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THE VERKHOVNA RADA SHOULD ESTABLISH COURTS OF LIMITED JURISDICTION WITH BOTH CIVIL AND CRIMINAL JURISDICTION AS PART OF UKRAINIAN JUDICIAL REFORM

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I. INTRODUCTION

This paper is written to benefit the Ukrainian Government as a joint venture with *USAID.gov* (United States Agency for International Development) and the United States of America's National Judicial College ("NJC"), which is part of the University of Nevada-Reno.² This paper addresses the usefulness of enacting legislation that creates courts of limited jurisdiction, which possess both civil and criminal jurisdiction, within the Ukrainian judiciary as the Verkhovna Rada (Ukraine's Parliament) addresses judicial reform, which is a key focus of the Ukrainian government.³ The opinions in this paper are those of the author alone and do not reflect the official positions of any organization or body with which the author has any association. This article intends to show the Verkhovna Rada the utility and logic of including courts of limited jurisdiction, including civil and criminal jurisdiction, in the Ukrainian judicial system. For this paper, a Justice of the Peace

Rural Courts for the National Judicial College (NJC). Judge Smith has also taught for the Tennessee Judicial Academy, a part of the Tennessee Administrative Office of Courts. Judge Smith was an integral player in the creation and enactment by the Tennessee Legislature of the Tennessee Municipal Court Reform Act of 2004, Tenn. Code Ann. § 16-18-301 et seq. These statutes updated and revamped Tennessee's municipal court system. During law school, Judge Smith was a municipal magistrate for the City of Birmingham, Alabama (1986-1988) and he acted as a Juvenile Court Referee for Montgomery County, Tennessee (1990-1994).

² See *Former Bar President Ed Blumberg to Chair the National Judicial College*, FLORIDA BAR NEWS (Jan. 23, 2023), <https://www.floridabar.org/the-florida-bar-news/former-bar-president-ed-blumberg-to-chair-the-national-judicial-college/>; *Justice Crothers Teaches in Ukraine*, STATE OF NORTH DAKOTA COURTS (Apr. 22, 2019), <https://www.ndcourts.gov/news/north-dakota/north-dakota-supreme-court/general-news/justice-crothers-teaches-in-ukraine>.

³ See Yuras Karmanau, *Ukrainian Parliament Approves Key Judicial Reform Bill*, ASSOCIATED PRESS (June 29, 2021), <https://apnews.com/article/europe-bills-government-and-politics-b75e2e63db69fd9be6ed2026c781b67b>.

Court⁴ (“J.P. Court”) will reference limited jurisdiction courts that exercise both civil and criminal jurisdiction. Small claims courts, for this paper, shall be limited to special jurisdiction courts that only exercise civil jurisdiction or only exercise criminal jurisdiction.⁵ J.P. Courts in the United States of America (“U.S.” or “United States”) stem back to at least the year 1664, over one hundred years beyond the birth of the U.S.⁶ Ukraine addresses similar formational issues of governmental infancy today that the United States addressed after declaring independence from Great Britain in 1776.⁷ All governments creating a new court system experience “growing pains.”⁸

II. HISTORIC PERSPECTIVE

The concept that an effective judicial system must include both high courts with general jurisdiction powers addressing macro issues of nationwide implication and local/smaller courts that address micro local issues dates back 4000 years to the hero of both the Quran and Bible, Moses.⁹ Where, as acknowledged by legendary Judge William Blackstone’s Commentaries, judges were expected to be incorruptible, unbiased, and able.¹⁰ Article 126 of Ukraine’s

⁴ See, e.g., Jessica L. Schneider, *High Court Strides: Breaking the Stride: The Texas Court of Criminal Appeals’ Rejection of the Lockstep Approach 1988–1998*, 62 ALB. L. REV. 1593, 1595 n.10 (1999).

⁵ See, e.g., *Pourbabai v. Bednarek*, 250 A.3d 1090, 1096 (D.C. App. 2021) (citing D.C. CODE ANN. § 11-1321 (Westlaw through Pub. L. No. 114-257 § 5(a))).

⁶ *Brick’s Estate*, 15 Abb. Pr. 12, 18 (N.Y. Cnty. Surrogate Ct. 1862 and *Van Giessen v. Bridgford*, 83 N.Y. 348, 356-57 (N.Y. App. 1881).

⁷ Compare *Bonnet v. State*, 357 A.2d 772, 803 (N.J. Super. 1976), with Emily Channell-Justice, *Ukraine’s Constitutional Court Crisis, Explained*, UKRAINIAN RESEARCH INST. (Oct. 25, 2020), <https://huri.harvard.edu/ukraine-constitutional-court-crisis-explained>.

⁸ See, e.g., 1955 Op. Atty. Gen. No. 6124, 1955 Ohio AG Lexis 402, at *1-3.

⁹ See *Moses*, NEW WORLD ENCYCLOPEDIA (Aug. 26, 2020), <https://www.newworldencyclopedia.org/entry/Moses>.

¹⁰ See Craig A. Stern, *What’s A Constitution Among Friends? – Unbalancing Article III*, 146 U. PA. L. REV. 1043, 1053 n.41 (1998).

1996 Constitution guarantees an independent judiciary.¹¹ The European Commission for Democracy Through Law (aka the Venice Commission)¹² notes that Ukraine's court system already has a version of J.P. Courts that may exercise administrative, civil, criminal, and juvenile jurisdiction. Still, each of the current Ukrainian courts specialize in a single area of law – not multiple areas of law that transcend the current jurisdictional specialties found in today's Ukrainian judiciary.¹³ Clarity and reform of the judiciary are necessary because the judiciary of Ukraine endures ongoing criticism and corruption charges.¹⁴ Even Ukraine's judiciary has noted this problem.¹⁵ In response to this criticism, the Constitutional Court of Ukraine provides public access to a complaint investigation process for issues of corruption by officials of the court.¹⁶ This

¹¹ In Re: Applicant for Security Clearance {Name Redacted}, 2011 DOHA Lexis 834, at *2 (Defense Hearings & Appeals 2011). *See also* Venice Commission, *infra* note 15, at § I, Art. 6(1). *See* JOHN R. VILE, A COMPANION TO THE UNITED STATES CONSTITUTION AND ITS AMENDMENTS 23 (7th ed. 2021) (explaining that the U.S. Constitution has a separation of powers design similar to Ukraine's Constitution).

¹² *See European Commission For Democracy Through Law (Venice Commission)*, COUNCIL OF EUROPE (Sept. 27, 2021), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2021\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)008-e).

¹³ *Id.* at § II, Art. 18(1).

¹⁴ Mykhailo Zhernakov, *It's Time to Start Treating Ukraine's Corrupt Judiciary as a Criminal Syndicate*, ATLANTIC COUNCIL (Dec. 1, 2020), <https://www.atlanticcouncil.org/blogs/ukrainealert/its-time-to-start-treating-ukraines-corrupt-judiciary-as-a-criminal-syndicate/>; *see also* Richard L. Hasen, *Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Election Meltdown*, 62 WASH. & LEE L. REV. 937, 941 (2005) (discussing questions regarding the validity of elections in Ukraine).

¹⁵ Mathieu LeLoup, *Sometimes Even Easy Rule of Law Cases Make Bad Law*, 18 EUROPEAN CONSTITUTIONAL L. REV. 753, 779 n.94 (2022).

¹⁶ *See Notification of possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine "On Prevention of Corruption"*, CONSTITUTIONAL COURT OF UKRAINE, <https://ccu.gov.ua/storinka/povidomlennya-pro-porushennya-vymog-zakonu-ukrayiny-pro-zapobigannya-korupciyi> (last visited

paper will primarily use Tennessee's version of J.P. Courts to guide how justice can be provided to citizens residing in rural parts of Ukraine.

III. SIMILARITIES BETWEEN UKRAINE AND TENNESSEE

Ukraine's famed agriculture is known as "The Bread Basket of Eastern Europe,"¹⁷ but a declining rural population adversely impacts Ukraine's agricultural economy.¹⁸ Likewise, Ukraine is known for its strong commercial industry.¹⁹ Ukraine has large, modern cities such as Kyiv and Odessa²⁰ in addition to rural areas with approximately thirteen million residents residing in remote farm areas.²¹ Tennessee also has many rural areas like Pleasant View, as well as large cities such as Nashville and Memphis. Court concepts that work in Tennessee are worth the Verkhovna Rada's consideration as Ukraine reforms its court system. Similarities exist between Tennessee and Ukraine's history in diverse racial group tensions and a government that inherited the ravages of war with citizens needing immediate relief from starvation and devastated homes.

Feb. 18, 2023). *Accord* TENN. CODE ANN. § 17-5-201 (West, Westlaw through 2023 legislation).

¹⁷ Andy Gipson, *Press Release on National Agriculture Day 2022*, 297 MSGR 77, 80 (2022). See John Garaventa, *An American Adventure: Down on the Farm, Soviet Style*, 155 NAT. GEO. 768, 797 (1979) (discussing the history of Ukraine's impressive farming culture).

¹⁸ Pamela Bickford Sak, *Environmental Law in Ukraine: From the Roots to the Bud*, 11 UCLA J. ENVTL. L. & POL'Y 203, 205 (1993).

¹⁹ *Id.* See also Tatiana Kyselova, *Dualism of Ukrainian Commercial Courts: Exploratory Study*, 6 HAGUE J. ON THE RULE OF LAW 178-201 (2014).

²⁰ See Sebastian Shehadi, *Ukraine's Largest Cities (And Their Investment Strengths)*, INVESTMENT MONITOR (Nov. 23, 2023), <https://www.investmentmonitor.ai/cities/ukraines-largest-cities-their-investment-strengths-kyiv/>.

²¹ Joseph Astrella, *Ukraine: New UN Survey Shows Rural Households are Increasingly Affected By the War*, FAO OF UNITED NATIONS (Dec. 14, 2022), <https://www.fao.org/newsroom/detail/ukraine-new-un-survey-shows-rural-households-are-increasingly-affected-by-the-war/en>.

The questions that President Andrew Johnson faced from the American Civil War ending included a hostile Congress that wanted to punish Southern states and handcuff the president from undermining the harsh laws that Congress implemented and led to an impeachment trial for President Johnson and distrust between the very actors tasked with reuniting the nation.²² Additionally, the chaos originating from the 1968 shooting of Martin Luther King, Jr. and Robert Kennedy, race riots, and Vietnam War protests came to a sad head in 1970 when four students at Kent State University were shot and killed by Ohio National Guardsmen in May 1970.²³ Kent State was the first time since the American Civil War that American soldiers fired upon American citizens on American soil. These shootings marked a turning point in public perception regarding the Vietnam War.²⁴ More recently, President Zelensky's "selfie videos," which began shortly after the Russians began bombing Kyiv, have become a focal point in Ukraine's war effort in a positive, encouraging, and very effective way in the 2020s, just as Kent State had a starkly negative impact on American national war perception in 1970.²⁵ In 2014, Ukraine faced Kent State-like student war protests and bombastic governmental responses.²⁶

In Ukraine, the current struggle stemming from Russia's invasive war adds stress on Ukrainian race relations.²⁷ Sadly, as Ukraine is learning, if a renegade nation such as Russia refuses to honor the rule of law, the system of arbitrating disputes

²² See generally Sanford Levinson, *The American Civil War: Endings and Beginnings: The Ten Year War: What If Lincoln had not Exited After Four Years?*, 51 *Tulsa L. Rev.* 313, 314-316 (2016).

²³ See *Marbury v. Pace Univ.*, 523 F. Supp. 414, 425-426 (S.D.N.Y. 2021).

²⁴ *Id.*

²⁵ Megan Garber, *The Grim Stagecraft of Zelensky's Selfie Videos*, *THE ATLANTIC* (Feb. 28, 2022), <https://www.theatlantic.com/culture/archive/2022/02/zelensky-ukraine-president-selfie-video-kyiv/622949/>.

²⁶ See SERHii Plokhyy, *The Gates of Europe: A History of Ukraine* 339 (2021).

²⁷ Marissa Jackson Sow, *The War in Ukraine and the Future of the International Legal Order: Ukrainian Refugees, Race, and International Law's Choice and Justice*, 116 *A.J.I.L.* 698, 705 (2022).

falters.²⁸ The Russian invasion of Ukraine has been called “A Gross Violation of International Law,” which created over four million refugees and 13,000 claims of war crimes committed by Russian soldiers against Ukraine citizens as of the spring of 2022.²⁹ Memphis, Tennessee, was the 1968 tinderbox that led to nationwide riots in the United States after American Civil Rights leader (and Nobel Peace Prize winner) Martin Luther King, Jr. died from a racist’s bullet.³⁰ Political pressures and manipulation attempts placed on Ukraine’s President, Volodymyr Zelensky, as he leads his country in the pending war with Russia, are well-documented.³¹ In 1865, President Andrew Johnson, of Tennessee, inherited a U.S. Presidency reeling and angry from the assassination of President Abraham Lincoln just a week after the Civil War finally ended, causing wounds and scars in the United States that dictated chaotic and tension-filled governmental policies for decades.³² Our two jurisdictions have relevant experiences that can benefit both cultures and governments

This author admires the courage displayed by the people of Ukraine in this time of war, strife, and the need to self-

²⁸ See, e.g., *Ukraine v. Russia*, 2019 ICJ Lexis 8 (Int. Ct. Just. 2019).

²⁹ See Claudio Grossman, *The Invasion of Ukraine: A Gross Violation of International Law*, 25 HUM. RTS. BR. 74, 74 (2022); Richard J. Wilson, *War Crimes: Basic Concepts, and Structures*, 37 CRIM. JUST. 3, 3 (2022).

³⁰ See, e.g., *Southlanes Bowl v. Lumberman’s Mut. Ins. Co.*, 208 N.W. 2d 569, 570 (Mich. App. 1973); *Bond v. State*, 9 N.E.3d 134, 140-41 (Ind. 2014); *Tilbern Realty, Inc. v. Lax Drug Co.*, 299 N.Y.S. 2d 758, 758 (Civ. Ct. of N.Y. 1969).

³¹ See, e.g., Michael J. Klarman, *The Degradation of American Democracy – and the Court*, 134 HARV. L. REV. 1, 26 (2020).

³² See, e.g., Jerry L. Mashaw, *Federal Administration and Administrative Law in the Gilded Age*, 119 YALE L.J. 1362, 1462-1463 (2010); Jed Handelsman Shugerman, *The Varied Roles, Regulation, and Professional Responsibilities of Government Lawyers: Professionals, Politicos, and Crony Attorneys General: A Historical Sketch of the U.S. Attorney General as a Case for Structural Independence*, 87 FORDHAM L. REV. 1965, 1973 (2019); a David P. Currie, *The Reconstruction Congress*, 75 U. CHI. L. REV. 383, 383-84 (2008). See also, Richard L. Aynes, *The 39th Congress (1865-1867) and the 14th Amendment: Some Preliminary Perspectives*, 42 AKRON L. REV. 1019, 1043-44 (2009).

identify.³³ How the heritage-rich country of Ukraine addresses today's crisis will leave a governmental legacy for centuries to come.³⁴ The people of Tennessee cannot know or fully grasp the tribulations Ukraine's government and people are enduring. We *can* applaud the Ukrainian justice system for the bravery of continuing to hold court in a world of bombardments.³⁵ The people of Tennessee *can* look at our own history and see similar trials. Hopefully, answers Tennessee created to address our needs regarding courts and due process justice are useful to Ukraine as the Verkhovna Rada attempts to construct a legislative blueprint that adequately addresses Ukraine's judiciary needs.

IV. WHAT ARE J.P. COURTS?

J.P. Courts can be hard to define.³⁶ Some states have J.P. Courts but fail to offer clear legislative definitions of court jurisdiction.³⁷ On the other hand, many states that include J.P. Courts as part of their court system set out very specific statutory jurisdictional guidance for judges.³⁸ It is important for legislatures, such as the Verkhovna Rada, to clearly specify the

³³ Recognize that how one sees themselves and how others view a person may not reach the same conclusion. *See, e.g.*, TENN. CODE ANN. §§ 62-35-127-128, (West, Westlaw through 2023 Legis. Sess.) (discussing civil fines for private citizens or private security firms making false self-identification as persons claiming to be police officers or military personnel).

³⁴ *See generally Ukraine, Russia, and the Cold War and its Legacies: Resources from the American Historical Association*, AM. HISTORICAL AN., <https://www.historians.org/ukraine-russia-resources> (last visited Feb. 22, 2023), for a general discussion on some of the distasteful legacies previous governments of Ukraine rendered.

³⁵ Dmitriy Kamensky, *Ukraine's Court System Operating Despite Bombardment*, 45 LOS ANGELES LAWYER 20, 23 (2022).

³⁶ *See, e.g.* 1909 Op. Atty. Gen., 1909 Ohio AG Lexis 458, at *1.

³⁷ *See Rutgers-The State University v. Fogel*, 958 A.2d 1014, 1018 (N.J. Super. App. Div. 2008); *Dutton v. Wolhar*, 809 F. Supp. 1130, 1139 (D. Del. 1992); *State ex rel. Skrukud v. District Court*, 230 P. 1089, 1090 (Mont. 1924).

³⁸ *See, e.g.*, *Ex Parte Daugherty*, 204 P. 937, 940 (Okla. Crim. App. 1922).

difference between courts of limited jurisdiction, such as J.P. Courts, versus other courts of limited jurisdiction (*i.e.*, “special courts like civil municipal courts or general jurisdiction circuit courts.”³⁹ Because the Tennessee Legislature has drafted clear statutes for the State’s special courts and their J.P. Courts, this discussion will focus on Tennessee, although many other examples of J.P. Courts exist both within the United States⁴⁰ and in other countries.⁴¹ J.P. Courts are creatures of statute.⁴² Legislatures set the jurisdictional limits of said courts.⁴³ Likewise, as creatures of statute, legislatures can eliminate a J.P. Court.⁴⁴

J.P. Courts have many names besides “Justice of the Peace,”⁴⁵ including, but not limited to, the following: municipal courts,⁴⁶ police courts,⁴⁷ and magistrate judges.⁴⁸ Versions of

³⁹ *Pulaski County Municipal Court v. Scott*, 612 S.W.2d 297, 302 (Ark. 1981) (Dudley concurring in part and dissenting in part).

⁴⁰ See TEX. CONST. art. V, § 19; *State v. Ball*, 718 P.2d 686, 691 (N.M. 1986).

⁴¹ See *Lawyers and Service Providers*, NEW ZEALAND MINISTRY OF JUST. (May 13, 2020), <https://www.justice.govt.nz/about/lawyers-and-service-providers/service-providers/justice-of-the-peace/>; *Italy*, GLOBAL ACCESS TO JUST., <https://globalaccesstojustice.com/global-overview-italy/> (last visited Feb. 18, 2023); *El Salvador v. Honduras*, 1992 ICJ Lexis *4, at *487 (Int. Ct. of Just. 1992); and *Jamaica*, JAMAICA MINISTRY OF JUST., <https://moj.gov.jm/justice-peace> (last visited Feb. 18, 2023).

⁴² *Kiser v. Kiser*, 360 P.3d 1139, 1140 (Mont. 2015).

⁴³ *A.B. Paul & Co. v. W.H. Beegan & Co.*, 1 Nev. 328, 329 (1865).

⁴⁴ See, e.g., *State v. Martineau*, 808 A.2d 51, 55 (N.H. 2002) (Nadeau, J., concurring).

⁴⁵ John C. Coolidge, Sr., a Vermont Justice of the Peace and Notary Public, had the honor of giving the oath of office to his son, Calvin Coolidge, for President of the United States on August 2, 1923. See CALVIN COOLIDGE, *THE AUTOBIOGRAPHY OF CALVIN COOLIDGE* 113-114 (2021).

⁴⁶ See ALA. CODE § 12-14-1 (West, Westlaw through 2023 Act 3).

⁴⁷ See N.Y. TAX LAW § 180 (LEXIS through 2023 released Chapters 1-134).

⁴⁸ KAN. STAT. ANN. § 20-302(b) (West, Westlaw through 2023 Legis. Sess.).

J.P. Courts exist in both America's federal court system⁴⁹ and in the Native American tribal court system.⁵⁰ The most famous case in American jurisprudence, *Marbury v. Madison*,⁵¹ established the concept of judicial review in the United States,⁵² and centered on the awarding of a Justice of the Peace judgeship.⁵³ By way of descriptive example, consider Delaware's version of J.P. Courts, which are defined as follows:

The Justice of the Peace Court has jurisdiction over civil cases involving debt, trespass and replevin in which the amount in controversy does not exceed \$25,000. The Justice of the Peace Court has jurisdiction over all landlord/tenant summary possession proceedings. Justice of the Peace Court is authorized to hear certain misdemeanors and most motor vehicle cases (excluding felonies) and may act as committing magistrates for all crimes. Appeals may be taken *de novo* to the Court of Common Pleas in criminal and civil cases, except landlord/tenant possession cases. Those cases may be appealed to a three-judge panel of Justices of the Peace.

⁴⁹ See 28 U.S.C. § 636 (2009). See also, 25 C.F.R. § 11.114, 11.400 (2008) (discussing criminal jurisdiction of the U.S. Department of the Interior's Court of Indian Offenses); 25 C.F.R. § 11.116 (2008) & *Auto Owners Ins. Co. v. Saunooke*, 54 F. Supp. 2d 585, 586 (W.D.N.C. 1999) (discussing civil jurisdiction of the U.S. Department of the Interior's Court of Indian Offenses). See generally *Lamere v. Superior Court*, 131 Cal. App. 4th 1059, 1067 n.6 (Cal. App. 2005).

⁵⁰ See generally, *U.S. v. Bryant*, 579 U.S. 140, 146 n.4 (2016) (discussing limited tribal court felony jurisdiction); 18 U.S.C. § 1153 (2013) (discussing misdemeanor jurisdiction for tribal courts); & *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 808 (2014) (discussing tribal court civil jurisdiction).

⁵¹ 5 U.S. 137 (1803).

⁵² See, e.g., *In Re Hernandez*, 487 B.R. 353, 360 (Bankr. P.R. 2013); *King v. State*, 818 N.W.2d 1, 87 n.65 (Iowa 2012).

⁵³ *Marbury*, 5 U.S. at 154.

The Justice of the Peace Court is Delaware's entry-level courts through which pass the great majority of all criminal cases.⁵⁴

This is a traditional explanation for J.P. Courts. The potential of a single justice of the peace wielding unrestricted authority and unjust application of judicial power has led to both criticism of the process,⁵⁵ and in some states, such as Mississippi, a total revamping of the court.⁵⁶ We now turn to Tennessee's version of J.P. Courts.

V. TENNESSEE'S GENERAL SESSIONS COURTS

Tennessee has three lower tier courts of limited jurisdiction, namely General Sessions Courts (J.P. Courts), juvenile courts, and municipal or city courts.⁵⁷ In Tennessee, city courts are specialized courts of limited jurisdiction, usually carrying the authority to only impose civil fines and primarily focusing on traffic tickets and ordinance violations.⁵⁸ The Tennessee municipal court system is the lower-level court for Tennessee that most closely fits into Ukraine's current Civil Law court design of specialized single judges hearing a narrow

⁵⁴ See *Jurisdiction*, DELAWARE COURTS, <https://courts.delaware.gov/jpcourt/jurisdiction.aspx> (last visited Feb. 19, 2023).

⁵⁵ See Anne E. Nelson, *Fifty-Eight Years and Counting: The Elusive Quest to Reform Arizona's Justice of the Peace Courts*, 52 ARIZ. L. REV. 533, 539 (2010); Angela M. Laughlin, *Learning From the Past? Or Destined to Repeat Past Mistakes? Lessons from the English System and its Impact on How We View the Role of Judges and Juries Today*, 14 WIDENER L. REV. 357, 366 (2009).

⁵⁶ See Roy Dripps, *The Persistence of Memory: The Continuing Influence of Antebellum Missouri Laws Regarding African Americans*, 20 SCHOLAR 57, 74 n.68 (2017) (discussing Mississippi's Justice of the Peace Courts).

⁵⁷ See *Understanding Your Court System*, KNOX COUNTY TENNESSEE, https://knoxcounty.org/chancery/pdfs/Understanding_Your_Court_System.pdf, (last visited Feb. 19, 2023).

⁵⁸ See TENN. CODE ANN. § 16-18-302; *City of Knoxville v. Brown*, 284 S.W.3d 330, 333 (Tenn. App. E.S. 2008).

field of cases pursuant to legislative enactment.⁵⁹ Tennessee juvenile courts primarily hear cases involving children under the age of majority, but most Tennessee juvenile judges are also General Sessions Court judges,⁶⁰ or sometimes, municipal court judges hearing juvenile traffic cases by agreement with the General Sessions Court of the county where the courts sit.⁶¹ Tennessee's General Sessions Court is the lower court "Jack of all Trades" court that was originally called the Justice of the Peace Court.⁶² The nuanced differences between Tennessee J.P. Courts and the later version of said court, called General Sessions Courts, are described as follows:

[G]eneral sessions courts retain many of the attributes of historical justice of the peace courts. They are not courts of record governed by the Tennessee Rules of Civil Procedure. Rather, they retain the informality of pleadings and procedure and jurisdictional limitations of the former justice of the peace courts. Although the authority of general sessions courts has exceeded that of justice of the peace courts, the "principal safeguard . . . [of] the broad right of appeal to the circuit court" is "designed to protect litigants against erroneous judgments"

⁵⁹ Compare Taras Tertychnyi and Natalia Antonyuk, *Survey of International Litigation Procedures: A Reference Guide - Ukraine*, FOUNDATION OF THE INT'L ASSOC. OF DEF. COUNS., <https://cms.law/en/media/local/cms-rrh/files/publications/publications/171106-survey-of-international-litigation-procedures-a-reference-guide-ukraine?v=1> (2017), with TENN. CODE ANN. § 16-18-302, and Tenn. Op. Atty. Gen. 10-17, 2010 Tenn. AG Lexis 27, at *8-9.

⁶⁰ See TENN. CODE ANN. § 37-1-203; *Wilson v. Johnson County*, 879 S.W.2d 807, 810 (Tenn. 1994).

⁶¹ TENN. CODE ANN. § 37-1-146.

⁶² *Ken Smith Auto Parts v. Thomas*, 599 S.W.3d 555, 561-562 (Tenn. 2020); *Elizabethton v. Carter County*, 312 S.W.2d 822, 829 (Tenn. 1958).

which may arise in a court that is, by intent, less formal than the circuit court.⁶³

General Sessions Courts in Tennessee are creatures of statute and derive their jurisdictional authority from legislative enactments.⁶⁴ Tennessee General Sessions Courts serve the same general purpose and intent as Ukraine's Rayon Courts (aka the People's Court or Regional Courts).⁶⁵ The difference is that J.P. Courts address a wide variety of cases,⁶⁶ while Ukrainian courts are specialized and normally focus on a single area of law.⁶⁷ Tennessee Code Annotated section 16-15-501 grants Tennessee General Session Courts jurisdictional authority. Tennessee General Sessions Courts have the statutory jurisdictional authority set out in Tennessee Code Annotated section 16-15-501. Appeals from General Sessions Courts are *de novo* with no presumption of correctness, so any procedural missteps are not fatal because the trial starts anew when a case is timely appealed.⁶⁸

VI. WHAT DO J.P. COURTS DO?

General Sessions Courts relax "[t]he rigid rules of practice . . . owing to the jurisdiction of justices of the peace (now courts of general sessions) being limited to small amounts, was relaxed in proportion as the value of the remedy was enhanced by an increase of

⁶³ McGee v. Jacobs, 236 S.W.3d 162, 167 (Tenn. App. W.S. 2007) (internal citations omitted).

⁶⁴ Burns v. State Farm Fire and Cas. Co., No. E2019-00044-COA-R3-CV, 2020 Tenn. App. Lexis 98, at *9 (Tenn. App. E.S. Mar. 6, 2020).

⁶⁵ Compare, *Ukraine - Judicial System*, ENC. OF THE NATIONS, <https://www.nationsencyclopedia.com/Europe/Ukraine-JUDICIAL-SYSTEM.html> (last visited Feb. 20, 2023), with TENN. CODE ANN. § 16-15-501(a).

⁶⁶ See, e.g., Denver & R.G.R. Co. v. Moss, 115 P. 696, 696-97 (Colo. 1991).

⁶⁷ See generally, Oleksiy Didkovskiy and Anna Tkachova, *Ukraine: Introduction to the Court System*, IFLR 1000 INSIGHT (May 14, 2015), <https://www.iflr1000.com/NewsAndAnalysis/ukraine-introduction-to-the-court-system/Index/3283>.

⁶⁸ Elmi v. Cheatham Cty. Bd. Educ., 546 S.W.3d 630, 636 (Tenn. App. M.S. 2017).

that jurisdiction.”⁶⁹ J.P. Courts offer a speedy, efficient, and inexpensive judicial option for smaller civil claims.⁷⁰ J.P. Courts often offer relaxed evidence presentation procedures than more formal courts such as general jurisdiction courts of potential unlimited damages.⁷¹ The J.P. Courts process is “quicker, simpler and less expensive” than other initial trial court general jurisdiction options.⁷² General Sessions Court civil cases tend to lack order, running as “trial by ambush” or “run by the seat of one’s pants.”⁷³

In criminal cases, J.P. Courts hear and try misdemeanor cases and hold preliminary hearings for felony cases, but this process has been criticized as underutilizing judicial resources.⁷⁴ The highlight of General Sessions criminal procedures, like General Sessions civil cases, is a speedy response to case resolution.⁷⁵ Besides hearing non-jury misdemeanor cases, General Sessions judges may issue search warrants and any other necessary criminal processes.⁷⁶

As previously noted, General Sessions judges in Tennessee usually possess juvenile court jurisdiction.⁷⁷ General Sessions judges may also perform marriage ceremonies.⁷⁸ Some

⁶⁹ 7 TENN. JURIS. § 3 *Certiorari* at “Original Writ” (LEXIS 2023).

⁷⁰ See *Lecates v. Just. of Peace Court No. 4*, 637 F.2d 898, 911 (3rd Cir. 1980); *Davis v. Jones*, 19 So. 841, 842 (1895).

⁷¹ See, e.g., *Bauer v. Livaudais Elec. & Constr., LLC*, No. 17-8221, 2017 U.S. Dist. Lexis 203749, at *10 (E.D. La. Dec. 11, 2017).

⁷² See *Lorenzetti v. Hodges*, 2012 Del. Super Lexis 41 (Sussex Cty. Super. 1/27/2012), at *18.

⁷³ See generally Frank S. Bloch, *Framing the Clinical Experience: Lessons on Turning Points and the Dynamics of Lawyering*, 64 TENN. L. REV. 989, 1004 (1997).

⁷⁴ Willie Santana, *How to Make Better Sessions Judges: Appellate Review: A Proposal to Reform Tennessee’s General Sessions Courts for the 21st Century*, 8 LINCOLN MEM’L U. L. REV. 208, 218-221 (2020).

⁷⁵ Jeffrey S. Bivins et al., *Belmont Criminal Law Journal Symposium 2017*, 1 BELMONT CRIM. L.J. 49, 57 (2018).

⁷⁶ TENN. CODE ANN. § 40-1-110 (West, Westlaw through 2023 legislation).

⁷⁷ See, e.g., *Wilder v. Wilder*, 863 S.W.2d 707, 711 (Tenn. App. W.S. 1992).

⁷⁸ TENN. CODE ANN. § 36-3-301(h) (West, Westlaw through 2023 legislation).

General Sessions judges, through special statute, can hear divorces,⁷⁹ worker's compensation⁸⁰ and probate cases.⁸¹ Tennessee's General Sessions Court system gradually took over the role of the justice of peace with a piecemeal legislative transfer of power in the 1950s and 1960s,⁸² which was designed to provide both a state and local county jurist in a single judge.⁸³ This brings a variety of uniform judicial services to both large cities on a daily basis and rural areas when the court may only meet two or three times per month.⁸⁴ A J.P. Court system in Ukraine could ensure a base or entry level of Due Process in large cities or remote areas, similar to how the procedure has worked in the United States for more than 100 years.⁸⁵ Careful monitoring of a J.P. Court system would be necessary to avoid a rural judge confusing a courtroom with a fiefdom⁸⁶ run by a tyrant.⁸⁷

VII. HOW J.P. COURTS DIFFER FROM SPECIALIZED COURTS

A specialized court, such as a U.S. Bankruptcy Court, is a court of limited jurisdiction that must stay within its narrow

⁷⁹ See, e.g., *Stricklin v. Stricklin*, 490 S.W.3d 8, 10 (Tenn. App. W.S. 2015). If a reader wishes to explore the humorous life of a small-town rural lawyer working a general practice, see JOHN GRISHAM, *FORD COUNTY: STORIES* 95-139 (2010).

⁸⁰ TENN. CODE ANN. § 16-15-501(b)(2)-(4) (West, Westlaw through 2023 legislation).

⁸¹ See, e.g., *In Re Estate of Trigg*, 368 S.W.3d 483, 498 (Tenn. 2012).

⁸² See *Gilreath v. Ferguson*, 260 S.W.2d 276, 277 (Tenn. 1953).

⁸³ *Rains v. Rains*, 428 S.W.2d 650, 654 (Tenn. App. M.S. 1968); *Lawler v. McCanless*, 417 S.W.2d 548, 553 (Tenn. 1967). *But see* *Chrisman v. Metropolitan Life Ins. Co.*, 157 S.W.2d 831, 832 (Tenn. 1941) (showing that some early General Sessions Courts pre-date the 1950s).

⁸⁴ See TENN. R. CRIM. P. 5 advisory committee note.

⁸⁵ See, e.g., *State ex rel. Hazel v. Watkins*, 253 S.W. 781, 782 (Mo. App. 1923).

⁸⁶ Gary Blankenship, *Diversity in the Florida Bar*, 74 FLA. BAR J. 64, 65 (2000).

⁸⁷ *Doe v. Univ. of Mich.*, 936 F.3d 460, 461 (6th Cir. 2019); *Beach v. Lady*, 262 S.W.2d 837, 840 (Ky. 1953) (Simms, J., dissenting).

jurisdictional scope to legitimately exercise authority.⁸⁸ When a specialized court of limited jurisdiction questions or doubts whether the court has authority to act, the procedural mandate is to refrain from acting in a lawsuit.⁸⁹ On the other hand, J.P. Courts are designed to quickly address matters in a smorgasbord approach of handling any “smaller” legal issues that might arise in day-to-day litigation⁹⁰ – especially in rural or remote areas where judges are scarce.⁹¹ As long as *de novo* review is possible, giving J.P. Courts wide discretion to hear misdemeanor criminal and small claim civil cases is a logical option for Ukraine.⁹² Practical demands on the judiciary tends to favor J.P. Courts over specialized courts in rural Ukraine because the concept of Due Process cannot be rigid or static, but must offer some flexibility to be viable.⁹³ Rural justice requires unique application to unforeseen, yet practical and everyday problems, such as how jurors or court staff eat during trials in

⁸⁸ See, e.g., *Vanguard Prods Corp. v. Citrin*, 645 Fed. Appx. 39, 40 (2nd Cir. 2016).

⁸⁹ *Baker v. Coxcom, Inc.*, 74 F. Supp. 3d 1375, 1377 (D. Kan. 2015).

⁹⁰ See, e.g., *State v. Williams*, 814 N.W.2d 460, 483 (Wis. 2012) (Abrahamson, J., concurring). See also *Bassett v. Board*, 1071/2011, ¶ 8 (Oct. 27, 2011), <https://jade.io/article/257368> (discussing how the Supreme Court of Western Australia acknowledges the wide variety of issues that come before Justice of the Peace Courts); Colin Hayes, *The Relationship Between Police Boards and Chiefs of Police in Canada*, THE POLICE JOURNAL, 74 PJ 149 (2001) (discussing the historic role of Justices of the Peace in Western Canada).

⁹¹ See generally *Sroka v. Welcher*, No. 13-CV-190A(Sr), 2016 U.S. Dist. Lexis 7835, at *6 (Jan. 20, 2016) (discussing the difficulty of finding a Justice of the Peace in remote areas during non-working hours).

⁹² See generally *Justice Court of Montezuma County v. Coleman*, 320 P.2d 336, 338-39 (Colo. 1958); *Oney v. Pomfrey*, 105 N.Y.S. 860, 860 (Saratoga Cty. Ct. 1907). See also G. Robert Blakey, *Time-Bars: RICO-Criminal and Civil -Federal and State*, 88 NOTRE DAME L. REV. 1581, 1618 n.52 (2013) (discussing the discretionary similarities of American Justices of the Peace with England’s Justices of the Peace).

⁹³ See, e.g., *Brown v. State*, 335 So.3d 123, 128-129 (Fla. App. 2022).

rural areas⁹⁴ or makeshift security in the courtroom when court safety budgets lack funds.⁹⁵

VIII. CHALLENGES OF ESTABLISHING J.P. COURTS

The first challenge for Ukraine's judiciary, as with all courts in any country, is perception.⁹⁶ Across the globe, a hallmark of perception for judicial Due Process states, "The public interest in the administration of justice requires an unqualified perception of its fairness in the eyes of the general public."⁹⁷ Stated another way by the U.S. Supreme Court, "justice must satisfy the appearance of justice."⁹⁸ Sadly, Ukraine's current judicial system does not carry the automatic trust of businesses across the world.⁹⁹ The Ukrainian people's confidence in their judiciary continually dropped over time after Ukraine broke from the old U.S.S.R. and started its own

⁹⁴ See, e.g., *Blackmon v. Ballard*, No. 2:09-cv-00789, 2010 U.S. Dist. Lexis 95376, at *33 (S.D. W. Va. Aug. 2, 2010).

⁹⁵ Ronald M. George, *Access to Justice in Times of Fiscal Crisis*, 40 GOLDEN GATE U. L. REV. 1, 4 (2009).

⁹⁶ A perception of fairness includes protection for the public or litigants' legitimate fear that outside sources are improperly undermining judicial decision-making. *U.S. v. Leal*, 81 M.J. 613, 620 (U.S. Coast Guard Ct. Crim. App. 2021).

⁹⁷ Sandro Goubran, *Conflicts of Duty: The Perennial Lawyers' Tale -- A Comparative Study of the Law in England and Australia*, 30 MELBOURNE U. L. R. 88, 135 n.301 (2006).

⁹⁸ *Offutt v. United States*, 348 U.S. 11, 14 (1954). See Mark Twain, MARK TWAIN IN VIRGINIA CITY 163-67 (1985) (American humorist Mark Twain (aka Samuel Langhorne Clemens) sarcastically wrote of "Old West" Nevada Territory backwoods "justice" in the early 1870s).

⁹⁹ *LG Display Co, Ltd. v. Obayashi Seikou Co., Ltd.*, 919F. Supp. 2d 17, 32 (D.D.C. 2013). See also *Teleguz v. Kelly*, 824 F. Supp.2d 672, 702-703 (W.D. Va. 2011). Cf. *Tatneft v. Ukraine*, No. 20-7091, 2021 U.S. Dist. Lexis 224418, at *27 (D.D.C. Oct. 18, 2021) (discussing perceived stonewalling efforts by Ukraine regarding enforcement of a judgment).

legal system.¹⁰⁰ Unless the perception of Ukraine's judiciary is seen as one of honesty and independence, no decision from Ukraine's court system will be respected as a ruling on the facts and law without a lingering question of bias.¹⁰¹

The second challenge facing the Verkhovna Rada grafting J.P. Courts into Ukraine's tree of justice is modifying the segmentation of specialized courts—at least for rural courts—because logistics and statistics, not to mention military invasion by Russia, imply that there is a severe shortage of law-trained judges to serve the 764 courts in Ukraine.¹⁰² By using Tennessee's version of J.P. Courts' format for preliminary felony level hearings, misdemeanor trials, traffic cases, or small claim civil cases, judicial resources are better applied to litigation needs because a single judge can hear multiple types of cases.¹⁰³ Overlapping trial areas between judges and courts

¹⁰⁰ See, e.g., Daris Synhaievskya, *What Is the Current Situation With Judicial Reform in Ukraine?*, UKRAINE WORLD (Dec. 16, 2022), <https://ukraineworld.org/articles/analysis/judicial-reform-ukraine.>; Mykhailo Zhernakov and Nestor Barchuk, *Fresh Challenges Threaten to Reverse Ukraine's Judicial Reform Progress*, ATLANTIC COUNCIL (Dec. 12, 2022), <https://www.atlanticcouncil.org/blogs/ukrainealert/fresh-challenges-threaten-to-reverse-judicial-reform-progress/>; *Ongoing Lack of Judge Independence*, UKRAINIAN HELSINKI HUMAN RIGHTS UNION (Dec. 18, 2009), <https://www.helsinki.org.ua/en/articles/ongoing-lack-of-judge-independence/>.

¹⁰¹ See *Tierney v. Four H Land Co. Ltd. P'ship*, 479 N.W.2d 586, 597 (Neb. 2011).

¹⁰² *Ukraine: The Justice System Should Be Strengthened During and Following the War*, INTERNATIONAL COMMISSION OF JURISTS (Nov. 18, 2022), <https://www.icj.org/ukraine-the-judiciary-should-be-strengthened-and-supported-during-and-following-the-war/>.

Oleksii Makarenkov, *Challenges for Justice Under Martial Law: Experience of Ukraine*, 45 LOS ANGELES LAWYER 9, 9-10 (2022).

¹⁰³ Duplication of judicial resources or fragmentation of available judicial resources is not the best use of available judicial resources. *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 9 (1992); *Vaughan v. Romander*, 360 P.3d 761, 768 (Utah App. 2015) (Orme, J., concurring).

also clog a judicial system.¹⁰⁴ As clearly stated by Judge Richard L. Nygaard of the United States Court of Appeals for the Third Circuit: “Courts exist to resolve disputes. The resources of the courts should be used to that end.”¹⁰⁵ A *de novo* appeal option for J.P. Court cases would reduce the concern that justice can be thwarted by egotistic maverick judges, which sadly infest every court system.¹⁰⁶

The third challenge for revamping the Ukrainian judiciary is logistics. Verkhovna Rada should look to Great Britain’s justice system where retired jurists act as “Traveling Judges” and sit in locations needing “extra hands” to meet strained caseload demands.¹⁰⁷ The concept of traveling judges, a version of *pro tem* or interchange of judges between courts and venues, would allow Ukraine to rotate judges among court districts or assign a sitting judge to a specific judicial district for a period of time to hear all routine cases in the assigned area.¹⁰⁸ The more difficult or demanding cases can be statutorily reserved for general jurisdiction courts or juries.¹⁰⁹ This concept would also open the option for retired judges to sit as a stopgap for stagnant or congested dockets.¹¹⁰ In the United States, this type of program is called “riding the circuit.”¹¹¹ In other words,

¹⁰⁴ See, e.g., *Sterling Educ. Assn. v. Bd. of Educ. of the Sterling Regional Sch. Dist.*, No. 277-11/18, 2019 N.J. AGEN Lexis 89, at *14 (N.J. Office of Admin. Law Mar. 14, 2019).

¹⁰⁵ *U.S. v. Bendolph*, 409 F.3d 155, 174 (3rd Cir. 2005), *en banc*, (Nygaard, J., dissenting).

¹⁰⁶ G. Michael Fenner, *Law Professor Reveals Shocking Truth About Hearsay*, 62 UMKC L. REV. 1, 104 (1993).

¹⁰⁷ See Alyssa S. King and Pamela K. Bookman, *Traveling Judges*, 116 A.J.I.L. 477-533 (2022).

¹⁰⁸ See, e.g., TENN. CODE ANN. § 16-2-509 (c)-(d) (West, Westlaw through 2023 legislation).

¹⁰⁹ See generally William H. Simon, *Legality, Bureaucracy, and Class in the Welfare System*, 92 YALE L. J. 1198, 1248 (1983) (discussing how administrative procedure “ALJ hearings” (administrative law judge) may lighten the load of general jurisdiction courts in a similar manner to the role J.P. Courts play).

¹¹⁰ *Id.* See also 28 U.S.C. § 371 (federal senior status judge law); TENN. CODE ANN. § 17-2-302 (Tennessee’s senior status judge law).

¹¹¹ See, e.g., *Thomas v. City of Benoit*, No. 4:18-cv-00115-GHD-JMV, 2018 U.S. Dist. Lexis 183355, at *6 n.4 (N.D. Miss. Oct. 24,); *Deuser v. State*, 697 P.2d 647, 648 (Alaska 1985).

J.P. Courts take justice to the masses instead of requiring the masses to find justice, which is hampered in rural communities.¹¹² It is important to acknowledge that Ukrainian law differs in application and approach to Tennessee law, so a shift in approach—and perhaps mindset—might be required to completely embrace Tennessee’s J.P. Courts.¹¹³ But to most extents, the laws of Ukraine and the United States have a shared, final answer to many legal questions.¹¹⁴

IX. SHOULD UKRAINE HAVE NON-LAWYER J.P. JUDGES?

The Venice Commission specifies that Ukraine’s judiciary is required to be law-trained.¹¹⁵ Tennessee likewise requires a law-trained judiciary for General Sessions judges.¹¹⁶ Tennessee acknowledges that, in some rural areas, necessity requires a non-lawyer judge, but this option occurs only when no law-trained option exists.¹¹⁷ Tennessee’s 1990 statute mandated law-trained judges for General Sessions judges and included a “grandfather clause” allowing non-lawyer judges that were sitting at the time the law went into effect to keep their position until retirement or loss of an election.¹¹⁸ A law degree

¹¹² See generally Michele Statz et al., *“They Had Access, But Did They Get Justice”: Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 28 GEO. J. POVERTY LAW & POL’Y 321, 376 (2021).

¹¹³ Matter of Serihy M. & Olena O.M., 33 Misc. 3d 1223(A) (King Cty. Fam. Ct. 2011), at ¶ 15.

¹¹⁴ See, e.g., U.S. v. Kalichenko, No. 14-CR-95, 2019 U.S. Dist. Lexis 61868, at *23-*24 (E.D.N.Y. Apr. 10, 2019) (discussing the fact that Ukraine’s public policy of protecting children from sexual abuse mirrors the same public policy in the United States).

¹¹⁵ Venice Commission, *supra* note 12, at § IV, Art. 69(6)(1).

¹¹⁶ TENN. CODE ANN. § 16-15-5005(a)(1) (West, Westlaw through 2023 legislation).

¹¹⁷ TENN. CODE ANN. § 16-15-5005(b) (West, Westlaw through 2023 legislation).

¹¹⁸ TENN. CODE ANN. § 16-15-5005(a)(2) (West, Westlaw through 2023 legislation).

does not automatically qualify a lawyer for a judgeship,¹¹⁹ as shown by former U.S. Supreme Court Justice James F. Byrnes, who dropped out of school in the seventh grade.¹²⁰ Judge Connie Kittrell, the municipal judge for Gallatin, Tennessee, is a non-lawyer jurist who was selected as Tennessee Municipal Judge of the Year in 2018.¹²¹ Most states in the United States have some level of the judiciary that includes non-lawyer judges.¹²² Irrespective, there should be a clear preference for law-trained judges in Ukraine, just as the United States prefers law-trained adjudicators deciding major legal issues.¹²³ The use of law-trained judges by Ukraine's J.P. Courts promotes confidence in the fairness of judicial decisions.¹²⁴ A court system that earns the trust of the public will also create a positive belief that the rest of Ukraine's government is generally trustworthy.¹²⁵ A part of this process would be ensuring that the

¹¹⁹ Brian V. Breheny & Elizabeth M. Kelly, *Maintaining Impartiality: Does Media Coverage of Trials Need to be Curtailed?*, 10 ST. JOHN'S J.L. COMM. 371, 399 n.169 (1995).

¹²⁰ *Biographies of the Secretaries of State: James Francis Byrnes (1882-1972)*, U.S. DEPARTMENT OF STATE, <https://history.state.gov/departmenthistory/people/byrnes-james-francis> (last visited Feb. 24, 2023).

¹²¹ See *Kittrell Named Judge of the Year*, GALLATIN NEWS (Nov. 26, 2018), https://www.gallatinnews.com/news/kittrell-named-judge-of-the-year/article_21cae062-f1b3-11e8-9ccd-afe85286d4c6.html.

¹²² See generally, Sara Sternberg Greene & Kristen M. Renberg, *Judging Without a J.D.*, 122 Colum. L. Rev. 1287, 1291, 1311 (2022).

¹²³ See *Howick v. Salt Lake City Employee Appeals Bd.*, 222 P.3d 763, 765 n.6 (Utah App. 2009).

¹²⁴ See generally *C.V.C. v. Superior Court*, 29 Cal. App. 3d 909, 919 (Cal. App. 1973).

¹²⁵ Cf. Jason Mazzone, *Democracy and Distrust: A Theory of Judicial Review Political Trust, Social Trust, and Judicial Review*, 36 CONST. COMMENTARY 297, 299-300, 303 (2021) (presenting a general overview of how courts should garner greater trust than other branches of government because courts, when properly functioning, have the power to curb excesses found in other branches of government. This commentary primarily focuses on the trust issue in the United States, but the overall theory applies worldwide).

committee that selects judges for Ukraine honors concepts such as separation of governmental powers.¹²⁶

X. LESSONS LEARNED AND CONCLUSION

What can be learned by Ukraine from Tennessee's experience in establishing J.P. Courts? Small claims courts, such as traffic courts, are the courts that traditionally have the most contact with the public.¹²⁷ The perception created by that contact between litigant and small claims court members of the judiciary will color how citizens view all judges in Ukraine.¹²⁸ J.P. Courts and small claims courts, often seen as an everyday "People's Court,"¹²⁹ can offer both access to justice in a speedy manner¹³⁰ and occasionally humor.¹³¹ The J.P. Court jurists must take the *job* seriously but *never* take the presiding jurist of the J.P. Court too seriously. In an articulate assessment of J.P. Courts, the Maryland Court of Appeals (the state's highest court) stated: "Historically, the purpose of small claims courts is to provide greater access to justice for the public by allowing claims for small amounts of money to be litigated inexpensively and efficiently."¹³² Scholars declare, "We can

¹²⁶ Stephen Markman, *Keynote Address: Remarks on In Re Certified Questions*, 15 NYU J.L. & LIBERTY 587, 588 (2022).

¹²⁷ See generally Marti Goodlad Heline, *New Kid on the Block Marnocha Maths the Transition from Prosecutor to Judge*, St. Joseph County Bar Assn., at *10 (May 12, 1999).

¹²⁸ Accord GREGORY D. SMITH, TENNESSEE MUNICIPAL JUDGES BENCHBOOK 4 (2nd ed. 2022) (quoting Chief Judge John C. Godbold, former dean of the United States Federal Judicial Center and Chief Judge of the Old 5th Circuit and the 11th Circuit U.S. Court of Appeals).

¹²⁹ Natalie L. Tyrell, *Justice Court: Strange But True Tales From Our People's Court*, 23 NEVADA LAWYER 26, 29 (2015). See also Arvelo by Arvelo v. City of New York, 182 Misc. 2d 101, 103-04 (Richmond Cty. Civil Ct. 1999).

¹³⁰ *Mech v. Brazilian Waxing by Sisters, Inc.*, 349 So. 3d 453, 455 n.2 (Fla. App. 2022).

¹³¹ See, e.g., Cheryl B. Preston, *This Old House: A Blueprint for Constructive Feminism*, 83 GEO. L.J. 2271, 2326 (1995).

¹³² *Bartlett v. Portfolio Recovery Assocs., LLC*, 91 A.3d 1127, 1138 (Md. 2014).

agree that judges should be incorruptible, courageous, good-tempered, diligent, skilled, and smart.”¹³³ As the Verkhovna Rada considers revising their whole judiciary, Parliament will benefit from looking for judges that are humble because, as famed British jurist Lord Camden said over 250 years ago in *Doe ex rel. Hindson v. Kersey*:¹³⁴ “The discretion of the judge is the law of tyrants . . . In the best it is often times caprice, in the worst it is every vice, folly and passion which human nature can be liable.”¹³⁵ Justice J.D. Heydon, of the High Court of Australia, citing the previous quote, took the point a step further saying, “Disloyalty to precedent gives judges uncontrolled power.”¹³⁶

Justice of the Peace Courts with crossover civil and criminal jurisdictional authority will serve as a great asset to Ukraine’s judiciary and should be created by the Verkhovna Rada, but these courts must be properly monitored. Acknowledging the missteps of the past is a good place to begin the trek for a quality judiciary. While perfection cannot be demanded of any judge, honesty can be expected.

¹³³ Lawrence B. Solum, *Empirical Measures of Judicial Performance: A Tournament of Virtue*, 32 FLA. ST. U. L. REV. 1365, 1376 (2005).

¹³⁴ *Doe ex rel. Hindson v. Kersey*, (1765) (Ct. Com. Pl.) (U.K.) (Camden, L., dissenting), reprinted in *Cornwell v. Isham*, 1 Day 35, 56 n.j (Conn. 1802).

¹³⁵ Hugh F. Landerkin, *Custody Disputes in the Provincial Court of Alberta: A New Judicial Dispute Resolution Model*, 36 ALBERTA L. REV. 627, 643 (1997) (showing the universal appeal this concept holds, Judge Landerkin, a Canadian jurist, quotes a Lord High Chancellor of England, for a writing requirement for a judicial master’s degree from the American National Judicial College).

¹³⁶ J.D. Heydon, *Judicial Activism and the Death of the Rule of Law*, 2003 ABR LEXIS 63, at *68 (Feb. 1, 2003).