THE JUSTICE OF THE PEACE SYSTEM IN DELAWARE

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The bulk of litigation in the states of the American Union is handled by an official known generally as the justice of the peace. He is the ubiquitous dispenser of justice, and his office has been long embedded in the governmental process at state level. Other titles, such as police judge, magistrate, trial justice, are sometimes employed, but the work is generally the same. The office is designed to afford a readily accessible forum with low costs for the handling of petty misdemeanors and small civil causes. This tribunal is also used as a committing bench, holding for higher court those accused of serious breach of the state law. In Delaware this tribunal is known as the justice's court, and the judge is the justice of the peace. Ofttimes he is referred to simply as "the magistrate," particularly in the urban areas.

Throughout the nation the justiceship has become a matter of grave concern to those who would improve the administration of law at local level. The local magistracy in Delaware has not escaped the attacks of those who declare this ancient institution of a quieter day to be outmoded and derelict.

The Delaware Bar Association and other civic-minded groups have called for its abolition. Suggestion has been made that a corps of paid judges, trained in the law, incorporated within the regular judicial system, should be substituted for the justice of the peace system.

Although strenuous efforts have been made to revise the justices' courts, little has been done to obtain basic information concerning their operation. It was with the intention of ascertaining basic data concerning the operation of the magisterial system in Delaware that the present study was undertaken. Two methods of research were employed. First, a careful perusal of the statutes covering the function of the justice of the peace was made; and second, by a

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1 Wilmington Journal Every-Evening, March 31, 1955.
series of interviews between the writer and the justices, information concerning the actual operation of their courts was obtained. Hence, this study attempts to depict and analyze the factors involved in the work of the justice of the peace system in Delaware in order that a substantial basis for intelligent recommendations concerning its future may be made.

The Historical Background of the Office

The justice of the peace is one of the oldest public officers in Delaware. The Dutch in their early venture in America provided for the governance of their colony at New Amstel on the “South River” (as the Delaware was called) by creating seven “schepens” or magistrates. These officers were appointed by the director of the Dutch interests in America, who resided in New Amsterdam. Selection of the magistrates was made from a list of “double numbers” of names submitted by certain local officials who had the right of nomination. These magistrates had limited civil jurisdiction, but extensive authority in criminal matters. They also exercised some legislative power. The fact that they were physically far removed from their source of authority gave them the opportunity to assume control over a wide range of governmental activity in the colony.

When the English succeeded to the claims of the Dutch in the “lower counties on Delaware,” the office of magistrate was continued, but the appointment thereto was made directly by the governor acting under the authority of the Duke of York. Much of the governing of the lower colony was in the hands of these judges, there being a division of the territory into three judicial districts each under the supervision of the magistrates named to a district. From these districts were formed the present counties of the State of Delaware: New Castle, Kent, and Sussex.

The position of justice of the peace was maintained without great change under William Penn’s proprietorship. After 1718, the magistrates (or justices of the peace as they had come to be known under the English) were commissioned in the name of the king although the actual appointment was made by the governor of the proprietary. By that time the justice had lost most of his legislative

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function. With the adoption of English legal customs and governmental practices the justice of the peace came to be looked upon as an administrative and judicial official.3

With the coming of statehood in 1776, the government of Delaware continued many of the political arrangements of the colonial days. Relative to the justice of the peace, however, there were certain significant changes. First, the appointment of these officials now came from the legislature and the executive. Twenty-four persons were nominated to the magistracy in each county by the General Assembly. The president and privy council appointed twelve of these persons to serve in each county. The Constitution of 1792 provided for not more than twelve justices in each county, and it rested their appointment in the governor with the consent of the Senate. Later, the number of magistrates was made the subject of legislative action. The highest number of these courts in the period 1792-1831 was 50. After 1831 the number of courts in each county was increased, until by the turn of the present century the legislature had authorized as many as 94 justiceships throughout the State.

With statehood, the office of the justice of the peace also became the chief position in the "hundred." * The statutes stated that the justice had to be named from the hundred in which he served, but this rule was not followed throughout the State. It was adhered to in New Castle County, however, and the civil jurisdiction of the justice in that county has continued to be confined to his own hundred and to the adjoining hundreds. In the lower counties the jurisdiction has continued to extend throughout the county.

Between 1792 and 1831 the justice of the peace performed various tasks. He had the right to adjourn the Court of Quarter Sessions if the required number of judges was not present. He administered oaths and exercised the office of coroner if that official was incapacitated. In addition he was commissioned to handle criminal and civil cases of minor import and to hold for court those accused of serious offense. Oddly enough the right to perform marriage had been taken from him although he still could issue the license. Records of dockets had to be maintained, and the accounting for the fines

* For a good treatment of the justice of the peace during the colonial period, see Leon de Valinger, "Local Government in Delaware, 1638-1682," unpublished mss. in Library of the University of Delaware, 1935.

* "Hundreds" in Delaware are vestigial remains of ancient tax assessment districts. The name is of early English origin. The hundred is not now a governmental unit in Delaware. It serves as a basis for representation in the legislature.
collected had to be made to the county or state treasurer as the law determined. At times the justices acted in concert (sometimes two, three or five) in trials for certain types of misdemeanor.

By the last quarter of the nineteenth century the rendering of justice by the minor judiciary allowed great room for improvement. In most instances the justices were local politicians with no formal training in the law and with little trace of the aristocratic background of the respected gentry who had manned the courts in the earlier decades of statehood. The physical conditions of the courts were often not of the kind intended for decorous administration of the law. At best, only part-time attention was given their duties by the local justices. Yet the system, until the turn of the present century, seems to have aroused no wide-spread criticism. This system was the accepted means of providing justice in a cheap, if not efficient, manner, and there was apparently little desire to reorganize the courts or to revise their operation. Until the rise of more complex social and economic conditions there was little demand for a reconsideration of the role of the minor judiciary in the governmental process. By the 1980's, however, a serious demand for re-examination of the justice of the peace system began to appear.4

Since then there has been a steady stream of questions and suggestions concerning the raison d'etre and the function of these courts. Studies both private and public have been made, such as that of the special committees of the Bar Association,4a but few of them have attempted to depict the role of the justice of the peace in relation to the law establishing his office, the services which he renders, the type of persons available for the job, the actual handling of cases.

Legal Status

According to the state constitution "the judicial power of the State is vested in a Supreme Court, a Superior Court, a Court of Chancery, an Orphans' Court, a Register's Court, justices of the peace, and such other courts as the General Assembly shall by law establish."5 The Constitution further prescribes that the justices of the peace shall be appointed by the governor by and with the consent of a majority of all the members elected to the State

4 Wilmington Journal Every-Evening, December 3, 1953.
4a Wilmington Morning News, February 26, 1954.
5 Constitution of Delaware, Art. IV, sec. 1.
Senate. The term of office is four years. Justices can be removed by the governor provided the General Assembly, by a two-thirds vote of both houses, has addressed governor requesting removal, or the governor himself may remove a justice if he has been convicted of misbehavior in office or of any infamous crime. Inasmuch as the justice of the peace courts are constitutional tribunals, any modification or alteration in their organization requires a two-thirds vote of all members elected to each house of the General Assembly. If the justice of the peace system were to be abolished, such action would probably require a constitutional amendment.

While the Constitution establishes the office of justice of the peace, it has remained for the statute law to describe the duties of the office. The Delaware Code of 1953 devotes part of two of its thirty titles to the justices' courts. The organization and operation including the general jurisdiction and powers of the courts are found in Title 10, beginning at Chapter 91 and running through to Chapter 97. In Title 11, which treats of crimes and criminal procedure, Chapter 59 is also concerned with the process of law in these courts. In addition there are several miscellaneous references to the function of the justices' courts. One of them has to do with applications for writs of certiorari to be issued to a justice of the peace. Another has to do with the duty of the justice of the peace with respect to liens. One further item concerns the power of the justice of the peace to punish for contempt.

The code revision of 1953 has been of inestimable help to the justices because it has concentrated under two general headings the bulk of the statutory authority given these courts. Prior to this revision the justices had to consult many sections of the Code of 1935 and the subsequent statutes in order to gain a complete picture of the duties of their office.

**Jurisdiction**

The basic criminal jurisdiction of the justice of the peace covers statutory and common law misdemeanors. In addition he holds

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10 Delaware Code of 1953, Title 10: secs. 3918, 5110, 5111.
preliminary hearings in which persons accused of felony are held for trial in upper court. Assaults and batteries and other breaches of state law, when the offense is not of a "high or aggravated nature," come before the justices' courts. Traffic code violations make up a large portion of the criminal jurisdiction of over half the justices. Game and fish law violations come within the purview of these courts. They have general jurisdiction over breach of stock laws, over the enforcement of administrative decisions taken by certain of the state administrative agencies, to enforce laws against truancy from the public schools, and over other specified misdemeanors. In New Castle County the justice of the peace has general criminal jurisdiction throughout the county except in the city of Wilmington. Misdemeanors occurring in the city are handled in the Municipal Court. In Kent and Sussex Counties the jurisdiction of the justices extends throughout their respective counties. The statutes provide that when an arrest is made without warrant outside the city of Wilmington for breach of the state vehicle code, the accused has the right to have his case heard before the nearest available justice of the peace.\textsuperscript{13}

In the civil field, the justices in Kent and Sussex Counties have jurisdiction throughout their respective counties of cases arising in contract for goods, rentals, labor, hire, or service; or for any "forfeiture incurred under provisions of statute." The amount involved in such cases may not exceed $500, plus interest accrued.\textsuperscript{14} In New Castle no cause of action "arising from any obligation or express or implied promise or contract for the payment of money or render of rent, or delivery of produce, chattels, goods or merchandise or contract for personal labor, or for any penalty or forfeiture incurred under the provisions of any statute" shall be brought before a justice of the peace against any person who does not reside in the same hundred as the justice or within a hundred immediately adjoining that in which the justice resides.\textsuperscript{15} However, a bona fide resident of a hundred in New Castle County may commence action in the justice's court of his hundred against any person residing in any other hundred of the county. Also, action may be commenced before any justice of the peace in New Castle against any non-resident of the State.

\textsuperscript{13} Ch. 414—Delaware Laws of 1955.

\textsuperscript{14} Delaware Code of 1953, Title 10: sec. 9301.

\textsuperscript{15} Ibid., Title 10: sec. 9302.
Justices of the peace have, within their respective counties, jurisdiction of actions in trespass and trespass on the case. The damage alleged must not exceed $500. If the trespass upon land is committed by animals or other chattels, the damage may not exceed $100 if the justice is to have jurisdiction. Concurrent jurisdiction with the Superior Court is exercised by the justices in matters of replevin and detinue; the amount in controversy may not exceed $500. Actions for forcible entry, detainer, and holding over rest with the justices in a county. These are matters concerning the rental, leasing, and possession of real property by a lessee.

According to the State Supreme Court, the jurisdiction, both criminal and civil, of the justice's court is purely statutory in origin. It has been held, however, that a justice's authority is as complete within his jurisdiction as is that of the Superior Court within its jurisdiction.\(^{16}\)

In addition to their judicial function, justices of the peace residing in unincorporated towns may hold elections for commissioners of these towns and make a record of the results.\(^{17}\)

**Number and Appointment of Justices of the Peace.**

Under existing statutes there may be as many as ninety-four justices of the peace in Delaware. Twenty-seven may be appointed in New Castle County; 30 in Kent; and 37 in Sussex. Prior to 1953, at which time the statute covering the number of justices was amended, the totals listed above appeared to be mandatory. The custom, however, had been for the governors to name considerably fewer than the required number. Discussion of this fact finally brought a change in the law, making the total statutory number permissive rather than mandatory.\(^{18}\) The statutes further state that at least ten of the magistrates serving in New Castle County must reside in specific hundreds and towns. Similar stipulations obtain for Kent with 13 judgeships so allocated, although the practice has been to appoint only six or seven justices in that county. In Sussex, 23 places are listed as requiring justices, but here again the law is not strictly complied with inasmuch as on an average only 18 or 19 justices have been named in that county.\(^{19}\) One of the basic reasons

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\(^{16}\) Schwander v. Feehey's, 42 Del. 198 (1943); Howell v. Eastburn, 39 Del. 588 (1939); Townsend v. Harmon, 35 Del. 562 (1934).

\(^{17}\) Delaware Code of 1953, Title 22: sec. 102.

\(^{18}\) Ibid., Title 10: sec. 9101.

\(^{19}\) Ibid., Title 10: sec. 9102.
for non-compliance is the difficulty in getting persons to accept appointment in areas where there is little work inasmuch as the only monetary rewards are based on the fee system. Most of the criminal work-load of a magistrate consists of traffic cases. Justices operating in out-of-the-way places find it impossible to maintain an office from the fees and costs derived from traffic fines alone. Several of the magistrates do a thriving civil business, but this is only possible if the magistrate's court is located in a well-populated area. Accordingly, the governors have sought to name justices only for those places where the number of cases make it worth while for the courts to be open.20  (See Figure 1.)

The statutory specifications respecting appointments to the judgeships reflect the local origin of the office of justice of the peace. The justices' courts were originally designed to afford a cheap, quick justice, and in order to achieve this, they perforce had to be accessible to the public. Accordingly, the location of the justices' courts during the latter part of the nineteenth century was made on the basis of the population of that period, and the distribution

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TABLE I

<table>
<thead>
<tr>
<th>Year</th>
<th>New Castle</th>
<th>Kent</th>
<th>Sussex</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1940</td>
<td>16</td>
<td>7</td>
<td>21</td>
<td>34</td>
</tr>
<tr>
<td>1941</td>
<td>16</td>
<td>5</td>
<td>17</td>
<td>38</td>
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<td>1942</td>
<td>13</td>
<td>7</td>
<td>19</td>
<td>39</td>
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<tr>
<td>1943</td>
<td>13</td>
<td>7</td>
<td>19</td>
<td>39</td>
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<tr>
<td>1944</td>
<td>11</td>
<td>5</td>
<td>18</td>
<td>34</td>
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<tr>
<td>1945</td>
<td>12</td>
<td>5</td>
<td>18</td>
<td>35</td>
</tr>
<tr>
<td>1946</td>
<td>13</td>
<td>6</td>
<td>17</td>
<td>36</td>
</tr>
<tr>
<td>1947</td>
<td>13</td>
<td>6</td>
<td>16</td>
<td>35</td>
</tr>
<tr>
<td>1948</td>
<td>13</td>
<td>6</td>
<td>16</td>
<td>35</td>
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<tr>
<td>1949</td>
<td>12</td>
<td>7</td>
<td>16</td>
<td>35</td>
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<td>1950</td>
<td>12</td>
<td>6</td>
<td>15</td>
<td>33</td>
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<td>1951</td>
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<td>6</td>
<td>14</td>
<td>33</td>
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<td>1952</td>
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<td>1953</td>
<td>10</td>
<td>5</td>
<td>19</td>
<td>34</td>
</tr>
<tr>
<td>1954</td>
<td>14</td>
<td>8</td>
<td>18</td>
<td>40</td>
</tr>
</tbody>
</table>

* Compiled from Delaware State Manual.

20 Letter to author from H. B. McDowell, then secretary of state, dated January 14, 1953.
FIGURE I

LOCATION OF THE
JUSTICES OF THE PEACE
IN DELAWARE
1955

TABLE II
SHOWING SHIFT IN POPULATION IN DELAWARE ACCORDING TO COUNTIES—
1890-1954

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>New Castle Number</th>
<th>Per cent</th>
<th>Kent Number</th>
<th>Per cent</th>
<th>Sussex Number</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1954</td>
<td>362,000</td>
<td>249,056</td>
<td>68.8</td>
<td>39,820</td>
<td>11.0</td>
<td>73,124</td>
<td>20.2</td>
</tr>
<tr>
<td>1950</td>
<td>318,085</td>
<td>218,879</td>
<td>68.8</td>
<td>37,870</td>
<td>11.9</td>
<td>61,336</td>
<td>19.3</td>
</tr>
<tr>
<td>1940</td>
<td>266,505</td>
<td>179,562</td>
<td>67.4</td>
<td>34,441</td>
<td>12.9</td>
<td>52,502</td>
<td>19.7</td>
</tr>
<tr>
<td>1930</td>
<td>238,380</td>
<td>161,032</td>
<td>67.5</td>
<td>31,841</td>
<td>13.4</td>
<td>45,507</td>
<td>19.1</td>
</tr>
<tr>
<td>1920</td>
<td>223,003</td>
<td>148,230</td>
<td>66.5</td>
<td>31,023</td>
<td>13.9</td>
<td>43,741</td>
<td>19.6</td>
</tr>
<tr>
<td>1910</td>
<td>202,322</td>
<td>123,168</td>
<td>60.9</td>
<td>32,721</td>
<td>16.2</td>
<td>46,413</td>
<td>22.9</td>
</tr>
<tr>
<td>1900</td>
<td>184,735</td>
<td>109,697</td>
<td>59.4</td>
<td>32,762</td>
<td>17.7</td>
<td>42,276</td>
<td>22.9</td>
</tr>
<tr>
<td>1890</td>
<td>168,493</td>
<td>97,182</td>
<td>57.6</td>
<td>32,664</td>
<td>19.6</td>
<td>38,647</td>
<td>22.8</td>
</tr>
</tbody>
</table>
of these courts reflected the distribution of the population obtaining in that day.

Shifting of population and reconcentrations of the populace, however, have not been followed by redistribution of the magistracies. This fact accounts for the failure of the governors to appoint to places where there is now relatively small incidence of litigation. In 1955 a bill was introduced in the legislature to reduce the number of justices to a total of 16 with six serving in New Castle, four in Kent, and six in Sussex. Effort was made in this proposal to allocate the appointments to the areas where the greatest need for local adjudication exists. The bill failed of passage. Similar suggestions have been made from time to time respecting the assignment of justices to specific areas along the main highways of the State in relation to the amount of traffic cases occurring on those highways. No action has been taken on such suggestions. Although tradition has required that each hundred have its own judge, there is some evidence that this feeling is subsiding to the point where a more equitable and workable apportionment of the justices' courts may be made eventually. Pressure is mounting for a rearrangement of the minor judicial system, and the next decade may see a complete reorganization of the justice of the peace system.21

By constitutional provision the justice of the peace is appointed by the governor for a term of four years. Confirmation by the State Senate is required before a justice's commission will issue. Interim appointments are permitted. Every justice before entering upon the duties of his office must file a bond in the amount of $1,000 approved by and placed with the Secretary of State.

Appointments to the justiceships are made on a partisan basis, usually upon proposals made by the local political leaders to the governor. In some few instances persons of the party opposite to that of the governor have been named to the magistracy. In making appointments there is little effort by the chief executives to determine the qualifications of their appointees in terms of educational background, mental ability, or general likelihood of success in office. Governor Buck (1929-37) tried to have at least three names submitted to him by the local party leaders when an appointment was due in a particular hundred. He demanded some statement from the local leaders concerning the reasons they be-

21 See House Bill 572, introduced in 118th General Assembly (1955).
lieved a nominee would be a good justice of the peace. In spite of this requirement it was extremely difficult for the governor to have the names of able persons presented to him. Governor Buck also tried to interview the individuals proposed for the judgeship by the committee members of the hundreds before he made an appointment, but this task became insuperable. The present Governor, J. C. Boggs, has attempted to get the local politicians to scrutinize the records of the persons they recommend for appointment before presenting their names to him, but there is no evidence that this is done; the job is usually looked upon as a political plum rightfully belonging to the party which has captured the governorship. The right of designation has rested by custom with the local political leaders in the hundreds, and these leaders have shown little appreciation of the need for naming competent persons to the minor judiciary. In spite of the fact that political preferment has dominated the designations to the lower bench several proposals have been made by some of the magistrates to the effect that the political basis of appointment should be abandoned.

Suggestions for placing appointments under a merit system have been made to the author by several sitting magistrates. It has also been suggested by several incumbents that appointments be made on a bi-partisan basis with half of the justices coming from one major party and half from the other major party. The leaders of both parties have not gone on record favoring this proposal.

Training and Supervision

One of the most serious deficiencies of the present justices’ system is that no provision exists for the training of the newly appointed magistrates in the duties of their office. In addition to the lack of formal pre-service or in-service training, there is no immediate supervision of the justices. The only control over the activities of the magistrates rests with the upper courts when charges of misfeasance or malfeasance are brought against a member of the lower bench. If conviction occurs in such cases, then the governor may remove the justice from office. This kind of control cannot be deemed supervisory, however.

In 1952 an attempt was made to give some in-service training to newly appointed justices. The new judges were asked to come to Dover and meet with the director of the Legislative Reference Bureau in order to be apprized of the procedures involved in their
office. This program was abandoned after a brief trial largely because under existing law no constitutional officer such as a justice of the peace can be compelled to submit himself to instruction in the operation of his office.

Several of the magistrates interviewed in the course of this study expressed a desire to have some means of conveying to new appointees the technical details of their job. It is generally felt that much time is lost by the new justice in the early months of his term in an effort to master the basic procedures of the job. The Delaware Code of 1953 contains a great amount of procedural material, and it is quite understandable that a beginner might have difficulty in handling the language of the statutes. One magistrate, who has held a respected position for several terms, feels that there should be a chief magistrate with three deputy chief magistrates, one for each county, charged with training the new appointees and supervising their judicial operations. In the event that the duties of the office were not being executed satisfactorily, recourse could be had by the deputy to the chief magistrate who in turn would have the right to cite the judge in question to a commission consisting of the governor, the attorney general and a member of the State Supreme Court for possible removal from office.22

In 1954 the Governor's Highway Safety Committee suggested that a series of "seminar discussion workshops" be held in order to acquaint justices of the peace with the proper method of handling cases involving breach of the motor vehicle code. The State Police have been interested in instituting such a program.23 To date nothing has come of any of these proposals.

Tenure

Under the constitution the term of office for the justice of the peace in Delaware is four years. While this is a relatively long term compared to that of the minor judiciary in other states, it is not overly lengthy in view of the experience needed to develop competency in office. Several of the men who have held the magistracy are quite ready to admit that almost half of their term was

22 Letter from Maurice Carrow, J. P. (Kent County) quoted in Journal Every-Evening, February 17, 1954.
23 Wilmington, Morning News, April 13, 1954.
gone before they felt adjusted to the position and capable of handling the routine.

Between 1940 and 1954, 160 persons were named to the justices' courts. Three of these failed of confirmation by the Senate. Of the total number appointed and confirmed, 26.1 per cent served two terms or more: 3.1 per cent served four terms each, 3.0 per cent served three terms, and 20 per cent served two terms. Hence, most of the magistrates have held office only for four years. Turnover is relatively high. As the two major parties approach equality in electoral strength, the tendency will be for a greater turnover to occur in the judgeships, inasmuch as neither of the two major parties is likely to hold the governorship for any extended length of time.

Sussex County has led in the number of reappointments in the past fifteen years. In that county, 37.3 per cent of the justices have served two terms or more. In Kent, the figure stands at 22.1 per cent, and in New Castle only 20 per cent of the justices have held office more than once. Thus, populous New Castle, where the bulk of the litigation before the minor judiciary is found, has had the highest percentage of turnover among the three counties.

According to the state constitution all civil officers in Delaware hold their office on condition that they "behave themselves well." In the event a magistrate is convicted of misbehavior in office or of any infamous crime, he is removable by the governor. In the course of the period 1940-1954, only two magistrates were removed. In both cases, charges of misbehavior in office had been made.

The Background of the Justices

Occupations. In the main, the occupational backgrounds of the vast majority of the justices of the peace who have served since 1940 reflect the ways of life found in the small towns and rural areas of the State. While it is at times difficult to ascribe a particular calling to a local justice, especially if he has been a man of affairs in his community, there is usually little question that his economic outlook and social attitude will be in basic agreement with the concepts held by the majority of his fellowmen. In general the justice of the peace will have had experience in (a) business of a local nature, (b) in agriculture, or (c) as a public officer such as a local councilman, alderman, or perhaps mayor. Often a combination of
all three or any two of these general categories can be found in the background of the justice. Table III furnishes a breakdown of the jobs held by the justices of the peace appointed during the past fifteen years.

TABLE III

**Occupations of the Justices of the Peace Held Prior to Assuming Office**

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Businessman</td>
<td>51</td>
</tr>
<tr>
<td>Farmer</td>
<td>11</td>
</tr>
<tr>
<td>Railroad employee</td>
<td>7</td>
</tr>
<tr>
<td>Retired:</td>
<td></td>
</tr>
<tr>
<td>Business</td>
<td>8</td>
</tr>
<tr>
<td>Skilled worker</td>
<td>3</td>
</tr>
<tr>
<td>Policeman</td>
<td>13</td>
</tr>
<tr>
<td>Army Officer</td>
<td>1</td>
</tr>
<tr>
<td>Public Officer:</td>
<td></td>
</tr>
<tr>
<td>Mayor</td>
<td>4</td>
</tr>
<tr>
<td>Councilman</td>
<td>4</td>
</tr>
<tr>
<td>Alderman</td>
<td>5</td>
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<tr>
<td>State Senator</td>
<td>1</td>
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<tr>
<td>Clerk of Court</td>
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<td>Industrial worker</td>
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<tr>
<td>Skilled worker</td>
<td>7</td>
</tr>
<tr>
<td>Clerical worker</td>
<td>5</td>
</tr>
<tr>
<td>Minister</td>
<td>3</td>
</tr>
<tr>
<td>Teacher</td>
<td>3</td>
</tr>
<tr>
<td>Veterinarian</td>
<td>1</td>
</tr>
<tr>
<td>Lawyer</td>
<td>3</td>
</tr>
<tr>
<td>Undertaker</td>
<td>2</td>
</tr>
<tr>
<td>Housewife</td>
<td>3*</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>157</td>
</tr>
</tbody>
</table>

*Five women have held justiceships during the period mentioned. In addition to those giving their occupations as “housewife,” there were two others: a school-teacher and a business woman who sat as justices of the peace.*

Some of the classifications listed in Table III are somewhat misleading. For example, under the category “businessman” several local repairmen and mechanics who operate their own shops are listed. Also, a man might like to designate himself as a farmer whereas the greater amount of his time probably was spent in
some other occupation, farming being merely an avocation. Effort has been made in the above listing to place the person in the category which seemed to conform to the facts wherever these could be ascertained.

It will be observed from Table III that over 10 per cent of the justices had experience in public office before accepting appointment to the minor bench. Also, nearly 8 per cent of the justices served as policemen, local or state, before acquiring a justiceship. It is questionable whether a former policeman should serve as judge inasmuch as he may have deeply ingrained in him the mindset of an arresting officer rather than that of the impartial arbiter. Few lawyers have been named to the lower bench in Delaware. Most of the attorneys in the rural areas have always found themselves so fully occupied in the pursuit of their profession that the local magistracy has little if any appeal. Apparently the run-of-the-mine cases coming before the justices of the peace hold little interest for the man trained in the law. If the practicing lawyer covets a judicial position, he will have his eye upon the upper bench. In all, less than 10 per cent of the justices named during the period under study could be said to have a professional background, which fact is consistent with the experience of other states.24

The rural justice of the peace is a man fairly well-known in his community and often one who has the respect of his fellows. In many instances he is a practicing politician and has worked with his party over a fairly long period of time. Frequently a pensioner or retired farmer will take up politics as a hobby, and because of the political fluidity in some of the areas of the state, such a person can project himself quite readily into the local political limelight. In some instances these late arrivals on the political scene have been offered justiceships as a reward for reviving a latent partisan feeling in a local community.

There have been occasions, when a partisan appointment has brought into office someone of exceptional ability, and when this has occurred there has been a tendency for a newly elected governor to continue the justice in office even though he is of the party opposite to that of the governor. Such practice is frowned upon by party workers who feel the magistracy is one of the plums of victory at the polls.

24 F. Talbott, Intergovernmental Relations and the Courts (Minneapolis, 1950), p. 64.
Age. The tendency has been for older men to be appointed to the minor judiciary in Delaware. Within the past ten years the median age of the justices was 52 years. Table IV shows the percentages within certain ranges of age. It will be noted that over 40 per cent were more than 60 years old. This fact probably can be attributed to the large number of retired persons who have been accepting appointment in recent years.

Education. Information concerning the educational background of the justices has not been obtainable for all the appointments since 1940. In some instances the ex-justice has removed from the

<table>
<thead>
<tr>
<th>TABLE IV</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age Range of Justices of the Peace in Delaware — 1945-1955</strong></td>
</tr>
<tr>
<td>------------------------</td>
</tr>
<tr>
<td>Age</td>
</tr>
<tr>
<td>------------------------</td>
</tr>
<tr>
<td>30-39 years</td>
</tr>
<tr>
<td>40-49 years</td>
</tr>
<tr>
<td>50-59 years</td>
</tr>
<tr>
<td>60 and over</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TABLE V</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Formal Education of Justices of the Peace in Delaware Serving Between 1950-1955</strong></td>
</tr>
<tr>
<td>------------------------</td>
</tr>
<tr>
<td>Highest Educational Level Achieved</td>
</tr>
<tr>
<td>------------------------</td>
</tr>
<tr>
<td>Completed 8th Grade</td>
</tr>
<tr>
<td>Completed Secondary School</td>
</tr>
<tr>
<td>Attended College or University without completing course</td>
</tr>
<tr>
<td>Graduate of College or University</td>
</tr>
</tbody>
</table>

State, and personal data are unavailable. Information concerning the education of justices appointed within the past five years is given in Table V. In view of the fact that the statistics found in Table V are based on 40 of the 60 justices serving during this period it can be assumed that these percentages would hold for the entire group. On the other hand the fact that only the past five years have been used in this analysis makes it extremely difficult to contend that such percentages would hold for the preceding ten years. It would appear from the statistics that the majority
of the justices of the peace who have served during the past five years have a relatively high amount of formal schooling.

The Physical Situation in the Justices' Courts

The outstanding feature of the justice of the peace court is the informality of its operation. In some instances there is effort on the part of the justices to adapt some of the more formal arrangements of the regular courts to the work in the lower courts, but in the vast majority of cases the justices carry on their business in a most informal manner interspersing their judicial duties with their domestic chores or those of their regular business if they happen to be engaged in an occupation in addition to that of the justice-ship. The informal approach is in keeping with the types of cases usually heard by the justices. The small causes on the civil side of the law are concerned mostly with petty open-book accounts for material or for the furnishing of services, and the litigants are usually not interested in employing the full niceties of procedure in order to arrive at a decision to their controversy. Likewise, the bulk of the criminal cases arise out of traffic violations, in which the only real question is the amount of the fine or punishment to be imposed. Usually there is little contest as to the facts in either the civil or criminal litigation coming before the justices. Yet the informal approach may at times lend itself to bad administration of the law. The judge in the magistracy is apt to permit moralizing to enter into the discussion of a case, particularly in a motor violation involving loss of life or limb, and it is difficult for him to keep the overtones of his own predilections out of the proceedings. The conventional courtroom with its aura of dignity and impersonality permits a more strict appreciation of the need for a rigorous impartiality on the part of the judge and other court officers. When a court of law is placed in a private parlor or back room of a store, the prevailing local attitudes and prejudices are quite capable of entwining themselves within the fabric of the facts and of the law involved in the case at hand.

Within recent times greater stress is being placed by students of legal administration upon the need for improving the physical surroundings and general tone of the minor courts.\textsuperscript{25} The upper tribunals, especially at Federal level, are models of the decorous

\textsuperscript{25} W. B. Graves, \textit{American State Government} (Boston, 1958), p. 601.
forum operating dispassionately and set apart from the hubbub of the work-a-day world. At state level emulation of this situation is fast becoming the practice among the first-instance courts in the upper jurisdiction. In Delaware the constitutional tribunals of first instance have long reflected the feeling of bench and bar that justice must be dispensed in a setting conducive to the rational and the urbane rather than in one marked by the emotional and the bizarre.

Some of this atmosphere is also discernible in the operation of the Municipal Court in Wilmington and in the Family Court for New Castle County, both of which have long had reputations for maintaining dignified proceedings. In respect of the justice of the peace courts the general physical situation is not that of the regular courts. The atmosphere of the justices' courts and the general tone of their procedure leave much to be desired even when the tendency toward informality is considered.

Of the justices of the peace serving between 1940 and 1955 only half held their courts in places separate from their homes or places of business. Of those who did, approximately eight per cent used the town hall or police headquarters of the community which they served. Of those who had no quarters separate from their homes or places of business, approximately half followed the usual Hollywood pattern with the sitting room or parlor serving as the bar of justice. The others conducted their hearings in general stores, garages, and in two instances in stables. The tendency, however, within the past five years has been for the justices to set up an office in the center of the town in their hundred. The Wilmington magistrates have usually maintained quarters in the central part of the city, and inasmuch as the bulk of their work is civil, they need regular office space to house the records and to provide working space for the clerks who keep them.*

Only those justices who do a fairly large amount of business can afford to have an office used only for judicial functions. The State appropriates nothing for the organization or management of a magistracy. The county provides the dockets (the books in which records of civil and criminal cases are kept), but it makes no appropriation for office space. The theory is that the justice of the peace system must be self-supporting.

* Clerk hire is at the option of the justice. He must meet the pay out of his costs; the State or county makes no provision for office help.
There is a general complaint from the State Police, who make the bulk of the traffic arrests in the State, that some of the justices' courts are completely lacking in the amenities of a tribunal. Stories are told of one magistrate who swept out the grain and feed dust from his store before trying a case, these preliminaries occurring in the presence of the accused and the arresting officer. Another tale deals with a judge, who came in from the field where he was plowing in order to hold court in the rear of his stable. Before the proceedings began he had to quiet the bovine inhabitants. Some of these situations may be sufficiently rustic and homespun to keep alive the traditional picture of the rural squire. At the same time, however, they give Delaware a bad name among travelers caught in the toils of traffic regulations while passing through the State. The State Police have a penchant for giving the impression of neatness, efficiency, and courtesy to the motoring public, and it is to their credit that a real respect is accorded the troopers by almost everyone who comes in contact with them. Hence, when a State police officer hales a traffic violator before some of the more rustic justices' courts he may find that his effort toward sophistication and urbanity in making the arrest in the first instance is put to naught by the antics of the local judiciary.

The tendency within recent years is for most of the justice of the peace courts to be established within the confines of the largest town within the hundred for which the justice has been appointed. There are still a few justices who set up court in the rural out-of-the-way areas, and in these instances the bucolic atmosphere prevails to its fullest. Little business of a civil nature comes before these tribunals, and criminal cases brought before them are at a minimum.

Where there is a fairly heavy load of cases, both criminal and civil, the justices usually find the greater portion of their workday consumed by judicial activity. They are really full-time justices, and the volume of their work is sufficient for them to maintain fairly formalized arrangements for the conduct of their courts. Several of the present justices holding hearings in the towns along the heavily travelled highways of the State have established courtroom-like offices. The typical office of these judges consists of a desk in the front of the room and several rows of chairs strung out in front of the desk. Ofttimes a small railing will separate the desk from the chairs. On the desk there is a well-worn Bible for
purposes of administering oaths. In one corner of the room reposes the American flag, and prominently displayed on a shelf behind the justice’s desk is a set of the Delaware Code of 1953. One justice, whose traffic case load reaches as high as twenty hearings a day, has built himself a retiring room in back of his office where he may get a few hours sleep in the late evening and early morning when the flow of traffic is somewhat lessened. Several justices maintain offices in the town proper but live just outside its boundaries. They maintain telephonic communication with their constables, who usually hold forth in the justice’s office during his absence. The State Police also keep in touch with the justice by phone when he is at home, and they notify him when they have made an arrest and advise that they are bringing the prisoner into his court. This advance notice permits him time to get to his office and be ready to conduct the hearing when the arresting officer arrives with his quarry. If an arrest is made late in the evening or early morning, however, the officer will probably take his prisoner directly to the justice’s home, where the hearing will then be conducted.

Because of the practice of the State Police to make arrests on sight when a traffic violation allegedly has occurred and to take the accused directly to the judge instead of issuing a summons to be responded to at a later date, it is difficult for the magistrates to maintain regular office hours. The lack of scheduled hearings and the sporadic nature of the justice’s work make it extremely difficult for most of the JP’s to maintain a regular court-like situation in their hearings. By establishing a physical setup which somewhat resembles a formal courtroom, something of the judicial atmosphere of the higher court is brought into the justice’s hearing, but the fact remains that first-instance jurisdiction at this level is of such a nature that informality is almost inescapable if the current practices are to be maintained. Few motorists would demand a formal hearing if it meant waiting several hours for court to open. Most arrested motorists are willing to abide by informal proceedings, even at the expense of injustice, if it means getting quickly out of the clutches of the law and on their way.*

* The writer interviewed more than twenty motorists after they had been tried in summary hearings and found guilty. They, with one exception, felt that even though the hearings were highly informal they were handled with dispatch. Speed seemed to be the chief criterion used by these interviewees in assessing the operation of the justices’ courts. Apparently a trial for speeding has redemptive value in the eyes of a speeder provided the trial itself is speedy!
Several of the justices who still hear cases in their own homes have provided an office or room apart from their regular living quarters. Effort is made by most of them to treat this room as something apart from the house, although items of domestic living are often in evidence. The wife of one of the justices who had set up an office in this manner used the office as an "extra room" for cleaning utensils. Whenever a hearing was to be conducted, several minutes were required to provide space enough for the arresting officer and prisoner and justice to stand. Generally speaking, those justices who have had to hold hearings in their homes, whether they have a separate office or not, have a difficult time in dissipating the flavors and aromas of the household from the hearing. Judicial atmosphere in such instances is difficult to obtain.

One noticeable difference between hearings conducted in an "informal" surrounding and those held under more formal circumstances is the appearance of the justice. If he holds court in his home, he is usually ill at ease and fumbling for his bearings. Usually he cannot find his Code, or the Bible, or even paper and pencil upon which to make notations. He is generally clad in either work clothes or in lounging suit. Some justices caught in such circumstances tend to adopt an air of unconcern, but the fact that facilities for the conduct of a trial are not readily at hand discomfit most of them. On the other hand, if a justice is at his office and attired in a business suit with his books and implements of office accessible, he tends to have control of the situation, placing both arresting officer and prisoner a bit more at ease. For example, a lecture on the dangers of speeding given by a justice who has had to clear away debris in order to get the case under way is less likely to have the effect which an admonition, given by a justice working under conditions of an orderly nature, would have.

Procedure Before the Justices' Courts

There are two main processes employed in the justice of the peace courts. One is the trial of various civil causes; the other is that invoked in criminal cases. Preliminary hearings to ascertain whether the accused shall be held for higher court also are held before a justice. Proceedings in these cases partake more of the nature of an investigation and inquisition rather than that of a trial.
Civil Procedure. Most of the civil cases coming before the justices are concerned with open-book accounts. Action for debt takes up the bulk of the time of the magistrate when he is sitting in civil jurisdiction. Such action, known usually as action in assumpsit, is commenced by a creditor making a complaint and presenting the justice with an itemized record of the indebtedness. Usually, when such presentation has been made, the justice will issue a summons directing a constable to call upon the defendant named in the action and summon him to appear before the justice on a day stated, which must not be later than fifteen days from date the summons was issued. The summons does not have to be served personally; a copy may be left at the usual place of abode of the defendant in the presence of some adult person. It must be left at least four days before the hearing is scheduled. The constable makes a return of the summons showing how it was served and before whom, stating that a copy was left with a certain person (named) or the defendant. This attest is in the form of an affidavit appearing on the reverse side of the summons, which is known as the warrant. In order to have the warrant issued, the plaintiff must make a deposit of $2.00 with the magistrate. This money is applied to the costs of the action, and can be collected from the defendant.

Most actions on open-book accounts result in judgment for the plaintiff (hence the initials "JP" are often understood as synonymous with "judgment for the plaintiff"). In the great majority of cases judgments are taken by default. Any defendant may within fifteen days after the date of judgment apply to the justice to vacate the judgment and hold a trial. The justice does not have to comply if he believes the defendant wilfully neglected to appear at the date originally set for a hearing.

Instead of being commenced by summons, a civil action for debt may be started by the process of attachment. Again the sum involved may not be over $500. Attachment will issue when the plaintiff has reason to believe that the defendant is about to abscond or to remove his personal effects out of the State or purposely conceal himself so that ordinary summons cannot reach him. The constable is responsible for seeing to it that the goods which are attached are preserved to meet the judgment if it is finally given.*

* The attachment process may also issue after judgment has been given in order to seize the debtor's goods and apply their proceeds against the judgment.
Wages due a debtor may be garnisheed through the process of attachment if the debt is for certain essentials of life. However, in the event of garnishment no judgment may be entered against the garnishee (the one owing the wages—the employer) until judgment has been given against the debtor.

In action for debt if the amount involved exceeds $5.00 either party may claim trial by three referees. For such cases three referees are appointed by the justice of the peace. These persons report their findings to the justice, who then gives judgment accordingly. The use of referees before a justice's court is very infrequent.

Another type of civil action infrequently brought before a justice of the peace is that of trespass. Actions in trespass are brought for acts of tortious nature committed against the person, property, or the rights of another. Most of the cases in trespass have to do with damages to property arising out of automobile accidents. In such cases if a criminal charge is also involved, that charge is heard first, and if conviction is obtained, then the justice will advise the plaintiff to pursue his quest for damages civilly. In most instances of this type, the same JP who heard the criminal action will sit in the civil suit. If judgment is rendered in favor of the plaintiff in the ensuing civil suit and the defendant does not pay, the magistrate will advise the Motor Vehicle Commission to that effect. Under existing law the defendant's license will be suspended. This action usually has the effect of forcing payment on the civil judgment. Most justices of the peace, however, tend to shun jurisdiction in cases involving automobile accidents. Litigants in damage actions usually will employ attorneys, and few magistrates like to have lawyers practicing in their courts. With the development of the Common Pleas Courts (one in each county), which have concurrent jurisdiction with the magistrate in civil matters, the tendency is for actions in trespass to be heard in these tribunals rather than in the justices' courts.

Replevin actions (which deal with the return of goods to a person who alleges they have been unlawfully taken from him or detained by another person) may also be instituted before a justice's court, but few cases of this type are handled by the magistrates. Under the law, the plaintiff in replevin action must enter into a bond before the case can be heard. The defendant likewise must post bond in double the amount of the action. The filing of these bonds presumes a technical competency on the part of the constable.
attending the justice, and few of these officials care to become involved in the complicated process of repleving an article and impounding it. Furthermore, most replevin actions exceed the amount limiting the justice’s jurisdiction, and in many instances of this type of case the litigants retain counsel. Most of the magistrates interrogated in the course of this study have never heard causes in replevin. It is questionable whether many of them are knowledgable of the process involved in such actions.

In one other type of civil action the justice can assume jurisdiction; namely, that which deals with forcible entry of real property, detaining of real property unlawfully, or holding real property under lease beyond the time of the instrument and after demand by the landlord to vacate. No writs can be issued by a JP upon a complaint of forcible entry after one year from such entry, or on a complaint of forcible detainer after tenant has been in continued possession for a period of two years. In ordinary distrains for rent which operate under what is known as a landlord’s warrant, the constable has jurisdiction, and it is he who carries out the levy and the sale on the levy. Ejectment is within the province of the Superior Court, but actions are often taken before a magistrate to have someone moved from a dwelling because of failure to pay rent or to vacate upon expiration of lease and notice to remove. It is questionable whether the constable, acting under a landlord’s warrant or upon warrant for delivering possession of property issued by a justice of the peace, can eject a person who actually remains on the premises. In the event a warrant for delivering possession has been issued, the justice makes a record of such issuance in his judgment docket. If there is controversy over the facts in a case of holding over or with respect to payment of rent, either party, before the return date of the summons, may request a jury trial before the justice. The jury in such instance consists of three persons summoned by the constable. Verdicts may be rendered in actions involving forcible entry, detainer, or holding over, but the amount of damages assessed cannot exceed $500. As in the case of trials by referees for debt, the use of juries before justices is extremely infrequent. The writer knows of no case in which a jury was used. One interesting side light on proceedings before a justice with a jury is that he is required by law to charge the jury con-

26 Delaware Code of 1953, Title 10: sec. 8122.
27 Ibid., Title 10: sec. 6701, 6702.
cerning the law involved in the case. No magistrate, however, is required to be a lawyer.

Criminal Procedure

It is in the procedure followed in the criminal courts of our land that the real safeguards against arbitrary government and gross injustice are to be found. If the procedure is such as to prevent a full explication of the facts and the proper application of the law to the facts, then the cherished rights of free men tremble in the balance and civil liberty is jeopardized. A constant complaint against the justice of the peace system heard throughout the nation is that the justices, when sitting criminally, often fail to give proper hearings and to conduct their inquiries with dispassion and honesty, determined to get at the facts and fit the law to the facts. The very informality with which magisterial courts are usually conducted lends itself to a relaxation in the rigorous application of procedural justice. Where procedure becomes slipshod, decisions become suspect. Second only to the need for the recruitment of qualified personnel for the justice of the peace courts is the need to improve their criminal procedure. Too little attention has been given to the technics of procedural reform. The common cry is to scrap the justice of the peace system in its entirety. Perhaps by a bit of conscientious effort changes could be effected in the present system which would permit the retention of a grass roots approach to the administration of law at local levels, and at the same time make that administration conducive to the promotion of justice.

The justice of the peace sits as a summary court in dealing with misdemeanors. The usual procedure in the prosecution of a misdemeanor is for a warrant to be issued by the justice upon the complaint of some other person. Service of the warrant is by the constable attached to the justice's court or by a local policeman or State Police officer. The accused, after being served, must appear before the JP. The accused may elect to be tried by the justice of the peace, or make known that he wishes the case tried before the county Common Pleas Court. In the event of the latter decision, bond must be posted. The bulk of the charges for misdemeanors are heard by the justices. Appeals from the magistrate's decision lie with the Superior Court in all cases involving misdemeanors.

The majority of criminal cases heard by justices of the peace in Delaware arise from traffic violation. The basic procedure followed
in a traffic case is summary. The arresting officer, if he is a state policeman, or (in New Castle County) a county officer, usually will bring the violator before a justice immediately upon making the arrest. The officer, of course, may instead issue a summons for a later appearance of the accused before a justice, but the former procedure is favored. At the hearing the justice will ask for certain data including the driver's license, terminal points of travel (if accused is from out of State), business, record of arrests (the accuracy of which can be readily verified through the Motor Vehicle Commission if the driver is a resident of the State), and whether the arresting officer had any difficulty with the prisoner. Before the actual trial of the case begins, the justice must advise the defendant of his right to elect to have the case tried before the Common Pleas Court. 28 The justice will also ask the policeman whether he informed the prisoner of his option in this respect. In the event the accused takes the case to the Common Pleas, bond must be posted by him to insure his appearance in that court. If the accused elects to have the case heard by the justice, a warrant will be issued by the JP upon complaint of the officer and the trial will then begin, or if the defendant wishes to have a postponement, this will be granted, but bond must then be posted.

In cases involving misdemeanors, the trial thus begins by the arresting officer making a formal complaint to the justice concerning the alleged violation. The defendant is asked to make his plea. The facts are then presented by the arresting officer, and the accused has the right to contradict. Some justices permit what amounts to a cross-examination of the officer by the defendant. After the evidence has been presented and the defendant has had the right to offer his version, judgment is rendered. If the verdict is guilty as charged, or if the plea of guilty has been entered, the judge assesses a fine, or in some severe cases may sentence the accused to jail. In the great majority of the cases involving traffic breach, a fine is the penalty. Fines range from $7.50 to $100, depending upon the enormity of the offense and the record of the defendant. Incarceration, if decreed, can be from ten days to six months.* Persons committed to jail are taken there by the constable, the commitment papers being made out by the justice.

28 Ibid., Title 11: sec. 5901.

* One section of the Delaware Code permits a justice of the peace to fine in the amount of $5,000 or imprison for five years or both in the event that a motorist,
In addition to the handling of misdemeanors, the justices are called upon to sit as committing magistrates. If a felony has been committed, the accused is brought before the justice, who holds a preliminary hearing and decides whether to hold the defendant for trial before a higher court or to dismiss the charge. At the preliminary hearing the arresting officer makes a complaint, which is entered in the criminal docket. In important felony cases a representative from the State's attorney-general's office will be present at the preliminary hearing. If the justice decides the evidence submitted by the arresting officer or the State's attorney warrants holding the accused for court, he then makes the commitment. If the offense is bailable, bail is set; otherwise the accused is committed to the county jail and held there for court. No bail may be entered in a capital case. In the event the accused is held for court, the justice of the peace must convey to the clerk of the higher court where the trial will be held all recognizances, examinations, and depositions taken by the justice at the preliminary hearing.

In handling felonies the State Police are tending to use the Common Pleas Court for the issuance of the warrants, particularly where search and seizure is involved. Probable cause is an important element in making an arrest where there is suspicion of a crime being committed but where no positive external evidence is available without an actual entry into the scene of the alleged misdoing. Search warrants are carefully scrutinized by the upper courts when the cases come to trial, and it behooves the arresting officers to make sure these documents are in order. Most justices of the peace do not have the technical legal training necessary for the proper issuance of a search warrant.

The justice of the peace may also try persons accused of contempt before his court. Fine or imprisonment may be the punishment for contempt. Persons resisting the execution of a court order or offering abusive language to an executing officer may be punished summarily by the justice who issued the order. When sitting in contempt proceedings the justice has plenary power over the case before him, although appeal will lie to the Superior Court. Trials for contempt before a justice are very infrequent, although the

who has inflicted physical injury or death upon some person through the negligent operation of his vehicle, leaves the scene of the accident without stopping or rendering aid. Delaware Code of 1953, Title 21: sec. 4150.

Ibid., Title 11: sec. 451.
justices threaten to use the power if a defendant or witness before them is obstreperous or boisterous.

If a justice of the peace in any criminal proceeding flagrantly violates the rights of persons before him, he is subject to attachment by the Superior Court.\footnote{King v. Reading, 5 Del. 399 (1852).}

In summarizing criminal procedure of the justice of the peace courts it should be pointed out that experience is a vital element in the development of efficient and well-ordered hearings. Those justices who handle a fairly substantial number of cases involving misdemeanors, especially traffic violations, tend to turn in the best judicial performance in criminal jurisdiction. If the case load exceeds 2,000 annually, however, the judges appear to be overworked. Those justices who have served more than one term exhibit a certain professional air in their treatment of arrests and in the interrogation of defendant and arresting officer. The State Police are a great help to newly appointed magistrates because the officers usually have their facts well in hand and present the evidence in a well-ordered manner. Many times the State Police have been of decided benefit to the justices, particularly those who have not yet become well-acquainted with the traffic provisions of the Delaware Code, because the policemen will cite the section which allegedly has been violated. This saves the justice some embarrassment by helping him in entertaining the correct charge and imposing the proper penalty in the event of conviction.

It is with the out-of-the-way justice whose experience in the handling of traffic cases is extremely limited, whose first reaction is to be "for" or "against" the defendant or the officer, or whose usual feeling is that some serious breach of law must have been committed otherwise an arrest would not have been made, that most of the anomalies in the rendition of justice occur. It is understandable that at times all magistrates are confronted with difficult cases, and hard cases make law hard to administer, but in many of the run-of-the-mine cases the less experienced justice gives evidence of abysmal ignorance concerning basic approaches to the handling of the criminal side of his job.

Costs and Records

It is in respect of the emoluments accruing unto the justice of the peace and the manner in which that official maintains the
record of his operations that the amateur status of the justice’s court is best revealed. As previously stated, the costs of operating the justice of the peace system do not fall upon the State or the local governments. These courts are completely self-sustaining, and it is this feature that appeals to the public whenever attempt is made to substitute a stipendiary minor judiciary for the present justiceships. On the other hand, the public becomes most annoyed at the justice of the peace system when the matter of record keeping is under discussion. The very factor of non-professionalism which makes the operation of these courts reflective of the influence of the grass roots is in large part responsible for the unprofessional manner in which their action is recorded.

**Civil Fees.** The fees charged by the justice and the constable in civil cases are determined by law. The magistrate’s fee in an action for debt runs usually between $4.00 and $7.00. The constable’s costs, including mileage charges incurred in the service of papers, may run as high as $5.00; hence, some ordinary debt cases carry costs as high as $10.00.

Under the law, no justice of the peace or constable may charge any fee for the collection of money due on a debt for which suit has been instituted. That is, neither a magistrate nor a constable may become engaged as a collection agency with respect to suits already in process or those in which judgment has been rendered. The attorney general has on several occasions remonstrated with justices who seem to be acting as collection agencies, and the attorney general’s office is on record declaring such practice as illegal. No prosecutions have taken place although there may be foundation for the charge that some magistrates violate the spirit of the law by permitting themselves to be indirectly associated with collection agencies. It would be quite possible, for example, for a magistrate before whom a creditor had come with an overdue account to have his constable advise the debtor that a suit may be instituted if the debtor doesn’t make some effort at payment.

**Civil Records.** At the expiration of ten years from the date of any civil records in the justice’s office, the same may be filed with the prothonotary of the county. This, however, is not the usual

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32 *Wilmington Morning News*, May 9th, 1941.
procedure. Both the judgment and execution dockets—the chief records of a justice's civil process—are usually retained in the magistrate's office, and when his term expires they are continued there by the succeeding justice. The writer has seen judgment dockets and execution dockets over twenty years of age in some justices' offices. Hence, the bulk of the justices' civil records are scattered throughout the several magistracies in the State, and research in them is exceedingly difficult. Furthermore, the accuracy of some of the judgment dockets is open to question. Not all justices have been circumspect in their record keeping. Constables are not always careful to enter full details of the returns from executions, and in some instances the records are quite incomplete in important details. Although the law provides that each justice shall "make a fair entry" in a judgment docket of every action commenced before him and shall further "maintain accurate records of returns from executions," there is no provision to instruct the justice in the keeping of such records. Some of the justices have understandable difficulty in setting up cases before them in which a plaintiff has commenced action but for some reason fails to follow through with the prosecution. The law is not specific on this point.

Within recent years there has been some improvement in the maintenance of civil records by the justices, and if some effort were made by the State to instruct newly appointed magistrates as to the formal civil procedures required by law, greater improvement undoubtedly would result.

Criminal Costs. Costs are assessed against the defendant if he is guilty. If he is not guilty, the county levy court must pay the charges. The usual criminal costs before a justice of the peace is $4.50. Additional costs are involved if a constable's services are employed. The justice and the constable make no report of the fees which they collect in criminal cases, but if the costs are assessed against the county, then a statement must be made to the county levy court. Fines are accounted for on a monthly basis and the return is made to the county or state treasurer depending upon whether the case was a state case or one in which the fine by law is to be paid to the county (e.g. in ordinary cases of breach of the peace).

The total amount of the fees collected by the several justices in
criminal cases shows a great degree of variance. The median return in 1954 was $2,000, but the range was from $50 to $29,500 with only one justice in the upper category.

In fiscal 1954, the New Castle County Levy Court paid out $14,734 in costs to the justices in that county. Fines turned into the county amounted to $20,276 for the same period. The total amount of fines turned over to the State in 1954 was $247,096.

### TABLE VI

<table>
<thead>
<tr>
<th>Amounts Collected</th>
<th>Number of Justices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $15,000</td>
<td>1</td>
</tr>
<tr>
<td>$9,500 — $14,999</td>
<td>2</td>
</tr>
<tr>
<td>$7,500 — $9,499</td>
<td>1</td>
</tr>
<tr>
<td>$5,500 — $7,499</td>
<td>4</td>
</tr>
<tr>
<td>$3,500 — $5,499</td>
<td>4</td>
</tr>
<tr>
<td>$1,500 — $3,499</td>
<td>11</td>
</tr>
<tr>
<td>Less than $1,500</td>
<td>17</td>
</tr>
</tbody>
</table>

**Criminal Records.** Judgment rendered by the justice in criminal cases must be recorded in the criminal docket. Fines assessed and sentences to period of incarceration must be noted.

According to law all fines and other penalties collected by the justices must be entered in a daily ledger or journal. Accounting is made of such collections to the county and state treasurers on a monthly basis, and copies of such transmittals are sent to the state auditor's office. All fines collected as a result of state motor vehicle code violations must be reported on a monthly basis to the State treasurer on forms provided by the State Highway Department. Annual audits of the justices' records are made by the accountant of the Permanent Budget Commission.

In spite of the procedure outlined above some magistrates find bookkeeping to be a chore for which they have little aptitude or training. Little effort has been made by the State to see that uniform methods of bookkeeping or accounting are adopted by the several justices, and the lack of a standard has at times resulted in some embarrassing moments for the magistrates at the time of the audit. Nothing is said in the law concerning the disposition of fines collected by magistrates within the month, but the State
auditor has requested that justices deposit these funds in special accounts and then draw checks against them when making their monthly accounting. Each justice appears to have his own method of accounting, however, and some of these arrangements leave a great deal to be desired as far as the maintenance of up-to-the-minute records is concerned.

**Work Load**

Although several studies of the magisterial system in Delaware have been made from time to time none of them to the writer's knowledge has attempted to give a full picture of actual work load of the justices both in respect of their criminal as well as civil jurisdiction. Until there is some idea of what this load is, little intelligent recommendation concerning the operation of these courts can be made.

**Criminal.** There is no doubt that the justice of the peace plays an important role in the administration of criminal justice in Delaware. As can be seen from a perusal of the general criminal jurisdiction of the magistrates, the bulk of traffic cases, common misdemeanors, and violations of the laws regulating hunting and fishing come within the purview of the justices' courts. In 1954 there were 24,010 criminal cases heard before the justices of the peace. This figure does not include preliminary hearings or arraignments for felony. Further, it does not include those criminal cases originally brought before the magistrates but removed for one reason or another to the Common Pleas Courts.

Within the last five years the volume of the motor vehicle code violations alone handled by the JP's has increased over 40 per cent.\(^{25}\) [See Table VII] The major portion of the rise in judicial activity of the lower bench has occurred in New Castle County. The number of misdemeanors other than traffic breach brought to the attention of the courts in New Castle has risen sharply. Much of this increase has occurred in the suburban areas surrounding the city of Wilmington.

In 1954, the number of traffic violations heard at state level by the justices in New Castle County was 60.8 per cent of the State total. Of the non-traffic misdemeanors, including violations of the

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game and fish laws, approximately 65 per cent were heard in New Castle County. Of the 38 magistrates serving in 1954 throughout the State only nine were located in New Castle County. Hence, approximately two thirds of the criminal cases handled by the justices throughout the State were covered by one-quarter of the magistrates.

Although the total number of criminal hearings in New Castle County in 1954 was just under 15,000, the average number of cases

<table>
<thead>
<tr>
<th>County</th>
<th>Motor Vehicle</th>
<th>General Misdemeanors</th>
<th>Game and Fish</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Castle</td>
<td>8,163 11,306</td>
<td>1,594 3,174</td>
<td>155 292</td>
</tr>
<tr>
<td>Kent</td>
<td>1,979 3,082</td>
<td>852 621</td>
<td>71 125</td>
</tr>
<tr>
<td>Sussex</td>
<td>3,077 4,199</td>
<td>1,190 974</td>
<td>84 287</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>13,219 18,587</strong></td>
<td><strong>3,636 4,769</strong></td>
<td><strong>310 654</strong></td>
</tr>
</tbody>
</table>

for each magistrate—if the load had been distributed evenly—would have been slightly over four each day, including Sundays. This was not the picture, however, inasmuch as four of the justices in New Castle County (outside the city of Wilmington) handled almost 12,000 of the 15,000 cases, or about four-fifths of the total. One justice accounted for 6,600 cases.

In Kent County 3,828 criminal cases were handled by the justices of the peace during 1954. Four of the nine justices sitting during that period heard approximately 2,200 cases, or nearly 58 per cent of the total. Thus the great disparity prevailing in New Castle is not duplicated in Kent.

In Sussex County during 1954, 5,410 criminal breaches were dealt with by the justices. Two of the seventeen justices sitting during this period heard one-third of the infractions brought before the magistracy. The remaining two-thirds were fairly evenly distributed among the remaining fifteen judges.

It is in New Castle County, outside the city of Wilmington, that

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85 All statistics relating to criminal cases were obtained from the files of the Permanent Budget Commission.
the great disproportion in the number of cases heard by the several
magistrates occurs. Any attempt at the reorganization of the
justice of the peace system should take this fact into account.

Table VIII shows the distribution of criminal cases heard by
the justices of the peace in the years 1950, 1951, 1953, and 1954.37
These years cover the period of the great increase in misdemeanors
which has taken place in Delaware. In 1950 it will be noted that
over half of the justices heard less than 200 cases, each. By 1954,
half of the justices heard less than 450 cases, each. The median
figure in 1950 was 111 cases; in 1951, it was 320 cases; in 1953,

**TABLE VIII**

**Distribution of Criminal Cases Among the Justices of the Peace
in Delaware — 1950, 1951, 1953, 1954**

(State level only)

<table>
<thead>
<tr>
<th>Number of Cases</th>
<th>1950</th>
<th>Number of Justices</th>
<th>1951</th>
<th>1953</th>
<th>1954</th>
</tr>
</thead>
<tbody>
<tr>
<td>1800 and over</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>1600 — 1799</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>1400 — 1599</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>1200 — 1399</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1000 — 1199</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>800 — 999</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>600 — 799</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>400 — 599</td>
<td>3</td>
<td>5</td>
<td>4</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>200 — 399</td>
<td>4</td>
<td>7</td>
<td>5</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>1 — 199</td>
<td>21</td>
<td>15</td>
<td>17</td>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

159 cases; and in 1954, 401 cases. The annual average number of
justices hearing cases during these years was 35. The range in the
number of cases heard in 1950 was 5 to 3,700; in 1951, it was 25
to 3,041; in 1953, it ran from 7 to 3,861; and in 1954, it was 33 to
6,599.

Some improvement can be noted between 1950 and 1954 in the
general criminal work load. Whereas in 1950 the median was 111
cases, by 1954 it had risen to 401 cases. In 1950, 14 justices had
handled fewer than 100 cases, each. In 1954, only one justice had
fewer than 100 cases. These figures, of course, do not include the
Wilmington magistrates inasmuch as the bulk of criminal work
there is under the jurisdiction of the Municipal Court.

37 Statistics for 1952 are unavailable.
DELAWARE'S JUSTICE OF THE PEACE SYSTEM

Much of the disparity in individual work loads of the justices and in the number of cases heard in the several jurisdictions is due to the concentrations of motor vehicular traffic in certain areas of the State. These areas are: (a) in northern New Castle County immediately north of Wilmington, served by the justices of the peace in Brandywine and Christiana Hundreds; (b) to the south and southwest of Wilmington, along U. S. Routes 13 and 40 (which are the main highways in the State), which area is served by the justice of the peace in New Castle Hundred; (c) in the Dover-Wyoming-Camden triangle in Kent County, approximately in the middle of the State; and (d) near Bridgeville and Georgetown in Sussex. Approximately 70 per cent of all traffic violations in Delaware outside the city of Wilmington occur in these four general areas. There are at the most five justices serving these four places. During the past five years nearly 20 per cent of all traffic violation charges heard in the State, not including Wilmington, were heard by one magistrate, namely, the justice of the peace in New Castle Hundred. The reason for this situation is the fact that the main highways feeding into the Delaware River Bridge converge in this official's jurisdiction.

Some of the justices serve also as town aldermen. This fact adds appreciably to their total judicial activities. Over 4,000 municipal cases were heard by state magistrates during 1954. One or two justices have shunned the handling of State cases, being content to deal almost exclusively with cases involving breach of local ordinance.

Civil. Although the statistics furnished by the Permanent Budget Commission and the State Auditor's office are fairly complete with respect to the criminal work of the justices, little information is obtainable concerning their civil case loads. No accounting has to be made to any supervisory or reporting authority for this phase of the magistrate's function. Except for the examination of the judgment dockets, when available, there is no documentary basis for any estimate of the total volume of civil work done by the justices either severally or collectively for any particular period. Judgment dockets, which contain a record of the civil cases instituted before a justice of the peace and record of all judgments taken, are by law to be forwarded to the levy court of the county at the expiration of a justice's term of office. The law
further provides, however, that if a successor is named to that justice's office, then the judgment docket is to be sent within three months of the original justice's retirement. What usually happens, therefore, is that the judgment dockets remain with the magistrates and are hardly ever filed with the county levy court unless a justice feels the books are crowding his office space, in which event he will send the earlier dockets to the county office. Few justices keep the older records in anything approaching a usable manner, although the law provides that records shall be arranged by the justice in such manner that they shall be "conveniently available for inspection." In some instances the records have been confused with personal records of the justices, and accordingly are not available to the student doing research. The judgments are not considered items of public record by many of the justices, and they will not let the observer view them.

It has been possible, however, through the process of personal interview and questionnaire, to gain some estimate of the civil work load of the justices of the peace. It must be repeated, however, that civil statistics are spotty, and cannot be used with the facility that is possible in the case of criminal records. The law and the practice regarding the centralization of records of civil judgments need immediate revision.

In 1954 there were approximately 14,000 civil judgments taken in the justice of the peace courts throughout the State. Of these, about 65 per cent occurred in New Castle County with the four Wilmington magistrates accounting for over two thirds of the total number of cases heard in the county. Fifteen per cent of the civil judgments took place in Kent County; and approximately 20 per cent occurred in Sussex County.

As in the matter of the criminal case load, there has been a steady concentration of civil work in the hands of a few justices. Nine justices (including the four who sat in Wilmington) handled about five sevenths of the civil cases heard in 1954.

The only fairly accurate comparison that can be made concerning the civil work load in the State is confined to New Castle County. In 1945, according to the best information available, there were slightly under 7,000 civil judgments in that county, nearly 5,600 of which were in the city of Wilmington. In 1954 there were

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38 Delaware Code of 1953, Title 10: secs. 9108, 9109.
approximately 9,000 civil cases in New Castle County, nearly 7,000 of them in Wilmington. Hence, there has been a slightly proportionate increase in the number of cases being heard in the county outside the city, a reflection of the increase in population in the suburban area surrounding the city. No statistics are available for Kent or Sussex Counties from which comparative estimates between 1945 and 1954 could be drawn. It would appear, however, from cursory interviewing of the busier magistrates in those counties that the rate of increase in the down-state civil case load has not been nearly so great as in New Castle County. The increase in population in northern Delaware compared to that in the southern part of the State in the decade 1940-1950 would indicate that the increase in civil cases in the northern and southern counties respectively would not be comparable. One exception might be in the Dover-Camden area in Kent where there has been a decided growth in population with the opening of the U. S. Air Force Base near Dover. There is also some indication that the civil judgments in the Seaford-Laurel area in Sussex County have risen sharply in the past five years. Again it should be noted that a steady build-up of population has taken place in this section of the State. With these two exceptions it would appear that the rest of the State has not experienced as high a rate of increase in civil cases as has the northern metropolitan area.

Another factor apart from population, which contributes to the increase in civil cases in New Castle County, particularly in Wilmington and its surrounding area, is the maintenance of fairly permanent magisterial offices in Wilmington. That is, these offices tend to be continued in the same or nearby places regardless of the incumbent. If a justice of one political faith is not reappointed upon an overturn in the gubernatorial office, his successor quite likely will take over the physical plant and often the same office staff which his predecessor had. There have been instances in which the outgoing magistrate merely turned over the keys of his office to his successor. Hence, the public and particularly the business houses in the Wilmington area know where the magistrates' offices are. Also, the volume of business is such and the number of outstanding judgments so great that it would work a decided disadvantage to the business community for complete changes to occur in the physical location and operation of the minor judiciary in Wilmington. It is this tendency toward institutional permanence
on the part of the justices of the peace in northern New Castle County that has greatly abetted the disproportionate number of civil cases heard in that area as compared to the number heard in other parts of the State. Of course, such commercial activity among the magistrates in this section of the State makes their offices lucrative political plums, and the avidity with which aspiring small-scale politicians seek these appointments is quite understandable.

In the down-state areas there is no real counterpart to this commercialized magisterial post, and consequently there is not the incentive in the less urban areas to build up the civil work of the minor bench as there is in the upper county. Yet as the rural areas become urbanized and business grows, book accounts will increase. Inevitably this will mean more civil law suits.

It should be noted that all magistrates are very dependent upon their constables for the proper operation of their civil practice. The constable is appointed by the levy court of his county, and he is not beholden to the justice of the peace for his job. Usually the appointment is made on a completely political basis, and it often occurs that a constable is of a different party from that of the magistrate to whom he is assigned. Constables tend to have their own ideas concerning their functions, and many times these ideas are not similar to the magistrate's concept of the constable's office. Furthermore, there are certain types of cases, such as distraint for rent, where the action is the constable's alone. He does not need the magistrate at all in the service of a distraint. He makes his own levy and collects his own fees. Some constables spend a good deal of their time handling rent accounts, and some of them have become rent collectors. If a constable has developed this type of business he is not apt to go out of his way to make himself constantly available to the justice of the peace. The latter then has difficulty in executing judgments. Unless the justice and the constable cooperate, the justice is apt to find himself powerless because he will not be able to have his writs served or his judgments executed with dispatch.

If the justice of the peace does not give the constable enough business to make the latter devote most of his time to the service of the justice's writs, creditors and other complainants will take their business elsewhere. Thus the constable holds the justice to book, and by such pressure can fairly well set his own terms. If the constable fails to work with a judge, then the latter's civil
business cannot prosper; if the justice has little civil business, he cannot keep the attention of the constable. One possible solution to this dilemma is for justice and constable to assume the roles of informal partners, and this is what has happened in many of the more prosperous magistracies.

If a justice has been assigned an incompetent constable, he finds himself helpless. Often he cannot get the levy court to remove the constable, and unless the latter actually maladministers his duties there is little the justice can do. The constable is the linchpin in the justice of the peace system.

Basically, the justices' courts in Delaware are small cause tribunals. Although an increasing number of civil cases are being taken to the Common Pleas Courts, the justice of the peace remains the work horse of the minor judiciary in respect of civil litigation. In Wilmington the magistrates handle the bulk of the civil business within the $500 limit. Outside the city, in the suburban area, two or three of the justices cover approximately 90 per cent of the civil cases coming before the magistrates in New Castle County. These judges are also engaged quite heavily in criminal work, and the concentration of civil and criminal load upon only a few justices makes the entire operation of the magisterial system in New Castle County exceedingly top-heavy. The old concept of the local squire capable of handling all types of litigation does not fit well when applied to the justiceships in upper New Castle County.

Conclusions and Recommendations

The theory underlying the justice of the peace system in Delaware contains the following premises: that it shall operate free of public expenditure, both in criminal as well as in civil matters; that it shall be administered for the convenience of the local citizen when they are litigiously involved; that it shall be a lay judiciary, schooled in the principles of common sense rather than in the more rarified concepts of jurisprudence. This theory grew out of the experience of the early settlers in Delaware.

The early experience of the new State of Delaware with the judicial process at local level led to a continuance of the colonial justice of the peace system. From time to time changes were made in the jurisdiction of these courts, but there was little need for general revision during the nineteenth century.
In evaluating any political institution one should ask whether that institution meets the current demands of the people for whom it exists. In the main, during the nineteenth century, the judicial requirements of the rural communities were met by the justices of the peace. Wilmington itself was not to outgrow the early judicial arrangements until the close of the nineteenth century. There was thus little objection to the operation of the system and practically no questioning of the assumptions under which it functioned until the 1930’s.

With the advent in that decade of a more complex, industrialized society in the northern section of the State, doubt arose concerning the efficiency and the raison d’etre of the justices’ courts.

Significantly, the demand for a revision of the magistracy was concomitant with the movement calling for a reappraisal of the correctional system in the state. At the same time there was demand for reappraisal of the civil function of the J P’s, many of whom gave little evidence of a good understanding of the law of contract and the law of tort. Matters concerning replevin and negotiable instruments were coming with greater frequency to the justices of the peace, and appeals from their decisions were being taken in increasing number to the Superior Court. One response to this recognized need for improvement in the handling of small civil causes was the creation of the Courts of Common Pleas. However, these courts have not been a complete answer to the problems confronting the handling of small civil causes. For one thing, the total number of such cases has, as pointed out above, increased tremendously. The Common Pleas Court, especially in New Castle County, is kept quite busy with its own civil and criminal jurisdiction. To extend the power of the Common Pleas over all civil litigation of a minor nature in northern New Castle County would be to swamp this court, rendering it ineffective in the work which it now does well, and providing no solution whatever to the problem in civil jurisdiction now existing at the justices’ level in New Castle County.

Rather than turning all the justices’ jurisdiction over to the Common Pleas Court, it is suggested that the justices of the peace in the city of Wilmington and in the hundreds contiguous to the city be abolished, and in their place a permanent small cause court, consisting of three or four stipendiary judges with civil jurisdiction throughout the city and the contiguous hundreds, be established.
These judges would sit in civil jurisdiction only, and the limit of their cognizance would be cases not exceeding $1,000 in amount. Writs would be carried out by court-appointed officials. The office of constable would be abolished throughout the jurisdiction of the small case courts. If a creditor did not want to take judgment and execution, he could seek the aid of a private collection agency, but this phase of credit work would not involve the courts. No judge would be permitted to be associated in any respect with collections work. It is felt that the area contemplated in the setting up of these courts would provide enough work to keep three or four judges quite busy, and the amount of costs received from the cases would offset to an appreciable extent the costs of operating a stipendiary tribunal.

Civil jurisdiction of the down state justices would be retained as it is, except that in view of better transportation facilities now available in the rural areas, there is little need to have as many justices as are now serving. Sussex could do with five or six magistrates, the county being split into the same number of districts, with a justice of the peace appointed for each district. In Kent County, smaller in size and less populous than Sussex, there would be three or four districts, each with a justice. In arranging the magisterial districts for Sussex and Kent, the fact that the towns (which are the population centers) would not be evenly distributed among the districts, would have to be taken into consideration. Some equitable disposition, however, could be made in this respect.

For the hundreds in New Castle County which are not contiguous to the city of Wilmington, an arrangement somewhat analogous to that proposed for Kent and Sussex Counties could be effected. The justices in all these areas would function under the present fee system, but by having their civil work loads increased it should be possible to make better appointments to these positions.

In addition to the questions which have been raised concerning the civil jurisdiction of the magistrates, there has been a decided feeling on the part of many people in northern New Castle County that the handling of criminal cases there by the justices of the peace has been anything but satisfactory. The rising incidence of petty thievery and general misdemeanors and the tremendous increase in motor vehicle code violations have brought with them an overloading of some of the justices in that area. The traditional role of the rural squire cannot be played effectively within the modern social setting of the northern metropolitan area of the State.
Much of the concern with the handling of criminal cases centers about the fact that the justices are not trained to deal with the types of misdemeanors currently brought before them. Modern traffic and general police regulations need a professional judiciary in order to make them fully effective. One reason that the present justice of the peace system has not developed greater efficiency in criminal jurisdiction is the uneven distribution of cases among the several justices. Present statutory arrangements make it extremely difficult to make the proper distribution of the criminal caseload especially in northern New Castle County.

One possible solution to this impasse in the criminal jurisdiction of the minor bench is to treat northern New Castle County (excluding Wilmington because its minor criminal cases are cared for by the Municipal Court) separately from Kent and Sussex Counties and southern New Castle County. By differentiating between the northern metropolitan and southern rural areas it is possible to reconstruct the criminal jurisdiction of Delaware’s minor judiciary within the framework set by the incidence of crime in the State. It has been noted that by far the greatest increase both absolutely and proportionally in misdemeanors has occurred in the northern metropolitan area. It is in northern New Castle County that the present judicial arrangements for handling motor violations and other minor breaches of the law exhibit serious faults. In the rural areas, however, much the same situation within which the justice of the peace system developed still obtains. Here the easy face-to-face neighborly relationships give vitality to the operation of the lay magistracy. It would be foolhardy indeed to rip out an institution still practical in one section of the State merely because its usefulness has been lost in another section.

The minor criminal cases in northern New Castle County can be divided into two major groups: one, traffic violations; and the other, ordinary breaches of the peace. For the handling of traffic cases, special traffic courts would be established for those hundreds contiguous to Wilmington. One such court might be located in the Bellefonte-Claymont area, north of Wilmington; another could be set up for the area in New Castle Hundred south of Wilmington where the meeting of the main highways of the State occurs near the approaches to the Delaware Memorial Bridge; another might be located in the area to the southwest of Wilmington. Each of these traffic courts would be manned by one or two stipendiary
judges trained in the law, appointed by the Governor with Senatorial consent for terms of twelve years. The judges would concentrate on the handling of violation of the motor vehicle code and would not be concerned either with civil actions or with non-traffic misdemeanors.

These courts would be accessible daily in order that summons issued for traffic violations might be disposed of without undue delay. It might be necessary to hold night court in order to keep the dockets clear. The present practice of the Municipal Court in Wilmington may serve as an example for the operation of these proposed tribunals.

It may be objected that a stipendiary magistracy would have a tendency to cause lawyers to appear before a trained judge with greater frequency than they do now before the lay justices, and that this might lead to extended litigation. The only answer to this objection is that if lawyers do appear, the judges will have to bend every effort to settle the cases without entertaining delaying tactics. Judges can, if they will, speed cases. Furthermore, it is problematical whether the costs of hiring legal aid would appeal to motorists charged with minor offenses.

Another argument against the paid traffic judge is that his salary becomes public expense. So far Delaware's justices' courts have cost the State nothing in terms of treasury commitments. These courts, however, have collected nearly a quarter of a million dollars in fines annually during the past two years. This money would more than pay the salaries and other costs associated with a stipendiary system located in the main travelled areas. The costs in traffic cases alone collected by the justices of the peace in northern New Castle County in 1954 amounted to over $50,000, which in itself is a tidy sum to place against the costs of a modest stipendiary system. The argument against the cost of a salaried, professional system is very weak. In fact it would seem that from a fiscal point of view the State might actually gain income (above the return from fines) from the employment of stipendiary courts, whereas now the costs of court go into the pockets of the magistrate and his constable.

Although there are several possible disadvantages of a stipendiary magisterial system, the need for trained judges, sitting as salaried officials, capable of working out a more uniform administration of the traffic laws, is imperative in a metropolitan area. As it now
operates, the justice of the peace system permits an individual justice a wide latitude in the handling of traffic misdemeanors. Some judges consistently impose higher fines than do others. Local residents brought before a local justice are apt to receive more considerate treatment than that afforded the stranger. A salaried state appointed judge would tend to have a less parochial outlook in dealing with the traffic problems of the metropolitan complex in northern Delaware.

It would, however, be feasible to introduce the stipendiary traffic bench gradually. At first, three of these courts might be set up in the congested areas of New Castle County as outlined above. Traffic cases occurring outside these designated areas would continue to be heard by the present justices of the peace. It might well be that these newly created courts would work closely with the Municipal Court in Wilmington and thereby effect a coordinated approach to metropolitan traffic problems.

The disposition of non-traffic misdemeanors in the hundreds contiguous to Wilmington would rest with the Common Pleas Court for New Castle County. For the remaining hundreds in New Castle County, non-traffic as well as traffic misdemeanors would be handled by the present justices in those hundreds.

The effect of the proposals outlined above would be to eliminate the JP system as it now operates in the radial hundreds of New Castle County and in the city of Wilmington, substituting in its stead the small cause courts mentioned earlier and the traffic courts suggested above.

For Sussex and Kent Counties the present jurisdiction of the justices of the peace would be retained. The number of justices, however, would be reduced to conform to the proposal made earlier concerning the civil jurisdiction of the magistrates in those counties; namely, five or six in Sussex and three or four in Kent.

With respect to the handling of arraignments, whereby persons accused of felony or high misdemeanors either are held for court or are discharged, it might be possible to bring all such cases in a county before the Common Pleas judge of that county. This provision would mean that the Common Pleas would have to be available on a daily basis, or at least five days each week, otherwise complications would arise in the matter of habeas corpus proceedings. The incidence of felony charges in Delaware, however, is not so high that by placing this charge upon the Common Pleas they
would be overworked. Also, the distances in Delaware are not so
great that an undue hardship would be imposed upon the police or
defendants to have arraignments held at the county seats. Under
present practices if an accused is held for court and is not admitted
to bail, he is incarcerated in the county jail, which is located in
the county seat.

In line with the reorganization suggested above, the office of
constable would be abolished in those hundreds of New Castle
County which are to be served by the small cause courts and the
traffic tribunals. The functions of this office would be given over
to court appointed officers charged with giving effect to the courts’
judgments. The constables in the remaining hundreds would be
named by the governor and would be placed under the direct super-
vision and direction of the justice of the peace for whose court
the constable had been designated. The present power of the con-
stable in respect of distrains would be removed, and the responsi-
bility for the issuance of distrains would rest with the magistrate.

Where the present JP system is retained, several recommendations
are in order with a view toward its improvement. First, the
number of magistrates should be made flexible in order that chang-
ing conditions can be met effectively. It has been suggested above
that four magisterial districts in Kent and six in Sussex would be
sufficient at present. However, as changes occur in the population
of these counties and the incidence of litigation varies, the governor
should be empowered to meet the new demands by redistricting,
by increasing, or by decreasing the magistracies. The same rule
would apply in lower New Castle County where three magistrates
at present could handle the civil and criminal litigation arising in
that area.

Periodic surveys would keep the governor apprized of changes in
the case loads in these jurisdictions, and in accordance with the
results of these surveys he would make the necessary adjustments
in the number of magistrates serving these areas. Second, appoint-
ments should be based on the results of qualifying examinations
administered by a neutral agency such as the University of Dela-
ware. Third, the term of office should be of sufficient length to
permit a new appointee to be trained on the job, and the judge
should not be made to feel that his appointment is tied in with
the vagaries of party politics. Fourth, adequate training on the
job, conducted by a chief magistrate named by the Chief Justice
of the State Supreme Court, should be afforded by the State. The newly appointed justice would receive compensation from the State during the training period. Fifth, a careful surveillance of the justices and other minor judges should be kept by the Judicial Council particularly in respect of trial procedures. The Council should be empowered to make recommendations to the governor for removal for cause with the right of appeal to rest with the Supreme Court of the State. Sixth, accounting procedures should be instituted which would provide a prompt, accurate accounting for all fines and other moneys due the State or county by the justices. The present system permits the retention of state moneys over too long a period with the result that bookkeeping becomes a major problem for some magistrates. No justice of the peace should be permitted to mix public moneys with his private funds. Poor accounting procedures have led to very embarrassing situations. Seventh, the fee system would be retained. Finally, appeals from both the civil and criminal jurisdictions of the minor courts should be taken to the Superior Court, but that court should have the right to deny certiorari; no appeals should rest on right.

The suggestions that have been made above are felt to be in line with the basic proposition that to effect feasible changes within a governmental structure it is necessary to work within the political assumptions of the society involved. Some of the controlling social and political concepts in Delaware find their origins in the buried past. Delaware's justice of the peace system in large part is predicated upon these ancient assumptions. Societal changes in the northern metropolitan complex have rendered some of these assumptions obsolete so far as they apply to that area. Recognition of the fact that the area within a ten-mile radius of Wilmington presents conditions quite different from those found in the remainder of the State is basic to any proposed reorganization of the minor judicial system in Delaware. On the other hand many of the early concepts vis-a-vis judicial operation still obtain and are representative of conditions in the rural areas. They reflect the face-to-face functioning of government in the downstate communities.

It has long been the theory of government in the United States that as much of government at the grass roots should be retained as can be done consistent with the satisfaction of public need. The justice of the peace system still functions fairly effectively in
the rural areas of the State. Wherever it does so function, there is good reason to retain it. Wherever by some modification it can be made to work, every effort should be directed to that end. By so doing, the administration of justice is kept at the local level wherever possible, a condition basic to the precepts of democratic government.

On the other hand where changes in existing organization hold great promise for improving the operation of a government service, then those changes should be made. Government, by and large, is by trial and error; it cannot be otherwise. Yet reason, buttressed by careful attention to the data involved in a particular governmental function, should be employed to facilitate that function. In the final analysis, however, the reasoning behind proposals to reorganize any governmental activity must take into account the values concerning governance which are held by the articulate segments of the body politic. The art of government is concerned with the possible, which in large part is determined by the values held by the controlling elements in a society. Students of government recognize that these values change slowly, and one must be satisfied with limited and perhaps slow changes in the organizational structure and method of government. To insist upon sweeping alterations in timeworn devices of governance is often to run head on into the deeply rooted hedgerows of tradition and custom. Far better it is to seek out the places where new ideas will be accepted because they are improvements upon the old design rather than to set up a completely new pattern which has no roots in the culture, where all fruitful governmental arrangements must find their sustenance.