The meeting was called to order at 9:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Don Ashworth
Senator Dodge
Senator Ford
Senator Raggio
Senator Sloan

ABSENT: None

SB 267 Transforms justices' courts to courts of record.

Tom Davis, Justice of the Peace and Municipal Judge of Carson City, appearing on behalf of the Judges Association. He stated that they are in support of this bill, but they would like some clarification. He felt that there could be a real problem if NRS 189.050 were repealed, as that would eliminate the trial de novo in criminal cases. As long as a lawyer judge was available to a defendant the non-lawyer judge could exist. This came out of a United Stated Supreme Court decision in the case of North vs. Russell (see Attachment A).

Senator Dodge stated he has talked to Frank Daykin about this and Mr. Daykin stated that he doesn't feel that it renders what we are trying to do here.

Judge Davis stated that he is satisfied, but the question did arise and so he is pointing it out. He also brought out the fact that the municipal courts have not been written into this section and he felt that they should be included. He also has a question in Section 7. This section is an either/or situation with the court reporter and the sound equipment. Is this intended?

Senator Ashworth stated this was done because in the small counties they don't have a stenographer.

Judge Davis asked if the courts could be prepared, expense-wise, to provide these services by January 1, 1980.

Senator Hernstadt stated this expense would only be around $1,200. These machines are similar to what is being used in the Legislature. They run 4 tracks so that you can have a speaker in front of the Judge, the witness, and each of the attorneys.

Senator Ashworth stated that the recordings would not be transcribed unless there was an appeal.

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Senator Raggio stated he could see a problem with the bill as the way it is drafted it requires a certified shorthand reporter. Under Section 7 it states "with the approval of the County Commissioners, either the District Court or the Justice Court, may in addition to a court reporter, order the installation of recording equipment."

Senator Dodge stated that the bill is incorrectly drafted. The thrust of the bill was to give the courts the option.

Judge Davis stated that he thought the concept of the bill was a good one and was one step further in turning the court professional.

Terry Reynolds, Administrative Planner with the Office of the Courts stated he would like to touch on two cases which might be of interest to the Committee. First was the one mentioned by Judge Davis the second was Treiman vs. the State of Florida (see Attachment B). He stated he would first like to point out that Nevada is like the North vs. Russell case, in that it has a two-tiered court system. That is a person being tried in a Justice Court or Municipal Court has the right of appeal for a new trial in District Court.

Senator Ashworth asked Mr. Reynolds if he was aware there was legislation pending to do away with the two-tiered system.

Mr. Reynolds stated he was. The question is, if you took away the two tiered system, if the judge was not an attorney, would the trial be constitutional. Under the Florida case, the State's Supreme Court decided that because they had their non-attorney judges attend a special training course, that it was constitutional because they did have legal training through a special session.

Senator Close asked if there was an appeal de novo available.

Mr. Reynolds stated there wasn't.

Senator Close asked if our state's Jusitces' of the Peace courts had the same type of training available to them.

Mr. Reynolds stated that they do. This state's non-attorney judges attend a two-week session and that session is in the process of being up-graded.

Senator Raggio stated that he thought it was mandatory.

Mr. Reynolds stated that it was, but there are some extenuating circumstances that can keep a judge from it.

Senator Close asked if this was two weeks every year, or two weeks during their term.

Mr. Reynolds stated that this is two weeks at the begining of their term. However, they can voluntarialy attend other sessions.

Ed Psaltis, with the Administrative Office of the Courts, stated that the operation that has been in effect was that as soon as a new judge is elected or appointed, we try to get them into the first two-week course available. We have also been having, over the past 5 years, 2 to 3 day sessions, approximately twice a year for the judges, to bring them current, as to what is going on in the state and what is happening outside. We also encourage them to take courses at the National Judicial College. These courses run about a week and cover such things as evidence, sentencing, search and seizure and many others. The response has been good. He stated that when the Committee looked over the Florida case, they should check over the course titles. They could be compared with what is being done at the Judicial College. So he felt that the Florida case could be used as a precedent-setting case.

Sam Mamet, representing Clark County, stated he had one concern and that was on Page 1, Line 10, where it stated "to take down in shorthand." He wanted to make sure that this language would cover stenotype.

Senator Ford stated that these people are now certified but she is not sure what their official title is.

Senator Close stated they are Certified Court Reporters.

Senator Raggio stated that this terminology is defined in the law and includes stenotype and shorthand.

Mr. Mamet stated that on Page 2, Line 13, Section 6, there is a question about the setting forth of the compensation of the reporters. He stated he has a problem with the phrase, "being available." Does that mean if you just walk in the door you are available? He felt it should be tightened up so that it is clear that it is $50 a day when they actually do whatever it is the reporter does.

Senator Dodge stated he thought that was in the law now. What this means is, if the reporter is ordered, their time is actually guaranteed.

Senator Ashworth stated he was unclear on who had the option to have it taken down in shorthand.

Senator Close stated that that point had not been decided yet. The problem is that it appears this was lifted out from the statute on the District Courts. He pointed out that this was apparent because on Page 3, Lines 3 thru 5, it talks about uncontested divorce proceedings.

Senator Raggio brought out the fact that on the first page of the bill it talks about both district and justice's courts.

Senator Close stated that he thought they should take a closer look at the bill to see what the drafter had done with it. He stated he certainly didn't want the two courts merged.

Senator Raggio stated that they had been kept separate before, but if we are going to allow the same thing in both courts, they could go in together in the general Statute on the courts.

Senator Close stated, except we are now talking about going more into the electronic recording.

Senator Raggio stated that he felt it could be made optional in the justice court operation without making it optional in the district courts.

Senator Close stated there is also a problem on Page 2, Section 1. It would not be my intent to permit the J.P. Courts to have each Justice of the Peace appoint one short-hand reporter.

Senator Sloan stated that there has to be a shorthand reporter for any preliminary hearing. He felt that most of the J.P.'s had appointed a shorthand reporter already.

Senator Hernstadt pointed out that when it talks about the tape it states "defective in any way." He felt that should be tightened up to say in a substantive way or something along those lines.

Senator Close stated he wanted to make sure it was understood that you could have recording devices in the J.P. Courts and that it would be up to the County Commissioners to appoint the court reporter.

Senator Dodge agreed that was the way it should be structured. He felt that if the three-tier system was developed there should be more stature in the J.P. Courts.

Senator Raggio stated he would like to see what happens with this in justice courts for two years before extending it to the municipal courts. He felt problems could arise that no one has thought of yet and they could get in too deep.

Senator Close stated that he felt that if either of the parties wanted a court reporter they should pay for their own.

Senator Sloan felt there could be a problem with this. First thing you would have would be the public defender asking for a reporter and expecting the public to pay for it.

Senator Close stated that is the way it is now. The only difference is now they are always available because the county commissioners have them over there.

Senator Sloan stated that they are not available in misdemeanors. He doesn't feel the public defender should be in a better position than the average misdemeanent.

Senator Raggio stated he agrees. One way or the other it is going to be a court of record. It is that way right now in district court, so why do something different in the lower courts.

Bill Macdonald, Humboldt County District Attorney, stated that they have a 4-track recorder and frequently use it when there is a brief matter in district court and the parties agree. We will then have a court clerk transcribe it later.

Senator Close asked if it is difficult to transcribe the proceedings accurately with one of these types of machines when it is in a court room.

Mr. Macdonald stated that his people find it great. The judge, the witness, the counsels are all on a separate track. If they are all talking at one time then you put it on one track and transcribe that and then back it up and take off the second track, and so on. They find it works well as in his office there are two prosecutors and two courts. Frequently there are two trials running at the same time. So we use the court reporter in the District Court and the recorder in the Justice Court. The only problem we have is with the public defender's office, they say we cannot do that. They say the law doesn't give us that authority.

Senator Raggio stated that only the lower courts were going to have the option, did he mean to have the District Court have it too?

Mr. Macdonald stated he thought it would be a good idea. Especially when you had a 5-minute arraingment and a day long preliminary across the hall. You have to wait until there is a recess in the preliminary hearing, the court reporter picks up his machine, runs across the hall, the prisoner is brought up, the District Judge is anxious to get out of town because he has more than one county to cover, and it is an inconvenience all the way around.

Senator Close stated that he would like to bring out the fact that this type of legislation is the practice in all the courts in Alaska.

Senator Close stated he would talk all these things over with Mr. Daykin and either get an amendment or a new bill, whichever was more convenient.

AB 168 Prohibits discharge of firearm at structures and vehicles.

See minutes of March 7 for testimony, discussion and action.

Senator Close stated he had not had all the changes marked down that they wished to make. He stated that he had 6 years marked down to conform it, and was there anything else.

Bill Mac Donald, Humboldt County District Attorney, stated he was not here for yesterday's testimony, and would like to make a statement, even though the bill had been passed. He felt there was a problem with the wording "abandoned." He stated they would take that wording to get the bill, but he thought that would add a problem to their enforcing. They had a problem in Winnemucca down in the jungle by the railroad tracks. Some guy was intentionally shooting into what appeared to be an abandoned tin shack. He apparently didn't see the smoke coming up from the guy inside cooking his beans. A bullet went through the shack and killed the guy inside. Now the question arises, is this really abandoned?

SB 143 Requires interpreters for certain handicapped persons in judicial and administrative proceedings.

See minutes of February 6, 13 and 14 for testimony and discussion.

Senator Close stated that he had a letter from the Legislative Counsel Bureau, in answer to Ms. Hensley's testimony. Andy Gross stated in the letter that there is nowhere in Federal Law that a mandate exists. He also read the changes that are to be made in the bill. On line 16 through end of line 18 delete. On line 20 change language to read "and serve as an interpreter as defined under NRS 171.1535." On Page 2, Section 2 take out line one and two up to "if appointed interpreter." All this will be qualified by section 3. We will then make sure the wording is right so that it cannot be the spouse as interpreter, unless so appointed by the court.

After some discussion the Committee agreed to have this brought back after the amendments were drafted to make sure this what they wanted, before taking action.

(See attachment C for letter from Legislative Counsel Bureau)

The meeting was adjourned at 10:50 a.m.

Respectfully submitted

Virginia C. Letts, Secretary

APPROVED:

Senator Melvin D. Close, Jr., Chairman

NORTH *v.* RUSSELL ET AL.

APPEAL FROM COURT OF APPEALS OF KENTUCKY

No. 74-1409. Argued December 9, 1975—Decided June 28, 1976

Under Kentucky's two-tier court system, police courts (the first tier) have jurisdiction of misdemeanor cases, but an accused has an appeal of right from a police judge's decision to the circuit court (the second tier), where there is a trial *de novo*. The State Constitution requires cities in Kentucky to be classified according to population size. By statute judges of police courts in cities of less than a certain population need not be lawyers, but in larger cities they must be, and all circuit court judges are lawyers. In this challenge to the constitutionality of the statutory scheme *held:*

1. An accused, who is charged with a misdemeanor for which he is subject to possible imprisonment, is not denied due process when tried before a nonlawyer police court judge in one of the smaller cities, when a later trial *de novo* is available in the circuit court. *Ward* v. *Village of Monroeville*, 409 U. S. 57; *Tumey* v. *Ohio*, 273 U. S. 510, distinguished. Pp. 333–339.

2. Nor does the State deny such an accused equal protection of the laws by providing law-trained judges for some police courts and lay judges for others, depending upon the State Constitution's classification of cities according to population, since as long as all people within each classified area are treated equally, the different classifications within the court system are justified. *Missouri* v. *Lewis*, 101 U. S. 22. Pp. 338–339.

Affirmed.

BURGER, C. J., delivered the opinion of the Court, in which WHITE, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. BRENNAN, J., concurred in the result. STEWART, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post*, p. 339. STEVENS, J., took no part in the consideration or decision of the case.

Charles E. Goss argued the cause and filed briefs for appellant.

Robert L. Chenoweth, Assistant Attorney General of Kentucky, argued the cause for appellees. With him on the briefs was *Ed W. Hancock*, Attorney General.*

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this case is whether an accused, subject to possible imprisonment, is denied due process when tried before a nonlawyer police court judge with a later trial *de novo* available under a State's two-tier court system; and whether a State denies equal protection by providing law-trained judges for some police courts and lay judges for others, depending upon the State Constitution's classification of cities according to population.

(1)

Appellant Lonnie North was arrested in Lynch, Ky., on July 10, 1974, and charged with driving while intoxicated in violation of Ky. Rev. Stat. Ann. § 189.520 (2) (1971). If a first offense, a penalty of a fine of from $100 to $500 is provided; if a subsequent offense, the same fine, and imprisonment for not more than six months.[1] Ky. Rev. Stat. Ann. § 189.990 (10)(a) (1971).

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*Briefs of *amici curiae* urging reversal were filed by *Allan Ashman* for the American Judicature Society; by *Rene H. Reixach, Jr.*, for the Petitioners and Classes of Petitioners in *Wyse* v. *Hopkins* and in *Sanchez* v. *Tonkin*; and by *Laughlin McDonald, Ray McClain, Neil Bradley*, and *Melvin L. Wulf* for the American Civil Liberties Union Foundation, Inc.; by *Leslie G. Whitmer* for the Kentucky Bar Assn.; by *Marshall J. Hartman, Joseph T. Garlovsky*, and *James F. Flug* for the National Legal Aid and Defender Assn.; and by *Jimi Mitsunaga* for the Salt Lake Legal Defenders Assn.

Eugene W. Salisbury, Duncan S. MacAffer, and *Lawrence A. Schulz* filed a brief for the New York State Association of Magistrates as *amicus curiae* urging affirmance.

[1] The offense now carries the same monetary fine schedule, but a second offense now requires imprisonment for not less than three

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Appellant's trial was scheduled for July 18, 1974, at 7 p. m., before the Lynch City Police Court. Appellee C. B. Russell, who is not a lawyer, was the presiding judge. Appellant's request for a jury was denied although under Kentucky law he was entitled to a jury trial. Ky. Const. § 11; Ky. Rev. Stat. Ann. §§ 25.014, 26.400 (1971). Appellant pleaded not guilty. Appellant was found guilty and sentenced to 30 days in jail, a fine of $150, and revocation of his driver's license.

Section 156 of the Kentucky Constitution requires cities to be classified according to population size. There are six classes of cities: fifth-class cities have a population of between 1,000 and 3,000; sixth-class cities have a population of less than 1,000. Lynch is a fifth-class city. Ky. Rev. Stat. Ann. § 81.010 (5) (1971). A police judge in fifth- and sixth-class cities must by statute be a voter and resident of the city for at least one year and be bonded. Ky. Rev. Stat. Ann. § 26.200 (1971); the police judge in such cities need not be a lawyer. Police judges in first-class cities, which have populations of over 100,000, must have the same qualifications as a circuit judge, who must be at least 35 years of age, a citizen of Kentucky, a two-year resident of the district, and a practicing attorney for eight years.[3] Ky. Const. § 130; Ky. Rev. Stat. Ann. § 26.140 (1971). Police court judges have terms of four years.

days and not more than six months; any subsequent offense requires imprisonment for not less than 30 days and not more than 12 months. Ky. Rev. Stat. Ann. § 189.990 (9) (a) (Supp. 1974).

[3] A second-class city (population 20,000–100,000) police judge must be at least 25, a resident of the city for four years, and an attorney at law. Ky. Rev. Stat. Ann. § 26.150 (Supp. 1974). A third-class city (population 8,000-20,000) and a fourth-class city (population 3,000–8,000) police judge must be at least 24 and a city resident. Ky. Rev. Stat. Ann. § 26.190 (1971).

In fourth-, fifth-, or sixth-class cities police judges may be either appointed or elected.[4] Ky. Const. § 160.

Police courts have jurisdiction, concurrent with circuit courts, of penal and misdemeanor cases punishable by a fine of not more than $500 and/or imprisonment of not more than 12 months. Ky. Rev. Stat. Ann. § 26.010 (1971). Kentucky has a two-tier misdemeanor court system. An appeal of right is provided from the decision of a police judge to the circuit court where all judges are lawyers, and in that court a jury trial *de novo* may be had. Ky. Rev. Stat. Ann. § 23.032 (1971); Ky. Rule Crim. Proc. 12.06.

Appellant did not appeal to the Kentucky circuit court for a trial *de novo* to which he was entitled. After being sentenced by appellee judge, appellant challenged the statutory scheme described above by a writ of habeas corpus in the Harlan County Circuit Court, where he was

[4] The General Assembly of the Commonwealth of Kentucky at its 1974 session, by Senate Bill 183, enacted an Act proposing an amendment to the Kentucky Constitution relating to the judicial branch of government. On November 4, 1975, the Kentucky voters ratified the judicial amendment to the Kentucky Constitution, effective January 1, 1976. It provides, in part, that by January 1, 1978, all the county, quarterly, justice of the peace, and police courts will be combined into one district court in each of the 120 counties. These counties are to be allocated among 55 districts and each district is to elect at least one district judge who must be an attorney licensed in Kentucky. A district judge in multicounty districts must appoint a trial commissioner for each county in which no district judge resides. The commissioner must be an attorney if one is qualified and available. The commissioner will have the power to perform such duties of the district court as may be prescribed by the Kentucky Supreme Court.

The case is not mooted by this judicial amendment since the police courts will continue to function as challenged until January 1, 1978, and since the new amendment still permits nonlawyer judges to sit. These judges may have power to impose prison sentences if the Kentucky Supreme Court so provides.

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represented by an attorney. Appellant contended that his federal due process and equal protection rights had been abridged because he had been tried and convicted in a court presided over by a judge without legal training and thus without legal competence. The State Circuit Court issued the writ, granted bail, and held an evidentiary hearing.

The Circuit Court noted that appellant was not challenging the adequacy of the proceedings before appellee Russell, and hence rested on the appellant's pleadings, which the court found were purposefully limited to the issue whether appellant could be tried before a judge who was not legally trained when persons similarly situated but residing in larger cities would be tried by a judge trained in the law. The Circuit Court denied relief on the basis of the Kentucky Court of Appeals holding in *Ditty* v. *Hampton*, 490 S. W. 2d 772 (1972), appeal dismissed, 414 U. S. 885 (1973). The Kentucky Court of Appeals in turn affirmed the denial of relief on the basis of *Ditty* v. *Hampton*, *supra*, noting that appellant could apply for bail in the event of an appeal from the Lynch Police Court judgment. 516 S. W. 2d 103 (1974).

When this case first came here on appeal we vacated the judgment and remanded it "for further consideration in light of the position presently asserted by the Commonwealth." 419 U. S. 1085 (1974). The Attorney General of Kentucky in his motion to dismiss or affirm had requested that this Court remand the case to the Kentucky Court of Appeals for consideration of violations of state law based on the suggestion that appellee judge had "mistakenly imposed a sentence of imprisonment upon appellant for a first offense of driving while intoxicated, whereas imprisonment is not an authorized punishment for first offenders . . . ." The

Kentucky Attorney General conceded that the writ of habeas corpus should have been granted and requested an opportunity to correct the error.

On remand, however, the Kentucky Court of Appeals declined to decide the case on the state grounds presented by the Attorney General, noting that the federal constitutional issue "was and is the only issue before us." That court noted that appellant sought only to "test the constitutional status of lay judges in criminal cases." No. 74–723 (Mar. 21, 1975).

On the second appeal to this Court we noted probable jurisdiction. 422 U. S. 1040 (1975).

(2)

Appellant's first claim is that when confinement is a possible penalty, a law-trained judge is required by the Due Process Clause of the Fourteenth Amendment whether or not a trial *de novo* before a lawyer-judge is available.[4]

[4] Article III of the United States Constitution, of course, unlike provisions of some state constitutions, see, e. g., N. Y. Const., Art. 6, § 20 (a); S. D. Const., Art. 5, §§ 10, 25, is silent as to any requirement that judges of the United States' courts, including Justices of the Supreme Court, be lawyers or "learned in the law." We note that in excess of 95% of all criminal cases in England are tried before lay judicial officers. See D. Karlen, Judicial Administration: The American Experience 32 (1970); H. Abraham, The Judicial Process 246–247, and n. 4 (2d ed. 1968). We also note that many of the States in the United States which utilize nonlawyer judges provide mandatory or voluntary training programs, see, e. g., Iowa Code Ann. § 602.50 (6) (1975); La. Rev. Stat. Ann. § 49:251.1 (Supp. 1976); Miss. Code Ann. §§ 7–5–59, 9–11–3 (1972); Mont. Rev. Codes Ann. § 93–401 (Supp. 1975); Nev. Rev. Stat. § 5.026 (1973); N. Y. Uniform Justice Court Act § 105 (Supp. 1975–1976); N. C. Sess. Laws, c. 956, § 11 (1975); N. D. Cent. Code § 27–18–08 (Interim Supp. 1975); Pa. Stat. Ann., Tit. 42, § 1214 (Supp. 1976–1977); Utah Code Ann. § 78–5–27 (Supp. 1975); and training

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It must be recognized that there is a wide gap between the functions of a judge of a court of general jurisdiction, dealing with complex litigation, and the functions of a local police court judge trying a typical "drunk" driver case or other traffic violations. However, once it appears that confinement is an available penalty, the process commands scrutiny. See *Argersinger* v. *Hamlin*, 407 U. S. 25 (1972).

Appellant argues that the right to counsel articulated in *Argersinger* v. *Hamlin*, *supra*, and *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), is meaningless without a lawyer-judge to understand the arguments of counsel. Appellant also argues that the increased complexity of substantive and procedural criminal law requires that all judges now be lawyers in order to be able to rule correctly on the intricate issues lurking even in some simple misdemeanor cases. In the context of the Kentucky procedures, however, it is unnecessary to reach the question whether a defendant could be convicted and imprisoned after a proceeding in which the only trial afforded is conducted by a lay judge. In all instances, a defendant in Kentucky facing a criminal sentence is afforded an opportunity to be tried *de novo* in a court presided over by a lawyer-judge since an appeal automatically vacates the conviction in police court. Ky. Rev. Stat. Ann. § 23.032 (1971); Ky. Rule Crim. Proc.

manuals, see, *e. g.*, G. Brownlee, The Montana Justice of the Peace and Police Judge (1970). The brief of *amicus curiae* New York State Association of Magistrates informs us that, of the States that have nonlawyer judges, Delaware, Florida, Idaho, Iowa, Mississippi, Montana, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Texas, Utah, Washington, West Virginia, and Wyoming have mandatory training programs, and Alaska, Georgia, Kansas, Louisiana, Missouri, Nevada, New Hampshire, Oregon, South Carolina, Tennessee, Vermont, and Wisconsin have voluntary training programs.

12.06. The trial *de novo* is available after either a trial or a plea of guilty in the police court; a defendant is entitled to bail while awaiting the trial *de novo*. 516 S. W. 2d 103 (1974).

It is obvious that many defendants charged with a traffic violation or other misdemeanor may be uncounseled when they appear before the police court. They may be unaware of their right to a *de novo* trial after a judgment is entered since the decision is likely to be prompt. We assume that police court judges recognize their obligation under *Argersinger* v. *Hamlin*, *supra*, to inform defendants of their right to a lawyer if a sentence of confinement is to be imposed. The appellee judge testified that informing defendants of a right to counsel was "the standard procedure." App. 32. We also assume that police court judges in Kentucky recognize their obligation to inform all convicted defendants, including those who waived counsel or for whom imprisonment was not imposed, of their unconditional right to a trial *de novo* and of the necessity that an "appeal" be filed within 30 days in order to implement that right. Ky. Rule Crim. Proc. 12.04.

In *Colten* v. *Kentucky*, 407 U. S. 104 (1972), we considered Kentucky's two-tier system there challenged on other grounds. We noted:

> "The right to a new trial is absolute. A defendant need not allege error in the inferior court proceeding. If he seeks a new trial, the Kentucky statutory scheme contemplates that the slate be wiped clean. Ky. Rule Crim. Proc. 12.06. Prosecution and defense begin anew. . . . The case is to be regarded exactly as if it had been brought there in the first instance." *Id.*, at 113.

We went on to note that the justifications urged by

States for continuing such tribunals[3] are the "increasing burdens on state judiciaries" and the "interest of both the defendant and the State, to provide speedier and less costly adjudications" than those provided in courts "where the full range of constitutional guarantees is available . . . ." *Id.*, at 114. Moreover, state policy takes into account that it is a convenience to those charged to be tried in or near their own community, rather than travel to a distant court where a law-trained judge is provided, and to have the option, as here, of a trial after regular business hours. We took note of these practical considerations in *Colten:*

> "We are not persuaded, however, that the Kentucky arrangement for dealing with the less serious offenses disadvantages defendants any more or any less than trials conducted in a court of general jurisdiction in the first instance, as long as the latter are always available. Proceedings in the inferior courts are simple and speedy, and, if the results in Colten's case are any evidence, the penalty is not characteristically severe. Such proceedings offer a defendant the opportunity to learn about the prosecution's case and, if he chooses, he need not reveal his own. He may also plead guilty without a trial and promptly secure a *de novo* trial in a court of general criminal jurisdiction." *Id.*, at 118–119.

[3] We observed in *Colten* v. *Kentucky* that in the first-tier tribunals, "[s]ome [States], including Kentucky, do not record proceedings and the judges may not be trained for their positions either by experience or schooling." 407 U. S., at 114. We took note of the Kentucky Court of Appeals' comment that "'the inferior courts are not designed or equipped to conduct error-free trials, or to insure full recognition of constitutional freedoms. They are courts of convenience, to provide speedy and inexpensive means of disposition of charges of minor offenses.' *Colten* v. *Commonwealth*, 467 S. W. 2d, at 379." *Id.*, at 117.

Under *Ward* v. *Village of Monroeville*, 409 U. S. 57, 61–62 (1972), appellant argues that he is entitled to a lawyer-judge in the first instance. There the judge was also mayor and the village received a substantial portion of its income from fines imposed by him as judge. Similarly in *Tumey* v. *Ohio*, 273 U. S. 510 (1927), the challenge was directed not at the training or education of the judge but at his possible bias due to interest in the outcome of the case, because as in *Monroeville* he was both mayor and judge and received a portion of his compensation directly from the fines. Financial interest in the fines was thought to risk a possible bias in finding guilt and fixing the amount of fines, and the Court found that potential for bias impermissible.

Under the Kentucky system, as we noted in *Colten*, a defendant can have an initial trial before a lawyer-judge by pleading guilty in the police court, thus bypassing that court and seeking the *de novo* trial, "erasing . . . any consequence that would otherwise follow from tendering the [guilty] plea." 407 U. S., at 119–120.

Our concern in prior cases with judicial functions being performed by nonjudicial officers has also been directed at the need for independent, neutral, and detached judgment, not at legal training. See *Coolidge* v. *New Hampshire*, 403 U. S. 443, 449–453 (1971). See also, *e. g.*, *Whiteley* v. *Warden*, 401 U. S. 560, 564 (1971); *Katz* v. *United States*, 389 U. S. 347, 356 (1967); *Wong Sun* v. *United States*, 371 U. S. 471, 481–482 (1963). Yet cases such as *Shadwick* v. *City of Tampa*, 407 U. S. 345 (1972), are relevant; lay magistrates and other judicial officers empowered to issue warrants must deal with evaluation of such legal concepts as probable cause and the sufficiency of warrant affidavits. Indeed,

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in *Shadwick* the probable-cause evaluation made by the lay magistrate related to a charge of "impaired driving." [6]

(3)

Appellant's second claim is that Kentucky's constitutional provisions classifying cities by population and its statutory provisions permitting lay judges to preside in some cities while requiring law-trained judges in others denies him the equal protection guaranteed by the Fourteenth Amendment. However, all people within a given city and within cities of the same size are treated equally.

The Kentucky Court of Appeals in *Ditty* v. *Hampton*, *supra*, articulated reasons for the differing qualifications of police court judges in cities of different size:

> "1. The greater volume of court business in the larger cities requires that judges be attorneys to enable the courts to operate efficiently and expeditiously (not necessarily with more fairness and impartiality).
>
> "2. Lawyers with whom to staff the courts are more available in the larger cities.
>
> "3. The larger cities have greater financial resources with which to provide better qualified personnel and better facilities for the courts." 490 S. W. 2d, at 776.

That court then noted: "That population and area factors may justify classifications within a court system has long been recognized." *Id.*, at 776–777. The Court of Appeals relied upon *Missouri* v. *Lewis*, 101

[6] In *Shadwick* we cautioned:

"[O]ur federal system warns of converting desirable practice into constitutional commandment. It recognizes in plural and diverse state activities one key to national innovation and vitality. States are entitled to some flexibility and leeway . . . ." 407 U. S., at 353–354.

U. S. 22 (1880), which held that as long as all people within the classified area are treated equally:

> "Each State . . . may establish one system of courts for cities and another for rural districts, one system for one portion of its territory and another system for another portion. Convenience, if not necessity, often requires this to be done, and it would seriously interfere with the power of a State to regulate its internal affairs to deny to it this right." *Id.*, at 30–31.

See generally *Salsburg* v. *Maryland*, 346 U. S. 545 (1954); *Fay* v. *New York*, 332 U. S. 261 (1947); *Manes* v. *Goldin*, 400 F. Supp. 23 (EDNY 1975) (three-judge court), summarily aff'd. 423 U. S. 1068 (1976).

We conclude that the Kentucky two-tier trial court system with lay judicial officers in the first tier in smaller cities and an appeal of right with a *de novo* trial before a traditionally law-trained judge in the second does not violate either the due process or equal protection guarantees of the Constitution of the United States: accordingly the judgment before us is

Affirmed.

MR. JUSTICE BRENNAN concurs in the result.

MR. JUSTICE STEVENS took no part in the consideration or decision of this case.

MR. JUSTICE STEWART, with whom MR. JUSTICE MARSHALL joins, dissenting.

Lonnie North was haled into a Kentucky criminal court and there tried, convicted, and sentenced to a term of imprisonment by Judge C. B. Russell. Judge Russell is a coal miner without any legal training or education

whatever.[1] I believe that a trial before such a judge that results in the imprisonment of the defendant is constitutionally intolerable. It deprives the accused of his right to the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments, and deprives him as well of due process of law.[2]

[1] The judge at North's state habeas corpus hearing concluded: "I think the fact has been established that [Judge Russell is] not a lawyer, he doesn't know any law, he hasn't studied any law." Judge Russell testified that he had only a high school education. He had never received any training concerning his duties as a lay judge. This is not a case, therefore, involving a lay judge who has received the kind of special training that several States now provide. *See ante*, at 333–334, n. 4.

A study of California's lay judges made in 1972 showed that 37% had no education beyond high school while 13% had even less formal education. *Gordon v. Justice Court*, 12 Cal. 3d 323, 330 n. 7, 525 P. 2d 72, 76 n. 7. A 1966 survey revealed that only 5% of Virginia's justices of the peace were college graduates, Note, 52 Va. L. Rev. 151, 177, while in 1958 one-half of West Virginia's justices had not completed high school, Note, 69 W. Va. L. Rev. 314, 323. In 1970, the Assistant Attorney General of Mississippi told the State's Judiciary Commission that "95% of the justices of the peace are limited in educational background to the extent that they are not capable of learning the necessary elements of law." Hearings on Justice of the Peace Courts and Judges before the Mississippi Judiciary Commission (testimony of R. Hugo Newcomb, Sr.), quoted in Comment, 44 Miss. L. J. 995, 1000 n. 31 (1973).

[2] At least two state courts have held that such a trial violates the United States Constitution. *Gordon v. Justice Court, supra*; *Shelnutt v. Jones*, No. 224048 (Utah 3d Jud. Dist., June 3, 1975).

Contemporary studies of American court systems have been unanimous in calling for the elimination of nonlawyer judges. See ABA Commission on Standards of Judicial Administration, Court Organization § 1.21 (1974); National Advisory Commission on Criminal Justice Standards & Goals, Task Force Report: Courts, Standard 8.1 (1973); The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts 36 (1967); Advisory Commission on Intergovernmental Relations State-Local Relations in the Criminal Justice System, Recommendation 21 (1971); Consensus Statement of the National Conference on the Judiciary, 55 J. Am. Jud. Soc. 29, 30 (1971).

I

A

The reasons why a defendant in a criminal trial needs a lawyer to assist in his defense have nowhere been better put than in the oft-quoted words of Mr. Justice Sutherland's opinion for the Court in *Powell* v. *Alabama*, 287 U. S. 45:

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." *Id.*, at 68–69.

So it was that, beginning with the capital case of *Powell* v. *Alabama*, *supra*, extending through the felony case of *Gideon* v. *Wainwright*, 372 U. S. 335, and culminating in the misdemeanor case of *Argersinger* v. *Ham-*

lin, 407 U. S. 25, the Court's decisions firmly established that a person who has not been accorded the constitutional right to the assistance of counsel cannot be sentenced to even one day of imprisonment.

But the essential presupposition of this basic constitutional right is that the judge conducting the trial will be able to understand what the defendant's lawyer is talking about. For if the judge himself is ignorant of the law, then he, too, will be incapable of determining whether the charge "is good or bad." He, too, will be "unfamiliar with the rules of evidence."[3] And a lawyer for the

[3] Judge Russell testified that he had not received any training concerning rules of evidence and that he was not familiar with the Kentucky statutes relating to jury trials, with the Kentucky rules of criminal procedure, or with the rights guaranteed to a defendant in a criminal case under the Fourteenth Amendment.

The deposition of a lay magistrate in a South Carolina case provides another illustration of the inadequate legal background of nonlawyer judges:

"Q. What books do you have . . . that deal with the duties of Magistrate?"

Magistrate McLendon: "I got a stack of volume books from the courthouse when I got the job, little red books.

"Q. What books are those sir, do you know the names of them?"

Magistrate McLendon: "No, sir.

. . . . . .

"Q. Tell me what your understanding of the Code of Laws is, what is contained in the Code of Laws, as you understand?"

Magistrate McLendon: "Well I never have done any reading in it.

"Q. You never have had occasion to refer to it?"

Magistrate McLendon: "No, sir." Deposition of Magistrate Robert McLendon, Oct. 15, 1974, p. 110, *Frierson* v. *West*, Civ. No. 74–1074 (SC May 15, 1975).

See generally Note, 61 Va. L. Rev. 1454, 1456 (1975); Note, 10 Harv. Civ. Rights—Civ. Lib. L. Rev. 739, 746–755 (1975); Note, 69 W. Va. L. Rev. 314, 323–326 (1967); Comment, 44 Miss. L. J. 996, 1004–1008 (1973); Note, 53 Ore. L. Rev. 411, 428–430, 437 *n.* 187 (1974).

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defendant will be able to do little or nothing to prevent an unjust conviction. In a trial before such a judge, the constitutional right to the assistance of counsel thus becomes a hollow mockery—"a teasing illusion like a munificent bequest in a pauper's will." *Edwards* v. *California*, 314 U. S. 160, 186 (Jackson, J., concurring).

B

In this case Judge Russell denied a motion for trial by jury, although under Kentucky law North was clearly entitled to a jury trial upon request. Ky. Const. § 11; Ky. Rev. Stat. Ann. §§ 25.014, 26.400 (1971). And after finding North guilty, Judge Russell proceeded to impose a sentence of imprisonment, although such a sentence was clearly unauthorized by Kentucky law. Ky. Rev. Stat. Ann. §§ 189.520 (2), 189.990 (10)(a) (1971).

But even if it were not possible to demonstrate in a particular case that the lay judge had been incompetent or the trial egregiously unfair, I think that *any* trial before a lay judge that results in the defendant's imprisonment violates the Due Process Clause of the Fourteenth Amendment. The Court has never required a showing of specific or individualized prejudice when it was the procedure itself that violated due process of law. "[A]t times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." *Estes* v. *Texas*, 381 U. S. 532, 542–543. See *Rideau* v. *Louisiana*, 373 U. S. 723; *Hamilton* v. *Alabama*, 368 U. S. 52.

A trial judge is "charged with the duty of insuring that justice, in the broadest sense of that term, is achieved in every criminal trial." *Faretta* v. *California*, 422 U. S. 806, 839 (BURGER, C. J., dissenting). See *Geders* v.

United States, 425 U. S. 80, 86–87. Among the critical functions that a trial judge must frequently perform are the acceptance of a guilty plea, *Henderson* v. *Morgan*, 426 U. S. 637; the determination of the voluntariness of a confession, *Jackson* v. *Denno*, 378 U. S. 368; the advising of the defendant of his trial rights, *Boykin* v. *Alabama*, 395 U. S. 238; and the instruction of a jury, *Bollenbach* v. *United States*, 326 U. S. 607, 612. A judge ignorant of the law is simply incapable of performing these functions. If he is aware of his incompetence, such a judge will perhaps instinctively turn to the prosecutor for advice and direction.[4] But such a practice no more than compounds the due process violation. See *In re Murchison*, 349 U. S. 133, 136.[5]

The Kentucky Court of Appeals characterized the kind of trial that took place here as an "absurdity." The trial,

[4] Judge Russell conceded that he relied on the city attorney for legal advice:

"Q. Prior to your appointment as City Judge . . . had you had any previous legal experience of any kind?"

Judge Russell: "No, sir.

"Q. Have you had any legal training of any kind since your appointment?"

Judge Russell: "Well, the only thing I can say, if I have any doubt, I just consult with the city lawyer . . . .

. . . . . .

"Q. And when you receive advice from the city attorney, do you follow that advice?"

Judge Russell: "Yes, sir."

See also Deposition of Magistrate Robert McLendon, Oct. 15, 1974, p. 116 in *Frierson* v. *West*, Civ. No. 74–1074, (SC May 15, 1975) (stating that in event of request for jury trial he "would come to Mr. George Stuckey [the county attorney] and find out what I had to do").

[5] See Note, 53 Ore. L. Rev. 411, 430 (1974); Note, 61 Va. L. Rev. 1454, 1469–1470, n. 74 (1975); Note, 10 Harv. Civ. Rights—Civ. Lib. L. Rev. 739, 755 (1975).

in my view, was such an absurdity as to constitute a gross denial of due process of law.[6]

II

The Court seems to say that these constitutional deficiencies can all be swept under the rug and forgotten because the convicted defendant may have a trial *de novo* before a qualified judge. I cannot agree.

In *Ward* v. *Village of Monroeville*, 409 U. S. 57, the Court made clear that "the State's trial court procedure [cannot] be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication. Petitioner is entitled to a neutral and detached judge in the first instance." *Id.*, at 61–62. See also *Callan* v. *Wilson*, 127 U. S. 540 (right to trial by jury is right to a jury in first instance).

The Court would distinguish the *Ward* case as "directed at the need for independent, neutral, and detached judgment, not at legal training." *Ante*, at 337. But surely there can be no meaningful constitutional difference between a trial that is fundamentally unfair because of the judge's possible bias, and one that is fundamentally unfair because of the judge's ignorance of the law.[7]

[6] The scarcity of lawyers or legally trained persons in rural areas cannot serve to justify trials such as this. Utah, to cite one example, has managed to devise a constitutionally adequate trial system even though large portions of the State are sparsely populated and 13 of its 29 counties have two or fewer lawyers. See Utah House Bill No. 1, 1975 First Special Session, amending Utah Code Ann. § 78–5–4. See generally Note, 10 Harv. Civ. Rights—Civ. Lib. L. Rev. 739, 763–767 (1975).

[7] The Court's reliance on *Colten* v. *Kentucky*, 407 U. S. 104, is misplaced. The question in *Colten* was not whether a trial of the kind challenged here is constitutionally valid, but the quite different question whether a greater sentence can be imposed on a defendant following a trial *de novo* without violating *North Carolina* v. *Pearce*, 395 U. S. 711.

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And the Court's suggestion that a defendant haled before a lay judge can protect his constitutional rights by simply pleading guilty and immediately seeking a trial *de novo* is wholly unpersuasive. First, this argument assumes without any factual support that the defendant will be informed of his right to a trial *de novo*.[8] Second, the procedure would still necessitate multiple court appearances, at the cost of both delay and an increased financial burden for attorneys' fees and court costs. Third, such a practice would turn what should be a solemn court proceeding, see *Boykin* v. *Alabama*, 395 U. S. 238, into nothing more than a sham. In short, I cannot accept the suggestion that, as a prerequisite to a constitutionally fair trial, a defendant must stand up in open court and inform a judge that he is guilty when in fact he believes that he is not.

At Runnymede in 1215 King John pledged to his barons that he would "not make any Justiciaries, Constables, Sheriffs, or Bailiffs, excepting of such as know the laws of the land . . . ." Magna Carta 45. Today, more than 750 years later, the Court leaves that promise unkept.

I respectfully dissent.

[8] The record indicates that North was taken to jail immediately after sentencing and obtained his freedom only when the state habeas corpus court on the following day signed a writ ordering his release. It is hardly likely that North would have spent the night in jail if he had been told that he could avoid jail simply by asking for a trial *de novo*.

The Court also states its assumption that Kentucky police court judges will advise defendants of their right to counsel and that counsel will advise their clients of their right to a trial *de novo*. See *ante*, at 335. This assumption is also devoid of support in the present record. Although Judge Russell stated that it was "the standard procedure" to advise defendants of their right to counsel, he was unwilling to state that he advised North of this right, and North unreservedly testified that he was not so advised.

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ELROD, SHERIFF, ET AL. *v.* BURNS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 74–1520. Argued April 19, 1976—Decided June 28, 1976

Respondents, Republicans who are non-civil-service employees of the Cook County, Ill., Sheriff's Office, brought this suit as a class action for declaratory, injunctive, and other relief against petitioners, including the newly elected Sheriff, a Democrat, and county Democratic organizations, alleging that in violation of the First and Fourteenth Amendments and various statutes, including the Civil Rights Act of 1871, respondents were discharged or (in the case of one respondent) threatened with discharge for the sole reason that they were not affiliated with or sponsored by the Democratic Party. Finding that respondents had failed to show irreparable injury, the District Court denied their motion for a preliminary injunction and ultimately dismissed their complaint for failure to state a claim upon which relief could be granted. The Court of Appeals reversed and remanded with instructions to enter appropriate preliminary injunctive relief. *Held:* The judgment is affirmed. Pp. 351–374; 374–375.

509 F. 2d 1133, affirmed.

MR. JUSTICE BRENNAN, joined by MR. JUSTICE WHITE and MR. JUSTICE MARSHALL, concluded that:

1. Neither the political-question doctrine nor the separation-of-powers doctrine makes this case inappropriate for judicial resolution, since, *inter alia*, neither doctrine applies to the federal judiciary's relationship to the States. Pp. 351–353.

2. The practice of patronage dismissals violates the First and Fourteenth Amendments, and respondents thus stated a valid claim for relief. Pp. 355–373.

(a) Patronage dismissals severely restrict political belief and association, which constitute the core of those activities protected by the First Amendment, and government may not, without seriously inhibiting First Amendment rights, force a public employee to relinquish his right to political association as the price of holding a public job, *Perry* v. *Sindermann*, 408 U. S. 593; *Keyishian* v. *Board of Regents*, 385 U. S. 589. Pp. 355–360.

Monroe W. TREIMAN, as Judge of the County Court of Hernando County, Florida, Appellant,

v.

The STATE of Florida ex rel. Thomas Hamilton MINER, Jr., et al., Appellees.

No. 49061.

Supreme Court of Florida.

Feb. 10, 1977.

Rehearing Denied April 7, 1977.

Misdemeanor defendants moved to have nonlawyer county judge recuse or disqualify himself. After motions were denied defendants filed petition for writ of prohibition. The Circuit Court, Hernando County, John W. Booth, J., issued writ, and the county judge appealed. The Supreme Court, Sundberg, J., held that constitutional provision that county judges in a county having a population of less than 40,000 are not required to be members of the Florida bar does not deny equal protection and that a nonlawyer county judge who completes a nonlawyer county judge training program at the university of Florida, including the

damages for mental anguish which may be available in a non-contract lawsuit. See *Kirksey v. Jernigan*, 45 So.2d 188 (Fla. 1950).

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examination to test proficiency, can constitutionally sentence a defendant to a prison term for commission of a misdemeanor, that instant decision operates prospectively and that an accused can knowingly and voluntarily waive his right to a trial before a law-trained judge.

Order affirmed.

Overton, C. J., concurred with an opinion in which Adkins, J., joined.

Roberts, Retired, dissented with opinion.

1. Constitutional Law ⇐225(1)

Constitutional provision that a county judge in a county having a population of 40,000 or less is not required to be a member of the Florida bar does not deny equal protection to those who live in smaller counties and whose courts may be presided over by nonlawyer judges. West's F.S.A. § 34.021; West's F.S.A.Const. art. 5, § 20 (c)(11).

2. Constitutional Law ⇐268(8)
Judges ⇐4

A judge who is ignorant of the law cannot afford due process to an individual facing imprisonment on conviction; however, a judge who makes such a determination need not necessarily be a member of the state bar. West's F.S.A.Const. art. 5, § 8.

3. Judges ⇐4

A nonlawyer county judge who completes the nonlawyer county judge training program at the University of Florida, including the examination to test proficiency, can constitutionally sentence a defendant to a prison term for commission of a misdemeanor. West's F.S.A. §§ 34.021, 775.082(4); West's F.S.A.Const. art. 5, § 20(c)(11).

4. Courts ⇐100(1)

Holding that nonlawyer county judges who properly complete judgeship training program at University of Florida can preside over criminal misdemeanor cases and can sentence a defendant to a prison operates prospectively only. West's F.S.A. §§ 34.021, 775.082(4); West's F.S.A.Const. art. 5, § 20(c)(11).

5. Constitutional Law ⇐268(8)
Judges ⇐4

Use of recently elected nonlawyer county judges in criminal proceedings depends on their being properly trained and educated in the law; completion by newly elected nonlawyer county judges of a training program similar to that currently offered by University of Florida is constitutionally necessary for them to be able to discharge their criminal constitutional duties; anything less fails to satisfy due process. West's F.S.A. §§ 34.021, 775.082(4); West's F.S.A.Const. art. 5, § 20 (c)(11).

6. Criminal Law ⇐105

A county judge not trained in the law may preside over a criminal misdemeanor trial where the accused makes a knowing and voluntary waiver of his right to a trial presided over by a law-trained judge. West's F.S.A. §§ 34.021, 775.082(4); West's F.S.A.Const. art. 5, § 20(c)(11).

Robert L. Shevin, Atty. Gen., Charles Corces, Jr. and Donna H. Stinson, Asst. Attys. Gen. and Fletcher N. Baldwin, Jr., Gainesville, for appellant.

Frank McClung of McClung & Underwood, Brooksville, for appellees.

Jerry Oxner of Reynolds & Marchbanks, Boca Raton, for Conference of County Court Judges of Florida, amicus curiae.

SUNDBERG, Justice.

Appellant was at the time these proceedings were commenced a nonlawyer county judge in Hernando County. Appellees, relators below, were arrested on misdemeanor charges which could result in the penalty of imprisonment upon conviction. See Sections 316.028, .029, .061, and 856.011, Florida Statutes. Defendants waived the speedy trial rule. Judge Treiman was the presiding judge in each case, and in each case appellees' attorney moved to recuse or disqualify him. The motions were denied. Thereupon appellees filed a petition for writ of prohibition in the Fifth Judicial

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Circuit in and for Hernando County. On October 29, 1975, the petition was granted and the writ issued. In its order the circuit court concluded:

"The ruling of the United States Supreme Court in [*Gideon v.*] *Wainwright*, [372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)] and *Argersinger* [*v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972)], giving a defendant who is charged with a criminal offense the right to an attorney logically and necessarily includes the right that such defendant's case be presided over by a judge possessing at *least* the same legal qualifications of the attorney representing the State and defendant."

Judge Treiman appealed from this judgment to the Second District Court of Appeal, which, on appellant's motion, transferred the cause to this Court. We have jurisdiction under Article V, Section 3(b)(1), Florida Constitution.

In Florida there are three types of nonlawyer county judges.[1] First, there are those who were "grandfathered in" when the people of this State adopted a substantial revision to Article V of our Constitution in 1972. Article V, Section 20(d)(7), reads:

"(d) When this article becomes effective:

(7) County judges of existing county judge's courts and justices of the peace and magistrates' court who are not members of bar of Florida shall be eligible to seek election as county court judges of their respective counties."

A second group, covered under Article V, Section 20(c)(11), consists of judges who hold office in counties of fewer than 40,000 people:

"(c) After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article:

(11) A county court judge in any county having a population of 40,000 or less according to the last decennial census, shall not be required to be a member of the bar of Florida."

Cf. Section 34.021, Florida Statutes (1975). Finally there are, of course, some nonlawyer county judges who hold their offices by virtue of both constitutional provisions. The appellant in this case was among them.

[1] Appellees argue that the 40,000 population provision denies equal protection of the laws to those who live in smaller counties whose county courts may be presided over by nonlawyer judges. However, our reading of *North v. Russell*, 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976), convinces us that such a classification passes constitutional muster. There the defendant was convicted of driving while intoxicated by a nonlawyer judge of the Lynch, Ky., City Police Court. The Supreme Court described the Kentucky statutory scheme as follows:

"Section 156 of the Kentucky Constitution requires cities to be classified according to population size. There are six classes of cities: fifth-class cities have a population of between 1,000 and 3,000; sixth-class cities have a population of less than 1,000. Lynch is a fifth-class city. . . . A police judge in fifth- and sixth-class cities must by statute be a voter and resident of the city for at least one year and be bonded. . . . [T]he police judge in such cities need not be a lawyer. Police judges in first-class cities, which have populations over 100,000, must have the same qualifications as circuit judges who must be at least 35 years of age, a citizen of Kentucky, a two-year resident of the district and a practicing attorney for eight years. . . . Police court judges have terms of four years. In fourth-, fifth-, or sixth-class cities police judges may be either appointed or elected.

"Police courts have jurisdiction, concurrent with circuit courts, of penal and misdemeanor cases punishable by a fine of not more than $500 and/or imprisonment of not more than 12 months. . .

1. "Unless otherwise provided by general law, a county court judge must be a member of the bar of Florida." Art. V, § 8, Fla.Const.

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> Kentucky has a two-tier misdemeanor court system. An appeal of right is provided from the decision of a police judge to the circuit court where all judges are lawyers, and in that court a jury trial *de novo* may be had. . . . " (Footnotes omitted) *Id.* at 2710–11.

The Court later rejected a contention that such a system violates the constitutional guarantee of equal protection, reasoning that "all people within a given city and within cities of the same size are treated equally." *Id.* at 2714. With the applicable standard having been thus enunciated, we have no difficulty concluding that the division of county courts into two classes effectuated by Section 34.021, Florida Statutes, and Article V, Section 20(c)(11), Florida Constitution, does not violate the equal protection guarantee of the United States Constitution.

The critical question in this case is whether a nonlawyer county judge can afford due process of law to a defendant charged with a crime which leads to possible imprisonment on conviction. *North v. Russell*, supra, is less than decisive in resolving this issue because there the Court laid great stress on the availability, at the request of the defendant, of a second, *de novo* trial before a lawyer judge—a feature which our system lacks.

Nor is the experience of other states determinative of the issue before us. While the language of other state appellate court decisions in this area can provide us with some guidance in deciding the merits of the instant cause, the wide variety in state court systems render such determinations mildly persuasive at best. Several state courts have upheld the constitutionality of using nonlawyer judges to try certain classes of cases. E. g., *Crouch v. Justice of Peace Court*, 7 Ariz.App. 460, 440 P.2d 1000 (1968); *City of Decatur v. Kushmer*, 43 Ill.2d 334, 253 N.E.2d 425 (1969); *North v. Russell*, 516 S.W.2d 103 (Ky.1974); *Ditty v. Hampton*, 490 S.W.2d 772 (Ky.1973).

In contrast, the California Supreme Court has held that due process requires that defendants be convicted and sentenced by lawyer judges even in the lowest courts ("justice courts") in counties or districts with 40,000 or fewer residents. That court concluded:

> "It has been suggested that our holding could cause serious practical problems in view of the asserted scarcity of attorney judges in certain rural areas throughout this state. We recognize that there will be problems and have sought to minimize them to the extent constitutionally possible. We do not abolish the existing system permitting the use of non-attorney judges in all matters within the justice court jurisdiction. Such judges may continue to function in civil cases, and in criminal cases not involving potential jail sentences. Moreover, even in criminal cases where a jail sentence may be imposed, the non-attorney judge may act so long as defendant or his counsel waives the due process right to have the proceedings presided over by an attorney judge. Such right may be voluntarily relinquished just as the right to counsel may be relinquished. In the event defendant or his counsel fails to so stipulate and no attorney judges are available in the district, then either the cause could be transferred to another judicial district in the same county (see Pen.Code, § 1035), or the Judicial Council could assign an attorney judge from another area to hear the matter."

Gordon v. Justice Court, 12 Cal.3d 323, 115 Cal.Rptr. 632, 639, 525 P.2d 72, 79 (1974), *cert. denied*, 420 U.S. 938, 95 S.Ct. 1148, 43 L.Ed.2d 415 (1975). Yet this decision is not dispositive of our case because in California justice court judges must either (1) be a member of the bar or (2) have passed a qualifying examination prescribed by the Judicial Council or (3) have been an incumbent in such court or a predecessor court at the time of the 1950 judicial system reorganization and have retained the position continuously. 115 Cal.Rptr. at 634, 525 P.2d at 74. The California court noted that, under the second procedure

> "a layman who is not an incumbent justice court judge may qualify as a candi-

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date for election to that court by passing the three-hour examination given by the Judicial Council. We have scrutinized the most recent Judicial Council examination and, although it extends over a wide area of the law, the examination is far less rigorous than the two-and-one-half days State Bar examination required of one seeking to become an attorney. We also note the absence of any requirement of college or law school education in order to qualify as a justice court judge." (Footnote omitted) 115 Cal.Rptr. at 636, 525 P.2d at 76.

As will be seen, such a statement would be inaccurate with respect to the vast majority of our nonattorney county judges.

[2] Appellees read the decisions of the United States Supreme Court in *Gideon v. Wainwright,* supra, and *Argersinger v. Hamlin,* supra, as necessarily leading to the conclusion that only a lawyer judge can afford a criminal defendant due process of law when incarceration is a possible result. The expertise of the professional attorney is wasted, they say, if his or her forensic efforts are directed at a judge who has no more educational background to absorb and appreciate such argument than any spectator in the courtroom gallery. As the Court recognized in *Argersinger,* legal and constitutional questions involved in a case actually leading to imprisonment for only a brief period (i. e., a misdemeanor prosecution) are frequently no less complex than those raised in the trial of a major crime. We agree with appellees, that, after *Argersinger,* it is clear that a judge who is ignorant of the law cannot afford due process of law to an individual facing imprisonment upon conviction. We do not agree that a judge who makes such a determination must necessarily be a member of The Florida Bar. Cf. *Shadwick v. City of Tampa,* 407 U.S. 345, 92 S.Ct. 2119, 32 L.Ed.2d 783 (1972). The people of this state through ratification of the revision to Article V of the Constitution in 1972 expressed their consent to a judicial system with limited utilization of nonlawyer county judges as explained above. It is not our function to thwart this decision by the people, provided the constitutional guarantee of due process of law is not abridged.

[3–5] At the behest of this Court, in August, 1974, a Non-Lawyer County Judge Training Program was begun at the Holland Law Center on the campus of the University of Florida, the sole purpose of which was to provide suitable training to allow nonlawyer county judges to be certified to sit only as county judges in those counties with over 40,000 population. Appellant, who is participating in this program, and amicus curiae provided brief information concerning the scope of this program in appendices to their briefs. They argue that such special training qualifies a nonlawyer judge to hear misdemeanor cases punishable by imprisonment. Pursuant to our October 14, 1976, order to supplement the record in this cause, Professor James R. Pierce, the director of the Non-Lawyer County Judge Training Program, has furnished us with material describing in detail the program's curriculum; hours of study, including duration of the course; and testing methods and grading. Professor Pierce's statement and a summary of the curriculum are reproduced as appendices A and B hereto and we see no point in discussing these materials in detail herein. Based on careful scrutiny of the materials synopsized in the appendices, we conclude that a nonlawyer county judge who completes the Non-Lawyer County Judge Training Program at the University of Florida can constitutionally[2] sentence a defendant to a

2. As best we can discern, even the *dissenting* justices in *North v. Russell,* supra, would find that the Florida program we have described passes constitutional muster. As pointed out in the dissenting opinion of Mr. Justice Stewart:

"The judge at North's state habeas corpus hearing concluded:

" 'I think the fact has been established that [Judge Russell is] not a lawyer, he doesn't know any law, he hasn't studied any law.' Judge Russell testified that he had only a high school education. He had never received any training concerning his duties as a lay judge. This is not a case, therefore, involving a lay judge who has received the kind

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prison term for commission of a misdemeanor as specified in Section 775.082(4), Florida Statutes.[3]

The program, which began in August, 1974, is designed to graduate its class of nonlawyer judges on June 30, 1977. It is possible that the program can be accelerated without sacrificing its scope and content. We hold that those judges who properly complete the educational program, including examinations to test their proficiency, may preside over criminal misdemeanor cases as described above. Our ruling operates prospectively only, following the date this opinion becomes final. The use of recently elected nonlawyer county judges in criminal proceedings depends upon their being properly trained and educated in the law. The completion by the newly elected nonlawyer county judges of a training program similar to the current program is constitutionally necessary for them to be able to discharge their criminal constitutional duties. Anything less fails to meet our construction of relevant due process safeguards.

[6] Of course, our holding here does not preclude a county judge not trained in law from presiding over a criminal misdemeanor trial where the accused makes a knowing and voluntary waiver of his right to a trial presided over by a law trained judge. See *Gordon v. Justice Court*, supra.

Accordingly, since at the time appellees came before his court, Judge Treiman had not completed the Non-Lawyer County Judges Training Program, the order of the circuit court granting the writ of prohibition is hereby affirmed.

ADKINS, BOYD, ENGLAND and HATCHETT, JJ., concur.

OVERTON, C. J., concurs with an opinion, with which ADKINS, J., concurs.

ROBERTS (Retired), J., dissents with an opinion.

APPENDIX A

I. INTRODUCTION

The Court on October 14, 1976 entered its order requesting, in essence, a complete report on the structure and conduct of the Non-Lawyer County Judge Training Program. To place the data requested in the proper perspective, it is first advisable to provide a brief description of the origins of the program and its overall format.

The program commenced under the auspices of the University of Florida Division of Continuing Education in cooperation with the University of Florida College of Law on August 15, 1974 with 25 participants all of whom were the non-lawyer county judges who intended to continue in office past their then present term. Subsequently, one judge was withdrawn from the program and two recently elected non-lawyer county judges were added. The current number of judges participating is 26. The program originally was structured into two institutes per year. The summer institute involved a resident period of instruction of four weeks including weekends at the University of Florida College of Law. All courses commenced in this summer institute were concluded during the course of the institute. The remainder of the year was

of special training that several States apparently provide. See *ante*, at 2711–2712 n. 4." [Reference to majority opinion listing Florida, among many other states, as having a "mandatory training program" for nonlawyer judges.]
96 S.Ct. at 2715.

3. § 775.082(4), Fla.Stat., reads:

"(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:
(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;
(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days."

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organized into an institute requiring resident instruction of four days of each month from October through June. Each institute provided 100 hours of classroom instruction covering three separate courses. The program was organized on this basis for both the 1974–75 and 1975–76 program years. The 1976–77 program year was restructured into a single institute involving a complete week (Monday through Friday) of resident instruction each month for eight months (November, 1976 through June, 1977). The 175 total instruction hours for the fifth institute is divided into five course blocks of 35 hours each. One of the five blocks has been further subdivided into two separate courses.

The underlying philosophy of the program was to provide the participants with a substantial portion of a conventional law school education. Standard law school materials, teaching methodology, examinations and instructors have been used throughout the program in furtherance of this objective. The material covered in the various courses involved material for which approximately 100 quarter hours of credit would be offered in the ordinary curriculum of the University of Florida College of Law. This would calculate to 79% of the 126 hours required for graduation from the College of Law. Because of the rearrangement of the material into slightly different course structures with necessary omissions and instances of abbreviated coverage, 79% probably represents a slight exaggeration of actual coverage. Nonetheless, it should stand as a useful estimate.

II. COMPLIANCE WITH ORDER

1. *Curriculum*

Attached hereto is a listing of all courses offered during the program indicating the title of the courses, the law professors teaching the courses, and the University of Florida College of Law counterparts to the courses. Attached also is that portion of the College of Law Catalog describing the law school courses. Please be advised that because of a modest restructuring of the law school courses for program purposes, the catalog descriptions will contain slight inaccuracies. For this reason an appendix of exact course descriptions and examinations prepared by the program professors for use during the program has been submitted to the Court and counsel.

2. *Hours of Study and Total Duration of Program*

During the course of the program approximately 600 hours of resident instruction will have been offered to the participants at the University of Florida College of Law. 575 of these hours have been in the form of regularly scheduled classroom hours. An estimate of approximately 25 hours of instruction has been assigned to the legal writing program to account for the irregularly scheduled lectures and consultations required. The method of instruction used in all courses additionally required literally hundreds of hours in reading, study, composition and preparation outside of the classroom on the part of each participant.

Generally, the total hours of instruction were divided into 32 to 35 hour blocks for each course taught. However, appropriate course coverage on occasion required reallocation of the time available among the courses in somewhat different configurations. The variations would not seem sufficiently significant to detail.

As previously indicated, the program commenced on August 15, 1974 and will be concluded on June 30, 1977.

3. *Faculty and Teaching Methods*

A complete listing of the program faculty is contained in the curriculum attachment referred to in section one. The program faculty were chosen from the faculty of the College of Law and all are experienced and considered well qualified in the areas to which they were assigned. A listing of the

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APPENDIX A—Continued

College of Law faculty indicating degrees held and academic rank is attached for reference.

The teaching methodology for the program is identical to the methodology used by the various professors in their regular law courses. The specific methodology varied greatly from course to course, however, a basic familiarity with general law school teaching methods should suffice to provide an adequate insight as to the overall teaching conduct of the program.

4. *Testing Methods and Grading*

At the outset of the program a basic decision was made against the usual assumption of the absence of testing and grading underlying most other continuing legal education programs. It was thought that to maintain consistency with the philosophy of close replication of a conventional law school experience that some form of testing and academic incentives was necessary.

The basic method of law school examination was retained primarily for its intrinsic value as a substantial learning experience, both in the preparation for exams and in the analysis required in taking them. The examination methods actually used in the program varied widely as can be observed by reference to the complete set of exams given to date contained in the appendix. All exams appear to be appropriate to the course material in each course and in aggregate constitute a fair cross section of conventional law school examination methods.

The grading method used in the program represents an attempt to preserve a system of incentives within a group of students as to which it was thought to be inappropriate to use conventional grading methods. From all observable indications, the system has operated to create the desired level of competition within the group.

The standard grade awarded in each course is simply "complete", which signifies that the student has regularly attended classes and has made a good faith effort in taking the exam. If it is determined that a good faith effort has not been made a grade of "incomplete" is established and an additional examination is scheduled. The system of incentives is predicated upon the ranking of the best ten examinations in each course in the order of accomplishment. The ten best students receive the numerical ranking as a grade in lieu of the standard "complete". Only students who successfully complete the exams on the first taking participate in the ranking.

5. *Post Program Requirements*

At the present time no further study requirements after graduation have been established.

Appendix B to follow.

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APPENDIX B

CURRICULUM
NON-LAWYER COUNTY JUDGE TRAINING PROGRAM

INSTITUTE	COURSES OFFERED	PROFESSOR	COLLEGE OF LAW MATERIAL COVERED
First	1. Florida Constitutional Law	J. C. Quarles	1. LW 653 - Florida Constitutional Law
	2. Civil Procedure	H. O. Enwall	2. LW 521 - Civil Procedure
	3. Evidence	J. R. Pierce	3. LW 625 - Evidence I
Second	1. Evidence	J. E. Lewis	1. LW 626 - Evidence II
	Civil Procedure	J. E. Lewis	LW 522 - Civil Procedure II
	2. Constitutional Law	F. N. Baldwin	2. LW 541 - Constitutional Law I
			LW 542 - Constitutional Law II
	3. Contracts	D. B. Deaktor	3. LW 501 - Contracts I
			LW 502 - Contracts II
	4. Legal Writing	S. Rubin	4. LW 591 - Legal Writing I
			LW 592 - Legal Writing II
Third	1. Property	D. T. Smith	1. LW 531 - Property I
			LW 532 - Property II
	2. Torts	W. Probert	2. LW 571 - Torts I
			LW 572 - Torts II
	3. Criminal Law	J. C. Quarles	3. LW 581 - Criminal Law
Fourth	1. Commercial Transactions	D. Delony	1. LW 601 - Commercial Paper
	2. Criminal Procedure	G. T. Bennett	2. LW 693 - Adversary Process
		J. R. Pierce	LW 693 - Police Practices
	3. Business Organizations	J. J. Froeland	3. LW 602 - Business Organizations
	Corporations		LW 603 - Corporations
Fifth	1. Commercial Transactions II	W. E. Williams	1. LW 600 - Sales
			LW 606 - Security in Goods
	2. Estates & Trusts I	D. T. Smith	2. LW 630 - Estates & Trusts I
	3. Remedies	F. E. Maloney	3. LW 671 - Remedies
	4. Jurisprudence	R.C.L. Moffat	4. LW 610 - Jurisprudence
	5. Domestic Relations	W. O. Weyrauch	5. LW 690 - Family Law
	6. Professional Responsibility	D. B. Deaktor	6. LW 619 - Legal Ethics

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OVERTON, Chief Justice, concurring.

I fully concur in the opinion by Mr. Justice Sundberg.

It must be recognized that this opinion is based on what is constitutionally required and not what is administratively desirable. Our ruling today is necessary because of the dictates of the United States Supreme Court's decision in *North v. Russell*, 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976). It recognizes that a defendant in a criminal trial which may result in imprisonment may be tried by a nonlawyer judge *if* the defendant has an opportunity for a second trial where evidence will be received before a law trained judge. Although this decision of the United States Supreme Court basically approves the historical use of nonlawyer magistrates, it does so conditionally upon at least one of the historical checks on the judge's authority being available to a defendant.

Under the historic English system magistrates have no authority to try a jury case. Checks on their actions include allowing either an appeal de novo (retrial) before a lawyer judge together with magistrates as fact finders or an opportunity for the defendant to ask for a high court jury trial with a law trained judge. In addition, the English system provides for a clerk who is a lawyer to advise the magistrates on the law. Further, the extent of punishments that can be imposed is more limited than in our present system and, in addition, the sentence is subject to review by a court presided over by a law trained judge. *See* The Legal Systems of Britain, British Information Services (March 1976), and English and American Criminal Law and Procedure, A Comparative Analysis (M. T. Sennett and B. J. George, Jr., American Bar Association Section of Criminal Justice, 1976).

We provide none of the foregoing checks in the use of nonlawyer judges in our judicial system. Such would require substantial revision in our present system.

ADKINS, J., concurs.

ROBERTS, Justice (Retired), dissenting.

I respectfully dissent and it is my view that a nonlawyer County Judge in a county with a population of less than 40,000 persons has the constitutional power and duty to exercise the full jurisdiction of that office. It is elementary that the sovereign states have the right to prescribe the qualifications for their state and county officials. Section 6, Article V, Constitution of Florida, provides for a County Court with misdemeanor jurisdiction. According to legislative records, the matter of qualifications for County Judges in counties of less than 40,000 was fully debated and the Legislature resolved that a County Judge in such counties would not be required to be a lawyer; see Section 20(c)(11), Article V, Florida Constitution. Upon submission to the people, the electorate of Florida approved the amendment submitted by the legislative resolution; see Section 20(c)(11), Article V, Florida Constitution. To interfere with that orderly process of establishing the qualifications of a county office would be an act of judicial activism with which I cannot agree. Furthermore, the Tenth Amendment to the Constitution of the United States provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

I am unable to find where the State of Florida ever submitted to the Washington government the power to interfere with the prescribing by the people of this state of the qualifications of its county officers, nor can I find any application of the Fourteenth Amendment to the Constitution of the United States in this situation. The answer to the question appears to me to be simple, viz., the Legislature had the right to resolve in a proposed constitutional amendment for a County Court to have jurisdiction over misdemeanors and to be presided over by a nonlawyer County Judge and the people of Florida had the right to adopt that amendment.

I, therefore, respectfully dissent.

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Nevada Court System
Administrative Office of the Courts

To: John and Terry

From: Ed

Date: March 7, 1979

MONTANA

There are no hard facts on increased case load, these are estimates by the State Court Administrator, Mr. Mike Abley.

When jurisdicition increased -
$1,500 civil litigation
$ 750 small claims

Case load increased over 50% in:
Great Falls
Billings
Muzzola

Fact: A number of justice courts were designated to only handle small claims.

In rural areas better than a 25% increase in case load.

STATE OF NEVADA

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William A. Bible, *Assembly Fiscal Analyst*

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ANDREW P. GROSE, *Research Director* (702) 885-5637

March 7, 1979

M E M O R A N D U M

TO: Senator Melvin D. Close, Jr.

FROM: Andrew P. Grose, Research Director

SUBJECT: S.B. 143/Federal Requirements for Interpreters for the Deaf

I have read PL 95-602 and find the applicable reference beginning at the bottom of page 92 S-TAT 2975 entitled "Interpreter Services for the Deaf."

As I read the law, this section is the authority to provide federal funding for state programs to establish interpreter services. The requirements to qualify for the funds are set forth and are rather simple. Nowhere do I see any federal requirement that a state establish an interpreter program.

The federal law does say that a state program may provide free interpreter services for up to 1 year to any particular entity. After that, the state must charge for the service. S.B. 143 would, by statute, insure a continuing demand for interpreters who would be trained under the federal program.

I see in Ms. Hensley's testimony that she reads PL 95-602 to require that states provide the service. I have difficulting in finding any mandate. The testimony tells that the 1978 amendments to the Rehabilitation Act of 1973 includes "communications" as an addition to architectural barriers which must be removed. This is not quite right. Attached is a copy of the USCA and I've written in "communication" according to the 1978 amendment. Notice, however,

that this is in the part of the board's function dealing with investigating and examining alternative approaches. This is not a section of the law mandating any sort of compliance.

I have not examined federal regulations but it is safe to say that none exist yet pursuant to a November 1978 law. There has not been enough time. In any event, Ms. Hensley references the 1978 law for a new federal requirement. Given the complexity of the way federal laws are drafted, I won't claim with total assurance that no mandate exists but I really think not.

APG/jld
Encl.

EXHIBIT C