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Justices of the Peace: Judges for Hire

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and we need communication which is not there between the Negro of the ghetto and the employers, unions, employment agencies, and the majority of Negro spokesmen. Therefore, I feel something more than this Act needs to be done. I agree with Mr. Schmidt when he says to obtain the necessary job opportunities for the majority of American Negroes there:

> . . . appear two, and only two, alternatives—short of social insurrection. First, the federal government could simply require private industry and labor unions to accept substantial quotas of Negroes—trained or untrained—into the working force and training programs as a necessary step to preserve the national welfare . . . or, certainly more acceptable, the government can attempt to convince industry and the unions that it is absolutely necessary for them to assume the employment training responsibility of the Negro. . . . Without immediate consideration of such alternatives there is little reason to be optimistic, for I am convinced that Title VII in no substantial way alters our present "collision course" with social disaster.[12]

In closing I would like to say, some of the provisions of Title VII have been given meaning in the courts, but I have mostly chosen to deal with the deficiencies in the Act as written in 1964. I leave it to the future to determine whether the courts can give enough meaning to this Act to begin to bring us together.

Justices of the Peace: Judges for Hire

Introduction

The critics of the justice of the peace system have not hesitated to say that the letters "JP" stand for "justice for the plaintiff" rather than "justice of the peace." This criticism stems from the fact that many justices are compensated from fees collected from these plaintiffs who hire them, so to speak.

Historically, the justice of the peace system was called into existence by King Edward III in the early part of the fourteenth century. His majesty would have thought twice before creating such a system had he perceived the graft and confusion later produced by his judiciary creation. The British colonists introduced the institution to America. The system is known to have been in existence in North Carolina prior to the adop-

[12] Schmidt, 7 BOSTON COLLEGE INDUSTRIAL AND COMMERICIAL LAW REVIEW 471 (Spring 1966).

tion of the Fundamental Constitutions in 1669,[1] and has existed until its abolition by the 1965 North Carolina Generaly Assembly.[2] However, the justice of the peace system will not be completely phased out until the first Monday in December, 1970.[3]

The Justice of the Peace Court is a lower court of first instance and decides petty civil and criminal cases. Criminal jurisdiction extends to misdemeanors in which no deadly weapon is used or serious damage results, and punishment may not exceed a fine of $50 or thirty days' imprisonment. Exclusive original jurisdiction exists in all civil actions founded on contract, except when the sum demanded, exclusive of interest, exceeds $200, and when the title to real property is in controversy.[4] Justices of the peace have concurrent jurisdiction of civil actions not founded on contract, wherein the value of property in controversy does not exceed $50.[5]

Defects of the System

The Justice of the Peace Court has long become antiquated and is a wornout cog in the wheel of our judicial machinery. The defects in this system are numerous; however, three of them stand out like a sore thumb. These basic defects consist of (1) the magistrate's pecuniary interest in the outcome of his decision, (2) most magistrates are unlearned in the law and some of them are unprincipled, and (3) we learn little from the reports about what actually takes place in the Justice of the Peace Court since few of them are courts of record.

It is the duty of the state to afford every litigant, without regard to the amount involved in his controversy, the opportunity to secure a determination thereof according to the highest conception of justice.[6] The magistrate of the justice of the peace system, which has continued principally because legislators have had little interest therein, cannot call on the legal experience of the ages to assist him because he is untrained in the law. He has no legal rules, principles, concepts or standards by which to judge the merits of the controversy to be decided. Therefore, he is

[1] Robert S. Rankins, The Government and Administration of North Carolina (Crowell, 1955), p. 152.
[2] G.S. 7A-176.
[3] G.S. 7A-132(3).
[4] G.S. 7-121.
[5] G.S. 7-122.
[6] Struburger, A Plea for the Reform of the Inferior Court, 22 Case and Comment, 20, 22 (1917).

helpless to do any more than apply his own personal notions of right and wrong to the case before him. Since the lay judge does not have the professional technique necessary for the administration of justice and the deciding of cases according to the substantive common law, the possibility of an adverse judgment against the defendant is very likely. This view is expressed by Isham G. Newton in his Ph.D. dissertation which is entitled "Minor Judiciary in North Carolina."[7] According to this paper, in civil actions alone, an average of 96 percent adverse judgments are rendered against defendants in Justice of the Peace Courts.[8] Such justice, at least, is questionable.

We must not lose sight of the fact that the justice of the peace is essentially a fee-paid judicial officer. In other words, he receives his compensation from the very litigants who bring cases before him or from the defendant who is summoned into court at the instance of the plaintiff. This type of system has turned the justice of the peace into a judge for hire to render a decision in favor of the hiring party. It does not take a scholar to determine that if a man's own financial status is involved in a controversy, he is hardly an unbiased judge. Yet the justice of the peace is permitted to determine controversies when he knows that if he decides the case one way he will be paid his statutory fees and if he decides it the other way, he will fail to receive his fees. It is self-evident that in such a system the magistrate's pecuniary interest in his own determination may affect his integrity.

In 1949, the North Carolina General Assembly enacted a measure abolishing the fee system in the office of justice of the peace. By this act, a regular annual salary is paid by the county and the justice of the peace must pay whatever is collected in fees into the general fund of the county.[9] Unfortunately, seventy-four of the one hundred counties were exempted from this act, while others could continue the fee system. In a 1953 speech, Harry McMullen, the Attorney General, called the fee system obnoxious and urged the counties to take advantage of this act and substitute annual salaries.[10]

We learn little from the reports concerning justice of the peace cases. It would be but a wild speculation to estimate the percentage of cases

[7] Isham G. Newton, "Minor Judiciary in North Carolina" (unpubl. Ph.D. dissertat., University of Pennsylvania).

[8] *Supra* 7.

[9] G.S. 7-210.

[10] DURHAM MORNING HERALD, November 13, 1953, Sec. A, p. 10, col. 1.

actually appealed from the justice of the peace court. However, a very large percentage of cases are not appealed for no other reason than that the amount involved would not warrant the increased expenditure.

Recent Trend

Recently, North Carolina and many other states have redoubled their efforts to provide equality of justice to all litigants. The tendency of some states is the abolishing of the fee system in the justice of the peace court and the replacing it with an annual salary measure for their magistrates. Many states have gone farther by abolishing the justice of the peace court altogether and substituting a system of judges trained in the law. The latter seems preferable because the former only eliminates one of the most glaring defects in the Justice of the Peace Court system.

Last year, J. Frank Huskins, Administrative Director of the North Carolina Courts, expressed his concern over the fact that non-lawyer judges are being elected to district judgeships. Many of the new judges are former justices of the peace, highway patrolmen and other non-professionals. Huskins charged that the State Bar Association has never tried to submit a constitutional amendment setting forth definite qualifications for judges. He added that probably lawyers think the people would suspect selfish motives behind such an amendment. "But I think the bar is too modest about this," said Huskins. And he added that the bar will consider such an amendment.[11]

Conclusion

While the justice of the peace system has a long history and has been firmly imbedded in the fundamental laws of the states, it is rapidly fading from our judiciary system. There are those who classify the justice of the peace system as a static part of our judiciary system. These foes of the system advocate a nation-wide abolition of the office of justice of the peace, and a substitution of a system of minor courts in its place, the judges of which have the training which qualifies them to administer justice according to the laws of the land. I am inclined to agree with these critics in that justices of the peace are laymen; they are not required to be otherwise, and are very seldom "learned in the law."

[11] WINSTON-SALEM JOURNAL, September 12, 1967, p. 4, col. 4.