1973

Arizona's Inferior Courts

Harold H. Bruff

University of Colorado Law School

Follow this and additional works at: http://scholar.law.colorado.edu/articles

Part of the Civil Procedure Commons, Courts Commons, Criminal Procedure Commons, Judges Commons, and the State and Local Government Law Commons

Citation Information


Copyright Statement

Copyright protected. Use of materials from this collection beyond the exceptions provided for in the Fair Use and Educational Use clauses of the U.S. Copyright Law may violate federal law. Permission to publish or reproduce is required.

This Article is brought to you for free and open access by the Colorado Law Faculty Scholarship at Colorado Law Scholarly Commons. It has been accepted for inclusion in Articles by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact erik.beck@colorado.edu.
Arizona's Inferior Courts

Harold H. Bruff*

For many citizens Arizona's inferior courts provide their primary, perhaps only, contact with the state's justice system. This Article—based in large part upon a thorough empirical and personal study of these lower courts—discusses the role that the courts play, the procedures that they observe, the qualifications of the personnel they employ, and the sufficiency of the justice they render. These findings are then evaluated, and recommendations for change are made.

*Assistant Professor of Law, Arizona State University. A.B. 1965, Williams College; LL.B. 1968, Harvard University.
# Table of Contents

I. Introduction: A Field Study of Arizona's Inferior Courts .................... 3

II. A Profile of Arizona's Inferior Court Judges .................................. 4
   A. Selection, Qualifications, and Salary ...................................... 4
   B. The Background of the Judges ............................................... 5
   C. Supervision, Training, and Legal Advice .................................... 6
   D. Finance, Facilities, and Personnel .......................................... 7
   E. Distribution of Workload ...................................................... 10

III. Civil Cases .................................................................................. 12
   A. The Nature of the Civil Cases .................................................. 12
   B. Civil Procedure in Inferior Courts .......................................... 16
      1. Venue and Personal Jurisdiction ......................................... 16
      2. Aids for the Civil Litigant ................................................. 17
      3. Procedure in Civil Trials ................................................... 17
      4. Amounts Claimed and Awarded at Trial ................................. 20
      5. Ancillary Proceedings ....................................................... 21
      6. Appeals .............................................................................. 23

IV. Criminal Cases ............................................................................. 23
   A. The Nature of the Criminal Cases ............................................ 23
      1. Jurisdiction and Subject Matter ........................................... 23
      2. Securing the Defendant's Presence ....................................... 25
      3. Counsel ............................................................................... 26
      4. Jury Trial ............................................................................ 26
      5. Disposition of the Cases ..................................................... 28
   B. Bail and Sentence Practices ..................................................... 29
      1. Bail .................................................................................... 29
      2. Fines .................................................................................. 30
      3. Jail Terms ........................................................................... 31
   C. Administering the Criminal Cases ............................................ 32
   D. Criminal Appeals .................................................................... 34
   E. Coroner's Inquests .................................................................. 35
   F. Felony Preliminary Hearings ................................................... 35

V. Conclusion ..................................................................................... 37
   A. An Evaluation of Arizona's Inferior Courts ................................. 37
   B. Reorganization ......................................................................... 45
ARIZONA'S INFERIOR COURTS

I. INTRODUCTION: A FIELD STUDY OF ARIZONA'S INFERIOR COURTS

Arizona's inferior courts consist of the justice of the peace courts, existing in the county structure, and the police courts, existing in the incorporated cities and towns. The term "inferior courts" is used in this article in its technical sense, to indicate that the Justice of the Peace (JP) and the police courts differ from the superior courts in terms of the qualifications that the law requires of their judges and in terms of the kinds of cases with which they deal. Thus, the jurisdiction of the inferior courts, which will be detailed below, is limited in criminal cases to misdemeanors and preliminary stages of felonies, and in civil cases (handled by justices of the peace only) to the lower amounts in controversy.

The first four sections of this Article summarize the findings of a field study conducted in August and September, 1972, pursuant to a grant from the Arizona State Justice Planning Agency. The study was conducted by student researchers from the Arizona State University College of Law under faculty supervision. The students traveled throughout Arizona, visiting as many justice of the peace courts and police courts as possible, ordinarily missing only those courts where the judge was on vacation or otherwise unavailable. The purpose of the visit was twofold: First, to interview the judges at length to examine the inferior court system from their viewpoint; second, to take a random sample of cases from their dockets to obtain an overall picture of the business these courts conduct. The judges were very cooperative; without their help, the study could not have been made.

At the time of the field study, Arizona had 89 justices of the peace (JP's) and 59 city magistrates—a total of 148 inferior court judges. Eighteen of the JP's also served as the city magistrate for a municipality, as permitted by law. Interviews were conducted with 76 of the 89 JP's and 44 of the 59 city magistrates, or 120 of the 148 judges. Docket samples were taken from 78 of the justices of the peace and 54 of the city magistrates, or 132 of the 148 total. For purposes of the study, all judges in the Phoenix and Tucson metropolitan areas (17 JP's and 33 city magistrates) were designated "urban," and those in the remainder of the state were designated "rural."

1. See pp. 4-5 infra.
2. This Article will use the term "judges"—the usual form of address—to refer collectively to the presiding officers of the inferior courts. The presiding officers of the police courts are ordinarily referred to as city magistrates. The statutory qualifications are set forth at p. 5 infra.
5. This included, for JP courts, Phoenix (6), Clendale, Mesa (2), Peoria, Scottsdale, Tempe, Tolleson, and Tucson (4); for police courts, Phoenix (11), Clendale, Mesa (2), Peoria, Scottsdale, Tempe (2), Tolleson, Paradise Valley, Avondale, Gilbert, Youngtown, Apache Junction, Tucson (5), and South Tucson (4). Of the urban JP's, 15 of 17 were interviewed, and 16 of 17 dockets were examined. Of the urban police courts, 22 of 33 judges were interviewed, and all dockets were examined.
Interviews with the judges followed a standardized questionnaire, and the responses were read and computer coded by categories of the most frequent answers. The docket sampling procedure was more complex. May, 1971, was chosen as the test month to ensure that all cases that would ever reach completion had had sufficient time to do so. Since cases were docketed in chronological order of filing, a random sample was selected simply by taking every fifth case for the test month from the following categories of cases examined: Civil, criminal, traffic, ordinance, and felony preliminary hearing. This procedure produced a total statewide sample of 2,800 cases. These sample cases and interview responses form the body of empirical data upon which the following discussion is based.

II. A Profile of Arizona's Inferior Court Judges

A. Selection, Qualifications, and Salary

Selection of Arizona's justices of the peace proceeds according to constitutional and statutory mandate. Each county board of supervisors is required to divide the county into justice precincts, the size and number of which are within the supervisors' discretion. The voters of each precinct then elect a justice of the peace and a constable for four-year terms. Elections for the office of justice of the peace, unlike those for the judges of Arizona's higher courts, are partisan in nature. Vacancies are filled by the board of supervisors. The importance of this appointive power is shown by the fact that over half (42) of the 76 JP's responding to the survey first assumed office by appointment to fill a vacancy. By contrast, 27 JP's won a contested election, and six an uncontested election. Although the law requires every city or town incorporated under the general laws and having a population greater than a specified minimum to establish a police court, the manner of selecting the city magistrate is ordinarily left to the municipality. In some small Arizona

6. A copy of the questionnaire is on file at Law and the Social Order.
7. The great number of traffic cases required a modified procedure. The researchers sampled only every tenth traffic case for the test month and compiled a maximum sample of ten cases per court.
8. For those courts in which there were insufficient cases in May 1971, to produce a sample of five cases per category, earlier cases were added to provide some idea of what all courts were doing with the cases they handled. Of the total statewide sample of 2,800 cases, 2,107 were from the prime test month.
towns, however, the city recorder is required by statute to be *ex officio* police judge. Of the 44 city magistrates responding to our survey, 42 held appointive office, one had initially been appointed to an elective office, and one had won a contested election. Some cities provide that appointed city magistrates serve at the pleasure of the city council; others provide that the city council may remove them only for cause.

The statutory qualifications of justices of the peace are that they be 18 years of age or older, residents of the state, electors of the precinct in which their duties are to be performed, and able to read and write the English language. They need not be lawyers. City magistrates must be electors of the municipality in which they serve; and the cities sometimes impose additional qualifications—for example, that they be attorneys.

Salaries of the justices of the peace are paid by the counties, but a statute requires their compensation to be within specified ranges based on the population of the precinct. The minimum salary, for precincts with fewer than 1,500 registered voters, is $5,100 to $6,600 per year; the maximum, for precincts with over 7,500 registered voters, is $11,000 to $14,000. Although the workload of a JP certainly varies with the population of his precinct, the statutory pay formula does not take into account the presence of other factors that may greatly affect his caseload, such as the presence of a major highway within the precinct. Insofar as it does not, judges doing more work may be paid less than their colleagues. It may be noted that 11 of the 76 JP's interviewed mentioned low salaries as a problem of the system. Compensation of city magistrates is fixed and paid by the municipality.

B. The Background of the Judges

The educational background of Arizona's inferior court judges varies widely. The largest single group (37.5 percent) of the judges interviewed had completed high school but had received no further formal education; a few judges had not completed high school. Twenty percent had had some col-

14. *Id.* § 9-204. This category of Arizona town has 600 to 800 voters. *Id.*
21. This topic is developed at pp. 10-12 infra.
23. Six judges indicated they had not finished high school; five of them were JP's. Thirty-two of the 76 JP's and 13 of 44 city magistrates had only a high school diploma.
lege education short of a four-year degree. Another 7.5 percent had attained a college degree as the highest level. Lawyers comprised another large group (8 of 76 JP’s and 17 of 44 city magistrates, or 21 percent of the total); a few judges had done some graduate work in other fields. There was a strong tendency for the judges who were lawyers to be found in the cities, and, conversely, for the judges with only a high school education to be found in rural areas. Of the urban judges interviewed, 22 of 37 were lawyers, and only 8 of 37 had no more than a high school education. Of the rural judges interviewed, 3 of 83 were lawyers; 43 of 83 had only a high school education.

Many non-lawyer judges had received law-related training. For instance, four JP’s had attended at least some law school courses, and 24 percent of all judges cited law-related training in law enforcement. However, 43 percent of the judges had had no law-related training. The city magistrates had a significantly higher total incidence of legal training than the justices of the peace: 38 percent of the city magistrates were lawyers, and 59 percent either were lawyers or had had law-related training; the corresponding figures for the justices of the peace were 10.5 percent and 42 percent respectively.24 The judges were also asked how long they had been in office. Eleven percent indicated less than a year’s experience; 42 percent, 1 to 5 years; 27 percent, 6 to 10 years; 20 percent, over 10 years. Five percent of the judges, all of them JP’s, had held office over 20 years.

Each judge was asked to specify any prior employment experience that had helped him as a judge. Most frequently mentioned was law enforcement experience, cited by 29 percent of the justices of the peace and 13 percent of the city magistrates, for a statewide average of 23 percent. The next most frequent answer was experience in law practice, cited by the judges who were attorneys. Other prominent categories of experience, each cited by roughly 10 percent of the judges, included legislative or government service, business, and “experience with people,” often mentioned in connection with another, more formal, type of experience.

C. Supervision, Training, and Legal Advice

The Arizona Constitution makes the supreme court administrative supervisor over all the courts of the state, including the inferior courts.25 The supreme court’s supervisory authority, implemented through its office of the Administrative Director of the Courts, has been used to some extent to train the inferior court judges and to inform them about legal developments. The Administrative Director reports that new justices of the peace and city magistrates now receive limited training about the time they assume office. Grants

24. The higher percentage of lawyers among the city magistrates is due largely to their presence in the Phoenix and Tucson police courts.
from the Arizona State Justice Planning Agency are used to send them to training programs for inferior court judges, run by judicial organizations located in other states, and lasting from three days to two weeks.6 With one exception,7 no formalized training program for new inferior court judges has been carried on within Arizona. The intermittent turnover in these offices would cause difficulty in administering such a program.

The supreme court's supervisory powers are used in several other ways to assist the judges. In 1962, the supreme court published the Arizona Manual for Justice Courts, the stated purpose of which was to provide guidance and information for the JP's rather than a set of binding general rules. Once a year, the supreme court orders all inferior court judges to attend a two-day conference, at which common problems can be discussed and lectures offered. (JP and magistrate associations also have conventions that offer opportunities for education.)

The Administrative Director regularly sends the judges new federal and state court decisions and statutes relating to their work. This dissemination of information is obviously helpful. Ninety percent of the JP's and 75 percent of the magistrates indicated that they were kept adequately informed of changes in the law that affect their work; only 2 JP's and 4 magistrates answered unequivocally that they were not. Information on changes in law was said to come from various sources: frequently mentioned were the Administrative Director, the Secretary of State, and the Attorney General. Because many of the inferior court judges are not lawyers, they sometimes desire legal advice on a pending case. Sixty-four percent of the JP's reported that they usually consult the county attorney, while 17 percent said they usually contact a superior court judge; the magistrates often (39 percent) consult the city attorney. However, a large number of magistrates simply rely on themselves (27 percent). The judges were asked how much of the time they were able to obtain legal guidance when they wanted it. Statewide, 68 percent answered "always or almost always," 12 percent "usually or occasionally," and 3 percent "rarely." (The remaining percentage was composed of nonresponses and judges who do not seek outside advice.) Despite these expressed opinions, however, 17 of the judges (12 of them magistrates) indicated there was a need for more training and upgrading of the inferior court judge's position.

D. Finance, Facilities, and Personnel

Arizona justice of the peace courts and most police courts are forbidden

26. The National College of the State Judiciary, in Nevada, has a Limited Court Judges Program involving a three-day seminar and a two-week course. The American Academy of Judicial Education, in Alabama, has one- and two-week courses.

27. In January, 1970, because of an extraordinary number of new judges taking office, the Director obtained funds from the Arizona State Justice Planning Agency and presented a three-day course for the new judges.
to operate under the constitutionally invalid fee system, in which the judge’s compensation consists of fees assessed against losing parties. Instead, fines collected in justice of the peace courts are paid over to the county treasurer (or in a few instances to a state agency); fines collected in the police courts ordinarily go to the city treasurer. Thus, fines usually go to the unit of government creating and maintaining the court—not necessarily to the unit of government whose law has been broken. For example, fines collected by city magistrates are paid to the city treasurer without regard to whether the violation is of state law or city ordinance.

The expense of maintaining the justice of the peace courts is borne by the counties; that of maintaining the police courts, by the cities. State law controls the amount of a county’s expenditure for its JP courts only by establishing mandatory salary ranges for the judges and for the constables, the other required officers. No such controls are placed upon cities’ expenditures for their police courts. The Office of the Administrative Director of the Courts has compiled recent budgetary figures for the inferior courts. Table I summarizes county budgets for the JP courts and demonstrates that, although these courts take in about as much revenue statewide as is spent to maintain them, there are significant differences among the counties in terms of whether revenue exceeds expenditures, or vice versa.

<table>
<thead>
<tr>
<th>County</th>
<th>Revenues</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apache</td>
<td>$51,543.95</td>
<td>$50,276.00</td>
</tr>
<tr>
<td>Cochise</td>
<td>192,981.11</td>
<td>96,058.49</td>
</tr>
<tr>
<td>Coconino</td>
<td>144,961.91</td>
<td>110,049.47</td>
</tr>
<tr>
<td>Gila</td>
<td>Unavailable</td>
<td>90,165.01</td>
</tr>
<tr>
<td>Graham</td>
<td>22,754.22</td>
<td>23,931.22</td>
</tr>
</tbody>
</table>


30. See id. § 22–404 (1956).
31. Id. § 22–117.
33. Id. § 11–424.01 (Supp. 1972–73). For JP’s the minimum is $5,100; the maximum, $14,000. For constables the minimum is $6,000; the maximum, $8,000. The exact salary figure depends upon the number of registered voters in the precinct.
34. The information compiled in this Table and in Table II is on file at the Office of the Administrative Director of the Courts.
Greenlee 7,310.00 20,432.55
Maricopa 801,610.00 1,085,581.00
Mohave 148,903.54 99,642.85
Navajo 101,933.63 69,155.59
Pima 350,047.00 313,592.31
Pinal 160,165.24 242,074.23
Santa Cruz 61,635.00 34,535.68
Yavapai 27,599.06 90,758.42
Yuma 276,823.74 168,020.83
Total $2,348,268.40 $2,494,273.65

Fewer figures are available for the police courts, but municipal budgets reported to the Administrative Director reveal a strikingly different pattern from that of the JP court finances. The picture is almost uniformly one of revenues far in excess of expenditures. Table II gives examples.

TABLE II
BUDGETS FOR POLICE COURTS
Fiscal Year 1971—72

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Revenues</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarkdale</td>
<td>$2,061.00</td>
<td>$637.78</td>
</tr>
<tr>
<td>Mesa</td>
<td>209,000.00</td>
<td>55,600.00</td>
</tr>
<tr>
<td>Peoria</td>
<td>71,531.00</td>
<td>17,291.00</td>
</tr>
<tr>
<td>Phoenix</td>
<td>3,400,000.00</td>
<td>935,793.00</td>
</tr>
<tr>
<td>Scottsdale</td>
<td>177,526.00</td>
<td>47,479.00</td>
</tr>
<tr>
<td>Tempe</td>
<td>220,000.00</td>
<td>61,420.00</td>
</tr>
<tr>
<td>Tucson</td>
<td>1,112,000.00</td>
<td>221,970.00</td>
</tr>
<tr>
<td>Winslow</td>
<td>66,874.40</td>
<td>6,989.10</td>
</tr>
<tr>
<td>Yuma</td>
<td>165,000.00</td>
<td>28,854.44</td>
</tr>
</tbody>
</table>

Requiring that the counties and cities maintain the inferior courts causes wide variation in the quality of the physical facilities and the number of supporting personnel furnished to the judges. In part, of course, this variation simply reflects the wide disparities in caseload. The facilities range from those described by field researchers as “a modern, large city facility” or a “formal and dignified courtroom” to “a school desk in a corner of the police office.” In some cases offices were used conjunctively with other local officials, with “no judicial atmosphere whatever.” Many of the adequate facilities were not new but did allow the judges to conduct trials and other business in an atmosphere of privacy and dignity. Not all of Arizona’s inferior court judges are given this opportunity. Thirty-seven percent of the judges visited had some type of courtroom, 34 percent had a courtroom-office combination, and 20 percent had an office only. Seven judges (6 percent) held court at their homes. When the judges were asked what their main day-to-day problems were, they gave as their most frequent single answer (32 judges) inadequate facilities and personnel.

The number of clerical personnel provided to judges differs significantly.

35. See pp. 10–12 infra.
Sixteen of the 76 justices of the peace interviewed (21 percent) had no clerical help and kept their own records. Fewer magistrates had no clerical help. Statewide, 58 percent of the judges relied for help in record keeping on one full-time clerk or less.

**E. Distribution of the Workload**

The territorial jurisdiction of a justice of the peace court often overlaps that of a police court within the JP's precinct. Each justice of the peace has jurisdiction over minor crimes committed within his precinct, which includes violations of city ordinances unless the city provides that its police court shall have exclusive jurisdiction over them. Similarly, each city magistrate has jurisdiction not only of ordinance violations, but of violations of state law committed within the city limits. (The JPs also have jurisdiction in some subject matter areas where the magistrates have none—civil cases and coroner's inquests.) Forty-one percent of the JP's interviewed shared criminal jurisdiction with a single police court within their precincts. Five more JP precincts included two police courts, and three precincts included an Indian tribal court.

When asked if there were any informal arrangements dividing up the concurrent jurisdiction, about half the judges responded that the city police cited violations within city limits exclusively to the police court. Whether or not this practice leads to an efficient division of labor between these courts, the reason for it is obvious, since fines collected in police court go to the city.

Each judge was asked whether he thought there was an efficient distribution of labor between the courts acting within his area. Virtually all city magistrates responding to the question (34 of 36) felt the division of labor was efficient; 28 of the 44 justices of the peace whose precinct included a police court agreed. Some of the judges felt that the presence of a police court within the precinct was unnecessary. The JP's were also asked whether they felt the boundary lines of their precincts were well-drawn. Seventy percent answered affirmatively; the others had a variety of complaints ranging from the extreme size of the precinct (8 percent) to the inclusion of citizens voting in another precinct. A common complaint (8 percent) was the setting of precinct lines in a manner which made it difficult to tell which JP had jurisdiction over a given crime—for instance, a boundary down the middle of a highway or a river.

Apart from the division of labor between justice of the peace courts and police courts within the same precinct, there are great differences in workload in different parts of Arizona. When asked about their day-to-day problems,

---

37. See *id.* § 22–402(B) (1956).
38. *Id.*
16 of 76 JP's and 10 of 44 city magistrates cited case overloads (the third most frequent response to this question). This problem is reflected in the judges' estimates of hours worked per week: 54 percent of the JP's and 11 percent of the magistrates indicated a workweek in excess of 50 hours, and an additional 17 percent of the JP's and 25 percent of the magistrates said they put in 41 to 50 hours. In contrast, 7 percent of the JP's and 36 percent of the magistrates indicated a workweek of less than 20 hours. One JP and eight magistrates said they spent less than 10 hours a week on the job.

Differences in caseload are graphically illustrated by variations in the number of cases filed in various courts during the test month of May, 1971. Some urban justice of the peace courts had large numbers of cases. For instance, in one Tucson JP court, 894 traffic cases, 80 civil cases, 34 criminal misdemeanors, and six ordinance cases were filed in the test month, and 18 felony preliminary hearings were held. High caseloads were not confined to the Phoenix and Tucson area JP's, however. During the test month, 803 traffic cases were filed in Kingman's JP court, as well as 38 misdemeanors and eight civil cases; eight preliminary hearings also were held. Predictably, heavy caseloads followed the major highways, not the population of the area. The JP court in Parker had 232 traffic cases in the month and 199 criminal misdemeanors, most of them boating offenses on the Colorado River. Sanders had 171 traffic cases; Bowie had 160. Caseloads in the police courts also were high in the big cities and along the highways. Phoenix's city court, with 11 magistrates, had 23,066 traffic cases filed during the month; Scottsdale, 817; Winslow, 286; Huachuca City, 132.

In stark contrast, some other rural justice of the peace and police courts do very little business at all. The JP in Cane Beds had 12 traffic cases in the test month and had had no civil cases in 14 years. The McNary JP, during the same period, handled one traffic case, five criminal misdemeanors, and one preliminary hearing. No civil cases had been filed since July of the previous year. The Eagar police court had five traffic cases for the month, and no others. In some areas, both a JP court and a police court existed despite a paucity of cases. Examples include Springerville, where the JP handled 15 traffic cases, 23 misdemeanors, and two preliminary hearings, while the magistrate had one ordinance case; and Duncan, where the JP had seven traffic cases, three misdemeanors, and two coroner's inquests, while the magistrate had two traffic cases and one misdemeanor.

The salaries paid the judges do not adequately reflect differences in their caseloads. The justice of the peace courts mentioned as examples of caseload variations can also serve to illustrate salary variances. Recent salary figures for the busy courts were reported as follows: Kingman, $7,800 a
year; Parker, $7,200; Bowie, $6,600; Sanders, $5,400. Justices of the peace with very little business were not paid substantially lower salaries: Cane Beds, $5,100; McNary, $5,100; Springerville, $5,400; Duncan, $5,640. In fact, the JP in Duncan was paid more than the JP in Sanders, who had a much greater workload. Salary figures for the city magistrates are not readily available at present. But for two of the high volume police courts mentioned above, Scottsdale and Winslow, they were recently reported as $19,920 and $6,651, respectively.  

III. Civil Cases

A. The Nature of the Civil Cases

In Arizona's inferior court system, justice of the peace courts have jurisdiction of civil cases, but police courts do not.  

By statute, the JP courts have exclusive jurisdiction of civil cases in which there is less than $500 in controversy; they have concurrent jurisdiction with the superior court in cases involving amounts from $500 to $1,000. A constitutional amendment adopted at the November, 1972, general election raised the superior court's minimum jurisdictional level to $1,000 for most kinds of ordinary civil damage suits, except where no other court has exclusive jurisdiction. This amendment apparently confirms the above statutory pattern of concurrent jurisdiction of civil suits for damages when there is between $500 and $1,000 in controversy. Cases of forcible entry and detainer make up the major exception to the pattern. For these, the superior court still has concurrent jurisdiction without a minimum jurisdictional amount, and the jurisdiction of the JP's ends when the rental value of the property exceeds $500 per month, the damages claimed exceed $1,000, or the right of title to the property, as opposed to possession, comes into question. 

The field study on which this article is based sampled a total of 556 civil cases from the dockets of Arizona's justices of the peace. Most of these cases (57 percent) were suits by sellers of goods or services to collect money due on their contracts. In contrast, suits by buyers in this category, for breach of warranty or other seller's default, comprised only 3 percent of the cases. These contract cases appeared with about the same frequency in both urban and rural samples. The next most frequent categories of cases concerned property damage (6 percent), loan payments due (6 percent), and forcible entry and detainer (6 percent). Cases in these categories appeared in the

39. This information is on file at the Office of the Administrative Director of the Courts.
urban courts about 2 percent more frequently than the statewide average, whereas those in the rural courts ran 2 to 4 percent below the statewide average. Of the remaining 20 percent of the cases, 17 percent were classified “unidentified” by the researchers, indicating uninformative record-keeping in the courts, and possibly indicating that the above categorical frequencies are actually understated.

The civil plaintiffs, on a statewide basis, fell into the following major categories: individuals, 34 percent; corporations, 30 percent; unincorporated businesses, 29 percent. Significantly, although individuals made up the largest single category of plaintiffs statewide, they were not the largest class in either the urban or the rural courts taken separately. In the urban JP courts, corporations constituted 41 percent of the total; individuals, 38 percent; unincorporated businesses, 17 percent. In the rural courts, unincorporated businesses made up 44 percent of the plaintiffs, individuals, 29 percent, and corporations, 16 percent. Statewide, business plaintiffs, both incorporated and unincorporated, made up 59 percent of the total number of plaintiffs, although the breakdown between the two categories differed sharply between urban and rural JP courts.

This state of affairs was generally confirmed by the judges’ own impressions. The JP’s were asked what percentage of their civil plaintiffs the above groups represent, and the estimates generally agreed with the sample figures, with significant groups of judges, probably in the rural areas, estimating that over half their plaintiffs were unincorporated business proprietors (26 percent) or individuals (18 percent). The judges were also asked what percentage of their civil plaintiffs collection agencies and finance companies alone represent. Four percent of the judges answered that the collection agencies and finance companies alone represent at least 75 percent of their civil plaintiffs; 9 percent answered that they comprised 50 percent or more of the plaintiffs; 12 percent that they comprised 20 percent or more of the plaintiffs. Thus, in every fourth JP court, collection agencies and finance companies were estimated to be at least 20 percent of all plaintiffs.

The civil defendants throughout the state, in contrast to the plaintiffs, were 86 percent individuals, with only minor percentage differences between rural and urban areas. As might be expected, the business defendants, who made up the remainder, were more frequently corporations in the urban areas and more frequently unincorporated businesses in the rural areas, in each case by several percentage points. Again the impressions of the judges

43. Of the total sample of 556 cases, 55 percent came from the urban JP courts. It should be remembered, however, that 16 of 17 urban JP dockets were examined, compared with only 60 of 72 rural JP dockets. Still, the indication of a higher concentration of civil cases in the urban areas remains strong.

44. In the rural areas, 29 percent of the cases were unidentified, indicating less complete records.
confirmed the sample. Just over one-half of the judges (51 percent) estimated that individuals comprised 90 percent or more of the defendants; 75 percent of the judges thought that individuals were at least one-half of the defendants. The judges made no significant mention of collection agencies and finance companies as defendants, and only 7 percent of the judges thought that businessmen were a majority of their defendants.

In most civil trials in Arizona justice of the peace courts, neither side has a lawyer. And when any lawyer is present, usually only the plaintiff is represented. The sample cases indicated that lawyers appeared solely for the plaintiff in 30 percent of the cases, solely for the defendant in 1 percent of the cases, and for both parties in 8 percent of the cases.43 This participation by lawyers in 39 percent of the civil cases is largely due to their much more frequent presence in the urban JP courts than in the rural ones. Lawyers appeared in 58 percent of the urban cases but in only 14 percent of the rural cases. Representation solely of the plaintiff was much more frequent in the urban courts—46 percent, compared with 10 percent in the rural courts. Representation of only the defendants was rare everywhere, and even rarer in rural areas. Representation of both sides was found in 11 percent of urban cases, but in less than 4 percent of rural cases.

Jury trials in civil cases were surprisingly rare. Only 3.6 percent of the sample cases involved a jury trial, although either party is entitled to a jury on demand, without regard to the amount in controversy.44 All the sample cases involving a jury occurred in urban courts.45

Reviewing the disposition of the sample cases produced at least one striking statistic. Fully 31 percent of the cases filed in May, 1971, were still pending at the time the field researchers examined the dockets, some 15 months later. There were fewer of these open cases in the urban courts (26 percent) than in the rural ones (37 percent). It seems most unlikely that these cases simply had not had an opportunity to come to trial, since the average elapsed time from complaint to trial in all decided civil cases was 59 days, far under the 15 months elapsed for the cases still pending.46 Also, at least one-half of the judges have no formal procedure for reviewing and disposing of old cases on the docket.

The JP's were asked to indicate the portion of their technically pending cases a year or more old that had actually been resolved. Twenty-six percent

43. This preponderance of representation solely for the plaintiff is partly due to the fact that many of the cases are defaults or are still technically pending—the defendant never appears at all. Also, corporations may not appear in court in Arizona except through an attorney. See Ramada Inns, Inc. v. Lane and Bird Advertising, Inc., 102 Ariz. 127, 426 P.2d 395 (1967).
45. Jury selection procedures are discussed at p. 20 infra.
46. The urban courts averaged 70 days from complaint to trial; the rural courts, 37 days.
thought that "substantially all" had been resolved, and an additional 29 percent thought that "many" or "most" of the cases were no longer active. Only 11 percent of the judges thought that only "some" or "a few" had been resolved. The JP's were further asked whether they had ever had occasion to check old cases to see what was happening, and, if so, whether indications were that the defendants were paying the claim, or fleeing, or otherwise avoiding payment. Thirty-eight percent of the JP's indicated they had not investigated the old cases; another 13 percent indicated they had investigated or had a procedure for dismissing old cases, but did not express an opinion regarding what had happened in them. Just over 30 percent of the JP's, however, thought that the defendants usually were paying or settling these claims. Only one judge thought that open cases usually indicated the defendant had fled; 5 percent thought the results were divided between settlement and flight.

It seems likely, then, that a large but unknown proportion of these old open cases, making up 31 percent of the civil total, have actually been resolved partly or entirely in favor of the plaintiffs by settlement or payment. In addition to the pending cases, a full 25 percent of cases statewide resulted in default judgments because the defendant did not appear at trial. Defaults were more common in urban courts (32 percent to 17 percent). Fully contested trials were thus rare. Plaintiffs received a contested judgment in 14.4 percent of all civil cases and won slightly more often in rural than in urban courts (16 percent to 13 percent). Defendants won a contested judgment in 4 percent of the cases statewide and won slightly more often in urban than in rural courts (5 percent to 3 percent). Defendants also secured dismissals before trial in 11 percent of the cases, indicating a settlement of some kind—not necessarily, of course, a victory for the defendant. The judges dismissed another 7 percent of the cases for failure to prosecute, indicating that a dismissal procedure for old cases is utilized. These dismissals occurred mainly in the urban courts.

These figures as a whole, then, indicate that the plaintiff prevailed a minimum of 50 percent of the time (counting defaults plus contested victories) and a maximum of 96 percent of the time (assuming that all open cases, voluntary dismissals, and dismissals for nonprosecution occurred because the plaintiff's claims had been paid). The figures also indicate that most of these cases are resolved by the parties rather than by the judge: only 18.5 percent of the cases resulted in a judgment after a contested trial, with the plaintiff winning 78 percent of them.

It also seems probable that the plaintiffs' actual rate of success in obtaining partial or complete payment of claims filed is quite high, although it is surely significantly lower than the theoretical maximum of 96 percent. If,
for instance, plaintiffs succeed in only half the open cases and dismissals before trial—a ratio that is conservative in terms of the judges' estimates for the open cases—the plaintiffs' total rate of successes would be 65 percent. Since only about 1 percent of the cases are appealed, whatever occurs at the JP court level is usually final.

If there is a "typical" civil case in the justice of the peace court, it is probably one in which a business plaintiff, possibly represented by a lawyer, sues an unrepresented individual to recover a contract debt. The "typical" result is a settlement out of court, a default judgment in the plaintiff's favor, or, occasionally, a contested case without a jury, in which the plaintiff can have a strong expectation of victory.

B. Civil Procedure in Inferior Courts

1. Venue and Personal Jurisdiction

In Arizona JP courts, a defendant generally must be sued in the justice precinct in which he lives. There are numerous exceptions to this rule, however. The most important one for justice of the peace courts provides that contract claims may be brought in the precinct where the contract was entered into, as well as the one where the defendant lives. Thus, some contracts initiated by mail orders or door-to-door salesmen may be regarded as entered into at the seller's home office, perhaps far from where the defendant lives. Defense of a suit brought by the seller could be very difficult for a buyer who would have to travel to the precinct where the home office is located.

The field researchers attempted to discover whether such suits were frequent in Arizona. In almost half the cases sampled, the researchers were unable to discern the defendant's residence from the court dockets. Of the remaining cases, most suits were against residents of the precinct or city (29 percent), or residents of the county (18 percent). A few (4 percent) were against defendants who were not residents of the county but were residents of Arizona. The judges were asked whether they had many suits against people not living in the precinct and, if so, whether they occurred in any particular kinds of cases. Over 70 percent answered that such suits were not frequent; but 14 percent, in contrast, answered that such suits were frequent in their precincts. Only about one-third of the judges giving the latter answer, however, indicated that the suits against nonresidents were by businesses

49. ARIZ. REV. STAT. ANN. § 12-401 (Supp. 1972-73); id. § 22-202 (1956).
50. Id. § 22-202(D). Another exception is that persons contracting debts in one county or precinct, and then moving to another, may be sued in any precinct of the county in which they are presently located. Compare id. § 22-202(C) (1956) with id. § 12-401(4) (Supp. 1972-73).
51. In California, such suits are said to have been common. See Note, The California Small Claims Court, 52 CALIF. L. REV. 876, 889 (1964).
suing on long-distance contracts. Such a practice, therefore, seems rather uncommon in Arizona.

The civil summons is often served by a private process server in Arizona’s urban areas (68 percent of the cases), but seldom (4 percent) in rural areas. Instead, the constable or another law enforcement officer is used. The dockets indicated that the constables were almost always successful in eventually making service of process (about 90 percent statewide). When asked whether they had encountered any problems with service of process, 76 percent of the judges answered that they had not; 17 percent, that they did have some difficulties in securing service. Fifty-one percent disfavored the idea of registered mail service in place of personal service; 29 percent preferred it; the rest were noncommittal.

2. Aids for the Civil Litigant

A civil litigant can commence a case in justice of the peace court by an oral pleading, summarized by the judge in his docket. Only certain technical defenses necessitate a written answer. The judges were asked how a citizen finds out the proper way to proceed with a lawsuit or defense, and the most common response (49 percent) was that the judge would help the litigant with whatever forms the court used. (Most courts (71 percent) kept a full range of legal forms on hand; some (20 percent) kept basic forms only; a few (5 percent) kept none. Ninety percent had no forms in Spanish.) Two judges said they advised a litigant to hire a lawyer when the case warranted one. Another 24 percent of the judges answered that the clerk would help with forms. However, 20 percent of the judges said that court personnel would not offer advice in filling out forms or answer other questions concerning how to proceed. Most of these respondents said that a litigant needing advice should retain a lawyer.

3. Procedure in Civil Trials

Arizona law provides that the procedural rules for the superior court, insofar as they are applicable, shall govern the justice courts in civil cases. Since few justices of the peace are lawyers, their management of trials is obviously more informal than superior court judges. Nevertheless, litigants retain the important procedural right to subpoena witnesses from within the county.

53. Id. § 22–215.
54. Id. § 22–216. The time in which an answer is to be filed depends upon where the summons is served. If it is served in the precinct, 5 days is allowed; if in the county but outside the precinct, 10 days; if outside the county, 15 days; in all other cases 20 days is the time provided. Id. § 22–213.
55. Id. § 22–211.
56. Id. § 22–217.
Interestingly, when the justices of the peace were asked what kinds of cases they least enjoyed, their most frequent answer (26 percent) by a substantial margin was civil cases. Some judges indicated a reason, such as their unfamiliarity with civil cases, or the tendency of civil litigation to become complicated.

The judges were also asked how they would handle civil litigants who became disorderly during a trial. The most frequent answer was that they would punish the person for contempt by fining or jailing him (22 percent). The next most frequent answers were that the judge would rebuke the party and threaten contempt sanctions (17 percent), or have him removed from the premises (14 percent). Almost one-third of the judges were unsure of what action they would take or simply indicated that disorderly litigants had never been a problem. When asked whether they felt they possessed the power of contempt in civil cases, the judges gave three answers in almost equal proportions. One-third had the clear impression that the power existed; another had the equally clear impression that it did not; the other third expressed doubt. The Arizona Supreme Court’s Manual for Justice Courts informs the judges that the question of a JP’s authority in this regard is both doubtful and complicated.9

The justices of the peace were asked numerous questions designed to discover their opinions on how active a role they should play in a civil trial. First, the researchers asked each judge whether he actively tries to get litigants to settle their dispute without trial. Nearly half the judges (48 percent) said they “always” encourage settlements. Five JP’s (7 percent) said they even screen cases at the time of filing, urging plaintiffs to try to obtain satisfaction without filing a suit.10 An additional 18 percent of the JP’s said they “usually” encourage settlement, giving a cumulative total of some 74 percent of the judges who have a reasonably well-defined practice of doing so. In contrast, 9 percent of the judges indicated that they followed no such practice, some feeling that it would be inappropriate, some desiring to hear both sides.

An Arizona statute11 specifies the procedure to be followed in civil cases when the defendant defaults. If there is a document supporting the claim in a precise amount (such as an account record), the judge is to give judgment for the amount claimed, even if the plaintiff is not present. If there is no document proving the claim in a precise amount, however, the judge must hear testimony from the plaintiff proving damages or, in his absence,

58. This latter practice obviously may affect the figures reported above regarding the disposition of cases. See pp. 14–16 supra.
ARIZONA'S INFERIOR COURTS

dismiss the case. Most Arizona justices of the peace make a practice of questioning the plaintiff on the validity and amount of his claim whenever he is present, even if he has documentary proof. One-half of the JP's interviewed said they "always and extensively" inquire into the matter; another 14 percent said that they "usually" do so. Nine percent said they do not go beyond the statutory requirements, some indicating that extensive inquiry into a default claim is "not my function."

The judges were asked to state their opinions regarding whether civil plaintiffs are usually better educated or more familiar with court proceedings than civil defendants. One-third of the JP's had no opinion; 41 percent thought that plaintiffs have an advantage; 1 percent thought that defendants have an advantage; 12 percent thought that the parties are generally evenly matched. This tendency on the part of the judges to feel that plaintiffs are better educated, or at least more familiar with court procedures, is probably due to the fact that most plaintiffs are businessmen and are frequently represented by lawyers.

California seeks to ensure equality between the parties by forbidding lawyers to appear in its small claims courts. Such a provision raises problems, however. For example, nonlawyer businessmen may still attain familiarity with court procedures if they frequently sue to collect debts. Individual defendants cannot then offset their disadvantage by retaining a lawyer. The difficulty of dealing fairly with cases involving plaintiffs who are not lawyers, but who are expert in small claims procedures, is greatest when collection agencies buy up bad debts and sue on them in great numbers. California attempts to prevent this practice by forbidding anyone who has been assigned another person's claim to sue in small claims court. Some states go so far as to forbid corporations, associations, or partnerships from suing in their small claims courts. Arizona has none of these restrictions. Despite any of them, of course, an individual businessman having frequent occasion to resort to justice of the peace courts would still have an advantage over a defendant who had not often appeared in court.

The field researchers asked the justices of the peace what they did when the parties were not evenly matched at trial—whether, for instance, the judges ever actively sought to bring out the other side of a case if only one party had a lawyer. Most of the judges (63 percent) answered that they always or usually try to develop the case of the weaker party in these circumstances. Another 9 percent said that they sometimes do so. Eighteen

percent of the judges answered that they never or rarely depart from a strictly impassive role, most of these judges indicating that active questioning to bring out the undeveloped side of a case was not the judge's proper function. Incidentally, in the case of the party most disadvantaged at trial, the non-English-speaking person, over three-quarters of the judges answered that regular provision for interpreting was made. Usually, interpreters were on call, or someone on the court staff was used. Where the problem was described as infrequent, the judges said either that arrangements were made, or that the litigants would have to bring an interpreter with them (4 percent).

Juries in civil cases are very rare in JP court (3.6 percent) despite the fact that either party may have one in any case upon demand. In civil cases before justices of the peace, the jury now ordinarily consists of six persons, five of whom must concur to render a verdict. The sheriff or constable summons the jurors from among the eligible persons residing in the precinct. The JP's, however, use varying methods of determining which people to summon. Twenty-six percent of the judges indicated that they made random selections from the list of registered voters. Another 18 percent said that the sheriff or constable kept a list from which jurors were called. Eight percent of the judges said that they simply rounded up available people. This informality may be due to the rarity of jury trials. Fully 37 percent of the judges had no set procedures for jury selection because they had too few jury trials (or none at all) to warrant the time expenditure. Once the jury is summoned in JP court, the parties have challenges for cause and peremptory challenges. The JP is forbidden to instruct juries on the law in civil cases.

4. Amounts Claimed and Awarded at Trial

When the field survey upon which this report is based took place, the JP's had exclusive jurisdiction only of cases involving less than $200; they had concurrent jurisdiction with the superior court of cases involving $200 to $500. The exclusive jurisdiction of JP courts has now been raised to $500. Under the old statute, 61 percent of the cases filed concerned amounts of less than $200 and therefore were within the area of exclusive jurisdiction. The remaining 39 percent of the caseload, of course, was in the range in which the superior court then shared jurisdiction but no longer does. Under the new law, the JP's are required to handle all of the cases in this range,

---

63. See p. 14 supra.
66. Id. § 22-223(B).
67. Id. § 22-211.
68. Id. § 22-201(B) (Supp. 1972–73).
including those formerly taken to superior court, as well as many cases in the $500 to $1,000 range. The added burden may well be substantial.

Eighty-nine percent of the judgments awarded were for $300 or less, and judgments for $51-$100 accounted for fully 50 percent of the awards. In 80 percent of the cases in which judgment was given, the plaintiff received the amount asked. In the remaining cases, claims that exceeded the final judgment were twice as frequent as judgments that exceeded claims. In almost 90 percent of the civil cases, no claim for attorney's fees was indicated. When attorney's fees were claimed, however, some amount was granted in 28 of the 30 sample cases. In 18 of these cases the file contained a contract document providing for the payment of attorney's fees should a lawsuit arise. Court costs in civil cases are set at quite low amounts by statute.**

5. Ancillary Proceedings

To institute attachment proceedings in Arizona justice of the peace courts, the plaintiff files an affidavit claiming that the defendant is indebted to him upon an unsecured contract and that unsuccessful demand has been made for the money, or, in the alternative, that the defendant is about to remove his property to defeat the plaintiff's attempt to collect a judgment in a pending damage action. If the affidavit is accompanied by the plaintiff's bond in an amount not less than the amount claimed, to protect the defendant against wrongful attachment, the justice of the peace must issue a writ to the sheriff or constable commanding him to seize enough of the defendant's property to satisfy the plaintiff's claim and to keep it in custody until the matter is determined at trial. The defendant may regain his property before trial by posting a bond in an amount calculated to protect the plaintiff's claim.

The United States Supreme Court's decision in Fuentes v. Shevin, handed down two months before the field study, cast severe doubt on the constitutionality of this procedure since the defendant has no opportunity to be heard before his property is subject to seizure. Attachment proceedings must be rare in Arizona JP courts: none were found in the cases sampled. Nevertheless, the judges were asked whether they would allow attachment before trial or before the defendant had some other opportunity to appear. Sixty-four per-

69. Id. § 22–281 (1956).
70. Id. §§ 12–1521, –1522.
71. See id. § 12–1524.
72. Id. §§ 12–1526, –1530.
73. Id. § 12–1536.
cent of the judges answered that they would not allow attachment without a hearing; 17 percent said they would. The others did not answer directly but often indicated that attachment had not been sought in their courts.

The Arizona garnishment statutes specify procedures similar to attachment. The plaintiff files an affidavit claiming the existence of an unsatisfied debt or judgment and alleging that the defendant does not have in his possession sufficient property subject to execution to satisfy the debt or judgment. The justice of the peace must then issue the writ. The defendant can release the garnishment by filing a bond in an amount usually greater than the plaintiff's claim. An Arizona statute entitles the defendant to exempt half his wages from garnishment if necessary to support his family.

There are several ways in which a literal application of Arizona's garnishment laws could contravene federal statutory or constitutional law. Under Sniadach v. Family Finance Corp., any wage garnishment without a prior hearing is unconstitutional. Even after a hearing, garnishment of more than 25 percent of a debtor's wages violates federal statutory limits on wage garnishment. And pre-hearing garnishment of debts other than wages is of dubious constitutionality in light of Fuentes. The field researchers found garnishment attempts in 11 percent (63 cases) of the civil cases that they sampled; in slightly over one-half (33) the garnishment attempt occurred after a hearing had been held. It was granted in all but one of these cases. In the other cases (30), garnishment was sought prior to an opportunity for the defendant to appear. It was granted in all of them.

The test month of May, 1971, preceded Fuentes, which cast doubt on all pre-hearing garnishment, but was after Sniadach, which held that wage garnishment is unconstitutional without a hearing. Most Arizona justices of the peace (74 percent) reported that they no longer allow garnishment in any case without a hearing. Only 9 percent stated that they still would allow garnishment without a hearing; and the remainder did not give a definite response to the question. Although researchers identified 52 percent of the garnishment cases as involving wages, the data did not reveal how many of these cases featured hearings before garnishment.

The judges were generally aware of the federal statute limiting wage garnishment. Eighty percent of them said they would not allow garnishment of more than 25 percent of a person's wages. Three judges, however, followed

75. Ariz. Rev. Stat. Ann. § 12–1571 (1956). When the plaintiff has not yet gained a judgment, a bond is required to protect the defendant against wrongful garnishment. Id. § 12–1572.
76. Id. § 12–1574.
77. Id. § 12–1578(B).
78. Id. § 12–1594(A).
the Arizona statutory practice of allowing 50 percent—perhaps more if no exemption claim were filed. Nine percent of the JP's were unsure of the percentage that could be taken, most of them having had no cases of this kind.

It did not often prove necessary to seek a writ of execution in the cases sampled. The records indicated resort to the courts' judgment execution process in only 7 percent of the civil cases. And in only 1 percent of the cases was an execution sale actually held.

6. Appeals

An appeal to superior court can be taken in any civil case where the judgment or the amount in controversy exceeds 20 dollars. The requirement of an appeal bond and the cost of prosecuting an appeal may discourage frivolous appeals. In any event, appeals are rare, occurring in just over 1 percent of the cases. Perhaps they will become more frequent now that the justices of the peace have jurisdiction of cases with much higher amounts in controversy. The JP's records do not ordinarily indicate the outcome of appeals in superior court. No appeal beyond superior court may be taken in any case commenced in a justice of the peace court.

IV. Criminal Cases

A. The Nature of the Criminal Cases

1. Jurisdiction and Subject Matter

Arizona's justices of the peace have criminal jurisdiction over misdemeanors punishable by a fine not exceeding three hundred dollars or imprisonment in the county jail for up to six months or both. The governing statutes also specifically confer jurisdiction over a series of specific crimes already covered by the general definition: petty theft, misdemeanor assaults, breaches of the peace, and willful injury to property. The JP's also have jurisdiction over felony preliminary hearings. Territorial jurisdiction ordinarily is limited to crimes committed within the precinct. City magistrates have concurrent criminal jurisdiction with the JP's for crimes committed within their city limits and for ordinance violations. The only instance in which there is not juris-

82. Id. § 22–261(A).
84. Id. § 22–266 (A) (1956).
85. Id. § 22–301 (Supp. 1972–73).
86. See id. §§ 13–663, –671.
87. See id. §§ 13–243, –244 (1956).
88. See id. § 13–371.
89. See id. § 13–501.
90. Id. § 22–402(B) (1956); id. § 28–1055 (Supp. 1972–73); see id. § 9–240(28).
diction in both the justice of the peace court and the police court for offenses that are within their subject matter jurisdiction and are committed within the city limits, occurs when a municipality provides that its police court has exclusive jurisdiction of city ordinance violations.\footnote{11} The inferior courts' criminal cases will be categorized for purposes of this discussion as traffic cases, other criminal misdemeanors, and ordinance violations.\footnote{12} Traffic cases made up a high percentage (78 percent) of all cases handled by Arizona's inferior courts.\footnote{13} Other criminal misdemeanors comprised 11 percent; civil cases, 5 percent; felony preliminary hearings, 3 percent; and ordinance violations, 3 percent.

Most traffic cases involved speeding (33 percent) or other moving violations (26 percent). The more serious infractions of driving while intoxicated (8 percent) and reckless driving (2 percent) were rarer. Most of the remaining traffic prosecutions were for technical offenses, such as license, registration, and weight violations (24 percent). These various types of cases occurred in similar proportions in urban and rural courts, except that rural courts had 9 percent more speeding cases and correspondingly fewer of the other moving and technical violations.

Other criminal misdemeanors included one dominant category of cases: 34 percent of them were for public drunkenness\footnote{14} or other liquor offenses. The next most frequent categories were assaults and breaches of the peace (13 percent), vagrancy (8 percent), game and fish violations (7 percent), theft (7 percent), and paternity cases (4 percent). Miscellaneous and unidentified cases made up the remainder. The incidence of liquor cases was higher in the urban courts than in the rural ones (42 percent to 31 percent). The same was true of thefts (9 percent to 6 percent). Assaults and breaches of the peace were more predominant in rural areas (16 percent to 8 percent), as were vagrancy (10 percent to 3 percent) and game and fish violations (8 percent to 3 percent).

Ordinance violations were predominantly (59 percent) liquor offenses. Other recurring kinds of ordinance cases were breaches of the peace (10 percent), zoning and housing violations (4 percent), occupational licensing cases (4 percent), and theft (2 percent). As might be expected, almost all ordinance prosecutions (90 percent) were in police courts. Liquor offenses accounted for 41 percent of all state misdemeanor cases and all city ordinance

\footnote{11} See p. 10 \textit{supra}. An example of such exclusive jurisdiction is to be found in \textsc{Phoenix, Ariz., Code} pt. I, ch. 8, § 2 (1954).

\footnote{12} Felony preliminary hearings will be treated separately at pp. 35–37 \textit{infra}.

\footnote{13} Over half the traffic cases for May, 1971, came from the Phoenix city magistrate courts alone—23,066.

cases added together. No other category of misdemeanor and ordinance cases combined approached this one in frequency. 95

2. Securing the Defendant's Presence

Initial complainants in the inferior courts' criminal cases 96 are usually law enforcement officers. In traffic cases, fewer than 1 percent of all cases are commenced by private citizens. This figure jumps to 25 percent in other misdemeanor cases, however, quite possibly due to family squabbles, which reportedly are dealt with frequently. For ordinance cases, the percentage of private complaints drops off again to 6 percent.

In Arizona misdemeanor cases, law enforcement officers made an initial arrest rather than an initial complaint 54 percent of the time. In one out of every six of these cases, the officer released the suspect upon his promise to appear. 97 Whenever the complaint is filed without the presence of an arrested suspect, the judge must decide whether to secure his presence through the use of a summons or an arrest warrant; he may issue a warrant only when he has reasonable grounds to believe the person will not appear in response to a summons. 98 When the case began with a complaint, the judges issued warrants 58 percent of the time. There was a striking difference of practice on this point between the urban and the rural courts. Although the percentage of initial arrests was slightly higher in the urban courts (55 percent to 53 percent), the urban courts in cases of initial complaint usually issued a summons (68 percent); the rural courts usually issued an arrest warrant (73 percent). In ordinance cases statewide, arrest occurred initially 72 percent of the time, followed by release upon promise to appear in just over one of every 10 cases. In ordinance cases initiated by complaint, however, arrest warrants were issued by the judge only 14 percent of the time.

There is a special procedure for traffic cases. When an officer arrests a person for most misdemeanor traffic offenses, he releases the offender upon the signing of a promise to appear—unless it reasonably appears to the officer that the person is about to leave the state. 99 Eighty-five percent of the state’s traffic cases sampled involved an initial promise to appear, with no significant variation between urban and rural courts. Almost all of the remaining cases involved an arrest followed by an appearance before the judge, not an initial complaint in the absence of the defendant.

Virtually all criminal defendants encountered in the sample were individuals. The figure ran over 99 percent in traffic cases, and over 97 percent in

95. The next most frequent category was for assaults and breaches of the peace—just over 12 percent of the total of all misdemeanors and ordinance violations.
98. Id. §§ 22–311(B), –421(B) (1956); Ariz. R. Crim. P. 11A.
both misdemeanor and ordinance cases. In the latter categories, there was a scattering of corporate or other business defendants. Most defendants were residents of the vicinity where the crime occurred. This was least true in traffic cases, where 35 percent of the defendants lived in the city or justice precinct and another 21 percent lived in the county. Twenty-eight percent were not residents of Arizona. In misdemeanor cases, 66 percent of the defendants lived in the city or precinct; 13 percent in the county; 17 percent out of state. Ordinance cases, as might be expected, were even more localized. Seventy-four percent of ordinance case defendants lived in the city; 11 percent lived out of state. In all categories, the urban courts had significantly higher percentages of local defendants than did the rural courts. In rural traffic cases, for instance, out-of-state drivers made up 36 percent of the defendants.

3. Counsel

Most criminal trials in Arizona’s inferior courts (excluding felony preliminary hearings) do not involve the presence of counsel for either side. Only 8 percent of the traffic cases involved any lawyers. There was little variation in this regard between urban and rural courts. And in 69 percent of the traffic cases where a lawyer was present, he appeared for the prosecution. In most of the remaining traffic cases where a lawyer was present, both parties had lawyers; in only 7 percent of these was the defense alone represented by a lawyer. Nine percent of all misdemeanor cases involved a prosecution lawyer only; 1 percent, a defense lawyer only; 4 percent, representation for both sides. Thus, in only 14 percent of these cases was a lawyer present in court. This figure jumps to 22 percent in the urban courts, and falls off to 11 percent in the rural courts. In ordinance cases, lawyers were predictably rare: prosecution only, 3 percent; defense only, 0.3 percent; both sides, 3 percent. The total representation average for ordinance cases was under 7 percent: 9 percent in the urban courts, 3 percent in the rural courts.

4. Jury Trial

Juries for criminal trials in Arizona inferior courts ordinarily consist of six persons, all of whom must concur to render a verdict. With the consent of the court, however, the parties may agree upon a lesser number of jurors. In justice of the peace court, a jury may be called in any criminal case upon

100. Recordkeeping concerning the defendant’s residence was very incomplete. The researchers were unable to discern the defendant’s residence in over half the cases in all categories. These percentages are for those cases in which residence appeared.


102. ARIZ. REV. STAT. ANN. § 21–102(E) (Supp. 1972–73). The portion of this section providing that the parties in criminal cases may agree on the concurrence of less than all jurors to render a verdict may contravene the mandatory terminology of ARIZ. CONST. art. II, § 23.
the demand of either party. In police court, there is no right to a jury trial for violations of ordinances unless they involve the kinds of offenses that were tried by juries at common law. In the remaining ordinance cases, and in all prosecutions in police court for violation of state law, a jury may be had upon the demand of either party. Jury demands were very rare in the criminal cases studied. There were juries in just under 2 percent of the traffic cases filed. In misdemeanor cases, juries were called only 0.3 percent of the time. In ordinance cases, jury trials comprised just over 2 percent of the cases.

When a jury demand is made, the inferior court judge orders the sheriff, the constable, or a policeman to summon the requisite number of qualified jurors. Probably because of the rarity of criminal juries, selection procedures discovered by the field study tended to be informal, especially in the JP courts. Thus, only 37 percent of the JP's said that they select jurors in a random manner from the list of registered voters, compared with 55 percent of the city magistrates. Twenty-one percent of the JP's and 18 percent of the magistrates relied on a list kept by the sheriff, constable, or chief of police. A full 18 percent of the JP's, but only 2 percent of the magistrates, simply tried to find available people. Eleven percent of the state's inferior court judges either had never had a jury case or had encountered them too rarely to have established a procedure for selecting jurors.

Arizona's justices of the peace and city magistrates probably have the power to instruct juries on the law in criminal cases, although they are forbidden to comment on the evidence. The judges' varying opinions concerning their power to instruct criminal juries on the law are demonstrated by the varying practices they follow. Over one-half of the city magistrates (57 percent), and a significant proportion of the JP's (29 percent), said that they always instruct criminal juries on the law. Conversely, 16 percent of the magistrates and 26 percent of the JP's said that they never do so. Others indicated that they sometimes instruct the juries, or that they simply read the statute to them. Twenty-one percent of the JP's and 13 percent of the magistrates did not respond definitely to this question, many of them mentioning the rarity of or absence of experience with jury trials.

104. Id. § 22--425(A).
107. The rules of procedure in the superior court apply to the inferior courts insofar as applicable. Id. § 22--313 (JP courts); id. § 22--423 (police courts). Although the officer summoning the jury in the inferior courts must do so by oral notification, he is not instructed how to select the jurors. Id. § 22--332. Municipalities may use the jury formation procedure used in superior court. Id. § 22--426 (Supp. 1972--73).
5. Disposition of the Cases

Most criminal cases in Arizona inferior courts result in victories for the prosecution. Our study found that the frequency of conviction was lowest in traffic cases—49 percent. To this figure must be added, however, some significant portion of the traffic cases in which the defendant did not appear at trial (29 percent); in many of these cases, the defendant forfeited bail as a substitute for a traffic fine rather than as an attempt to avoid prosecution. In an additional 10 percent of the traffic cases, charges were dismissed by the court without trial. The defendant succeeded in gaining an acquittal at trial only 0.6 percent of the time. (It should be remembered that this acquittal rate, like those reported in the succeeding paragraphs, is a percentage of all cases filed, not merely cases disputed at trial; in the latter situation the acquittal rate is higher.) The remaining 10 percent of the cases were mostly still technically pending, perhaps indicating more clearly successful attempts by defendants to avoid prosecution. A few cases ended in suspended proceedings, changes of venue, and other dispositions. The figures were similar when urban and rural courts were compared, but the urban courts did have relatively more nonappearances and acquittals, and relatively fewer formal convictions, than did the rural courts.

Statewide, 62 percent of the misdemeanor cases resulted in convictions. Fourteen percent were dismissed by the prosecution or the judge before trial, and defendants failed to appear for trial 7 percent of the time. An additional 9 percent of misdemeanor cases are still pending. Only 0.6 percent of all misdemeanor cases filed resulted in acquittals at trial. The remaining cases included suspended proceedings, changes of venue, and other dispositions. The urban courts had relatively fewer cases still pending, more pretrial dismissals, fewer nonappearances, and slightly fewer convictions than did the rural courts.

The ordinance cases had the highest conviction rate—75 percent. Only 2 percent of these cases were still pending. Nine percent were dismissed prior to trial by the court or the prosecutor. Defendants failed to appear 11 percent of the time and won acquittals 0.3 percent of the time. There was little variation in the results between urban and rural courts. The results in these criminal cases are usually final because appeals of inferior court verdicts run below 3 percent in all criminal categories.

The “typical” criminal case in Arizona’s inferior courts, then, is a prosecution for a traffic moving violation or for drunkenness. It is commenced by

110. The Chief Presiding Judge of the Phoenix City Court has estimated the acquittal rate in contested traffic cases at about 25 to 30 percent. Letter from Eugene K. Mangum, Chief Presiding Judge of the Phoenix City Court, to Edward W. Cleary, Professor of Law, Arizona State University, January 2, 1973, on file at Law and the Social Order.

111. See p. 34 infra.
an arrest of an individual defendant who lives in the vicinity, followed by a nonappearance at trial and the forfeiture of bail, a successful attempt to have charges dismissed before trial, or an appearance by the defendant at a trial without jury, with no lawyers present, at which the chances for conviction are very strong. The average elapsed time from initial arrest or complaint to trial was not long in any category of cases sampled, and it was always significantly longer in urban courts than rural ones. In traffic cases, the average was 35 days (49 days in urban courts; 15 days in rural). In misdemeanor cases, the average was 14 days (18 days in urban courts; 10 days in rural). And in ordinance cases, the average elapsed time was a speedy seven days (10 days in urban courts; three days in rural). These figures suggest that delay, so much a problem at other levels of court administration, is not a problem at the inferior court level. It should be remembered, however, that many of these courts have very heavy caseloads, with the result that there is little time to devote to each case. The defendants' impression of haste and "assembly line" justice, so often criticized in our lower courts," can thus be present despite the absence of long delay from complaint to trial.

### B. Bail and Sentence Practices

#### 1. Bail

In Arizona, accused persons have the right to bail for all offenses except capital crimes and felonies committed while on bail for a felony." The bail rules governing the superior courts are applicable to the inferior courts." For traffic offenses, the inferior court judges are required to prepare a schedule with a specific bail amount for each offense and to designate a deputy other than a law enforcement officer to collect bail when the court is closed." In Arizona criminal misdemeanor cases sampled, the average elapsed time from arrest to appearance before the judge for the setting of bail was just over two days. The average elapsed time from arrest to release on bond was ten and one-half days. The delay until appearance was greater in the rural courts (2.5 days compared with 1.8 days), but the delay until release on bail was much greater in the urban courts (14.4 days compared with 3.3 days). The time from arrest to appearance was about the same for ordinance violations (two days), with no significant variations between urban and rural courts. The time from arrest to release was significantly shortened in these

---


115. Id. § 22–112 (Supp. 1972–73) (JP court); id. § 22–424(B) (police court).
cases, however, averaging 3.76 days, again with little variation between urban and rural courts. The longest time between arrest and appearance (4.6 days) occurred in traffic cases. These were probably the most serious traffic cases, often involving injury to the defendant; most traffic offenders were released immediately upon signing a notice to appear, and they were not included in this group.

The majority of traffic cases (74 percent) did not result in the setting of monetary bail.116 Where monetary bail was required, the bail was $20 or less in 62 percent of the cases. It was between $21 and $50 in 28 percent of the cases. Bail amounts in excess of $50 were scattered about evenly along a continuum up to $300 and then fell off in frequency, with no bail set in excess of $1,000 in the traffic cases sampled. Similarly, most criminal misdemeanors (82 percent) did not involve the setting of monetary bail.117 In cases where monetary bail was required, bail was $50 or less 48 percent of the time and $150 or less 71 percent of the time. A few criminal misdemeanor cases involved bail of over $1,000. In ordinance cases, no money bail was set in 87 percent of the cases. When it was set, it was less than $75 about 82 percent of the time.

2. Fines

Statutes authorize Arizona inferior courts to impose fines of up to $300.118 Fines were formally imposed in almost half the traffic cases, and bail forfeitures produced the equivalent of a fine in many additional cases.119 In 72 percent of the traffic cases in which a fine was imposed, it was $20 or less; in another 12 percent of these cases it was $50 or less. The higher fine amounts were distributed about evenly up to the $300 maximum. In 5 percent of the traffic cases, the defendant received a jail sentence rather than a fine. In misdemeanor cases, fines were imposed 33 percent of the time and jail terms 29 percent of the time, accounting together for the 62 percent of the cases producing convictions. Sixty-eight percent of the misdemeanor fines were $50 or less. In ordinance cases, fines were imposed in 40 percent of the cases and jail terms in 35 percent, for the total of 75 percent convictions. Eighty-eight percent of the fines were $50 or less. There was no significant variation in the figures for any category of criminal cases when urban and rural courts were compared.

116. This includes both cases in which trial was had on the spot at the defendant's first appearance following arrest and those in which the defendant was released on his own recognizance for later trial. These categories were not separated in the data. The bail figures also include many instances in which bail was posted and simply forfeited as the equivalent of a fine. See Ariz. R. Traffic Cases P. VII(b).

117. This includes cases in which a summons rather than an arrest was used, those in which trial was had upon defendant's first appearance, and those in which release was granted on recognizance. These categories were not separated in the data.

118. See p. 23 supra.

119. See p. 23 supra.
Arizona statutes providing that a person may be imprisoned to satisfy a fine have been limited by the United States Supreme Court's decision in *Tate v. Short.* In *Tate* the Court held that a person may not be jailed solely because he is too poor to pay a fine. Thus, the Arizona statutes can now apply only to refusal to pay a fine, not inability to do so. Both the Arizona Supreme Court, pursuant to its rulemaking power over the state's courts, and the legislature, through new statutes, have now expressly sanctioned the delayed or installment payment of fines when the defendant cannot immediately pay them. In so doing, they seem mainly to have codified a practice already existing in most Arizona inferior courts. The field researchers asked the judges what arrangements they were making with offenders for the payment of fines. Virtually all the city magistrates (43 of 44) said that they were either accepting installments or giving varying periods of time in which to pay, in some cases as long as 90 days. Most of the justices of the peace (61 of 76) said they were doing the same. Six JP's, however, answered that the person had to pay immediately or be jailed. Two JP's answered that they were giving straight jail sentences to avoid the problem, and three JP's answered that they jail only nonlocal people who cannot pay. Four JP's did not respond to the question. The survey was made two months after the issuance of the Arizona Supreme Court rule ordering judges to provide for installment payments and just at the time that the similar statutory provisions were becoming effective—but well over a year after *Tate.*

3. Jail Terms

Jail sentences were rare in Arizona traffic cases sampled during the study. Sentences were awarded in 7 percent of the traffic cases, but most (65 percent) were suspended, resulting in probationary status. Eighty-two percent of the sentences were for 30 days or less. In misdemeanor cases, jail sentences were more frequent (29 percent), but suspension still occurred in most cases (52 percent). Seventy-one percent of the jail terms in misdemeanor cases were for 30 days or less; 87 percent were for 60 days or less. Jail sentences were imposed most frequently (32 percent) in ordinance cases, and suspensions were least frequent (23 percent). Still, 84 percent of the sentences were for 30 days or less. Sentencing patterns did not differ greatly between the urban and the rural courts in these categories.

*Tate v. Short,* holding unconstitutional the practice of jailing persons for inability to pay fines, was decided three months prior to the test month of

May, 1971. Nevertheless, in addition to the jail sentences summarized in the preceding paragraphs, Arizona inferior courts were still meting out some "dollars or days" sentences. These sentences, of course, are unconstitutional only when jailing punishes inability rather than refusal to pay,\(^{125}\) a difference ordinarily not revealed in court dockets. The most frequent use of "dollars or days" sentences was found in ordinance cases. This kind of sentence was imposed and discharged by payment in 7 percent of these cases, and resulted in jail for nonpayment in another 15 percent. In misdemeanor cases, the respective figures were 6 percent and 5 percent; in traffic cases, 4 percent and 0.4 percent.

In almost one-half the cases in which a person was jailed for nonpayment of a fine, the researchers found evidence that the defendant had been given an opportunity to pay according to his means. In the other cases, the opportunity may have been given but was not recorded. The elapsed time from trial to jailing for nonpayment was measured on the theory that the longer the time between these events, the clearer the opportunity to pay. (Such a figure, of course, omits cases of refusal to pay stated at trial.) In traffic cases, the average elapsed time from trial to jailing for nonpayment was less than a day; in ordinance cases, just over a day. In misdemeanor cases, the average was just over a week, largely because the average was just over two weeks in urban courts. These figures tend to indicate that the \textit{Tate} decision was not yet being fully implemented in Arizona inferior courts when the study was made.

Aside from the traditional fines and jail sentences, the inferior court judges imposed some innovative kinds of sentences. About one-half the judges indicated that they impose some or all of the following kinds of sentences: Attendance at counseling programs for alcoholics or at defensive driving schools for traffic offenders, restitution to the victim for goods stolen or damage done, litter collection along the highways, or probation of some kind.

\textit{C. Administering the Criminal Cases}

Arizona's inferior court judges have experienced some problems in administering their criminal caseload that are, not surprisingly, different from problems experienced at the superior court level. The justices of the peace and city magistrates responded in similar fashion to most questions asked them on this subject. The JP's questionnaire responses indicated that the JP's generally prefer dealing with criminal rather than civil cases, perhaps because of greater familiarity with criminal procedure.

The threshold problem of scheduling cases differs in the inferior courts, because of the widely varying caseloads. The Arizona Supreme Court en-

\footnote{125. See note 121 \textit{supra} and accompanying text.}
ARIZONA'S INFERIOR COURTS

Courage the inferior courts to schedule traffic trials at times separate from other criminal trials, presumably to prevent mingling the two groups of offenders in court. Most of the judges (61 percent), however, said they do not schedule traffic cases separately. The most frequent reasons given were that this procedure is inappropriate in rural areas, or that it is otherwise unnecessary—perhaps because of a high preponderance of traffic cases in a given court or a practice of simply trying cases immediately as they come up. The judges were also asked whether they schedule evening court sessions. Sixty-six percent reported that they do not, usually adding that evening sessions are unnecessary. Twenty-five percent of the judges both held such sessions and found them worthwhile; the practices and responses of the remaining judges varied.

Many of the judges have to deal with seasonal variations in their caseload, especially in traffic cases. Seventeen percent found the traffic caseload "somewhat" or "much" higher in summer; 12 percent estimated the increase as double the number of cases, or more. In contrast, 13 percent reported a somewhat higher traffic caseload in winter. One-half the judges said they perceive no seasonal traffic variation. The variation for other types of criminal cases does not seem as great. Fifty-nine percent of the judges reported no detectable seasonal variation in misdemeanor and ordinance cases. Eighteen percent said they had more of such criminal cases in the spring and summer, and 13 percent said they had more in the fall and winter. None indicated variations approaching those in traffic cases in some courts.

The availability of prosecutors is sometimes a problem in the inferior courts, especially in rural areas. One-half the judges reported that prosecutors were available on a regular basis, and another 22 percent reported that prosecutors were "always" or "usually" available. In contrast, 20 percent said that prosecutors were available "sometimes" or "seldom enough to be a problem." In rare instances, it was reported that prosecutors could almost never be obtained.

The judges were asked whether they could obtain traffic offenders' prior records quickly enough to utilize them. Over one-half (53 percent) said that they could; 7 percent, that they sometimes could; 9 percent, that they could not. Many of the remaining judges (11 percent) said they rely on the arresting law enforcement officer or prosecutor to provide records of prior convictions in traffic cases. Some judges (8 percent) said that prior traffic records are available only for local offenses. Conviction records in other criminal cases seem to be less frequently available. Only 34 percent of the judges said that these records can be obtained quickly enough to be useful; 6 percent, that they sometimes can; 15 percent, that they cannot. Again, it

126. Ariz. R. Traffic Cases P. IX.
was frequently reported (14 percent), especially by city magistrates, that only records of local offenses are available. And many judges (23 percent), especially the JP’s, said they rely on the prosecutor or arresting officer to furnish records of prior convictions.

Prior discussion in connection with the civil cases suggested that the existence of the contempt powers of Arizona inferior court judges is a difficult and doubtful question. Interestingly, the judges seem more confident of the existence of such powers in criminal cases than they are in civil cases. Almost one-half of them (48 percent) felt they definitely had the contempt power in criminal cases; 22 percent were doubtful; 23 percent thought the power absent. The remainder did not respond definitely, probably indicating doubt on their part.

D. Criminal Appeals

The defendant in an Arizona inferior court criminal case may appeal any conviction to the superior court, but usually no higher. The appeals are retried de novo. This procedure has the effect, of course, of causing some repetition within the judicial system. Appeals from inferior court convictions were rare for all categories of cases sampled. Traffic appeals were the most frequent, 2.7 percent statewide. For misdemeanors, the figure was 1.4 percent; for ordinance violations, 1.3 percent.

A recent study of the Arizona Superior Court’s criminal cases, conducted by the Behavior Research Center of Phoenix, revealed the distribution and outcome of criminal appeals from the inferior courts in 1970. Surprisingly, 88 percent of the appeals came from Maricopa County (compared with 6 percent from Pima County). This concentration of appeals in Phoenix has no obvious explanation. Statewide, 51 percent of the appeals resulted in a second conviction. These second convictions were made up of plea bargained cases (13 percent), other guilty pleas at trial (3 percent), and reconvictions after a contested trial (35 percent). The 49 percent of cases not reaching a second judgment of conviction were divided into cases dismissed before trial (23 percent) and acquittals (26 percent). In Maricopa County, 53
percent of the appeals resulted in a second conviction, but in Pima County, only 34 percent of the cases sampled did so.\textsuperscript{135} Again, there is no clear explanation for the difference. The appeals took an average of 110 days to reach completion, statewide.\textsuperscript{136} One reason for the rather low general rate of conviction on appeals may be a disinclination on the part of city prosecutors to pursue them vigorously, since fines collected in superior court appeals are paid to the county.\textsuperscript{137}

\textbf{E. Coroner's Inquests}

Each Arizona justice of the peace is the ex officio coroner for his precinct.\textsuperscript{138} His duty in this capacity is to initiate a formal investigation into the cause of any death that he determines occurred in circumstances affording reasonable ground to suspect foul play.\textsuperscript{139} The actual investigation is conducted by a coroner's jury summoned by the judge.\textsuperscript{140} The jury must examine the body and hear any witnesses, who ordinarily include a physician who has examined the body or conducted an autopsy.\textsuperscript{141} The jury is then required to render a verdict on the cause of death.\textsuperscript{142} If the jury finds the death to have been the result of criminal conduct, it must identify any known culprit, and the judge must then initiate criminal proceedings against him.\textsuperscript{143}

The justices of the peace spend relatively little of their time on coroner's inquests. No judge interviewed for our study estimated that over 25 percent of his time went to these duties; 87 percent of the judges estimated that less than 10 percent of their time on the job was spent as a coroner. Despite the minimal time demands imposed by coroner's duties, the judges seem to find them both unpleasant and inappropriate. When asked what features of the inferior court system needed improvement, 18 of the 76 judges interviewed mentioned a need to remove the coroner's function—the second most frequent response to this question. Some of the judges suggested that a medical examiner who is a physician be used in place of the laymen coroners and juries.\textsuperscript{144}

\textbf{F. Felony Preliminary Hearings}

Arizona inferior courts do not have the power to try felonies or high mis-
demeanors. The Arizona Constitution provides, however, that felony trials must be preceded either by a preliminary examination before a magistrate (the term includes both the JP's and the city magistrates) or by a grand jury proceeding. In Arizona preliminary hearings, the defendant is entitled to be represented by a lawyer if he can afford one (and in counties having a public defender, even if he cannot). No Arizona case has yet held that indigent defendants are always entitled to have lawyers appointed for them at preliminary hearings. As might be expected, lawyers were present in preliminary hearings sampled much more frequently than in other inferior court proceedings. Statewide both sides had lawyers in 60 percent of the hearings (80 percent in urban courts, 49 percent in rural courts). The prosecution alone was represented in another 11 percent of the cases; the defense alone in 1 percent of the cases. In 11 percent of the cases, the records did not reveal whether lawyers were present or not, suggesting that they were not.

As a result of the preliminary hearings, 48 percent of the defendants were bound over to superior court for trial (58 percent in urban courts, 43 percent in rural ones). The charges were reduced to misdemeanors in return for guilty pleas in 17 percent of the cases. The charges were dismissed in 20 percent of the cases and were still pending in 8 percent of them. Various other dispositions accounted for the remainder. The amount of bail set was $1,000 or more in 52 percent of the cases (61 percent, urban; 46 percent, rural). Bail was never set at less than $150 in the cases sampled; however, 18 percent of the cases involved no monetary bail. In the cases reduced to misdemeanors and disposed of by the magistrates, jail terms were awarded rather more often than fines, but the sentences were suspended in about two-thirds of the cases. Predictably, fines tended to be larger and jail terms longer than in other inferior court criminal cases.

The average elapsed time from arrest to initial appearance before the magistrate for the setting of bail in felony preliminary hearings was a day and one-half. The elapsed time from arrest until release on bail averaged just over four days. The recent study by the Behavior Research Center, dis-

145. Id. § 22–301 (Supp. 1972–73); id. § 22–402 (1956); see id. § 13–103 (Supp. 1972–73), giving courts and prosecutors discretion to classify some crimes for purposes of having them decided by the inferior or superior courts.
149. See id. § 11–584(1); Ariz. R. Crim. P. 16, 23.
cussed in connection with criminal appeals, found the statewide average elapsed time from the initial bail determination to the preliminary hearing to be 21 days. It was only 18 days in Maricopa County and 25 days in Pima County. But in the sparsely populated Arizona counties having only one superior court judge, an average of 55 days passed before the preliminary hearing was held. The problems of logistics involved in bringing lawyers and witnesses together at an isolated inferior court are obvious.

V. CONCLUSION

A. An Evaluation of Arizona’s Inferior Courts

The principal organizational characteristic of Arizona’s inferior court system is decentralization. The organizing and financing agencies for the inferior courts are the separate counties and municipalities; the state imposes only broad overall structural and fiscal controls. And within each county, there are of course several separate inferior court systems—the justice of the peace courts form one system, and there is another separate “system” for each incorporated city having a police court, since budgeting and control operate at the municipal level.

The overriding conclusion of this article is that the fragmented structure of the inferior courts causes unnecessary inefficiencies and inequities. This conclusion remains valid despite the fact that decentralization of some functions is vital to the effective operation of these courts. Two major weaknesses are evident: (1) The decentralization of finance causes unequal expenditure in support of these courts and introduces considerations impairing overall organizational efficiency; (2) the statutory distribution of power includes rigidities that impair flexible local response to problems and delegates some functions that could be better handled at the state level. The ensuing analysis of the field study’s findings will provide concrete examples to buttress these generalizations.

The selection and qualification of inferior court judges currently follows a bifurcated pattern that creates some anomalies. There seems no clear reason why the justice of the peace should be an elective office, while most city magistrates fill appointive posts. In practice, of course, the tendency for JP’s to have been appointed initially to fill a vacancy reduces the effect of a difference in selection procedure. One result of allowing the cities to choose selection procedures and qualifications for the magistrates is that both formal and actual qualifications of the city magistrates are often higher than those of the JP’s. Thus, only police courts ever have a requirement that the judge be a lawyer. Also, the city magistrates interviewed were more fre-

151. See Survey, supra note 131.
152. See id. at 34.
quently lawyers than were the JP’s, and they generally had more formal education. These findings do not represent a statewide tendency, however, insofar as the disparity simply reflects the high concentration of lawyer city magistrates in the urban police courts of Phoenix and Tucson.\textsuperscript{133} Such a concentration of lawyer judges in the urban areas is, of course, to be expected in any Arizona inferior court system. But to say that lawyers are rare in rural counties, which is assuredly true,\textsuperscript{134} does not fully justify the present situation for two reasons. First, the existing disparity is largely between judges who are lawyers in the urban areas and judges with only a high school education in rural areas. If rural judges cannot always be lawyers, they need not so often be only high school graduates. Second, the existing functions of the inferior court judges can be separated into those that require lawyers to discharge them and those that do not. For example, in rural areas a resident magistrate who is not a lawyer might be authorized to handle search warrants, bail determinations, and minor infractions such as speeding cases, but not civil cases above a given figure, felony preliminary hearings, or important criminal misdemeanors such as drunken driving. These cases could be handled by lawyers or specially trained magistrates riding circuit from the county seat.\textsuperscript{135}

The present lack of formal training for Arizona inferior court judges is understandable in light of the limited capacities of the counties and cities to provide it. This function is better performed at the state level, as the limited efforts initiated by the office of the Administrative Director of the Courts demonstrate. Indications that the judges keep reasonably well abreast of relevant developments in the law are probably due to the efforts of the Administrative Director’s office. But many of the judges still must depend upon the county or city attorneys for everyday legal advice. Since these are the prosecutors regularly appearing before the judges, personally or through their staffs, a serious and unnecessary conflict of interest exists,\textsuperscript{136} which could be remedied by providing for a regular source of advice in the state system.

The fragmented financial structure of the inferior courts constitutes perhaps the most serious deficiency in their management. The budgetary figures show that statewide county revenues approximate expenditures for the JP

\textsuperscript{133} See note 24 and pp. 6–7 supra.

\textsuperscript{134} State Bar of Arizona figures for December 31, 1972, identified seven of Arizona’s 14 counties as having fewer than 25 active lawyers: Mohave (22), Navajo (18), Apache (15), Gila (12), Santa Cruz (11), Graham (9), and Greenlee (2).

\textsuperscript{135} In the wake of Argersinger v. Hamlin, 407 U.S. 25 (1972), the necessity for the presence of defense counsel before a jail sentence may be imposed will prevent immediate trial of major criminal cases anyway.

\textsuperscript{136} Cf. Ward v. Village of Monroeville, 409 U.S. 57 (1972), for federal due process considerations; analogy may be taken to the administrative law doctrine of separation of functions between judge and prosecution, see generally K. Dave, Administrative Law Text § 13.01 to 13.04 (3rd ed. 1972).
courts. Some counties, however, spend substantially more to maintain these courts than they take in; others, substantially less. These relative expenditures reveal policy differences among the counties concerning the level of support appropriate for the JP courts, or at least differences in the relative fiscal positions of the counties. Similarly, absolute differences between the counties in amounts spent to maintain the courts may not stem entirely from variations in population and caseload. These differences, whether caused by policy or necessity, are not justifiable if Arizona desires an even statewide quality of justice.

The high degree of profitability of most police courts stands in sharp contrast to the more balanced figures for the JP courts. It may be a denial of due process for cities heavily dependent on revenues from their police courts to allow municipally paid magistrates to decide the cases and levy the fines. In the recent case of *Ward v. City of Monroeville,* the United States Supreme Court held that it was a violation of due process for an Ohio mayor, who had extensive responsibilities for village finances, to sit as a judge in cases upon which the village greatly depended for revenue. The Court, however, distinguished and apparently approved *Dugan v. Ohio,* which held that a mayor without any close relationship to city finances could sit as a municipal judge. Read together, these cases apparently approve the present Arizona scheme for police courts, especially since the contention was made and rejected in *Dugan* that paying the judge's salary out of municipal revenues derived in part from fines would fatally affect his impartiality in any given case. But even if Arizona's police court scheme does not offend minimal constitutional guarantees, its high profitability is bound to create public suspicion that it dispenses "cash-register justice." Since it is vitally important that the courts be above the appearance of corruption, as well as above the fact of it, the cities should be relieved of financial responsibility for the police courts.

The discussion of variations in expenditures for Arizona's inferior courts has assumed that court budgeting does affect the quality of justice dispensed. The premise seems sound at least insofar as higher salaries for judges will attract better qualified aspirants for the position. In addition, the level of expenditure affects the quality of justice in at least one other fashion: the quality of the physical facilities used as courtrooms. It seems likely that the quality of judicial proceedings is affected by major differences in the dignity of the surroundings. And in any event, undignified "courtrooms" used for some Arizona inferior courts surely demean the entire Arizona judicial

---

158. 277 U.S. 61 (1928).
system in the eyes of persons exposed to them. It seems unlikely that the public will carefully differentiate among the levels of the judicial system, thoughtfully identifying what governmental unit maintains the particular court.

Partly for reasons of finance, the organizational structure of the inferior courts hampers efficiency. The cities' dependency on revenues from their police courts suggests a reason for their continued existence that is unrelated to whether they are really necessary. If the statutory allocation of fines were reversed—to the unit of government whose law is broken rather than to the unit of government maintaining the court—perhaps more cities would eliminate their separate police courts, transferring their business to the JP whose precinct includes the city. Another statutory provision with unfortunate rigidities is the prescription of salary ranges for the JP's on the basis of population rather than caseload; this arrangement causes unfairness whenever a judge with a heavier caseload than his colleagues receives less pay.

In general, a system of courts with overlapping territorial and subject matter jurisdiction but without centralized management does not seem calculated to produce optimum efficiency. The inferior court judges work widely varying hours to cope with widely varying caseloads. Sometimes, in areas where a JP court and a police court coexist, neither court is a busy one. Separate and often inadequate recordkeeping in the various courts makes it difficult even to discern where the present divisions of authority are inefficient. Centralized recordkeeping and management could result in better identification of manpower needs and facilitate a more flexible response to them. For instance, the seasonal caseload variations existing in some areas could be met by transferring personnel in anticipation of need. The present supervisory activity of the Administrative Director of the Courts, which includes limited transfers of judges to meet needs caused by illness or burdensome caseloads, is a hopeful beginning in this direction, but it is only a beginning.

Certain major characteristics of civil cases in Arizona's JP courts appeared frequently enough in the field study's data to justify generalizing about these cases as a group. Suits to collect amounts due on contracts were by far the most frequent. Business plaintiffs, often represented by lawyers, ordinarily opposed individual defendants, infrequently represented by lawyers. Most cases involved no lawyers, and no contested trial. Instead, defaults (25 percent) and presumably settled pending cases (31 percent) made up the bulk of the dispositions—only about 18 percent of the cases filed resulted in a trial. Both jury trials and appeals were rare.

The picture that emerges is that of a judicial system which a creditor invokes to force payment or settlement of his claim, the merits of which are not ordinarily litigated. Insofar as these claims are acknowledged by both parties to be valid, there is of course no societal value in formalistic litigation
of them. The danger remains, however, that the inherent coercive power of judicial process will cause uninformed or timid defendants having a defense against part or all of the amount claimed to forego assertion of their rights.\textsuperscript{160} To the extent that the availability of formal process papers from the inferior courts creates a danger of unjust settlements, these courts should assume a concomitant responsibility to do what is reasonably feasible to make defendants aware of their rights and unafraid to exercise them. Possibilities range from including information regarding legal aid organizations with the summons and complaint to providing a staff of paralegal personnel,\textsuperscript{161} trained in inferior court procedures, to help plaintiffs and defendants litigate their controversies.

If the purpose of small claims courts is to provide inexpensive and fair settlement of minor controversies,\textsuperscript{162} hopefully without the necessity of private legal counsel, the court's willingness to help the lay litigant deal with unfamiliar procedures becomes crucial to the success of the system. At present, Arizona JP's exhibit a variety of attitudes regarding assistance to civil litigants seeking information about how to pursue a claim or defense. There seems to be no justification for policy variations on this important matter. A centrally managed inferior court system could give more consideration to the problem than has been given to date, establish and promulgate a standard policy in search of maximum feasible aid to the litigant, and implement the policy by providing staff help, forms, and information to the various courts.

Most Arizona JP courts have no standard procedure for reviewing and disposing of old pending cases. This failure makes it difficult to measure the actual workload of the courts. Furthermore, a procedure for reviewing open cases can provide an opportunity for examining the fairness of out-of-court settlements, perhaps by adopting much the same procedure as is now specified for questioning the plaintiff on the validity and amount of an unliquidated claim before awarding him a default judgment.\textsuperscript{163} A statute could condition

\textsuperscript{160} An argument could be made that, insofar as the state's process has the effect of coercing pretrial settlements from defendants who are afraid to present their defenses in a court of law or are unaware of them, the state causes a taking of property without due process. Cf. Fuentes v. Shevin, 407 U.S. 67 (1972); Note, The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California, 21 Stan. L. Rev. 1657 (1969). Such a conclusion would rest on the premise that the state incurs an affirmative obligation to supervise out-of-court settlements for at least minimal fairness when its process has the known effect of intimidating some persons from asserting rights to defense, even if those rights are formally stated in the process papers. Any such conclusion seems well beyond existing case law.

\textsuperscript{161} See, e.g., Statsky, Paraprofessionals: Expanding the Legal Service Delivery Team, 27 J. Legal Ed. 397 (1972); Note, supra note 160, at 1682–84.


\textsuperscript{163} See p. 18 supra.
the plaintiff's access to the court's process upon agreement to notify the
court of any settlement and to appear to have it ratified.

The study data indicated differing attitudes and practices regarding en-
couragement of settlements and inquiry into claims before awarding default
judgments. In both matters, the inferior court judges could provide an im-
portant check on unfair resolutions of controversies initially committed to
them. The practice followed by some JP's of inquiring extensively into any
claim for which default judgment is sought, including questioning designed
to discover whether there are defenses known to the plaintiff, should be made
standard practice. Present variations in practice on these and other important
matters are symptomatic of the present absence of meaningful training for
inferior court judges before they assume office.

In those civil cases sampled in which a contested trial occurred, the plain-
tiff won 78 percent of the time. The plaintiffs' advantage in these cases, often
recognized by the judges, is probably created by a number of factors: The
higher education usually possessed by business plaintiffs, the familiarity with
court procedures acquired through repeated suits, and the more frequent
representation of plaintiffs by lawyers. Other states have tried various devices
to make the parties more even—such as forbidding business associations or
assignees of a debt to sue in small claims court or forbidding lawyers to
appear. All of these exclusionary devices have unsatisfactory repercussions.
Forbidding business associations or assignees to sue may be unfair to them
and does not prevent an individual business plaintiff from acquiring exper-
tise in small claims procedures. Banning lawyers prevents legal aid for de-
fendants. Also, issues in a suit claiming less than $1,000 can frequently be
complex enough to warrant representation of the parties by lawyers.

Perhaps the simplest and surest approach to ensuring fairness between
parties that are unlikely to be inherently balanced in strength is to use
only lawyers or thoroughly trained laymen as judges in small claims cases
and to charge them with a clear responsibility to take an active role in ensur-
ing the full development of both sides of each case. This practice, of course,
would depart from the traditional role of the common law judge as passive
arbiter of a case brought forward solely by the adversaries. But the tradi-
tional role of the judge is ill-suited to situations in which unrepresented
parties seek informal resolution of disputes in the absence of a jury. The
characteristics of informality and the absence of lawyers or juries call instead
for the more active role characteristic of the administrative hearing officer.164
Indeed, the present procedure for disposing of civil cases in Arizona's JP
courts may well be characterized as administrative rather than judicial be-
cause of the rarity of the traditional full-blown trial.

164. See p. 19 supra.
Although the Arizona system for adjudicating small claims may be more administrative than judicial in fact, it remains largely judicial in terms of the procedure that the law requires. Unfortunate consequences result. For instance, the actual rarity of jury demands despite formal provision for them is probably responsible for the JP's common tendency to resort to highly informal, and therefore highly suspect, jury selection procedures when a demand does occur.\textsuperscript{166} Similarly, the statutory requirement that the rules of procedure govern to the extent applicable\textsuperscript{167} probably causes differences in procedure that result solely from whether the judge is a lawyer. If technical rules of law are applied by untrained laymen, the result is likely to be unwitting violation of the law. This observation may account for the field study's discovery that some Arizona JPs follow illegal practices in such technical and rapidly changing areas as attachment and garnishment.

The recent increase in the maximum jurisdictional amount for civil cases in Arizona JP courts may represent an attempt by the legislature to "solve" problems of superior court congestion by diverting some cases to the inferior courts. Unfortunately, this added burden on the JP courts is unaccompanied by any financial support to aid them in meeting their newly increased responsibilities. Moreover, by funneling increased numbers of civil cases involving higher amounts in controversy into the JP courts, the legislature has increased the impact of present actual and legal disparities between the JP courts and the superior courts. An example of a perhaps unjustified legal disparity between these courts is the statutory provision that most kinds of civil cases commenced in JP court may be appealed no higher than superior court; those commenced in superior court, on the other hand, may ultimately reach the Arizona Supreme Court.\textsuperscript{168}

Many of the foregoing observations about civil cases in Arizona JP courts apply as well to the inferior courts' criminal cases. The criminal area is also distinguished by a heavy preponderance of particular subject matter: traffic cases account for 78 percent of the criminal caseload, and public drunkenness predominates heavily among the misdemeanors and ordinance cases. The inferior court criminal process, like the civil process, may be characterized as primarily administrative and managerial rather than judicial and adversarial because of the rarity of contested trials in the traditional common law sense. This characterization is neither new nor confined to the Arizona experience; the predominance of traffic cases and liquor offenses is common in the lower criminal courts.\textsuperscript{168}

\textsuperscript{166} See p. 20 supra.
\textsuperscript{167} See p. 17 supra.
The field study data did not produce a specific statistic indicating the percentage of contested trials in inferior court criminal cases. The extremely low acquittal rate (in terms of all cases filed) and the infrequent presence of counsel or juries, however, suggest that contested cases are very much the exception. Suggestions are now commonplace that minor traffic infractions be decriminalized and made subject to administrative disposition rather than to a theoretically judicial process. Arizona is soon to embark on the experiment of decriminalizing the offense of public drunkenness in favor of an approach treating alcoholism as a public health problem. This experiment clearly seems a step in the right direction and should substantially reduce the criminal caseload of the inferior courts.

Arizona's statutory framework for the inferior courts creates a decentralized system but imposes procedural requirements on the courts that are difficult for untrained, isolated judges to follow. The results are burdens on the local governments and courts, difficulties in responding to changing federal and state law, and variations in local practice on important matters, sometimes amounting to outright violations of law. The judges were asked to identify the main problems Arizona's inferior courts face as a system, and their second most frequent complaint can be summarized as the presence of various burdensome or inappropriate requirements of law—both state and federal. Frequently cited as an example of a federally imposed burden on the inferior courts was the requirement established by *Argersinger v. Hamlin* that the indigent have a right to counsel before any jail sentence may be imposed. Arizona's present inferior court system is not structured to allow it readily to absorb major changes of this nature. The counties and cities must respond separately, with what resources they have, to a problem perhaps best solved by the state. Since Arizona's new drunk driving statute carries a mandatory one-day jail sentence for a first conviction, *Argersinger* will necessitate provision for appointing defense counsel for all indigents charged with the offense. A sharply reduced number of guilty pleas and a concomitant greater trial burden at the inferior court level will probably follow. Another state statutory requirement often criticized by the judges was the provision for de novo retrial of appeals to superior court. This provision in turn results from an explicit constitutional bar against changing JP courts to courts of record. The de novo appeals were criticized both

171. See note 94 supra.
174. See note 130 supra.
175. Id.
because they cause unnecessary duplication of effort and because they permit someone charged with a misdemeanor to have two jury trials for the same offense, although someone charged with a felony has only one.

In criminal cases, the field study found that local practice varied in several important respects. Urban courts tended to secure the presence of the defendant through a summons; rural courts usually issued an arrest warrant. Jury selection practices varied and were sometimes highly informal, probably for the reasons advanced previously to explain the same variation in civil cases. Sentencing practices also differed: some courts followed an actively innovative sentencing policy, and others shunned irregularities. These procedural differences may raise issues of basic fairness and of equal protection. They can and should be rendered more nearly uniform and more reliably fair. Apart from the foregoing instances of procedural variation, there were strong indications that illegal awarding of "dollars or days" sentences continued, despite the mandate of Tate v. Short. Given the rarity of appeals from inferior court criminal cases, there seems to be a need for more supervision over these courts, both to prevent abuses such as these where they develop and to provide more help to the inferior court judges than is presently available.

B. Reorganization

The foregoing analysis of organizational and operational deficiencies in the Arizona inferior courts should be put in perspective. Neither the structure of these courts nor the problems besetting them are unusual in any major respect. State trial court systems have commonly consisted of multiple levels of relatively uncoordinated tribunals, and the units of government maintaining the inferior courts have often been left to fend for themselves. A serious consequence is the lingering existence of "cramped and noisy courtrooms, undignified and perfunctory procedures, and badly trained personnel." The danger is that many citizens will have their respect for the judicial system as a whole diminished by what they observe at the first and only point at which they ever personally contact it. The nation's widely shared problems with the inferior courts have long received attention in the literature. Organizational change, however, has been slow and halting. Even constitutional mandate has not always had full effect—forty years after the

180. See authorities cited note 177 supra.
The Supreme Court invalidated the fee system of compensating justices of the peace,181 three states were still employing it.182

Modern studies of state court organization usually propose one of two basic types of structure. The first, recommended by the National Conference on the Judiciary in 1971, is as follows:

State courts should be organized into a unified judicial system financed by and acting under the authority of the state government, not units of local government.

They should be under the supervisory control of the supreme court of the state, whose chief justice should be the chief executive officer of the unified court system. . . .

Funding by the state legislature should be adequate to provide uniformly throughout the state the manpower, facilities and supporting services that are necessary to provide speedy and certain justice to all who come before the courts.

There should be only one level of trial court, divided into districts of manageable size. It should possess general jurisdiction, but be organized into specialized departments for the handling of particular kinds of litigation. Separate specialized courts should be abolished.

Only one appeal as of right should be allowed. It should lie only from a final decision of the trial court and should not be a trial de novo, but an appeal based on the record, which should be kept in all cases, utilizing modern recording devices.183

The President's Commission on Law Enforcement and Administration of Justice has also recommended unified trial courts.184 In Arizona, unification could offer the advantage of uniform statewide financial support to courts at even the lowest level, thereby assuring adequate facilities and staff help and removing current inequities in judges' salaries. Central management and recordkeeping could promote more efficient utilization of manpower and facilities than can a rigidly decentralized system. Specialization could mean that judicial officers handling particular offenses, such as traffic violations, would have qualifications and training different from those of the judges with general trial jurisdiction.185 Sensible decisions about the proper functions to be served by nonlawyers in different areas of the state could then be made.186 In outlying areas, qualified lay magistrates would dispose of those matters requiring immediate resolution, leaving the remaining matters for lawyer-judges riding circuit from the county seat.187

182. See Task Force Report, supra note 179, at 34. See also Callahan v. Wallace, 466 F.2d 59 (5th Cir. 1972).
187. See p. 33 supra; Report No. 23, supra note 162, at 18.
The second major state court organizational model is typified by the American Bar Association’s Model State Judicial Article. This model differs from the first proposal mainly by dividing the state’s trial courts into a court of general jurisdiction, like Arizona’s superior court, and a single separate trial court of limited jurisdiction. The state supreme court would administer the court of limited jurisdiction and would also define its subject matter jurisdiction by rule to avoid the rigidity of statutory specification. No important purpose seems to be served by formally bifurcating the trial courts, however, and a unified trial court with specialized divisions seems preferable.

Full implementation of organizational reform of Arizona’s inferior courts would probably require a constitutional amendment. The Arizona Constitution provides:

The judicial power shall be vested in an integrated judicial department consisting of . . . a superior court, such courts inferior to the superior court as may be provided by law, and justice courts.

It further provides:

The jurisdiction, powers and duties of courts inferior to the superior court and of justice courts . . . shall be as provided by law.

The Arizona Constitution thus gives the legislature considerable power to reform the inferior courts, but legislation alone probably could not accomplish all needed reforms. The constitution forbids justice of the peace courts from becoming courts of record, and the constitutional command that “[t]he judicial power shall be vested in . . . justice courts” may prevent abolishing the JP courts or reducing the JP’s to purely ceremonial functions. Still, the legislature could replace the police courts with district courts of some sort, centrally financed and administered. These could be courts of record, but the jurisdiction of statutory inferior courts and justice of the peace courts is limited to misdemeanors and civil cases involving less than $2,500. If their civil jurisdiction exceeds $1,000, the judges must be lawyers.

An alternative to the creation of new statutory inferior courts would be

188. See Report No. 23, supra note 162, at 12, 94–96.
190. Id. art. VI, § 32.
191. Id. art. VI, § 30.
194. See id. art. VI, § 32.
195. See id. art. VI, § 22.
the use of commissioners appointed by the judges of the superior court to replace the city magistrates and perhaps to perform some present duties of the JP’s. The powers and duties of superior court commissioners must be provided by statute or by rule of the Arizona Supreme Court, which has administrative authority over all the courts of the state. The commissioners could be appointed and their qualifications matched to their particular duties. Both of the foregoing possible statutory reorganizations seem clearly preferable to the present Arizona inferior court system, but neither has the beneficial potential of a constitutional amendment creating a fully unified trial court.

196. See id. art. VI, § 24.
197. Id.
198. Id. art. VI, § 3.
199. California has had two levels of inferior trial courts since 1950 and has encountered problems similar to those of Arizona. Extensive study has led to proposals for reorganization to form a fully unified trial court or a single unified county court inferior to the superior court. JUDICIAL COUNCIL OF CALIFORNIA, 1972 JUDICIAL COUNCIL REPORT TO THE GOVERNOR AND THE LEGISLATURE 13–21, A–96 to –104 (1972).
II. JUDGES

A. Judicial Selection and Tenure in Arizona
   by Stephen E. Lee

B. Discipline and Removal of the Judiciary in Arizona

C. Peremptory Challenge of Judges: The Arizona Experience

D. The Role of the Judge in Civil Settlements

E. Judge's Inability to Comment on the Evidence in Arizona