plaintiff and defendant alternately strike names until six are left and the remaining six persons then compose

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[46]Oklahoma Statutes, Title 39, Section 132

[47]Oklahoma Statutes, Title 39, Section 121

[48]Oklahoma Statutes, Title 39, Section 161

[49]Oklahoma Statutes, Title 39, Section 165

[50]Oklahoma Statutes, Title 39, Section 181

the jury. If either party refuses to participate in striking the names then the justice shall strike such names in behalf of such party.[51] After the jury has been selected, the justice of the peace then issues a summons for the jury.[52]

Conducting the Trial. In civil actions, when neither party has demanded a trial by jury, the justice of the peace conducting the trial then "shall hear the proofs and determine the cause, according to law and right."[53] In civil cases where a jury has been demanded "the justice shall determine all questions of law as they arise on the introduction of evidence during the trial, but in no case shall he instruct the jury on questions of law or fact."[54] Each justice of the peace has the power to grant a new trial[55] and issue contempt citations.[56] The justice is required by law to sign a bill of exception stating that one of the parties has taken exception to the opinion of the justice upon any question of law arising during the course of the trial if either party makes such a request.[57] Justices also have the responsibility to issue orders of attachment,[58] to hear garnishment[59] and replevin proceedings,[60] approve

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[51] Oklahoma Statutes, Title 39, Section 183.

[52] Oklahoma Statutes, Title 39, Section 184.

[53] Oklahoma Statutes, Title 39, Section 146.

[54] Oklahoma Statutes, Title 39, Section 192.

[55] Oklahoma Statutes, Title 39, Section 211.

[56] Oklahoma Statutes, Title 39, Section 462.

[57] Oklahoma Statutes, Title 39, Sections 214, 215.

[58] Oklahoma Statutes, Title 39, Sections 321, 322, 323.

[59] Oklahoma Statutes, Title 39, Section 343.

[60] Oklahoma Statutes, Title 39, Section 421.

stays of execution,[61] to issue execution of judgment[62] and to solemnize marriages.[63]

Criminal Action. Justices of the peace have certain powers, duties, and responsibilities regarding criminal action that come within their jurisdiction. Justices of the peace are examining and committing magistrates, hear complaints, and conduct trial activities.

Activities as Examining and Committing Magistrates. Justices of the peace as stipulated in the State constitution are examining and committing magistrates. In regard to this duty, justices of the peace must hear complaints, issue warrants, subpoenas, and contempt citations, order commitment or set bail.

Hearing Complaints. It is the responsibility of the town justices of the peace or other justice courts to hear complaints alleged against some person within their jurisdiction. Such complaint must include the time, place, persons and property involved.[64] If the justice of the peace hearing the case is satisfied that the offence has been committed, he must issue a warrant for the arrest of the person suspected of committing the offense.[65] Upon the appearance of such person before the justice he is ask how he pleads. He will then be held over for trial

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[61] Oklahoma Statutes, Title 39, Section 271.

[62] Oklahoma Statutes, Title 39, Section 282.

[63] Oklahoma Statutes, Title 39, Section 82.

[64] Oklahoma Statutes, Title 39, Section 494.

[65] Oklahoma Statutes, Title 39, Section 495.

or admitted bail,[66] the amount of which is set by the justice of the peace conducting the hearing.[67]

Trial Activities. Much of the procedure in the criminal trial is similar to that of the civil trial. As in civil trials the justices of the peace in criminal cases have the power to issue subpoenas and contempt citations,[68] grant changes of venue,[69] and postpone the trial.[70]

In the actual trial itself, the justice of the peace, as in civil trials, is responsible for conducting the trial. If a jury is requested by either party, it must be impaneled.[71] If one is not requested the justice of the peace hears the case without the aid of a jury.[72] The justice of the peace is responsible for determining all questions of law as they arise on the introduction of evidence during the trial, but he is not allowed to instruct the jury as to questions of law or fact.[73]

If the defendant is acquitted he must be immediately released.[74] However, if the defendant pleads guilty or if he was convicted by the court, the court must render judgment of fine or imprisonment, and upon judgment the court must order the fine to be secured or that the defendant

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[66] Oklahoma Statutes, Title 39, Section 498.

[67] Oklahoma Statutes, Title 39, Section 525.

[68] Oklahoma Statutes, Title 39, Section 526.

[69] Oklahoma Statutes, Title 39, Section 501.

[70] Oklahoma Statutes, Title 39, Section 503.

[71] Oklahoma Statutes, Title 39, Section 505.

[72] Oklahoma Statutes, Title 39, Section 499.

[73] Oklahoma Statutes, Title 39, Section 510.

[74] Oklahoma Statutes, Title 39, Section 521.

stand committed.[75]

Compensation for the Justices of the Peace. The compensation that the Oklahoma justice of the peace receives for the services that he performs is derived from the fees which he collects for such services. The statutes specifically prescribe the kind of activity and the amount to be charged and retained for such activity by each justice of the peace. (See Appendix B) In all criminal cases where fees are prescribed and where they are not paid by the defendant or complaining witness they are paid by the county as allocated by the county excise board.[76]

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[75]Oklahoma Statutes, Title 39, Section 516.

[76]Oklahoma Statutes, Title 28, Section 53.

CHAPTER III

THE OKLAHOMA JUSTICE OF THE PEACE COURTS IN OPERATION AND THE MOST SALIENT CRITICISMS OF THAT OPERATION

It is a phenomena of many institutions found within the framework of Oklahoma government that they do not always operate or function in the manner stipulated by the laws of the state. This is to say that the manner in which they, according to the state constitution and state statutes, are to function and the way in which they actually operate in many instances are two different things. This phenomena is particularly evident in the operation of the Oklahoma justice of the peace courts. The Speaker of the House, J.D. McCarty, expressed this notion when he said, "These courts [referring to the Oklahoma justice of the peace courts] just don't function like they are supposed to."[1] Corbitt B. Rushing expressed essentially the same attitude when he said, "The justice of the peace courts many times act outside of the law."[2] Apart from the criticism that the law under which the justice of the peace courts operate is defective, the willingness of the courts to act outside of this law is the basis for a great amount of criticism that is directed toward the courts and their operation. This criticism is the one that is most widely used by the

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[1] Interview with J.D. McCarty, Speaker of the Oklahoma House of Representatives, Oklahoma City, Oklahoma, April 19, 1966.

[2] Interview with Corbitt B. Rushing, Executive Director, Oklahoma Institute for Justice, Inc., Shawnee, Oklahoma, June 18, 1965.

opponents of the system in advocating the abolishment of the system.

It is the purpose of this chapter to show in as much detail as possible how the Oklahoma justice of the peace courts really operate, to relate some of the major discrepancies found within the operation of the system, and to give some insight into the major criticisms of the system and its operation as voiced by the most vocal persons and groups of persons. Such a discussion should then set the stage for study of the fruitless attempt by the 1965 Oklahoma State Legislature to abolish the Oklahoma justice of the peace system.

An analysis of the operation of the system of justice of the peace courts in Oklahoma should include an examination of the fee system, a discussion of the justice of the peace courts dispensing 'justice', the accessibility of Oklahoma justice of the peace courts, and a study of the actual record keeping and accounting of the justices of the peace. Intertwined in the discussion of these three topics will be an analysis of the various criticisms of the Oklahoma justice of the peace system and its operation as voiced by different persons and groups of persons involved in the attempt to abolish the system.

The Fee System

The fee system can be found at the present time in the judicial systems of twenty states either by virtue of constitutional or general statutory provisions or both.[3] The fee system is simply, "A system

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[3]The following states, either by their constitution or their statutes provide for, in one or more of the branches of their judicial system, some form of a fee system for compensating judges: Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, Tennessee, Texas, Utah, Vermont, Washington, and West Virginia.

whereby a judicial officer is compensated for his services from the parties before him in the form of an assessment which is in some manner dependent upon the outcome of the litigation."[4] In the United States there can be found five different variations of the fee system in criminal cases: (1) the simple fee system, (2) the alternative fee system, (3) the limited fee system, (4) the penalty fund fee system, and (5) the salary fund fee system. A brief explanation of each form of the fee system follows:

(1) The simple fee system. The simple fee system is the system that is employed in Indiana. Under this type the judges of the courts are compensated in whole or in part by fees derived from fines; costs or both which are wholly dependent on individual convictions.

(2) The alternative fee system. Texas uses the alternative fee system and it is simply a system whereby the judges are compensated in whole or in part by scheduled fees per case, which fees are derived from the defendant, if convicted, or from the state or political subdivision thereof in the event the defendant is acquitted.

(3) The limited fee system. The Oklahoma judicial system is a good example of the limited fee system. Under this system the judges are compensated in whole or in part by scheduled fees per case, which are derived from the defendant, if convicted, or from the state or subdivision thereof in the event that the defendant is acquitted; provided, that the latter form of compensation shall not exceed a minimum cumulative amount over a specified period of time; consequently, the fees that are paid by the

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[4]Robert H. Reynolds, "The Fee System Courts--Denial of Due Process," Oklahoma Law Review, Vol. 17, Nov. 1964, University of Oklahoma Press, Norman, Oklahoma.

state or subdivision are of a lesser amount than if paid by the convicted defendent.

(4) The penalty fund fee system. An example of the penalty fund fee system can be found in the state of Florida. Under this type of system the judges are compensated in whole or in part by scheduled fees per case, regardless of conviction or acquittal, which fees are derived from a fund created and maintained solely by fines and or costs imposed by the court in previous cases.

(5) The salary fund fee system. Ohio uses the salary fund fee system and it is a system in which judges are compensated by fixed salaries, the amount of which is derived solely from funds accumulated by fines and/or costs imposed in previous cases by the court.[5]

The Fee System and Due Process of Law. One of the most fundamental criticisms of the Oklahoma system of justice of the peace courts voiced by critics of the system is that in a court of law where the presiding judge receives a fee, the amount of which is dependent upon the outcome of the case, the defendant in that case is deprived of due process of law. In 1927 the United States Supreme Court was asked if the fee system was inconsistant with the due process of law clause of the fourteenth amendment to the United States Constitution. In the decision Chief Justice William Howard Taft declared the fee system as presented to the Court by the case before it to be unconstitutional. He said:

> From this review we conclude that a system by which an inferior judge is paid for his service only when he convicts the defendent has not become so embedded by custom in the general practice, either at common law or in this country, that it can be

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[5]Ibid.

> regarded as due process of law, unless the cost usually imposed is so small that they may be properly ignored as within the maximum de minimis non curat lex.
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> The mayor received for his fees and cost in the present case $12 and from such costs under the Prohibition Act for seven months he made about $100 a month, in addition to his salary. We cannot regard the prospect of receipt or loss of such an emolument in each case as a minute, remote, trifling of insignificant interest. It is certainly not fair to each defendant brought before the mayor for the careful and judicial consideration of his guilt or innocence that the prospective loss by the mayor should weight against his acquital.
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> . . . . There are doubtless mayors who would not allow such a consideration as $12 cost in each case to affect their judgment in it, but the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denied the latter of due process of law.
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> It certainly violates the fourteenth amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case.[6]

Opponents of the justice of the peace system point to this case as evidence of the fact that the fee system as found in Oklahoma justice of the peace courts is also a denial of due process and consequently inconsistent with the fourteenth amendment. The legality of the system as it operates in Oklahoma is based upon a decision by the Oklahoma Supreme Court. The Court, when asked about the legality of the fee system as it is used in the Oklahoma justice of the peace courts, said that

> Ih order to disqualify a justice of the peace under the due process provision of the constitution of Oklahoma the interest of such justice of the peace must be direct, personal,

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

> substantial, precuniary interest in the subject matter of the litigation, and not merely indirect, incidental, contingent, or possible.[7]

The Fee System as it Operates in Oklahoma. Most opponents of the fee system as it is found operating in Oklahoma justice of the peace courts argue that such a system gives rise to fierce competition for 'business' between various justices as well as consistent 'judgments for the plaintiff.' Competition between different justices of the peace is made possible in Oklahoma because within the justice of the peace jurisdictions the choice of the justice of the peace court where a case is to be adjudicated is made by the county attorney in criminal cases of the county where the illegal act was committed.[8] This means then that in some counties there are several different justice of the peace courts in which the county attorney may assign cases. Opponents of the system argue that the county attorney is usually most concerned with obtaining convictions; consequently, he will assign the cases in his county to the justice of the peace court that is most likely to render such a verdict. Since the different justices of the peace know the attitude of the county attorney they compete with each other for the 'blessing' of the county attorney by finding a verdict that is desired by the county attorney. Corbitt B. Rushing says that many times defendants who have committed a violation of law in Oklahoma County are transported across the county to Midwest City because in the justice of the

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[7]Ex Parte Lewis, 47 Okl, Cr. 72, (1930).

[8]Oklahoma Statutes, Title 409, Section 22.

peace court located in Midwest City the authorities "can be assured of a conviction."[9]

State Senator Anthony M. Massad expressed essentially the same idea when he said,

> . . . . in the five years I was in the County Attorney's Office here in Frederick, I saw at first hand that this /referring to the Oklahoma justice of the peace courts/ was nothing more than a 'kangaroo court'. The idea of justice to an accused was not even considered. A justice of the peace, realizing that he makes no money unless he finds the accused guilty and that unless he does what the county attorney asks, his business will be taken elsewhere, without exception, that I am aware of, will render judgment as asked by the prosecutor. Of course, the prosecutor is interested in convictiong the accused, so he has a vested interest in the case. The J. P., realizing that there must be a conviction before he can receive his fee, has a vested interest. So who cares about the rights of the accused and more particularly, whether he is really guilty or not.[10]

One can find evidence of the validity of the arguments of the opponents of the fee system as it is used in the Oklahoma justice of the peace courts by looking at the case load of some justice of the peace courts in Oklahoma City. The six justice of the peace courts located in Oklahoma City reported for the year 1962 a criminal case load that ranged from 616 criminal cases in the most infrequently used court to 1,162 criminal cases in the most extensively used court. In the court reporting 616 criminal cases, the total amount of fines paid to the Oklahoma county treasurer was $4,404.32 and the fees collected by the justice of the peace on the cases amounted to $2,252.91. During the same period, the court in which 1,162 cases were reported filed paid into the county treasurer in fines and costs the sum of $15,432.00 and collected in fees in amount of

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[9]Interview with Corbitt B. Rushing.

[10]Letter from State Senator Anthony M. Massad, July 12, 1966.

$4,234.00.[11] The latter described court received almost twice the fees and more than tripled the fines and costs collected by the former indicates that there was some selectivity as to where the cases were filed and that some justices of the peace in Oklahoma City are more prone to find in favor of the plaintiff than are other justices of the peace located in that particular jurisdiction.

Sometimes a county attorney will for some reason almost completely boycott the court of a particular justice of the peace located within his county. A good example of such a practice can be found in Stephens county. According to a justice of the peace who resides in the northern part of the county, the county attorney was not fulfilling a previously made agreement between himself and the justice of the peace since the county attorney was filing almost all cases involving illegal action committed within the county in the county court rather than in the justice of the peace courts. He said that the reason for the county attorney operating in such a manner was because the county was in the process of constructing a new court house and more funds could be obtained for the new structure as a result of more cases being adjudicated in the county court.[12]

Heber Finch, Jr., State Representative from Creek county, says that probably ninety-nine out of one hundred persons who are tried in justice of the peace courts are found guilty of the charge with which they are being tried.[13] He said, "I can show you justice of the peace courts in

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[11]Reynolds, "The Fee System Courts--Denial of Due Process," p. 378.

[12]Interview with Nolan J. Hubbs, Justice of the Peace, Marlow, Oklahoma, April 15, 1965.

[13]Interview with Heber Finch, Jr., State Representative from Creek county, Stillwater, Oklahoma, December 10, 1965.

Oklahoma that are nothing more than courts to pull money from people." He went on to cite a specific example.

> The other day I went to one justice of the peace court where if a man plead guilty the justice of the peace would turn to the county attorney and ask how much the man should pay. If he plead not guilty he would have to post bond. Most would just plead guilty because it was easier and cheaper than posting bond.[14]

Mr. Finch went on to say that some justices of the peace in Oklahoma were "getting rich by finding people guilty." According to Mr. Finch some of the more aggressive justices of the peace in the larger cities in the state have a yearly income which ranges from thirty to fifty thousand dollars.[15]

The Oklahoma justices of the peace, of course, view the fee system quite differently than do those who are opposed to the system. It seems that when compared with a salary system as used by some other states, the Oklahoma justice of the peace much prefers the present fee system. They see the system not as one that deprives the individual of due process of law, but rather as one that insures it. They, however, make no explanation as to how due process of law is insured. The view concerning the fee system as held by most Oklahoma justices of the peace was expressed in an interview with an Oklahoma City justice of the peace and former state president of the Oklahoma Justices of the Peace and Constables Association, Marvin Cavnar. Mr. Cavnar said that instead of J. P. meaning 'judgment for the plaintiff', as charged by opponents of the justice of the peace system, J. P. really should mean "justice as based on the law and evidence presented." He said that he knew that justice of the peace

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[14] Ibid.

[15] Ibid.

courts in Oklahoma had a record for finding a greater percent of the persons guilty than did the other courts of the state. This phenomenon, however, according to Mr. Cavnar, was not due to the fact that the justice received more compensation if he found the individual before him guilty as charged, but rather because "if they weren't guilty they wouldn't be in the justice of the peace court in the first place." Mr. Cavnar exemplified this point by saying that usually a plaintiff files a case in the justice of the peace court for money due on account and usually the plaintiff would not file such a case unless there was positive evidence that the defendant was guilty. In such cases, according to Mr. Cavnar, the justice of the peace court will "hear the evidence presented and the judgment rendered will be according to the law and the evidence presented."[16] It is interesting to note that according to Mr. Cavnar's argument the justice of the peace courts are not really courts of law in the traditional sense of the term. The effect is that if defendants who are brought into justice of the peace courts are guilty then those, being the plaintiffs, who bring the charges actually make the determination of the innocence or guilt of the defendants merely by filing suit against them. If this is the case then, the justice of the peace court is not needed.

Mr. Cavnar elaborated for some time on criminal cases in justice of the peace courts. He spoke specifically of cases dealing with traffic violations and the unlawful use of licenses. He was careful to point out that the charge made by the opponents of the justice of the peace system to the effect that in some parts of the state elaborate speed traps are

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[16]Interview with Marvin Cavnar, Justice of the Peace, Oklahoma City, Oklahoma, June 10, 1965.

set up on the basis of an agreement between local enforcement officials and justices of the peace in order to bring more money into the local treasury was completely without foundation.

> This speed trap situation is no more--the justice of the peace when dealing with cases concerning moving violations do as they do in any other situation and that is to follow the law and the evidence and then he rules accordingly. For instance, a moving violation carries a minimum fine of $10, added to that is a county fee of $5. The justice of the peace fee is only $5 and there is an educational fee of $2, thus making a charge for moving violations in the state of Oklahoma a total of $22.[17]

In regard to the unlawful use of licenses, Mr. Cavnar pointed out that the unlawful use of licenses in Oklahoma was a misdemeanor; thus, a person who uses a license unlawfully cannot be fined less than $25 and not more than $50. According to Mr. Cavnar there is a county fee of $10. There would be a total charge of $10 on a $25 fine.[18]

In response to a question of whether or not he, as a justice of the peace, and if justices of the peace in general adhered to the statutory provisions limiting the amount that could be charged by the justices of the peace in the State for services rendered by them, Mr. Cavnar said that he did not always adhere to the amounts as listed in the statutes because "a man just can't make a living that way". He said that he believed that the same feeling was prevalent among the other justices of the peace in the State. Mr. Cavnar justified his action by pointing out that the statutes were written some time ago and that living expenses have increased since that time.

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[17] Ibid.

[18] Ibid.

Mr. Cavnar gave a specific example in response to a question asked him by this author as to whether or not he charged only the sum of $3; as prescribed by the Oklahoma statutes for performing a marriage ceremony. He replied:

> Well, now if I have to go up into the northern part of Oklahoma City and put on a clean white shirt, then it is apt to cost those people about $20 or $25. Legally I'm still only charging the $3 but most like to give me a little extra because I do a good job.[19]

In summary, the fee system as used in justice of the peace courts is one of the chief criticisms made by the opponents of the Oklahoma justice of the peace system. The opponents point out that they believe that on the basis of the doctrine as presented in Tumey v. Ohio the fee system as used in Oklahoma justice of the peace courts is inconsistent with the fourteenth amendment to the United States Constitution. The opponents also argue that the fee system gives rise to competition for business among justices of the peace in a particular jurisdiction, as well as consistent judgment for the plaintiff. In order to get a valid impression, however, one must take into consideration the attitudes and argument of those who favor the fee system. Those in favor of the fee system point out that regardless of the fact that most cases adjudicated in justice of the peace courts are found in favor of the plaintiff, the courts still follow the law and evidence presented. The proponents of the fee system also concede that they do not follow the letter of the law when charging for their services. However, they justify their action by pointing out that they are forced by

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[19]Ibid.

economic reasons to charge more than the prescribed amounts for their services.

The Oklahoma Justice of the Peace Courts Dispensing 'Justice'

One of the basic tenets of American jurisprudence is that the courts of the land are places where one can go when he has committed a wrong or when he has been wronged and receive impartial justice dispensed by an independent and unbiased tribunal which is presided over by a judge who is 'learned in the law'. It is interesting to view the Oklahoma justice of the peace courts in the context of this fundamental notion of the American legal system.

It seems that many of those who favor the abolition of the Oklahoma justice of the peace system are concerned with the impressions of 'American justice' that the American public receives from justice of the peace courts. When asked to express his views on the Oklahoma justice of the peace system, former Oklahoma University Law School Dean, Earl Sneed, said, "The justice of the peace courts in Oklahoma are frightening things." He went on to say that

> The sad part about the whole operation is that the view that most Americans get about American courts and American justice is the view that they receive from the justice of the peace courts for that is the court where most have their cases adjudicated.

Mr. Sneed pointed out that he thought that Americans generally get a bad impression of the American legal system "when they are taken into someone's living room or bedroom or out on their front lawn to have their

cases tried."[20]

In order to properly analyse the Oklahoma justice of the peace courts in the process of dispensing 'justice,' one should first examine the setting of some justice of the peace courts, next he should consider the qualifications of the justices of the peace, and finally he should view the accessibility of the justice of the peace courts.

The Setting of Some Justice of the Peace Courts. In discussing the setting of some Oklahoma justice of the peace courts, one must consider the environment in which the justice of the peace conducts the trial as well as the qualifications of the presiding judge. Most opponents of the Oklahoma justice of the peace system argue that in many proceedings in justice of the peace courts the place in which the trial is conducted resembles anything but a court of law and the presiding judge, because of his lack of legal qualification, resembles anything but a trial judge.

Even though it is impossible to determine exactly how many Oklahoma justices of the peace do not maintain an office for legal business, one can say; however, that there are many in the state who conduct their business in an office that is used for some other business, or in their own home. According to Mr. Marvin Cavnar very few justices of the peace in Oklahoma can afford to maintain a separate office and court room for their legal proceedings. He said that many Oklahoma justices of the peace who are engaged privately as insurance agents, real estate agents, and other professions merely use the office that they maintain for their private business as a justice of the peace office and court room. Those who are

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[20]Interview with Earl Sneed, former Dean of the Oklahoma University School of Law, Oklahoma City, Oklahoma, April 19, 1966.

retired or for some other reason are not engaged in business merely use their own home in which to conduct their legal proceedings.[21]

L. G. Hayden, attorney for the State Examiner and Inspector, said that in the course of an investigation conducted by the State Examiner and Inspector's Office, the members of the staff had encountered several examples of proceedings in justice of the peace courts that were being held in "deplorable" surroundings. He cited one example.

> Down in Kingfisher county we found out that there was a justice of the peace court which was at least in one case held not by the justice of the peace, but rather by his wife because the justice of the peace wasso intoxicated to the point that he was unable to perform his duties. The court was held in the living room of the justice of the peace.[22]

Opponents of the Oklahoma justice of the peace system, when talking about the setting of some Oklahoma justice of the peace courts, point not only to the surroundings in which the trial is conducted, but also to the ability or perhaps the lack of ability of the justice of the peace who conducts the trial. As was pointed out in Chapter II, the Oklahoma statutes are void of any professional or educational requirements for the Oklahoma justices of the peace. The Oklahoma justice of the peace is required only to be a legal voter of the state.

The attitude of the opponents of the Oklahoma system of justice of the peace courts in regard to the lack of any legal or educational qualifications on the part of the justices of the peace in the state can be exemplified by relating some of the objections expressed.

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[21]Interview with Marvin Cavnar.

[22]Interview with L. G.Hayden, Attorney to the State Examiner and Inspector, Oklahoma City, Oklahoma, April 19, 1966.

The Oklahoma League of Women Voters expressed the League's attitudes concerning the ability of the Oklahoma justice of the peace in a statement to the Oklahoma House of Representatives Committee on County Government. Representatives of the League said, "It is unfortunate that the first contact with justice under the law should happen in these courts /referring to the Oklahoma justice of the peace courts/ where standards and qualifications are notoriously lacking."[23]

Corbitt B. Rushing expressed the view that is held by many of the opponents of the Oklahoma justice of the peace system when he said, "How can a person expect to get justice in a court that is conducted by a so-called judge who many times never finished high school, let alone received legal training."[24] In a book that was compiled by the Oklahoma Institute for Justice, Inc., there is an example of a letter that was written by an Oklahoma justice of the peace. The purpose of the reprint of the letter is to exemplify "the caliber of some Oklahoma justices of the peace." (See Appendix C) Mr. Rushing says that the purpose for reprinting this letter as well as other examples of work done by justices of the peace in Oklahoma is to "show the Oklahoma voter just how ignorant some of their justices of the peace really are."[25]

A major leader in the attempt to abolish the Oklahoma System of justice of the peace courts, state Senator Anthony M. Massad expressed his view on the qualifications of the judges on these courts.

> A complete illiterate can file for and be elected judge. In one town, this was actually done. The J. P. I have practiced before

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[23]Statement by Mrs. William Morgan, representing the Oklahoma League of Women Voters, to the House Committee on County Government, March 20, 1965.

[24]Interview with Corbitt B. Rushing.

> the past twelve years has only an eighth grade education. Yet it is before these men that lawyers argue the highly intricate and complicated propositions of law for a decision which will affect the rights of their clients. Are not the small rights of people as important as the large rights? We do not let untrained and incompetent persons sit as county, district or supreme court judges. Why the J. P.?[26]

The Oklahoma Bar Association uses the lack of qualifications as one of its major arguments for the abolition of the state justice of the peace system. Vincent Harper in his article, "The Justice of the Peace System in Oklahoma," gives essentially the view of the Oklahoma Bar Association in regard to the lack of educational and professional requirements for the Oklahoma justices of the peace.

> He /referring to the Oklahoma justice of the peace/ rarely has any educational qualifications but will decide the most intricate legal problems at the snap of the finger; as an illustration, no time will be consumed by the justice of the peace in deciding whether one of the litigants were acting under an agency, when there are hundreds of volumns that have been written on the subject, and higher courts might take hours or days in determining if any agency existed--not so for the J. P. for he will decide it without hesitation, usually incorrectly but nevertheless he will decide it.[27]

Mr. Sneed expressed his view on the question of the lack of educational and professional requirements when he said. "I do think it is to the everlasting discredit of the legal profession to permit the only court so many people ever visit to be staffed by non-lawyers."[28]

In order for one to get a complete picture of the controversy of whether or not the Oklahoma justices of the peace should possess certain

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[26]Letter from Anthony M. Massad.

[27]Vincent Harper, "The Justice of the Peace System in Oklahoma," Oklahoma Bar Association Journal, Vol. 23, No. 12, Oklahoma City, March 29, 1952.

[28]Speech by Earl Sneed, Seventeenth Annual Law Day luncheon, University of Oklahoma, Norman, Oklahoma, Thursday, April 29, 1965.

educational and professional qualifications, one should be familiar with the attitudes held by those who are opposed to such requirements and the arguments espoused by them.

Of course those who are opposed to any educational and professional requirements for the Oklahoma justices of the peace view the question of whether or not there should be certain requirements somewhat differently than those who support the contention that there should be. Foremost among those who are opposed to restrictive requirements are the state justices of the peace. They view the lack of educational and professional achievements not as an evil, but rather as a blessing; yet, they are quick to point out, however, that not all state justices of the peace are without educational and legal qualifications. According to Mr. Cavnar the Oklahoma Justices of the Peace and Constables Association conducted a survey last year which indicated that "all justices of the peace in the state were qualified from a high school education to lawyers with two degrees."[29]

It seems to be the feeling among the opponents of educational and professional requirements for justices of the peace that it would be impossible to maintain the justice of the peace system if such requirements were imposed. Mr. Cavnar pointed out that the justice of the peace in the state should not be required to have legal training or be a lawyer because "there are too many counties in the state where there is no lawyer living, yet a justice of the peace court is needed." He went on in an attempt to support his argument by giving an example.

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[29]Interview with Marvin Cavnar.

> I know of one county in the state where there is no justice of the peace court. There are several others where there are less than the required six. Latimer county has only two lawyers and they take turns being county attorney and I have heard of counties in Oklahoma where some old retired lawyer would be called to perform as county judge and county attorney simply because there is no one else.[30]

In summary, one should point out that those who oppose the Oklahoma justice of the peace system generally argue that many American get a bad impression of the American legal system as a result of the setting of some justice of the peace courts. This bad impression is given them as a result of the surroundings in which the court is held and as a result of the fitness of the person who is presiding over the court.

The Accessibility of Oklahoma Justice of the Peace Courts

One of the basic foundations of the American legal system is the notion that in the American courts every man, no matter who he is or what the circumstances, is entitled to have his case heard in the court of proper jurisdiction. This means then, that under no circumstances either by formal deprivation or by acute inconvenience on the part of the litigants shall persons be deprived of the right to have their cases heard.

In Oklahoma those who support the existence of the justice of the peace courts argue that these courts are the bulwark of this fundamental concept of the American legal system. They say that the justice of peace courts are by far the most accessible courts for three reasons. First, because there are supposed to be at least six justice of the peace courts in each county and even more in the larger cities. They argue then that no where in the state is one so far from a justice of the peace court to

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[30]Ibid.

prevent him from having his plea heard. Second, because justice of the peace courts, unlike other courts, are not required to hear cases only during specified sessions. They argue that the justice of peace courts are more accessible because "a person can even have his case heard in the middle of the night."[31] And third, the justice of the peace court is a court where every man, no matter how poor, can have his case tried. They argue that the justice of the peace courts are the 'little peoples court' or the 'working man's court'. When following this argument, supporters of the justice of the peace courts are quick to point out that the filing fees in the justice of the peace court are relatively inexpensive and the litigants many times have no need of legal counsel. "It's simply a court where friends meet and have their disputes settled without much cost to either of them."[32]

> . . . . The Justice Courts have required less revision than the others for the very simple reason that they are 'grass roots courts' and have always been more ethotic / sic / and responsive to the diverse and demogenic / sic / needs of the common man. They are truly the 'people's courts' because they provide speedy, inexpensive and convenient means for the settlement of minor disputes, infringements and violations. They have been aptly referred to many times as 'the poor man's court' because in these tribunals he may file and plead his own cause without the aid of legal talent, and at small expense, obtain a decision by his friends and neighbors on the merits of his controversy. In like manner he is afforded a speedy and inexpensive hearing as to his guilt or innocence, and if guilty, a prompt decision as to the gravity thereof. He or she has confidence that they will not be unduly deprived of their liberties or long incarcerated unjustly as would be the case many times were it not for the availability of Justice Courts.[33]

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[31] Ibid.

[32] Ibid.

[33] Lester E. Smith, "Justice for Justice of the Peace Courts," Oklahoma Bar Association Journal, Vol. 23, No. 21, May 31, 1952.

Even though the proponents of the existence of the justice of the peace courts argue that these courts are the most accessible courts in our legal system, there is much evidence, which is espoused by the opponents of the system, to indicate the contrary is true. The Oklahoma justice of the peace courts are not as accessible as the proponents would lead one to believe for several different reasons. In reference to the argument that the justice of the peace courts are accessible because of their location in the counties, one needs only to refer to Mr. Cavnar's statement. "I know of one county in the state where there are less than the required six."[34] Most of those opposed to the justice of the peace courts argue that as a result of improvements in the modes of transportation, the justice of the peace courts are no longer needed.

> . . . . The honorable members of the constitutional convention were in a hurry to get a state established and did not have time to go into the merits of the justice of the peace problem so they copied that portion of the Constitution from another state. At the time transportation was not as swift and convenient as today, and there was more merit to the justices of the peace then than now. With our present road system and convenient modes of transportation, equal convenience could be had by all persons of a county if they were required to air their problems in a court of record in the first instance, consequently the abolishment of the office of justice of the peace would inconvenience no one. The municipal court could deal with city cases.[35]

Mr Sneed presents essentially the same type of argument when he says, "In 1907 our justice of the peace system might have had some

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[34]Interview with Marvin Cavnar.

[35]Harper, "The Justice of the Peace System in Oklahoma," Oklahoma Bar Association Journal.

validity. There were no motor cars and the state was basically rural. It made some sense to have a dispenser of local justice in almost every township." Mr. Sneed goes on to point out that at the present time two-thirds of the people who live in Oklahoma live in areas classified as urban, and one-half of all the people in Oklahoma live in the six largest cities.[36]

Regarding the argument espoused by the proponents of the justice of the peace system that the Oklahoma justice of the peace courts are easily accessible because they are always in session, opponents point out that the courts are not accessible "by reason of the circumstance that the places where court is held is not generally known, and no regular hours are kept."[37]

The final and perhaps the most often used argument in defense of the accessibility of the Oklahoma justice of the peace courts is that the courts are highly accessible because no one as a result of his personal economic circumstances is deprived of the right to be heard in court. Opponents of the system say that this argument is without validity. Their feeling can best be presented in a statement by Mr. Sneed.

> Arguments used in the J.P.'s defense of their jobs are understandable, even if not valid. They say that the J.P. courts are the 'little people's courts'. The Tulsa World answered this better than the lawyers by saying editorially. 'It's

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[36]Seventeenth Annual Law Day Luncheon speech by Earl Sneed.

[37]Statement to the House Committee on County Government by Mrs. William Morgan.

> a phony slogan; we think the 'people' can get a better deal if their cases go before judges who have some qualifications, ... and who will be paid regardless of fees.'[38]

The argument by the proponents of the justice of the peace system seems to be even weaker when one takes into consideration the fact that organized labor is one of the primary forces attempting to abolish the Oklahoma justice of the peace system.

Record Keeping and Accounting Practices of the Oklahoma Justice of the Peace

By reason of the Oklahoma statutes, the Oklahoma justices of the peace are required to keep accurate records of their activities and at a specified period submit them to an audit by the office of the State Examiner and Inspector.

It seems that the justices of the peace in the state are just as laxidasical as some other state and local officials in regard to their record keeping activities. Mr. Cavnar, in response to a question concerning the extensiveness of the records he kept, replied. "All the records that I have I keep in my head. After all, I know what I'm doing." He went on to say that he could not be sure as to the extensiveness of the records of other justices of the peace in the state, but he thought that "most do about the same as I do."[39]

All of the blame for inefficient record keeping and accounting practices cannot, however, be placed on the justices of the peace.

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[38]Seventeenth Annual Law Day Luncheon Speech by Earl Sneed.

[39]Interview with Marvin Cavnar.

The justices of the peace would probably keep more accurate records if they were forced to do so. Even though the statutes stipulate that the books of the justices of the peace shall be audited, the truth of the matter is that they are rarely ever opened for inspection. L.G. Hayden from the State Examiners and Inspector's office says that the books are not audited because the funds are not available and even if they were "most J.P.'s don't keep records that are complete enough for us to audit."[40]

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[40]Interview with L.G. Hayden.

CHAPTER IV

THE ATTEMPTED ABOLISHMENT OF THE OKLAHOMA SYSTEM OF JUSTICE OF THE PEACE COURTS BY THE 1965 OKLAHOMA STATE LEGISLATURE

Many persons who were involved in the operation of Oklahoma politics and government were convinced that the 1965 session of the Oklahoma Legislature was the time, if there ever was going to be a feasible time, to abolish the Oklahoma system of justice of the peace courts. Corbitt B. Rushing expressed the feeling of many when he said, "We all felt that if we were ever going to get the State Legislature to abolish the justice of the peace courts, we were going to have to get it done this session while everybody seemed to want judicial reform."[1] This reform atmosphere which seemed to be prevalent among the Oklahoma voters can be attributed, to a great extent, to the fact that during the time that the State Legislature was considering the bill that would abolish the Oklahoma justice of the peace courts, one former justice on the State Supreme Court was serving a sentence in a federal prison for income tax evasion and another was being impeached by the legislative body.

It is the purpose of this chapter to determine why the measure to abolish the Oklahoma system of justice of the peace courts passed the state Senate, yet failed in the state House of Representatives;

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[1]Interview with Corbitt B. Rushing.

to discover what political forces were active and determine their real motivation; and analyse what seems to be the most popular proposals that subsequently came forth.

The chapter will be divided into four sub-topics which are (1) Passage through the State Senate, (2) Defeat in the State House of Representatives, (3) Political forces active in both the Senate and the House of Representatives, and (4) Subsequent proposals for change.

Passage Through the State Senate

The judicial reform atmosphere that was prevalent throughout Oklahoma found expression in the state Senate during the 1965 session of the Legislature. People who were talking about judicial reform seemed generally to be including everything from the appointment instead of the election of state Supreme Court justices to the abolition of the state's justice of the peace courts. This reform atmosphere served as a major impetus to the introduction of Senate Bill 113 which would abolish the justice of the peace courts.

Introduction. Senate Bill 113 was introduced on the Senate floor on January 20, 1965, soon after the convening of the 1965 legislative session. The measure, as introduced, was written by Senators Anthony M. Massad, Cleeta John Rogers, Charles Pope, and Finis W. Smith and Representatives Joseph E. Muntford and Frank Patterson. Senator Anthony M. Massad was the principle author and sponsor of the measure.

According to Senator Massad, he introduced the measure in the state Senate because he felt that judicial reform in the state was absolutely necessary and that "abolition of the justice of the peace system was a

good place to begin."[2] The President Pro Tempore of the Senate, Clem McSpadden, said that he felt that Senator Massad introduced the bill because "he is just that sort of person--he likes to try to make reforms and even though he failed, I expect he will introduce a similar bill next session."[3]

Content. The bill as introduced in the Senate provided for, among other things, the establishment of a system of general sessions courts in certain counties and the restriction of the jurisdiction of the justice of the peace courts to matters involving not more than the sum of one dollar except for the performance of marriage ceremonies. The short title of the bill read:

> AN ACT RELATING TO COURTS; CREATING A GENERAL SESSIONS COURT IN CERTAIN COUNTIES OF THIS STATE WITH ONE OR MORE JUDGES BASED ON POPULATION OF SUCH COUNTIES; MAKING COUNTY JUDGE, JUDGE OF GENERAL SESSIONS COURT, IN CERTAIN COUNTIES; DIRECTING ELECTION OF ADDITIONAL JUDGES; DESIGNATING LOCATION OF COURT IN COUNTIES WITH TWO OR MORE JUDGES OF SUCH COURT; ESTABLISHING JURISDICTION OF COURT; PRESCRIBING PRACTICE AND PROCEDURE; FIXING QUALIFICATIONS OF JUDGES; MAKING PROVISIONS FOR TEMPORARY JUDGES; DIRECTING WRITS AND PROCESSES TO BE SERVED BY SHERIFF, CITY MARSHAL OR CONSTABLE; SETTING SALARIES OF JUDGES AND PROVIDING FOR EXPENSES OF COURT; REQUIRING BOND AND OATH OF OFFICE FOR JUDGES; REQUIRING MONTHLY REPORT BY JUDGES OF FEES AND FINES RECEIVING AND DIRECTING PAYMENT THEREOF TO COUNTY TREASURER; REQUIRING FINES AND FEES COLLECTED TO BE DIVIDED ONE-FOURTH TO COURT FUND AND THREE-FOURTHS TO GENERAL FUND OF COUNTY; PROHIBITING CHANGE OF VENUE; AUTHORIZING DISQUALIFICATION OF JUDGE; PROVIDING FOR JURORS, LIMITING NUMBER TO SIX AND FIXING COMPENSATION; REQUIRING DEPOSIT BY DEMANDING PARTY CALLING FOR A JURY; ALLOWING APPEAL TO DISTRICT OR SUPERIOR COURTS, FIXING TIME, FORM, NOTICE AND BOND THEREON; FIXING TERM OF JUDGES AT TWO YEARS; PROVIDING FOR FILLING OF VACANCIES BY BOARD OF COUNTY COMMISSIONERS FROM A LIST OF ATTORNEYS SUBMITTED BY COUNTY BAR ASSOCIATION; LIMITING JURISDICTION OF

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[2]Letter from Senator Anthony M. Massad.

[3]Interview with State Senator Clem McSpadden, Oklahoma City, Oklahoma, April 13, 1966.

JUSTICES OF THE PEACE TO ONE DOLLAR; CONTINUING JURISDICTION OF JUSTICES OF THE PEACE IN ALL CASES PENDING IN SUCH COURT UNTIL DISMISSAL ENTRY OF JUDGMENT OR OTHER SUPERVISION BY DISTRICT COURT; AUTHORIZING APPEARANCE BONDS ON CHARGES OF TRAFFIC VIOLATIONS; REPEALING 39 O.S. 1961, SECTION 491 AND ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

Even though the bill did not provide for the abolishment of the justice of the peace courts per se, the practical effect of the measure was virtual abolition of the courts and establishment of a system of courts of general sessions. Under the bill, the justice of the peace courts, even though still legally in existence, would just not function since the meager income derived from their operation would not attract candidates to file for the office. The authors of the bill limited the jurisdiction of the courts rather than providing for their abolishment because they knew that any statute that directly provided for the complete abolition of the state system of justice of the peace courts would be unconstitutional, since the justice of the peace courts are created by the state constitution and can only be directly abolished by a constitutional amendment.

Hearings and the Vote. All hearings and actual committee work that was done in regard to Senate Bill 113 was conducted in the Senate. Upon introduction, the bill was sent by the President Pro Tempore, Clem McSpadden, to the Senate Committee on the Judiciary with Senator Denzil D. Garrison serving as chairman and Senator Roy Grantham as vice-chairman.[4]

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[4]Other members of the Senate Judiciary Committee were: Senators Birdsong, Garrett, Gee, Howard, Luton, Murphy, Nichols, Porter, Romang, Smith, Stipe.

According to Senator Garrison there were several persons who testified during the course of the Senate committee hearings on the proposed measure. Among those present and testifying were Marvin Cavnar, representing the Oklahoma Justices of the Peace and Constables Association, Corbitt B. Rushing, representing the Oklahoma Institute for Justice, Inc., and former University of Oklahoma law school dean, Earl Sneed.[5]

On March 18 the bill was submitted to the floor of the Senate for a vote. The measure passed the Senate by a vote of 27 in favor of the bill and 17 opposed. Two senators were excused from voting, two were absent, and one did not vote as a result of being in the chair.[6]

Political Pressure. According to the President Pro Tempore, Clem McSpadden, most political pressure regarding the measure was directed toward the members of the House of Representatives rather than the members of the Senate. The Senator expressed this idea when he said, "Here in the Senate those for and against the bill mostly just talked--they put the pressure on in the House."[7]

Senator McSpadden was of the opinion that the division over the bill was again a dispute between the urban and rural forces. He pointed out

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[5]Letter from State Senator Denzil D. Garrison, June 18, 1965.

[6]Those supporting the measure were: Senators Atkinson, Baggett, Bartlett, Birdsong, Boecher, Bradley, Field, Findeiss, Garrison, Gee, Grantham, Graves, Ham, Howard, Massad, Muldrow, Murphy, Pope, Porter, Rhoades, Rogers, Romang, Selman, Smith, Stansberry, Terrill, Williams. Those opposed to the measure were: Senators Baldwin, Berrong, Berry, Cowden, Dacus, Garrett, Holden, Horn, Keels, McSpadden, Martin, Massey, Miller, Nichols, Payne, Stipe, and Young. Senators Hamilton and Luton were excused from voting and Senators McClendon and Taliaferro did not vote.

[7]Interview with State Senator Clem McSpadden.

that this is the only logical conclusion that one can draw when he "looks at the names of those who voted for the bill and at those who voted against it and then takes note of which districts each are representing."[8] He listed the groups that supported the bill in the Senate as the Oklahoma Bar Association, Organized Labor, and the Oklahoma Institute for Justice, Inc. He also stated that there was one person who supported the measure but who did not seem to be affiliated with any organized group and whose interest seemed to be only academic. He, of course, had reference to former Oklahoma University law school dean, Earl Sneed. The Senator also listed such opposing groups as the Oklahoma Justices of the Peace and Constables Association and a group of 'unorganized' small businessmen.

The Senator pointed out that "there was really nothing new in the arguments from either side." Those who testified for the passage of the measure presented arguments to the effect that the general sessions courts would produce a better 'quality' of justice than the justice of the peace courts presently provide. The proponents focused much attention on the fee system as it is presently employed and on the accessibility of the justice of the peace courts. On the other hand, those who testified against the proposal argued essentially that the justice of the peace courts were at the present time operating effectively and efficiently and that the justice of the peace courts should not be abolished until a better plan could be devised to replace them.[9]

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[8] Ibid.

[9] Ibid.

Why the Bill Passed. According to Senator McSpadden there was no specific overriding factor that one could point to as being the reason that the bill passed the Senate. There were; however, a combination of several related causal factors. When listing these factors the Senator stated that most of the senators were motivated by their own personal beliefs rather than by political pressure, however, he would not discount the fact that some of the senators were persuaded by political pressure. He pointed out that some of the senators voted for the bill even though they were opposed to it. They did this, he said, because they were yielding to pressure that was applied to them; however, they knew that the House of Representatives would defeat the measure.

A second reason that the bill passed the State Senate, according to Senator McSpadden, was that the composition of the Senate differed from that of the House. He explained that "there are different people in the Senate who were motivated differently. They know that they, unlike the members of the House, must run for re-election only every four years. Their constituents are quick to forget how their senator's vote."[10]

Speaker of the House of Representatives, J. D. McCarty, viewed the action of the Senate somewhat differently than did Senator McSpadden. He felt that the Senate passed the bill in order to give the impression that the senators were trying to reform the state judicial system, while at the same time they knew that "we would have to stop the bill here in the house....they were merely passing us the buck."[11]

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[10] Ibid.

[11] Interview with House Speaker, J. D. McCarty.

State Representative Heber Finch, Jr. felt essentially the same way as did the Speaker of the House of Representatives in regard to the action of the Senate. He was, however, somewhat more caustic in his criticism of the Senate's action than was Speaker McCarty. He said "The Senate was a new Senate and those old hands voted for it /meaning Senate Bill 113/ because they like to grandstand in order to get their names in the paper."[12]

The Senate Leadership. It is interesting to note that the majority of the senators whom the President Pro Tempore considered to be the Senate leadership, voted against the passage of the bill.

> We were not voting against the measure because we like the justices of the peace and don't want to see them abolished. We all know that something should be done here. We were voting against the general sessions courts. They could not serve the purpose that the justice of the peace courts presently serve. At the present time such a court is not economically feasible. There are just too many small, economically deprived counties in the state that couldn't bear the expense of a general sessions court and the state can't pay for them.[13]

In summary, the reform atmosphere that seemed to be prevalent among the Oklahoma voters appears to have been the major catalyst that perpetuated the introduction into the Senate of the bill that would abolish the Oklahoma system of justice of the peace courts. Even though the bill simply provided for the limitation of the jurisdiction of the justice of the peace courts to the sum of one dollar and for the establishment of a system of courts of general sessions, the practical effect was complete abolition of the justice of the peace courts. Hearings were conducted by

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[12]Interview with Representative Heber Finch, Jr.

[13]Interview with State Senator Clem McSpadden.

the Senate Judiciary Committee with both sides presenting their ideas concerning the measure. The bill passed the Senate because of a combination of factors including such things as the personal convictions and attitudes of the individual senators as well as political pressure applied by the proponents of the measure. It seems that the Senate leadership was not opposed to the abolition of the state's justice of the peace system but rather to the establishment of the system of general sessions courts.

Defeat in the House of Representatives

After passing the State Senate, the bill was sent to the State House of Representatives. Upon introduction into the House, the bill was immediately transmitted by the Speaker of the House to the House Legal and Fiscal Committee which was headed by State Representative, Heber Finch, Jr. The bill died in this committee with little consideration.

A primary concern at this point is to ascertain some reason as to why the bill was never allowed on the House floor for a vote. For the purpose of analysis, this section will be divided into four different subtopics; (1) Active political forces, (2) Assignment to committee, (3) Committee action, and (4) Attitude of the House leadership.

Active Political Forces. According to the Speaker of the House, the political forces that were concerned with the measure to abolish the justice of the peace system were "extremely vocal and active." He listed the same organized groups as those that the President Pro Tempore listed as being the most active in the Senate. He pointed out that he thought the proponents of the bill received a great amount of help from the

metropolitan press. He said that just as soon as the bill reached the House he received numerous telephone calls, telegrams, and letters from people in the state, "asking me to do something about it."[14]

Assignment to Committee. McCarty reacted to the pressure of the opponents of the measure by sending the bill to the House Legal and Fiscal Committee whose chairman was Representative Heber Finch, Jr. According to Representative Finch, his standing committee was considered a "deep freeze" committee which was used by the Speaker to get bills either passed or defeated according to his wishes. "For all practical purposes submission of the bill to my committee was the same as killing it. The Speaker is able to maintain such a committee because he is a powerful leader. If you don't go along with him then you don't serve on his committee."[15]

Speaker McCarty was emphatic about his action. "Sure I sent the bill to that committee /referring to the House Legal and Fiscal Committee/ because I wanted it killed." The Speaker went on to say that there were essentially two reasons why he did not want the bill to reach the floor of the House. The first reason was that "I knew that was what the majority of the members of the House wanted; after all, two-thirds of the House members were freshmen who didn't want to vote on the bill--they were scared. I decided to take the criticism rather than let the members take it." The second reason, according to McCarty was that the House was pre-occupied with what seemed to be more important problems, such as

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[14]Interview with House Speaker McCarty.

[15]Interview with Representative Heber Finch, Jr.

education, welfare, highways, and "I didn't want to see the House get bogged down with the justice of the peace problem."[16]

Committee Action. The House Fiscal and Legal Committee handled the bill in accordance with the desires of the Speaker of the House. The bill was killed in committee; consequently, it never got to the floor of the House for a vote. Representative Finch, in response to a question concerning the extensiveness of the discussion of the bill that was held in the committee, replied, "We didn't even vote on it because we all knew how each other felt." When asked if Speaker McCarty applied any direct pressure on any member of the committee in order to get his desires honored, Representative Finch replied, "As far as I know McCarty didn't put the pressure on anybody--after all he didn't have to because we all knew how he felt."[17]

Attitude of the Leadership of the House of Representatives. Since the House leadership has the power to say, in effect, whether or not a certain measure is to be voted on by the members of the House, it is necessary to consider the attitude of the leadership of the House in regard to Senate Bill 113. The attitude that seemed to be prevalent among those whom the Speaker considered to be the "House leadership" was essentially the same as the leadership of the Senate. It appears that both the leadership in the House and the Senate were not opposed to the abolition of the state's system of justice of the peace courts, but rather they were opposed to the establishment of the system of general sessions courts.

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[16]Interview with House Speaker McCarty.

[17]Interview with Representative Heber Finch, Jr.

Speaker McCarty expressed this idea when he said, "We have got to do something about the justice of the peace courts, but the general sessions courts are not the answer."[18]

The Speaker said that he felt that there were two problems which had to be considered when studying the bill to abolish the justice of the peace courts: First, the problem of economics and second, the problem of convenience and accessibility.

Regarding the problem of economics, the Speaker felt that at the present time and under the present financial conditions of the state that a system of general sessions courts was just not feasible. According to the Speaker, many counties could not afford the additional expense of a general sessions courts and the state would have to shoulder the burden. "The state would get another financial burden from the general sessions courts just like the new district attorney bill which is now costing the state about one million dollars per year."[19]

Representative Finch also expressed concern over the feasibility of the courts of general sessions. He said that he personally felt the same as Speaker McCarty and pointed out that the State Legislature probably would not want to appropriate money for the general sessions courts because "there just isn't enough money and people don't get concerned with the courts until they have to go to them--the counties can't stand the additional expense either." He pointed specifically to Creek County. "In Creek County such a court would take three or four hundred thousand dollars from the county budget and the county just couldn't stand the

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[18]Interview with House Speaker McCarty.

[19]Ibid.

expense." He said that he believed that the general sessions court was a good idea if such a system of courts could be adequately financed. Mr. Finch also voiced objection to the portion of the bill that provided that all judges of the general sessions courts be lawyers. He pointed out that in several counties in the state there are not enough lawyers to fill the county offices requiring lawyers.[20]

In regard to the problem of convenience and accessibility, Speaker McCarty voiced some concern. He said that he felt that regardless of what the opponents of the justice of the peace system said about the inaccessibility of the justice of the peace courts, he was of the opinion that the justice of the peace courts were the most convenient and accessible courts that have ever or will ever be devised. He pointed out that the general sessions courts, unlike the justice of the peace courts, would hold court only at regular session and would be less convenient because there would be fewer of them throughout the state.[21] Representative Finch voiced about the same objections and said that he thought that the general sessions courts could function in only the five largest counties.[22]

It appears that the leadership in both the House of Representatives and Senate share the same feeling in regard to the abolition of the Oklahoma justice of peace system. That feeling is that they are not opposed to the abolition of the system but rather they do object to the establishment of a system of general sessions courts. They point out that neither

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[20]Interview with Representative Heber Finch, Jr.

[21]Interview with House Speaker McCarty.

[22]Interview with Representative Heber Finch, Jr.

the state nor the counties could afford the added expense that would be imposed by general sessions courts and some felt also that the general sessions courts were objectionable because they would not be as convenient and accessible as the justice of the peace courts.

Groups Involved and Apparent Motivation

To a great extent the final product of the deliberation of a legislative body is the result of interacting political forces. The defeat of the measure that would have abolished the Oklahoma system of justice of the peace courts to a great extent can be attributed to the activities of various political groups. The validity of this assertion can be recognized when one recalls the statement by the President Pro Tempore of the Senate where he spoke of the various political forces merely talking in the Senate but applying political pressure to members of the House of Representatives. Further evidence of the validity of the statement can be noted when one takes into consideration the fact that the leadership in both the House and the Senate did specifically identify the different groups involved and offered some assessment as to the effectiveness of each.

In order to determine the motivation of each of the groups involved, it is necessary to look at each group independently. When studying each group the organizational structure, the membership, the role that the group played in regard to the proposed measure, the aruments used, and the effectiveness of the efforts of each will be noted. It is hoped that from such an analysis the real motivation of each interest group might be ascertained.

It is a rather simple task to identify the groups involved because the leaders of both the Senate and the House of Representatives identified the same groups as the ones being involved. Those supporting the adoption of the bill, thus the abolition of the justice of the peace system and the establishment of the system of general sessions courts, were: (1) the Oklahoma Bar Association, (2) the Oklahoma Institute for Justice, Inc., and (3) organized labor. Those actively opposed to the adoption of the measure were (1) the Oklahoma Justices of the Peace and Constables Association, and (2) an informal group of businessmen and merchants.

Oklahoma Bar Association. The Oklahoma Bar Association has been one of the primary forces advocating the abolishment of the Oklahoma system of justice of the peace courts. The Association has not, however, limited its attack to the justice of the peace courts, for it has advocated extensive judicial reform in the state which includes such things as the establishment of a court on the judiciary and the selection rather than the election of Supreme Court justices.

According to Leroy Blackstock, president of the Oklahoma Bar Association, the organization is composed of about forty-two hundred active members and includes approximately two-thirds of the lawyers in the state. Mr. Blackstock said the Bar Association is composed of every class of lawyers in the state; however, he admits that the more active members of the organization are the more prominent, successful attorneys.[23]

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[23] Interview with Leroy Blackstock, President of the Oklahoma Bar Association, Tulsa, Oklahoma, April 20, 1966.

The real governing and decision making body of the organization at the time that Senate Bill 113 was being considered was the house of delegates. The members of the house of delegates were elected by the members of the organization with each county having at least one representative and the more populous counties having up to ten. It was this body that conducted the Bar Association's campaign to abolish the state system of justice of the peace courts.

Mr. Blackstock said that the Oklahoma Bar Association was opposed to the justice of the peace system because "we recognize the fallacies in the system and as lawyers we don't like to have cases tried by judges who don't know the law."[24]

The Oklahoma Bar Association is not without a vested interest in the abolition of the justice of the peace courts and the establishment of general sessions courts in their place. In justice of the peace courts litigants many times do not need the assistance of legal counsel; however, such would not be the case in general sessions courts. Lawyers can see the possibility of a greater demand for attorneys, thus, a financial gain.

The organization has for some time conducted various campaigns in order to get the State Legislature to seriously consider its request. According to Mr. Blackstock, the Bar Association conducted about the same type of campaign in regard to Senate Bill 113 as it had on other measures in which the organization was interested. This included such things as

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[24]Ibid.

publication and distribution of material expressing the 'evils' of the justice of the peace system, presenting its point of view at the Senate hearings, and personal conferences with different legislators.[25]

In regard to the effectiveness of the organization's attempt to get the State Legislature to listen and acquiesce to its wishes, the best that anyone can do is merely speculate. Speaker McCarty said that he felt that the organization did have some effect; however, its effectiveness was diminished by the fact that most of the members did not like the Bar Association and he pointed out that

> Most of them /meaning the members of the Bar Association/ are a bunch of theoreticans who don't understand the politics involved. They think that we should just automatically establish a general sessions court. They don't have to worry about getting money for it--taking appropriations from welfare, education and roads. They have their eyes on more attorney's fees.[26]

Oklahoma Institute for Justice, Inc. The Oklahoma Institute for Justice, Inc. is a relatively new organization which is advocating certain changes in the state judicial system. The organization was established in 1963 and was an outgrowth of the conference on judicial selection, tenure and organization sponsored on the University of Oklahoma campus by the Kellogg Foundation. The organization was established

> to conduct, assist and otherwise encourage studies to determine the best methods of administering justice; the best forms of court organization; the proper and most effective methods of judicial selection, tenure, removal, retirement, compensation and discipline; the improvement of the administration of justice; the improvement of practice and procedure in the courts; and any and all matters

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[25] Ibid.

[26] Interview with House Speaker McCarty.

> which bear upon the determination of the best and most efficient judicial system; and to publish, publicize and disseminate, by any and all appropriate methods, the results of the studies conducted, assisted and encouraged, and to make available to the public all information bearing upon the enumerated topics and all other topics affecting or related thereto.[27]

The Institute seems to be a broadly based organization which is governed by a board of directors. This board is made up of six laymen and two representatives of the legal profession. This board of directors conducted the Institute's activities concerning Senate Bill 113.

Like the Oklahoma Bar Association, the Oklahoma Institute for Justice, Inc. has supported different measures dealing with the Oklahoma judicial system. Such measures include judicial reorganization, a court on the judiciary, and the appointment rather than the election of Supreme Court justices.

The Institute took an active interest in the bill to abolish the Oklahoma justice of the peace system. Some of the members of the organization were instrumental in the authorship of the bill and the Institute "put its entire support behind the passage of the bill." Some of the members appeared at the Senate committee hearings, met privately with different legislators, wrote letters and distributed printed matter.[28]

Essentially the organization argued that the system of justice of the peace courts is an anachronism and that it should be completely abolished. It seems that its arguments were more pointed toward the

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[27]The Purposes of the Oklahoma Institute for Justice., as stated in the Articles of Incorporation.

[28]Interview with Corbitt B. Rushing.

abolition of the justice of the peace system rather than in support of the proposed system of general sessions courts. Its criticism centered primarily around the lack of any professional qualifications of the justices of the peace, the inaccessibility of the courts, and the fee system.[29]

It appears that the organization as such was not motivated by any vested interest. However, this does not mean that certain members who were active in the organization were not motivated by their own interests. A good example would be members of the Oklahoma Bar Association and different members of organized labor. They had their own particular interests and found that the Oklahoma Institute for Justice, Inc. was an effective avenue by which they could voice their interests.

The effectiveness of the Institute's activities is difficult to ascertain since the Institute centered much of its activities outside the legislative body in an attempt to persuade persons to apply pressure directly on the legislators. It is apparent that the organization did have some effect, for according to the President Pro Tempore of the Senate, "they were present and they let us know which side of the issue they were on."[30]

Organized Labor. The words "organized labor" is meant to encompass the entire labor membership in Oklahoma which is estimated at 60,000. Included in this figure are some 36,000 members affiliated with the

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[29]Ibid.

[30]Interview with State Senator Clem McSpadden.

AFL-CIO with the remaining membership found chiefly in the Teamsters and the Railroad Brotherhoods.[31]

Organized labor has been an active force in numerous attempts to alter the state judicial system. This large group advocates that all judges in the state be elected on a popular ballot and that the justice of the peace courts and all forms of the fee system be abolished.

According to Martin Hauan, organized labor "applied the usual pressures" in order to influence the members of the State Legislature to abolish the system of justice of the peace courts. "I'm sure that labor leaders went to all the people whose campaigns they had contributed to, urging the 'proper' vote." The group also distributed material to its membership supporting the view of labor and urging them to express their desires to their respective senators and representatives.[32]

Organized labor was not without vested interest in the abolition of the state system of justice of the peace courts and the establishment of a system of general sessions courts. Labor would like to see the justice of the peace courts abolished because "the justice of the peace courts are easy courts in which to litigate garnishment proceedings."[33]

According to Mr. Huaun, the state labor movement opposes the justice of the peace courts for two primary reasons. First, "working people can't afford to take time off from work to appear in J.P. courts. If you appear, you not only pay court costs but also suffer from loss of

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[31]Letter from Martin Huaun, Public Relations Director for the State AFL-CIO, July 20, 1966.

[32]Ibid.

[33]Ibid.

work." Second, "justices of the peace have the power to garnishee a worker's salary even if the worker is absent." He cited an example. "A high-powered salesman sells a workingman's wife an expensive product. A few days later he files garnishment proceedings which can cause the employee to loose his job. Employers don't like employee deadbeats."[34]

Apparently the efforts of the state labor movement did have some effect. The Speaker of the House of Representatives, J.D. McCarty, said that the efforts of organized labor to influence the members of the legislative body to yield to its request were "as effective, if not more so than any of the others."[35]

The Oklahoma Justices of the Peace and Constables Association. The Oklahoma Justices of the Peace and Constables Association was the primary group actively fighting for the defeat of Senate Bill 113, and thus the retention of the state system of justice of the peace courts.

According to Marvin Cavnar, former president of the Oklahoma Justices of the Peace and Constables Association, the organization is composed of "almost every justice of the peace and constable in the state." The organization is governed by an executive committee and it is this executive committee that spearheaded the organization's activities in the State Legislature.

The organization utilized several approaches in applying pressure on the members of the State Legislature. "We testified at the Senate hearings, talked personally to some of our friends there, and had the

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[34] Ibid.

[35] Interview with House Speaker, J.D. McCarty.

members to write letters, send telegrams, call and visit their representatives."[36]

The motivation of the Oklahoma Justices of the Peace and Constables Association is evident. If the bill had passed the House of Representatives and subsequently became law, there would have been approximately 281 justices of the peace in the state who could no longer serve in that office. To many this would have meant abolition of their only means of livelihood.

In regard to the effectiveness of the organization's efforts, one must conclude that it did have some effect for Senator McSpadden said, "J.D. McCarty listened to someone so it must have been them."[37]

Businessmen and Merchants. According to both Speaker McCarty and the President Pro Tempore McSpadden, there was an 'unofficial' group of small businessmen and merchants who actively opposed the measure to abolish the state justice of the peace courts. The group was not a formal organization as such, but it worked directly with the Oklahoma Justices of the Peace and Constables Association.

This group was active because it, like the other active groups, had a vested interest in maintaining the justice of the peace courts. Small businessmen and merchants have found that the justice of the peace courts are "cheap collection agencies." They can with very little expense go to a justice of the peace court and garnishee a debtor's salary

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[36]Interview with Marvin Cavnar.

[37]Interview with State Senator Clem McSpadden.

or bring him into court and force him to pay for merchandise received or services performed.[38]

Subsequent Proposals for Change

Following the defeat of the measure to abolish the Oklahoma justice of the peace system and the establishment of a system of general sessions courts, came assertions from opponents of the present system that they would increase their efforts in order to get the 1967 State Legislature to honor their request. Along with these assertions came several proposals for change. Of all the proposals that have come forth, only two seem to have captured the attention of the Oklahoma voters. The first is a procedural proposal for abolishing the system which was suggested by House Speaker, J.D. McCarty. The second is a substantive proposal for replacing the present system which was suggested by Earl Sneed.

Speaker McCarty feels that the State Legislature must devise some measure to replace the justice of the peace system, yet one that would be feasible for the poorer, less populated counties as well as in the more metropolitan, richer counties. He suggested that the justice of the peace courts be allowed to function in the rural counties for the present time but abolish them in the counties that could afford a different kind of court system.

Upon analysis of this proposal, one finds that there is one major problem that is encountered. That problem is the uniformity clause of the state constitution and the Attorney General's opinion of that clause that was written July 15, 1964. In that opinion, the Attorney General

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[38]Interview with Corbitt B. Rushing.

held that no act that established a court for some but not all of the 77 counties was constitutional. He cited Article V, Section 46 of the state constitution. "The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law. . . ." He then referred to two relevant cases.

> The question as to whether or not an act establishing a court for a single county is a local or special law has been passed on by a majority of the courts of this country, and the opinions seem to be about equally divided. Those cases which hold that such legislation is special and local appear to be founded upon better reasoning, but we are committed to the opposite rule, which has heretofore been adopted by this court.[39]

> The uniformity clause of the Constitution prohibits the Legislature from vesting in justices of the peace of one county a jurisdiction or power that is not vested in the justices of the peace of every other county of the state.[40]

Speaker McCarty's proposal is not, however, without merit for, according to L.G. Hayden, attorney for the State Examiner and Inspector, "the Legislature may be able to draw up a bill that would have the effect of McCarty's proposal, yet be consistant with the state constitution."[41]

The other proposal that has been offered by Earl Sneed is a substantative proposal for the replacement of the state system of justice of the peace courts with a system of magistrate courts. Mr. Sneed was of the opinion that the only way the State Legislature was ever going to abolish the justice of the peace courts in Oklahoma was through a

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[39]Chicago R.I.&P. Ry. Co. v. Carrol, 114 Okl. 193 (1952).

[40]Levine v. Allen, 96 Okl. 252 (1923).

[41]Interview with L.G. Hayden.

much broader plan of judicial reform.

The proposal that Mr. Sneed has made follows generally the Model Judicial Article of the American Bar Association, which was approved by the American Bar Association House of Delegates in 1962. The plan would streamline and simplify the state's judicial structure. (See Appendix D) Under his plan the magistrate courts would be a small claims court of limited jurisdiction and would exercise original jurisdiction in such cases as the State Supreme Court designated by rule.

> Cases involving minor matters such as traffic offenses, minor crimes, and small claims would be delegated to the magistrate courts. In other words, the magistrate courts would handle the work of the present Justices of the Peace Courts, Special Sessions Courts, Common Pleas Courts and much of the criminal and civil work of the present county courts. Because of the need for flexibility in the use of the magistrate court, it is deemed best to leave the exact jurisdiction to the control of the Supreme Court by rule. However, it is specified that the Magistrate Court would serve as a small claims court, thus, providing laymen with the same service now available through the small claims courts operated by the Justices of the Peace.

According to the Sneed plan, the magistrates would be appointed for a term of three years by the district court judge of the district wherein the magistrate is to serve. In order to be eligible for appointment to the position of magistrate, a person would have to be domiciled within the state, a citizen of the United States, and licensed to practice law in the courts of the state. The magistrate's salary would be fixed by statute, and he could only be removed by the Court on the Judiciary after an appropriate hearing.[42]

In summary, the reform atmosphere that appeared to prevail among

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[42]A Proposed Judicial Article (Revised) for Oklahoma by Earl Sneed.

the voters of the state prior to and during the 1965 legislative session seems to be a major factor that perpetuated the introduction into the State Senate a bill providing for the abolishment of the state system of justice of the peace courts and the subsequent establishment of a system of general sessions courts. The bill passed the Senate but failed in the House of Representatives because it was never allowed to come to the floor for debate. Different political pressure groups were present and each voiced their feelings on the measure. According to both the Speaker of the House and the President Pro Tempore of the Senate, the most important groups were the Oklahoma Bar Association, the Oklahoma Institute for Justice, Inc., organized labor, the Oklahoma Justices of the Peace and Constables Association, and an 'unorganized' group of small businessmen and merchants. It seems that the leadership in both the House of Representatives and the State Senate were not opposed to the abolition of the justice of the peace system, but rather they were opposed to the establishment of the system of general sessions courts. They felt essentially that such a system of courts was just not feasible at the present time primarily because of the acute financial condition of the state and county governments. After the defeat of the measure, two proposals came forth. One provides for a procedure for abolishing the justice of the peace courts and the other provides for a system of magistrate courts with which to replace the present system of justice of the peace courts.

CHAPTER V

SUMMARY AND CONCLUSIONS

When Oklahoma became a state in 1907 a provision was incorporated into its constitution which established a system of justice of the peace courts. This system of courts that was established in the State is essentially of English orgin and is similiar to that found in many other states in the nation.

Because the articles in the Oklahoma Constitution dealing with the justice of the peace courts are very brief it was necessary for the State Legislature to supplement the articles with statutes. These statutes provided a more detailed elaboration of the jurisdiction, operation, and procedure for appeals. They also provided for a fee system in which the justices of the peace are permitted to charge for their services in both civil and criminal matters.

It might be concluded that the justice of the peace system fulfilled the needs of a newly created state with a predominately agrarian population where there was a lack of qualified judges and the distance between courts was great. Courts of limited jurisdiction in both civil and criminal matters were needed in the rural areas where it was not possible to find judges with professional training to staff the courts or insufficient revenues existed to provide compensation ample enough to attract highly qualified people.

For some years, however, the justices of the peace courts in Oklahoma have come under severe criticism and attempts have been made to alter or abolish the system. The movement of the State's population to the urban centers, more efficient means of transportation, unqualified personnel serving on some courts, disatisfaction with the fee system of compensation for judges services, as well as a recent court scandal in the State's highest court have been cited as major problems requiring court revision in Oklahoma.

After the 30th Legislature of Oklahoma convened, different persons and groups of persons in the state began exerting so much pressure on the membership that a bill was introduced and seriously considered which would have abolished the State's system of justice of the peace courts and replaced it with a system of general sessions courts. The measure was introduced in the State Senate and after considerable debate it subsequently passed, however, upon reaching the House of Representatives the measure was received with little enthusiasm. In order to keep the measure from passing the House of Representatives, House Speaker, J. D. McCarty, who was personally opposed to the bill, sent the measure to a committee called the 'deep freeze' committee which was used by him to pass or reject measures in accordance with his wishes. The committee performed as the Speaker desired and the bill was never reported to the floor of the House for a vote by the entire membership.

There are several reasons why the measure passed the State Senate, yet failed in the House of Representatives; however, by far themost important reason was the action of the various interested pressure groups. Without exception each group that took an active part in the consideration

of the measure did so because it had some vested interest that it wanted to protect.

The Oklahoma Bar Association led the efforts of those opposing the justice of the peace system. It appears that the Bar's real interest in opposing the courts stemmed from the fact that there would be a greater demand for legal counsel in the proposed general sessions courts than is presently required in the justice of the peace courts. The Oklahoma Institute for Justice, Inc. also played an important role. It seems that the Institute was motivated by various vested interest of the individual members of the organization. A third group supporting the abolishment of the State justice of the peace courts was organized labor. Organized labor had a vested interest in abolishing the justice of the peace courts by the fact that these courts are easy agencies in which garnishment proceedings can be brought against members of the laboring community.

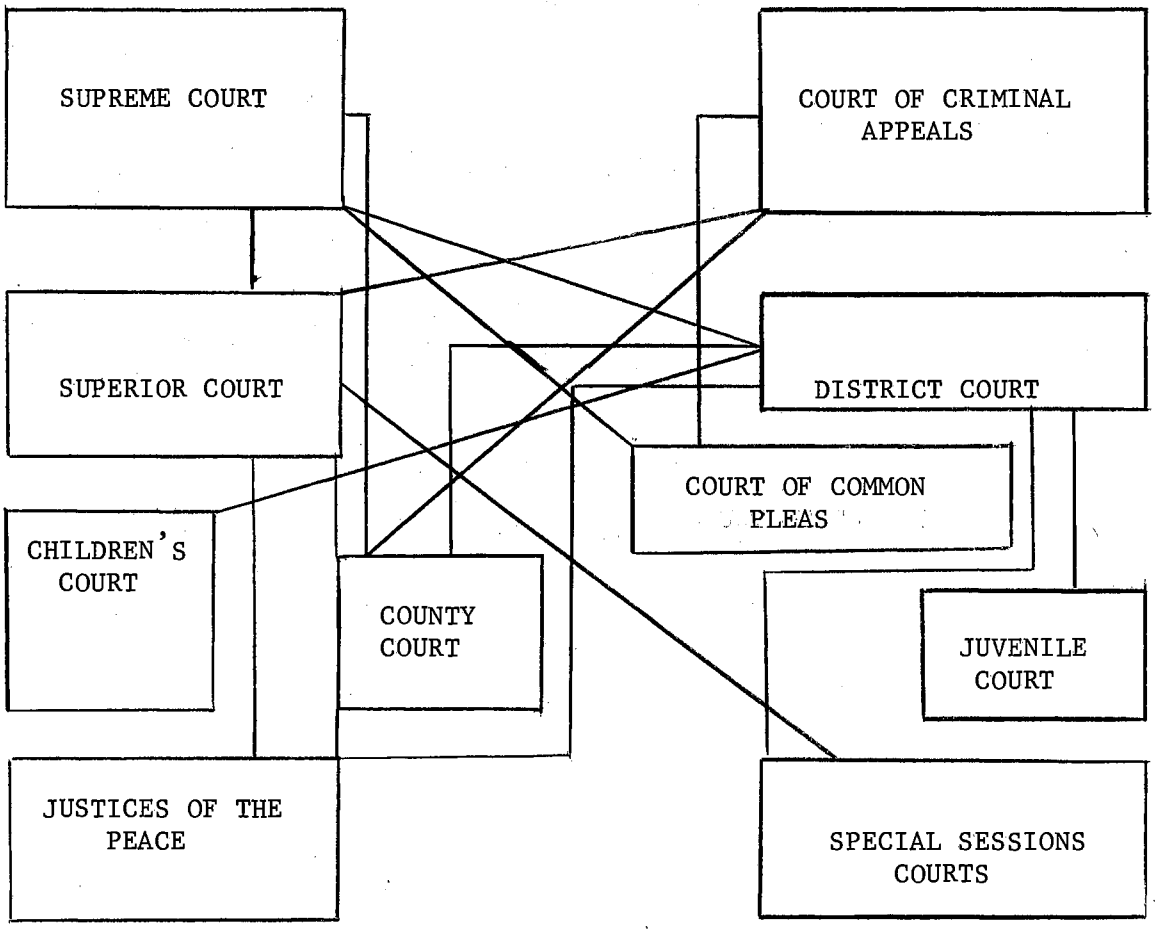
The Oklahoma Justices of the Peace and Constables Association spearheaded the efforts to retain the justice of the peace courts. Its motivation is evident, for if the State justice of the peace courts were abolished all of the justices of the peace in the State would have to find some other means by which to obtain a livelihood. In addition to the Oklahoma Justices of the Peace and Constables Association, there was an active group of small businessmen and merchants that supports the present system of justice of the peace courts. This group was interested in retaining the justice of the peace courts because these courts can be used by their members to easily and inexpensively collect outstanding debts.

It is too much to assume that the justice of the peace courts were retained because the groups favoring the system were able to exert more political pressure than the groups opposing the system. It appears that most of the leadership in both the State Senate and the House of Representatives were not unequivocally opposed to the abolishment of the State justice of the peace system, yet they were opposed to the establishment of a State system of a general sessions courts. This opposition to the establishment of a system of general sessions courts stemmed primarily from the belief that neither the State nor the counties could bear the additional cost, and that the present justice of the peace courts were more accessible than would be the general sessions courts.

APPENDIX A

THE PRESENT

OKLAHOMA COURT SYSTEM*



*Taken from the Daily Oklahoman, June 19, 1966.

APPENDIX B

SCHEDULE OF FEES*

Docket fee, which shall include index and cross index filing of all papers in the cause, and all entries made or required by law to be made upon his docket, the sum of	$2.00
For summoning jurors, witnesses, administering oath, viewing a dead body, and making report of proceedings,	3.00
For swearing witnesses in any cause, wherein three or more are sworn at one time,	.25
For administering each oath, except wherein otherwise provided in this Act,	.25
For issuing order of attachment or garnishment,	.75
For issuing order of replevin,	.75
For issuing orders of sale,	.75
For rendering judgment,	.75
For issuing each execution,	.50
For issuing each summons,	.75
For issuing order to view fence,	.25
For issuing each committment,	.50
For entering on the appearance docket each order or ruling made on motion or demurrer,	.50
For entering order of judgment,	.50
For making certified copy of appeal or certiorari, for each one hundred words,	.10
For issuing venire for jury,	.25
For viewing premises,	1.00

For soleminizing marriage,	3.00
For signing and certifying depositions when proposed,	.75
For writing depositions when required to do so, each one hundred words,	.15
For issuing an order to assess damage,	.35
For swearing jury to try cause,	.25
For writing or taking each recognizance,	.50
For writing or taking each affidavit for appeal,	.25
For entering continuance in cause,	.50
For any transcript or report of docket entry,	.75
For hearing evidence,	.75
For making any certificate,	.75
For issuing order for garnishee to deliver,	.50
For entering any order,	.50
For filing any process,	.25
For entering any plea on arraignment,	.50
For issuing warrant,	1.00
For issuing order of release or discharge,	.50
For issuing every subpoena, all names included in one praecipe,	.25
For entering change of venue,	.50
For filing affidavit for change,	.25
Minimum fee in any case,	5.00

*Taken from the Oklahoma Statutes, Title 28, Section 51.

APPENDIX C

THE CALIBER OF SOME OKLAHOMA JUSTICES OF THE PEACE

A LETTER WRITTEN BY AN OKLAHOMA JUSTICE OF THE PEACE

REAL ESTATE - FARM LOANS - INSURANCE - NOTARY PUBLIC
(Name omitted)
(City omitted), Oklahoma

Feb' 12.1960

(Name omitted)
(Address omitted)
(City omitted), Oklahoma

Dear sir; have waited 5 days for you inquire on ticket 307585 By OMP' (name omitted) on2/6/60. I had an inquire on it to day by the county att' who is (name omitted), hein turn had assigned this complaint to me some timw ago, we have been ~~been~~ waiting for your inquire as you was advise and extended the Courtisy of be let procede with out holding at the time of the offence. You can make ~~apŀe~~ plea of Not Guilty and Have a trial this will ~~reure~~ require and bond, a plea of Guilty, ye could carry the ~~Mınıum~~ Minimum Fine, the last can be processed By Mail.

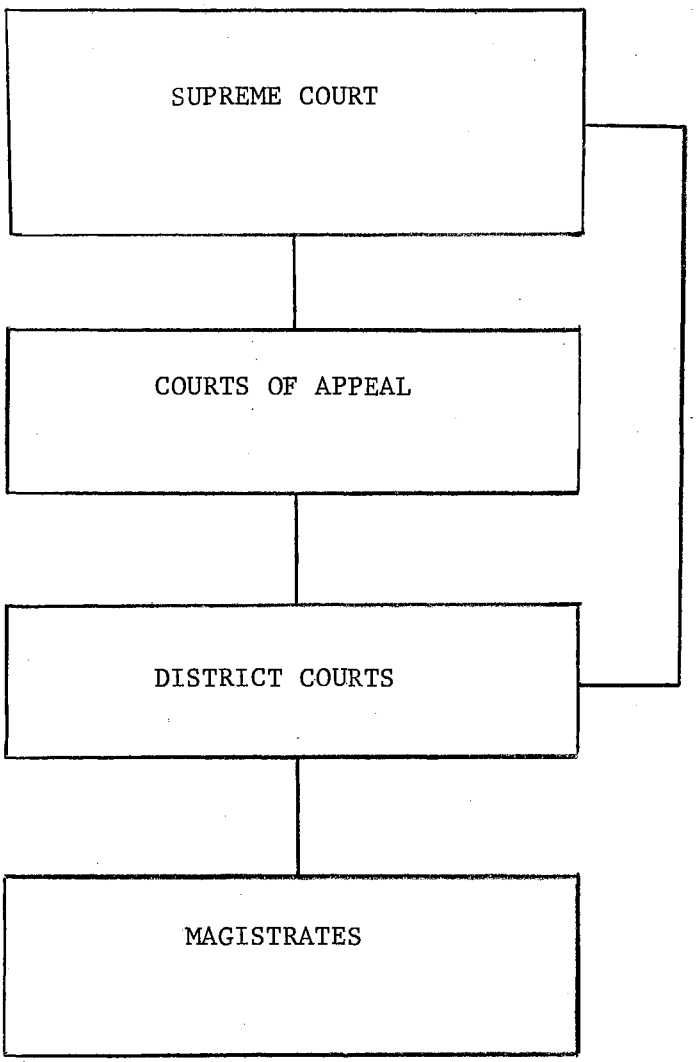
Waiting you r desire .

(Name and address omitted)

APPENDIX D

THE PROPOSED

SNEED PLAN*



*Taken from the Daily Oklahoman, June 19, 1966.

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VITA

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of Master of Arts

Thesis: THE OKLAHOMA JUSTICE OF THE PEACE SYSTEM: ITS OPERATION AND ATTEMPTED ABOLISHMENT

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Biographical:

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