

2000

John G. Wells v. City Court of Logan City, County of Cache, State of Utah : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

JOHN G. WELLS,
Plaintiff and Appellant,

-vs-

CITY COURT OF LOGAN CITY,
COUNTY OF CACHE, STATE OF
UTAH,

Defendant and Respondent.

Case No. 13824

AMICUS CURIAE BRIEF OF UTAH STATE ASSOCIATION OF
CITY COURT JUDGES IN SUPPORT OF
RESPONDENT'S PETITION FOR REHEARING

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

JOHN G. WELLS,)	
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Plaintiff and Appellant,)	
)	Case No. 13824
-vs-)	
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COUNTY OF CACHE, STATE OF)	
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AMICUS CURIAE BRIEF OF UTAH STATE ASSOCIATION OF
CITY COURT JUDGES IN SUPPORT OF
RESPONDENT'S PETITION FOR REHEARING

STATEMENT OF POSITION

On May 1, 1975, this Court handed down its opinion in the above-entitled case, holding in effect that prosecutions for drunk driving under the Utah Motor Vehicle Code cannot take place in city courts if there is a justice of the peace nearer or more accessible to the place where the defendant is arrested (See Appendix "A" for the complete opinion of the Court). Respondent, Logan City, has filed a Petition for

Rehearing which is the matter presently pending before the Court.

The Utah State Association of City Court Judges is, as its name suggests, an organization consisting of the City Court Judges throughout the State of Utah. The members of the Association strongly feel that the Court's decision greatly undermines the city court system, that it is contrary to the best interests of the citizens of this state, and that the narrow construction given Section 41-6-166, Utah Code Annotated, is not required by the statute itself, nor was it construed in harmony with the intention of the legislature. The City Judges appreciate the leave of court granted to them to be heard as friends of the Court, and as interested parties, and hopefully, we might be of assistance to the Court in pointing out circumstances and considerations which may have been overlooked. It will be respectfully urged that the Court reconsider its decision and grant respondent's Petition for a Rehearing.

ARGUMENT

POINT I

THE COURT ERRED IN HOLDING THAT CITY COURTS DO NOT HAVE COUNTY JURISDICTION IN ALL STATE TRAFFIC OFFENSES.

A. Basic Policy Considerations. In considering the relationship of an individual member of society to its

government, it is difficult to conceive of anything more important than the judicial system. All of the basic rights guaranteed by law become meaningless if a tribunal is not available to dispense justice in an efficient, fair and impartial manner; and yet, because of human frailties, and in spite of all constitutional safeguards, no judicial system can ever be better than the judges behind it. Recognizing this basic principle, it has always been the strong public policy of the State of Utah to require its judges to be trained in the law. Section 2, Article VIII of the Utah Constitution requires a Supreme Court Judge to be "an active member of the bar, in good standing, and learned in the law." The same requirement is imposed upon District Court Judges at Section 5, Article VIII of the Utah Constitution. And, likewise, City Court Judges are held to the same strict standards and qualifications at 78-4-4 and 78-4-8, Utah Code Annotated. Membership in the bar, of course, requires many years of legal education as well as good moral character and the successful passing of a difficult examination covering principles of common law, equity, criminal law and the statutes and practice of this state (78-51-10, Utah Code Annotated).

The only judicial office to which the above qualifications do not apply is the justice of the peace. Obviously, the reason for this exception was simply the practicalities of

the situation at statehood and the fact that even today there are many small communities throughout the state where legally trained people are simply not available. Certainly it is better to have good, fair-minded men dispensing justice than to have no judges at all. However, it is hardly debatable that efficient judicial administration is best promoted by trained judges rather than untrained judges.

The above policy considerations have been stressed because the effect of the Court's decision in this case is to take away the county-wide jurisdiction of city courts in drunk driving and hit-run cases (which offenses are generally regarded as the most serious of all traffic offenses and involve the possible loss of driving privileges as well as fine and incarceration) and leave them with county-wide jurisdiction of all of the remaining minor traffic offenses. It is unreasonable to believe that the legislature could have intended to give the untrained judges the important cases and the trained judges the less important cases. Such result simply runs against the grain of all logic and common sense. In the case of Rowley -vs- Public Service Commission, 112 Utah 116, 185 P.2d 514, this Court in stressing the importance of public policy in the interpretation of statutes stated as follows:

"* * *Indeed, a purpose to disregard sound public policy must not be attributed to the law-making power, except upon the most cogent

evidence, and it is the duty of the courts to render such an interpretation of the laws as will best promote the protection of the public, insofar as this may be accomplished in accordance with well established rules of construction. * * * In some cases, the words of a statute may even be restrained or enlarged so as to comport with principles of sound public policy. * * *

The Court further stated that where "a literal interpretation of the language of the statute gives an absurd result" then the court will search further for the legislative intent, and had no trouble in rejecting the literal wording of the statute in depriving a motor carrier of the right to operate under a "grandfather" clause of the applicable statute. See also Johanson -vs- Cudahy Packing Company, 107 Utah 114, 152 P.2d 98, holding that the literal wording of a statute need not be followed when to do so would defeat legislative intent and make the statute absurd.

B. The Controlling Statutes. This brings us to the statute which the amicus curiae believes to be of controlling importance, namely Section 78-4-16.5 Utah Code Annotated, Pocket Supp., which provides as follows:

"Whenever a complaint may be commenced before a magistrate under section 77-57-2, or an arrested person is to be taken before a magistrate under section 77-13-17, the complaint may be commenced or the arrested person may be taken before the nearest city court judge in counties where city courts have been established."

The above statute was passed by the legislature in 1971 and

is the most recent enactment of the statutes involved. The rationale of the majority of the court in its opinion in this case was that the above statute is not applicable because it deals with arrests generally (covered by 77-13-17, Utah Code Annotated) and not specifically with arrests made under Section 41-6-166 of the Motor Vehicle Code (See Appendix "B" for full text of applicable statutes). It is contended by the amicus curiae that such result is not required even by the literal wording of the statutes.

Section 41-6-166, Utah Code Annotated, requires that a person arrested for drunk driving be taken to the nearest most accessible magistrate. Nothing whatever is stated in that section as to what the magistrate is to do when the arrested person is brought before him. Is he to be charged with an offense? Is he to simply be advised of his rights? Is he to be incarcerated? Is he to be given chemical tests? Is bond to be set? These questions are merely raised to show that Section 41-6-166 cannot be considered in isolation or in a vacuum. It most certainly must be considered in connection with statutes for arrest generally and the general statutes relating to the procedures and jurisdiction of city courts and justice of the peace courts. For example, reference must be made to Section 77-13-17 dealing with arrests generally to indicate that when taken before a magistrate, a complaint stating the charge against the person arrested must be made.

Since Section 77-13-17 and other procedural statutes apply to arrests for traffic as well as other offenses (otherwise Section 41-6-166 would be meaningless as no procedures would be established) the amending statute of 1971, Section 78-4-16.5 would clearly have to apply. There is absolutely no rhyme or reason why the legislature would have intended otherwise. Nor is there anything irreconcilable in the applicable statutes. Additional rules of statutory construction supporting this conclusion are to the effect that related statutes should generally be harmonized with each other whenever possible, Glenn -vs- Farrell, 5 Utah 2d 439, 304 P.2d 380; also in the event of conflict, a later statute should prevail over an earlier statute, P.I.E. -vs- State Tax Commission, 7 Utah 2d 15, 316 P.2d 549.

Another statute which has not been taken into consideration is Section 41-6-169, Utah Code Annotated, which provides that the provisions and procedures of the Motor Vehicle Code relating to police officers making arrests without warrants "shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade". In light of the existence of this provision in the Motor Vehicle Code itself, it is not convincing that the legislature intended to exclude serious traffic offenses from the 1971 enactment (Section 78-4-16.5) giving city courts jurisdiction in all cases that otherwise might have been commenced

before a justice of the peace.

It might also be noted that our sister state of California has recently held that the permitting of non-lawyer judges to preside over criminal trials for offenses involving jail sentences violates the due process clause of the United States Constitution. Gordon -vs- Justice Court for Yuba, J.D. of Sutter City, 558 P.2d 72. The California Supreme Court reasoned that a non-lawyer is simply not qualified to determine whether constitutional rights have been violated, to make rulings on technical questions of evidence, to properly voir dire witnesses, to accept guilty pleas in accordance with constitutional requirements, and to make proper sentence decisions. The court very logically pointed out that if under the United States Constitution an accused is entitled to be represented by counsel in misdemeanor cases (Argersinger -vs- Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed.2d 530) it is even more important that the judge presiding at the trial be trained and competent. On the basis of Gordon, and the authority therein cited, a recent case was filed in the District Court of Salt Lake County challenging the constitutionality of the justice of the peace system in Utah as it applies to criminal trials (Shelmidine, et al. -vs- Jones, et al., Salt Lake County District Court No. 224948). On June 3, 1975, Judge Stewart M. Hanson, Jr. handed down a Memorandum Opinion holding that non-lawyer justices of the peace could not constitutionally impose jail sentences in criminal

trials (a copy of the full decision of the Court is attached hereto as Appendix "C"). The decision in the Shelmidine -vs- Jones case will undoubtedly soon be before this Court on appeal.* While it may be improper for the amicus curiae to get into the merits of that case, nevertheless it should be brought to the Court's attention as an additional reason for the propriety of granting a rehearing. Also, regardless of the final outcome of Shelmidine -vs- Jones, the reasoning therein and in the Gordon -vs- Justice Court for Yuba, supra, is very persuasive as a simple guide toward finding the reasonable legislative intent. Aside from the fact that statutes are not to be construed in a manner that makes their constitutionality questionable, it is simply incredible that the legislative intent of a statute passed in 1971 could be construed in such a manner as to restrict the jurisdiction of legally trained judges who conduct their proceedings in dignified surroundings, and expand the jurisdiction of the laymen judges, many of whom don't even have courtrooms.

C. Other Practical Considerations. There are still other practical considerations which the Court may have overlooked. For example, in Davis County, Utah, there are numerous towns and cities each having a justice of the peace, as well as various interspersed and irregular county areas served by a precinct justice of the peace. It is not uncommon for individual justices of the peace to hold court at different places, such as

at home, or at his place of business, or at the town hall, whichever is most convenient. Under these circumstances, it creates a nightmare for an arresting officer making an arrest someplace on a freeway to determine which is the nearest most accessible magistrate. Must each highway patrol officer keep daily track of a dozen or more justices of the peace? Likewise, it places an unreasonable and unintended burden on prosecutors in having to establish this as an element of their case. Does this now become a jury question? And is the state required now to expand its prosecutors so as to try more and more cases in justice courts, many of which are held only at night since the justice of the peace may have a daytime job? These are undoubtedly some of the considerations which motivated the legislature in giving county-wide jurisdiction to city courts. Courts are to avoid a construction of a statute that will result in confusion or uncertainty. Masich -vs- United States Smelting, Refining & Mining Company, 113 Utah 101, 191 P.2d 612.

CONCLUSION

This case is of extreme importance because it reflects upon the entire judiciary. It has been said that 90% of the citizens of our state will never appear in a district court. The vast majority of persons having contact with the law will do so in connection with a traffic ticket or a related type of matter. The impressions made on the city court level will

largely determine the respect, or lack of respect, that the community as a whole develops toward all courts and toward the rule of law that we hold so sacred. The importance of developing respect for the courts and of administering justice in dignified surroundings by competent, well-trained judges is so overwhelming that it is inconceivable to reasonably ascribe a conflicting legislative intent. It should be the policy of this court to upgrade the judicial administration throughout the State of Utah wherever possible. The decision in Wells -vs- Logan City Court as it presently stands would be a step backward in accomplishing this objective. The decision is simply not in the best interests of the citizens of this state. It is contrary to the long established public policy of this state. It is contrary to any manifestation of legislative intent, and it is contrary to the statutes themselves. The amicus curiae respectfully urges the Court to reconsider its opinion and grant respondent's Petition for Rehearing.

Respectfully submitted,

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Amicus Curiae

FOOTNOTE

Since the time of typing the other portions of this brief, it has been brought to the attention of the amicus curiae that another petition has been filed in the District Court of Salt Lake County seeking to prohibit the Murray City Court from proceeding with a drunk driving case. The reasoning of the petition is that since under Shelmidine -vs- Jones, justices of the peace can no longer impose jail sentences, and since under Wells -vs- Logan City a defendant must be taken before a justice of the peace if he is the nearest and most accessible, then the punishment for the offense will depend upon where it took place creating an unconstitutional discrimination. If the decision in Wells -vs- Logan City continues to stand, we may no longer have the offense of drunk driving in the State of Utah.

APPENDIX "A"

John G. Wells,
Plaintiff and Appellant,

No. 13824

v.

FILED
May 1, 1975

City Court of Logan City, County
of Cache, State of Utah,
Defendant and Respondent.

Allan E. Mecham, Clerk

HENRIOD, Chief Justice:

Appeal from a denial of a petition to prohibit the Logan City Court from pursuing a prosecution on a drunk driving complaint because it had no jurisdiction under the facts and statutes of this state. Reversed, with instructions to grant the petition and issue the writ.

Wells was arrested nine miles from Logan, Cache County, Utah, but only one mile from Wellsville, Cache County, Utah. Both cities, or towns, have magistrates.¹ He was taken under obvious arrest to Logan, and ticket-booked in the Logan City Court, which ticket printedly and presumably ordered him to appear at a date certain to answer, to which ticket he did not consent or sign, although he may have had that opportunity.

His attorney appeared specially and filed a motion to dismiss a complaint based on these facts, on statutory grounds,² which was denied. The motion was based on a failure of the arresting officer to comply with a very simple statute which says in clear English that if a person is arrested for drunk driving by a peace officer, or anyone else, "he shall be immediately taken to a magistrate . . . who has jurisdiction of such offense and is nearest . . . to the place where such arrest is made." Wellsville had such a magistrate, or justice of the peace at the time of this arrest.³

There is no showing here that the Wellsville magistrate had gone fishing, and it should be mandated that peace officers, in light of existing statutes, should not be free to go fishing for magistrates - which easily could lead to inequity and/or injustice, although there is no such suggestion in this case.

It is important to note the complaint filed against Wells was laid under Title 41, Utah Code Annotated 1953, - the Motor Vehicle Code, - not under Title 77, having to do generally with magistrate procedural and jurisdictional matters re misdemeanors as offenses, - of which there are hundreds and probably thousands that this writer intends not to count. But under Title 41, there are carved out, in 41-6-166, two specific misdemeanors, i. e., - 1) driving under the influence, and 2) leaving the scene of an accident, in which events defined with solemn specificity, in as ceremonious, clear, convincing, language imaginable, requires that the person arrested for either of such clearly defined misdemeanors "shall be⁴ immediately taken before a magistrate . . . nearest or more accessible" to "the place where said arrest is made" It is not the defendant's duty to prove but only to claim that this was not done, since it is the state's duty to prove beyond a reasonable doubt that it followed statutory interdictions, - not the defendant's duty to expend time, money or irritation to prove that the state, of all monsters, did not conceive, nurture, and feed its own offspring.

1. Wellsville was one of such.

2. Title 41-6-166, Utah Code Annotated 1953.

3. Titles 77-10-4, 5, Utah Code Annotated 1953, 78-5-5, U. C. A. 1953.

4. Not "may" be, or in the "discretion of someone," etc.

The state's attempt to talk about Title 77 is a diversionary tactic, and its refusal to talk about Title 41-6-166, is an evasive action that runs procedure and emotion into a questionable judicial cul du sac.

WE CONCUR:

R. L. Tuckett, Justice

Richard J. Maughan, Justice

ELLETT, Justice: (Dissenting)

I dissent. Logan City Court is presided over by a lawyer-judge and has jurisdiction throughout Cache County. The Wellsville justice of the peace is a non-lawyer. He likewise has county-wide jurisdiction of misdemeanors. There is nothing in the record to show where the justice of the peace was at the time of the arrest or whether he was "available" at that time.

The plaintiff alleged in his complaint that he was not taken before the nearest and most accessible magistrate when he was arrested. It would appear that he would be required to prove that allegation as a part of his case. By failing to do so, he was not entitled to prevail in his suit, and the lower court was correct in so ruling.

The City Court of Logan has jurisdiction of the offense of drunk driving, and the idea that Mr. Wells should have been taken elsewhere is no defense to this action. Mr. Wells was taken to Logan in order that a breathalyzer test could be made pursuant to Section 41-6-44.10, U. C. A. 1953 (Replacement Volume 5A), since that is the only place in Cache County where the test could be conducted. He accompanied the officer there and after taking the test was released. He was not taken before a magistrate in Logan City or anywhere else.

The prosecution was initiated against Mr. Wells at a later date by the filing of a complaint and the service of a summons upon him pursuant to Section 77-12-21, U. C. A. 1953.

The venue of criminal actions is set out in Section 76-1-202, U. C. A. 1953 (1973 Pocket Supplement). That section sets forth a number of situations not material here and then in (g)(v) it provides:

For any other offense, trial may be held in the county in which the defendant resides, or, if he has no fixed residence, in the county in which he is apprehended or to which he is extradited.

It thus appears that Mr. Wells can be tried in any court in Cache County which has jurisdiction therein, and the misdemeanor charge in the Logan City Court is properly placed, and the trial thereof should not be interfered with by this court.

In addition to what is said above, this prosecution is proper in view of the fact that a new section was added to our statute by Chapter 7, Section 3, Laws of Utah 1971,¹ which reads as follows:

Whenever a complaint may be commenced before a magistrate under section 77-57-2, or an arrested person is to be taken before a magistrate under section 77-13-17, the complaint may be commenced or the arrested person may be taken before the nearest city court judge in counties where city courts have been established.

Appendix "A" Continued

1. Also known as Section 78-4-16.5, U.C.A. 1953 as amended (1973 Pocket Supplement).

The statute thus gives the officer the discretion and the right to take a prisoner to or file a complaint in the nearest city court having jurisdiction of the offense. The defendant herein was the only city court in the county. The other magistrates were mere town justices.

The ruling of the trial court in my opinion was correct and should be affirmed.

Crockett, Justice, concurs in the views expressed in the dissenting opinion of Mr. Justice Ellett.

APPENDIX "B"

TEXT OF STATUTES

41-6-166: Appearance Upon Arrest for Misdemeanor

Whenever any person is arrested for any violation of this act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is nearest or most accessible with reference to the place where said arrest is made, in any of the following cases:

- (1) When a person arrested demands an immediate appearance before a magistrate.
- (2) When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs.
- (3) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries, or damage to property.
- (4) In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided, or when in the discretion of the arresting officer, a written promise to appear is insufficient.

77-13-17: Duty of Arresting Officers Without Warrant--Delivery of Prisoner--Complaint--Duty of Magistrate

When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken to the nearest or most accessible magistrate in the county in which the arrest is made, and a complaint, stating the charge against the person must be made before such magistrate. A conductor or other person who makes an arrest as provided in Section 77-13-5 shall, without unnecessary delay, take the person so arrested before any accessible magistrate or deliver him to a peace officer; and a complaint stating the charge against the person must

Appendix "B" Continued

be made. The magistrate before whom such charge is made, if the offense is triable by him, shall have full jurisdiction over the offense and the defendant to try and determine such offense. If he has not jurisdiction to try the defendant for the offense charged, he must proceed as provided in chapter 15 of this title.

APPENDIX "C"

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LARRY J. SHELMDINE and JOHN F.
REEVES, on their own behalf and
on behalf of all others similarly
situated in Salt Lake County,
Utah,

Plaintiffs,

CHARLENE POLLY COOK,

Intervening Plaintiff;

vs.

CHARLES A. JONES in his capacity
as Justice of the Peace of
Precinct 4 of Salt Lake County,
Utah; LYNN D. BERNARD, RALPH
CHILDS, LYLE GUNDERSON, WAYNE
GUNDERSON, GERALDINE CHRISTENSEN,
HENRY H. PRICE, WARREN D. COLE,
REX C. CONRADSON, ELMAR L.
JOHNSON, all in their capacity as
Justices of the Peace for
Precincts in Salt Lake County,
Utah,

Defendants.

MEMORANDUM DECISION

Case No. 224948

Plaintiffs challenge the practice of per-
mitting non-lawyer justices of the peace to hear misdemeanor
cases in which a jail sentence could be imposed.¹ This
challenge is founded upon three bases: That Due Process
under the Fifth and Fourteenth Amendments of the United
States Constitution requires that judges in criminal cases
in which imprisonment may be imposed be lawyers; that the
practice of permitting most of the justices of the peace

¹ Section 78-5-1, Utah Code Annotated, provides that:
"Justices' courts have jurisdiction of the
following public offenses committed within the respec-
tive counties in which such courts are established:

throughout the state to be non-lawyer judges, at the same time requiring that judges of the city courts, whose jurisdiction is the same as the justice courts with regard to this type of offense, be lawyers, constitutes a denial of equal protection under the Fourteenth Amendment of the Constitution of the United States; that the right to counsel and, more fundamentally, the right to a fair trial, mandated by the Sixth and Fourteenth Amendments of the Federal Constitution are abridged and denied by allowing non-lawyer or lay judges to preside in any criminal case in which a jail sentence may be imposed.

By virtue of the foregoing assertions, plaintiffs are asking this Court to prohibit the defendants, each of whom is a non-lawyer or lay justice of the peace, from hearing cases involving the plaintiffs in which each plaintiff is charged with the commission of a misdemeanor offense, the conviction of which could result in imprisonment.² Both plaintiffs and defendants have moved for summary judgment and, to that end, have stipulated that

1 (cont)

discharge of his duties or to have been committed with such intent as to render the act a felony.

- (3) Breaches of the peace, committing a wilful injury to property, and all misdemeanors punishable by a fine less than \$300 or by imprisonment in the county jail or municipal prison not exceeding six months or by both such fine and imprisonment."

Section 76-3-301 provides that a fine of \$299 may be imposed upon a conviction of a Class B or C misdemeanor or infraction. Section 76-3-204 provides that the sentence for a Class B misdemeanor may be for a term of imprisonment not exceeding six months and for a Class C misdemeanor for a term not exceeding 90 days. Under Section 76-3-205, no person convicted of an infraction may be imprisoned.

- 2 Plaintiffs Shelmidine and Reeves are charged with the crime of driving under the influence of intoxicating

there are no material

facts are more fully set out in the memoranda filed by the respective parties with two minor exceptions noted in the record during oral argument, about which there is likewise no dispute which raises any issue of fact.

Justice of the peace courts in Utah, manned by non-lawyer judges, are courts of convenience, particularly in isolated rural areas typical of most of this state in which there are few, and sometimes no attorneys. In the early days of statehood there were so few attorneys and such great distances to be covered by those attorneys who were available that the system of justice in dealing with minor criminal offenses would have broken down completely if lawyer judges had been required. Thus, while city court, district court and Supreme Court judges were, from the inception of statehood and before, required to be lawyers, both the Constitution of the state of Utah and legislative enactment left open the question of qualifications of the judges of justice courts with respect to legal background and training.

Modern transportation and communication have considerably alleviated much of the problem earlier encountered in effectuating a viable means of administering effective and speedy justice on the misdemeanor level. Nevertheless, of the 29 counties in Utah there are still eight counties with two or less resident attorneys and five counties with no resident attorney, for lawyers, whose livelihood is dependent upon the services they are able to render to people, have tended to settle in the more popu-

of the state requiring the inhabitants in

many areas to travel some considerable distance to obtain legal counsel. The impact of this on the administration of misdemeanor offenses -- the very type of offense with which a limited-jurisdiction, lay justice of the peace most frequently deals -- is immediately apparent: One-third of the counties of the state do not have enough resident lawyers to staff the justice courts and still have a prosecutor and defense counsel. In Salt Lake County, where the heaviest concentration of lawyers is found, only one justice court judge is a lawyer.

With this background, the question before this Court is whether the historically convenient and necessary lay justice of the peace system in Utah can withstand the developing mandates of Due Process, of fundamental fairness and of equal protection. The basic predicate is not whether a lay justice of the peace can conduct an error-free trial or whether he is capable of being fair and impartial, for Due Process does not guarantee an error-free trial, Roberts vs. New York City 295 U.S. 264 S.Ct., L.Ed. 2d (1934), nor does this Court have any doubt that for the most part lay justices of the peace are fully capable of fairness and impartiality. Rather, it is whether a non-lawyer judge has sufficient legal training, background and experience to afford a misdemeanant a fair trial, the end result of which may be imprisonment. In this context, "fairness" does not mean merely impartiality. Its meaning is of constitutional necessity more encompassing. It alludes to a quality of justice which fully observes all rights, both substantive and procedural, of the citizen-defendant

in which he lives, no matter how petty. Ideally, one would hope for an entire judiciary staffed with learned judges who, by intellect and passion, are able to discern the delicate and subtle nuances extant in our constitutional system by which the rights of the individual are balanced against the power of the government. While the ideal may not be perfectly met, we come as close as humanly possible by imposing rigorous standards of training, background, experience and temperament on our judges to achieve the highest quality of justice possible. To impose less than that does not meet the fundamental constitutional requirements of Due Process for a constitutionally fair trial where loss of liberty is a possible consequence. Due Process permits no compromise between fundamental rights on the one hand and convenience or necessity on the other.

If one is entitled, under the growing concepts of Due Process and fair trial, to legal counsel in a misdemeanor case where there is a possibility of imprisonment, Argersinger vs. Hamlin, 407 U.S. 25, 92 S.Ct. 2066, 32 L.Ed. 2d 530 (1972), see also Gideon vs. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963), then Due Process, the right to a fair trial and the right to counsel likewise mandate that under such circumstances only a lawyer-judge, qualified by training, background and experience to comprehend and utilize counsel's legal arguments, can impose a sentence of imprisonment, Gordon vs. Justice Court, 115 Cal. Rptr. 632, 12 Cal. 3d 323, 525 P.2d 72 (1974), cert. den. 16 Cr.L. 1483, 1484 (1975).

The defendants nevertheless argue that the

of an appeal "anew" to a lawyer judge, and thus saves the system from any constitutional infirmity. But must a defendant incur the added expense, both in time and money, of an appeal in order to be afforded Due Process? I think not. The availability of a trial de novo on appeal does not guarantee a fair trial in the justice court, the court with which we are here dealing. Plaintiffs are entitled to Due Process and a fair trial in the first instance. Ward vs. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed. 2d 267 (1972).

This Court therefore finds and holds that the practice under Utah law which allows non-lawyer or lay justices of the peace to impose a jail sentence or imprisonment constitutes a denial of a criminal defendant's right to a fair trial in violation of the mandate of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. To the extent that Section 78-5-4, Utah Code Annotated, authorizes lay justices of the peace to impose imprisonment, it, too, is violative of the guarantees under the Federal Constitution of Due Process, of the right to fair trial and of the right to counsel, and is void.³

Accordingly, defendants' motion for summary judgment is denied, plaintiffs' motion for summary judgment is partially⁴ granted, and the defendants are prohibited

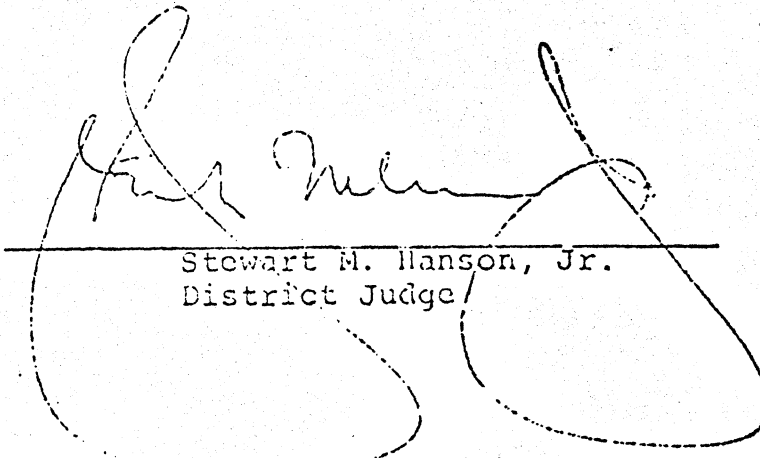
3 It is unnecessary to address the question of whether a lay judge can impose a fine since the only matter presently before this Court is whether a lay judge can affect the "liberty" of a defendant by imprisonment.

4 It is granted "partially" because, while the plaintiffs have this Court prohibit the defendants from

as lay judges from imposing - ,
upon a conviction of the offenses over which they otherwise
have jurisdiction. Counsel for the plaintiffs are directed
to prepare and submit an Extraordinary Writ in the nature
of prohibition in accordance with this memorandum decision.

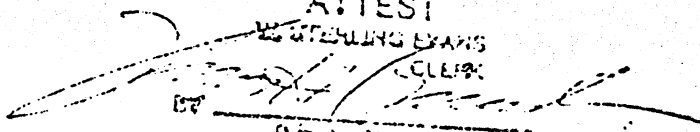
Dated this 3rd day of June, 1975.

BY THE COURT:



Stewart M. Hanson, Jr.
District Judge

SMH/rgp

ATTEST
W. STELLING DEANS
CLERK
By 
Deputy Clerk