League of Women Voters of Minnesota Records

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JUDICIAL SELECTION AND TENURE:

"MISSOURI PLAN" WORKS WELL IN ACTUAL RESULTS

By James M. Douglas - Supreme Court of Missouri

The State of Missouri has followed from time to time three different methods of selecting judges, in its search for one which will provide an independent judiciary. As we all well realize, only with an independent judiciary can a real democratic form of government exist. The judiciary must be fully independent, not only of the other branches of government but the so-called pressure groups and of political organizations as well. Our system of government requires an independent judiciary to guard both the Constitution and the rights of individuals. The importance of independent judges was fully recognized by those who wrote our Federal Constitution. One of the complaints in the Declaration of Independence had been addressed to the control of the Colonial judges by the King.

For freedom from the political pressure which ordinarily attends an elective office on a party ticket, security in office is the keystone of the independence of a judge. The extent of that security must be sufficient to free a judge of political dependence but not so absolute as might lead to or permit a neglect of duty or abuse of power.

Previous Methods of Selecting Judges in Missouri

Under Missouri's Constitution of 1820, the Governor appointed all the judges of the Supreme Court and Circuit Courts, with the advice and consent of the State Senate. The judges so appointed held office during good behavior.

Then beginning in 1830 and lasting some twenty years, the method of selecting judges in the various States changed generally throughout the country. Appointment of judges for life was abolished, and election for short terms was substituted in all but a few states. This was done in Missouri by a constitutional amendment adopted in 1851.

Criticisms of Judicial Elections

This method of selecting State judges has become increasingly subject to criticism. It has been fairly well agreed that in many instances the independence of the judge has been impaired and that the standards of our State Courts have been lowered. James Bryce, writing in 1859, commented:

> "Any one of the penomena I have described-popular elections, short terms, and small salaries - would be sufficient to lower the character of the judiciary. Popular elections throw the choice into the hands of political parties, that is to say, of knots of wire-pullers inclined to use every office as a means of rewarding political services, and garrisoning with grateful partisan posts which may conceivably become of political importance. Short terms oblige the judge to remember and keep on good terms with those who have made him what he is, and in whose hands his fortunes lie. They induce timidity, they discourage independence."

Origin of the "Missouri Plan"

The need for improving the judiciary of the States was recognized by the American Bar Association in 1937, when a resolution was adopted by the House of Delegates designed to establish methods of judicial selection which would take judges out of politics as far as possible. There followed an exhaustive study of the subject by the Association's Committee on Judicial Selection and Tenure, under the leadership of John Perry Wood of California.

A year or so later, several of our leading lawyers organized the Missouri Institute for the Administration of Justice, for the purpose of seeking ways and means of improving the administration of justice. This was not a group whose membership was restricted to lawyers or even one where the lawyers were in the majority. Layman participation was sought for and achieved. The Institute's successes were due in a large part, I think, to the fact laymen were in the majority. Of 150 members there were 100 laymen; fifty lawyers represented the Bar of the entire State. On the Executive Committee which was to draft in legal form any recommendations the Institute might foster, there were ten lawyers and five laymen.

A committee of the St. Louis Bar Association presented to the Institute for study and approval a draft of our present method of selecting judges, now referred to as the "Missouri Plan", but patterned after the plan recommended by the American Bar Association. The Institute adopted the draft as its own and prepared it in the form of a constitutional amendment. Then the Institute organized sub-committees in each of the 114 counties to interest the citizens in the plan, and to obtain the necessary signatures to initiative petitions for placing the plan on the ballot.

"Missouri Plan" of Judicial Selection is Adopted by the People

At the election of 1940 the plan was adopted as an amendment of the State Constitution, by more than 90,000 votes. The politically minded were astounded. They had been certain the people would not relinquish the right to nominate the judges at primary elections, and would not approve the proposed plan. And when the people voted for it, the politically-minded were confident the people did not know what they had done. So, through the Legislature, a constitutional amendment was proposed to repeal the plan. This put the issue back again to the voters. Evidently the people had known what they were doing, because when they voted again at the 1942 election the plan was retained by more than 180,000 votes.

The issue was debated once more in the recent constitutional convention of the state, which reincorporated the plan in a proposed new Constitution without change except to place more judges under it. The popularity of the plan with the people had much to do with the large vote by which the new and progressive Missouri Constitution of 1945 was adopted.

Thus the voters of Missouri spoke three times, each succeeding time with increased approval of the plan.

Summary of the "Missouri Plan" for Selecting Judges

The plan is mandatory as to the Supreme Court, the three Courts of Appeals and the Circuit and Probate Courts of Jackson County (which includes

Kansas City) and the City of St. Louis. As to the other thirty-six Circuit Courts (Missouri has thirty-eight Circuits), the plan is optional-subject to adoption by the vote of the people in each circuit. Thus, the plan was first made mandatory as to the Courts where the size of the electorate made it impossible for the candidate to be personally known to more than a handful of voters, and was left optional as to the other Courts where the candidates are closer to the people.

Nominating or Selection Commissions Provided as to Judges

Appellate jurisdiction in Missouri is vested in a Supreme Court and in three separate Courts of Appeals. The State is divided into three appellate Court districts: One for the St. Louis Court of Appeals, one for the Kansas City Court of Appeals, and one for the Springfield Court of Appeals. Judges of the Supreme Court are elected by a State-wide vote, those of the various Courts of Appeals, by the voters of their particular districts.

The plan provides for two sorts of Selection or Nominating Commissions called "Judicial Commissions." The Appellate Judicial Commission selects nominees for all appellate Courts. Then there are Circuit Judicial Commissions, one for each judicial circuit included in the plan.

The Appellate Judicial Commission is composed of three lawyers who are elected, one from each Court of Appeals district, by a mail vote of the lawyers residing in each district; three laymen, one from each Court of Appeals district, appointed by the Governor. The seventh member is the then Chief Justice of the Supreme Court, ex officio, who is the Chairman of the Commission. The office of Chief Justice is rotated among the seven judges of the Supreme Court by their own balloting.

The Circuit Judicial Commissions for the two Circuit Courts have five members each. Two lawyer members are elected by the Bar of the Circuit; two lay members are appointed by the Governor; and the fifth member is the Presiding Judge of the Court of Appeals of the district in which the circuit is located, ex officio, who acts as Chairman.

The members, other than the chairman, have six-year terms, staggered so that no more than one term ends in the same year. Members are not eligible to succeed themselves and serve one term only.

Since our Governor is limited to a single term of four years, no one Governor can effectively control any Commission through his appointments. No member of a Commission, other than the chairman, may hold other public office, and no member may hold any official position in any political party.

The "Missouri Plan" in Action

Whenever a vacancy occurs in the office of any judge affected by the plan the following three steps for nomination, appointment and election are taken:

(1) The appropriate judicial commission selects three persons possessing the qualifications of the office, and submits their names to the Governor;

(2) The Governor must appoint one from the three submitted, to fill the vacancy;

(3) After the person so appointed has served a probationary period of at

least twelve months, he must then be voted on by the people at the next general election. At such election he has no opponent, but runs on his record. His name is placed on a separate judicial ballot without party or political designation, in the following manner:

Shall Judge_____ of the_____ Court be retained in office?

Yes No

The voting is by scratching one answer and leaving the other. If the vote is favorable, he (incumbent) then serves a full term thereafter-six years for a Circuit Judge, twelve years for an appellate judge. But if the judge be not retained, then the nominating and appointing procedure is again invoked.

Thus the judge runs against no political opponent, against no political party or policy, but runs only on his record of service on the bench. Unless that record is corrupt or obviously inefficient, there is every reason to expect that he will receive a favorable vote.

The judges on the bench at the time of the adoption of the plan continue to serve out their regular terms. If such a judge desires to run for reelection upon the expiration of his term, he merely files his declaration of candidacy for re-election, and his name is placed on the judicial ballot without further action of any kind. He is voted on at a general election in the same manner as a newly appointed judge: "Shall Judge_____ of the_____ Court be retained in office?" His candidacy for re-election is not subject to any action by the Judicial Commission.

A judge who has been elected under the plan runs for reelection in the same manner. Neither is his candidacy for re-election subject to any action by a Judicial Commission. In both instances the judges run for re-election on their records, as in the case of a newly appointed judge whose record is passed on by the voters for the first time. Of course, should a judge running for re-election be not retained in office, then a vacancy would arise, and the procedure for selection and appointment provided by the plan would be invoked to fill the vacancy.

"Missouri Plan" Combines Best Features of Other Systems

The plan combines the best features of both the appointive and elective systems and adds new safeguards which assure better judges. The selection of nominees is made by a group which has no other function and whose only interest is the name the best man available. The Judicial Commission is representative of the bench and the Bar, and the people, for whom the Courts are established. The fact that this choice must later be confirmed by the people would make a Governor exercise caution in choosing the appointee from the three selected.

Then the necessity of approval by the entire electorate of the appointee's record tends to insure faithful service on the bench. If a judge decides to make a career of the bench, the requirement of confirmation of his record from term to term likewise insures faithful service throughout his career.

In the seven years the plan has been operating, only lawyers and laymen of high character and integrity have been selected as members of the Judicial Commissions. In that interval we have had a Democrat as Governor, then a Republican, now a Democrat.

During the same interval no selection by any Commission has ever been criticised by the Bar or the press, although nominations to fill nine vacancies have been made - two for the Supreme Court; two for different Courts of Appeals; two for the Circuit Court of Jackson County; one for the Probate Court of Jackson County; and two for the Circuit Court of St. Louis. In every instance all of the nominees have been widely and generally approved. Choosing men of character, ability, learning and industry has been the rule.

Lawyers with successful practices but no political bent have been induced to give up the practice and come on the bench. A State-wide campaign over a State as large as Missouri for office on the Supreme Court has seldom proved to be an attraction to the successful, learned, studious practitioner, but by the present plan men of such type are being added to that Court.

Politics Are Not a Factor in the Election of Judges

It is interesting to observe the operation of the plan in the general elections which have been held since its adoption. In 1942 the State went Republican, but two qualified Supreme Court Judges, both Democrats, ran for re-election and were retained in office. The City of St. Louis, which also went Republican, re-elected six Democratic Circuit Judges and retained a Republican Circuit Judge previously named by the Governor under the plan. Jackson County went Democratic, but the voters there removed one Circuit Judge, a Democrat, and retained one, also a Democrat, who had made an outstanding record on the bench.

In 1944 the Democrats were successful, and fourteen judicial candidates, four Republicans and ten Democrats, all approved by polls taken by the Bar Associations, were retained in office. Finally, in 1946 St. Louis went Republican but retained all ten Democratic judges in office.

Thus it should be apparent that partisan political considerations have been effectively removed from voting on the members of the judiciary. In 1944 Judge Laurance M. Hyde of the Supreme Court and I both ran for re-election. He is a well-known Republican; I am a Democrat. Judge Hyde's brother had been a Republican Governor of Missouri and later the Secretary of Agriculture in President Hoover's Cabinet. The name of Hyde is one which has long been prominently and honorably associated with Republican politics. In that election the State went Democratic. Yet Judge Hyde polled about the same vote as I did in our overwhelmingly Democratic counties known as Missouri's "Little Dixie", and I ran about even with Judge Hyde in the solidly Republican counties.

Some Objections to the Plan Considered

The "Missouri Plan" has been criticized in several particulars. No one has contended the plan is perfect, yet we do feel it is a long step in the right direction.

It is apparent that every advantage is with the incumbent seeking retention in office. The plan has tended to freeze in office the judges who were on the bench when the plan was adopted. But unless an incumbent has proved unworthy or incapable, he should be retained in office, under the spirit and purpose of the plan. The plan looks to security of tenure so as to reduce the turnover in judicial personnel, and permits a judicial career to be a life work. It sometimes takes several years to train and season a judge; much judicial talent is lost just as it has become best equipped to do the job.

On the other hand, an unwanted incumbent can be turned out. In Jackson County in the election of 1942, a judge opposed by the Bar was not retained when he ran for re-election.

Appointments Under the Plan Have Not Been Non-Partisan

Another objection has been that the plan is not non-partisan because the Governors have followed party lines in making appointments. It is true that so far they have, but in each instance their appointments have been lawyers of outstanding character and ability, approved generally by the Bar and the public. But regardless of the political beliefs of those whose names are selected by the Commissions, under this plan the Governor cannot make a poor appointment so long as the Commissions are faithful in their trust.

A Judicial Commission, regardless of its political complexion, has never stacked a list of nominees against the Governor by naming only those of the opposite political party. In every instance those selected have come from both parties.

The plan has been criticized as undemocratic. I do not believe this charge is well founded. The plan was adopted by the people themselves for the purpose of improving their Courts - the Courts which assure their liberties and rights under a democratic form of government. The plan does delegate to a representative group the duty of choosing the nominees and to the Governor the selection of the one, but reserves to the voters the right of election.

In the past, choosing judicial nominees has been delegated to political party conventions as representative of the people but this was not believed to be undemocratic. Later, however, even party responsibility was removed by substituting the direct primary for party conventions.

Under the party primary and election system, our experience in Missouri showed that tenure depends on the prevailing political issues, and not upon a judge's ability, qualifications or record. In the twenty-year period between the first and second World Wars, only twice was a judge of the Supreme Court, who had served a full term, re-elected to another term. The ten elections during this period all turned on National party issues, and the records and qualifications of judicial candidates received but little, if any, attention.

It is true that in a democracy political office-holders, and through them the policies and political principles which they avow, must give periodic accounting to the voters. Their submission to "the will of the people" means, in practice, that they and their policies must be judged at regular intervals by a secret ballot, on which the voters are free to oppose them, and to turn to new and different policies. But what political policy or principle can a judge properly entertain about the administration of his office? It is immediately obvious there can be none whatever.

The only principle a judge can advocate is fair, impartial and sure justice to everyone alike. And this must be so, be he a Democrat or a Republican, or be he a liberal Democrat or a Conservative Democrat. I do not believe the charge that the plan is undemocratic has been sustained; to the contrary, the opposite seems true. Under it a judge's record, which is the only true platform upon which he should stand or fall, is submitted to and passed upon by the voters, unconfused with purely partisan political issues. Any plan which tends towards independent judges surely follows the fundamental principles of democracy, even one which goes to the extent of removing judges from the arena of partisan

politics.

Political Activity by Judges Is Prohibited Under the Plan

The constitutional amendment embodying the Court plan contains a direct prohibition against political activity by a judge whose office is covered by the plan:

He may not directly or indirectly make any contribution to any political party.

He may not hold any office in a political party.

He may not take part in any political campaign.

When Judge Hyde and I were relected in 1944, we spent our entire time at our desks doing our normal work, instead of spending months in campaigning throughout the State, first for nomination at the primary, and then for election at the general election. We were prohibited from making any political contributions. We were thus saved from the usual election-time horde of solicitors for political advertisements and donations. To all of you who have been through a hard campaign, it should be immediately apparent why the plan finds such favor with our bench in this regard. The Circuit Judges who are not now covered by it are eyeing it hopefully.

It has been pointed out that a politician may ordinarily make a good judge if he can stop being a politician when he goes on the bench, but the usual system for election requires a judge to continue to be a politician in order to remain a judge. In this respect we feel we have met that problem. I can safely say the Courts of Missouri have never been held in greater confidence than they are today.

Important Role of Bar Associations Under the Plan

I should not close without mentioning the importance of the organized Bar in the successful administration of the plan. The Missouri Bar is integrated. Its membership includes every lawyer licensed to practice in our State. When a Supreme Court Judge, for example, is up for election, which is State-wide, the Bar polls its entire membership on the question of retaining that judge in office. If the vote is favorable, then the Bar itself assumes the duty of advising the people to vote for his retention. In a number of instances it has caused the county chairmen of the two political parties to join in a public statement printed in the county newspaper, urging a favorable vote.

On the other hand, if the result of the Bar Association's poll is unfavorable, it is then equally its duty to advise the voters against retaining such judge in office. It seems to me that if in a fair and comprehensive poll a judge cannot win the approval of the lawyers, who are in a position to know him and his qualifications better than anyone else, then that judge is not deserving of retention in office.

This responsibility as well as the duties directly imposed on the lawyers chosen to administer the plan, both require a high degree of unselfishness and devotion to duty on the part of the entire Bar. But this is not new to the legal profession. No group of citizens, no profession, gives more of its time and effort to public service than lawyers. I am happy the

leadership which lawyers have traditionally exercised in government has been augmented by this plan of choosing judges. In this field particularly, no others are as well qualified. Who better can exercise this leadership so unselfishly and only in the interest of equal justice to all, than the lawyers themselves? Under any and every method of selecting judges, the proper administration of justice and its continuing improvement is the lawyers everpresent responsibility.

File Copy -

re proposed Judicial Article

of State constitution

(1954?)

MEMORANDUM

House File No. 954 is a bill for an act proposing an amendment to Article VI of the Constitution providing for the exercise of the judicial power of the state. This bill proposes a complete redraft of present Article VI of the Constitution which relates to the courts of the state. The proposal was drafted by a bar association committee following the report of the Constitutional Commission of 1948. The language in each section follows very closely the commission report but differs somewhat widely from the present constitutional provisions. The commission recommended that the entire Article VI be stricken and new sections substituted therefor. The proposed constitutional amendment would accomplish the following purposes:

1. Justices of the peace are no longer made a constitutional office. The legislature is free to abolish this office and substitute such form of inferior courts as it may deem suitable.

2. Courts may be created by majority vote of the legislature instead of by a two-thirds vote as is now required.

3. The members of the supreme court are designated as judges rather than as justices.

4. The legislature may increase the number of judges in the supreme court from six to eight if it so determines.

5. The provision for definite terms of the supreme court is eliminated.

6. The clerk of the supreme court is made an appointive

office with the appointment to be made by the members of the supreme court.

7. The district court judges may be assigned to serve on the supreme court by action of the court itself rather than by action of the governor and it is not necessary that members of the supreme court be incapacitated in order to permit district court judges to serve.

8. The present limitations on the original jurisdiction of the district court are removed.

9. The act provides a uniform term of office of six years for all judges.

10. The term of appointment of judges is changed so that they would hold office until the next election one year after the vacancy occurs instead of thirty days after the vacancy occurred as is now required.

11. The office of court commissioner is no longer a constitutional office although the legislature has power to continue this office if it desires.

12. The amendment makes provision for the use of retired judges so that they may hear and decide causes the same as the judges regularly in office, the purpose being to make use of the abilities of these judges to help over-crowded terms so far as possible.

13. The amendment authorizes the legislature to set up the plan for retirement of judges including the manner in which a judge who is incompetent may be removed from office.

14. The amendment requires that judges of the supreme court, the district court and the probate court be learned in the law and authorizes the legislature to prescribe requirements as to legal training for other judicial offices.

15. The legislature will be authorized to combine the probate courts in the various counties and may add a probate judge in any county.

16. The compensation of the probate judge is to be fixed by the legislature rather than by law as at present. This incorporates in the section relating to the probate court the interpretation of the supreme court concerning salaries of district court judges.

17. The clerk of the probate court is not provided for in the Constitution, leaving this matter for determination by the legislature.

Respectfully submitted,

CHARLES B. HOWARD

Chairman, Constitutional Revision Committee of the Minnesota State Bar Association

3 1 55

FAEGRE & BENSON

1260 Northwestern Bank Building
Minneapolis 2, Minnesota

30 December 1954

Fannie J. Klein, Librarian
Institute of Judicial Administration
40 Washington Square South
New York 12, N.Y.

Dear Mrs. Klein:

Mr. DeParcq has asked me to answer your letter to him under date of December 17th in reference to the amendments to the Minnesota Constitution relating to the courts.

The probate court amendment was adopted in November. A copy of this amendment, omitting the formal parts, is enclosed herewith.

The Minnesota Bar Association's proposed amendment to the Constitution was submitted and approved at the meeting of the Association held in 1953. Certain amendments were proposed at the 1954 session and these matters were referred back to the committee with instructions to report their recommendations to the Board of Governors at the fall meeting. At the fall meeting the Board of Governors postponed action, directing the committee to prepare and mail to each member a copy of the proposed changes. These changes I may state were primarily clerical except for the adoption of a new section relating to retired judges which was proposed by the District Judges Association. I am enclosing a copy of the proposed constitutional amendment as it will appear if the suggestions by the committee are adopted by the Board of Governors.

Since Section 6 of the proposed new article relates to the probate court, it may be of interest to consider what changes will result in this section if the proposed constitutional amendment is adopted. These are as follows:

FAEGRE & BENSON

1260 Northwestern Bank Building
Minneapolis 2, Minnesota

1. The legislature will be authorized to combine the probate courts in the different counties.

2. The legislature may add a probate judge in any county.

3. The probate judge is required to be a lawyer whereas the newly adopted amendment permits the legislature to set up qualifications.

4. The term of the probate judge is extended from four to six years.

5. The compensation of the probate judge is to be fixed by the legislature rather than by law. This incorporates in the section relating to the probate court the interpretation of the supreme court recently announced that district court judges' salaries are fixed by the legislature and are not subject to veto by the Governor.

6. There is no express provision concerning the appointment of the probate court clerk.

Yours very truly,

Charles B. Howard

CBH:ie

enclosures

ARTICLE VI

JUDICIARY

Section 1. Judicial Power. The judicial power of the state is hereby vested in a supreme court, a district court, a probate court, and such other courts, minor judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish.

Sec. 2. Supreme Court. The supreme court shall consist of one chief judge and not less than six nor more than eight associate judges, as the legislature may establish. It shall have original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, but there shall be no trial by jury in said court.

A judge of the district court may be assigned as provided by law temporarily to act as a judge of the supreme court upon its request.

The supreme court shall appoint, to serve at its pleasure, a clerk, a reporter, a state law librarian, and such other employees as it may deem necessary.

Sec. 3. Judicial Districts; District Judges. The number and boundaries of judicial districts shall be established or changed in the manner provided by law but the office of a district judge may not be abolished during his term. There shall be two or more district judges in each district. Each judge of the district court in any district shall be a resident of such district at the time of his selection and during his continuance in office.

Sec. 4. District Court Clerks. There shall be elected in each county one clerk of the district court, whose qualifications and duties shall be prescribed by law, and whose term of office shall be four years. His compensation shall be prescribed by law and shall not be diminished during his term of office.

Sec. 5. Jurisdiction of District Court. The district court shall have original jurisdiction in all civil and criminal cases, and shall have such appellate jurisdiction as may be prescribed by law.

Sec. 6. Jurisdiction of Probate Court. The Probate Court shall have unlimited original jurisdiction in law and equity for the administration of the estates of deceased persons and all guardianship and incompetency proceedings, and such further jurisdiction as the legislature may establish, including jurisdiction over the

administration of trust estates and for the determination of taxes contingent upon death. Until otherwise provided by law, each county shall constitute a probate court district and there shall be one or more probate judges in each district. Each judge of the probate court in any district shall be a resident of such district at the time of his selection and during his continuance in office.

Sec. 7. Qualifications; Compensation. Judges of the supreme court, the district court, and the probate court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office.

Sec. 8. Terms of Office; Election; Vacancies; Reelection. The term of office of all judges shall be six years and until their successors are qualified, and they shall be elected in the manner provided by law by the electors of the state, district, county, municipality, or other territory wherein they are to serve.

Sec. 9. Holding Other Office. Judges of the supreme court and the district court shall not hold any office under the United States except a commission in a reserve component of the military forces of the United States and shall not hold any other office under this state. The term of office of any such judge shall terminate at the time he files as a candidate for an elective office of the United States or for a nonjudicial office of this state.

Sec. 10. Retirement. The legislature may provide by law for retirement of all judges, for the extension of the term of any judge who shall become eligible for retirement within three years after expiration of the term for which he is selected and for the removal of any judge who is incapacitated while in office.

Sec. 11. Appointment. Whenever there is a vacancy in the office of judge the Governor shall appoint in the manner provided by law a qualified person to fill the vacancy, to hold office until his successor is elected and qualified. The successor shall be elected for a six year term at the next general election occurring more than one year after such appointment.

Sec. 12. Retired Judges. As provided by law, a retired judge may be assigned to hear and decide any cause over which the court to which he is assigned shall have jurisdiction.

SCHEDULE

(a) All justices of the peace shall continue in office each for the remainder of his term which remains unexpired at the time this Article takes effect.

(b) All probate judges in office at the time this Article takes effect shall be deemed learned in the law for the purpose of continuance in, and reelection to, any judicial office inferior to the district court.

(c) All municipal courts in existence at the time this Article takes effect shall continue in existence until otherwise provided by law.

(d) Salary schedules, in effect when this Article takes effect for the compensation of judges, court commissioners, clerks of court, and other court employees, shall remain in effect until otherwise provided by law.

(e) Statutory provisions fixing the retirement compensation of judges, in effect when this Article takes effect shall remain in effect until otherwise provided by law.

(f) The office of court commissioner in any county at the time this Article takes effect shall continue in existence until otherwise provided by law.

BALTIMORE
League of Women Voters
411 North Charles Street
BALTIMORE 1, MARYLAND
SARATOGA 7-1961

August 20, 1956.

Dear Mrs. Young:

This is a copy of the Grand Jury Survey that we have completed from the questionnaires that so many of you distributed for us.

We hope your League will find it useful at some time and that it will be of interest to your Attorney General.

If you have any questions about the material Mrs. Christopher Gray, chairman of the study will be glad to answer them.

Many thanks for your co-operation.

Sincerely yours,
Florence Lerner
Mrs. George Lerner
President

FL/evh

Mrs. Basil Young,
84 South 10th Street,
Room 406,
Minneapolis, Minn.

Additional copies 50¢ each.

F3 D3 F19

return to

GRAND JURY SURVEY

- compiled by -
BALTIMORE LEAGUE OF WOMEN VOTERS
411 N. Charles St.
Baltimore 1, Maryland

C O N T E N T S

PREFACE

Desire for a comparison between Maryland and other States.

The Baltimore League of Women Voters wanted to know how grand juries in different parts of the country are organized. Grand juries in Baltimore and Maryland have long enjoyed much power, and command the respect of the courts here and elsewhere. There were several questions of grand jury policy that we thought might best be considered after we know how grand juries in other areas were conducted. Every state has certain statutes devoted to the grand jury. Actually rather than 48 or 49 there are nearer 5,000 ways of organizing grand juries.

Material gathered by questionnaire delivered to 48 State's Attorneys by Presidents of League of Women Voters.

We felt that statements on grand juries from most of the states would give responsible answers to many of our questions. The information needed to come from the office of the Attorney General or from a State's Attorney. In order to make sure that the questions were seriously considered, the president of each State League of Women Voters was requested to deliver the questionnaires in person. These women cooperated with us, and complete credit is given to them for obtaining this information. The Attorney Generals or State's Attorneys gave these questionnaries much time and thought. We gratefully acknowledge their efforts and hope some of the summary we have compiled will be useful to them.

Summary intended to bring old material up to date.

The study is not intended to uncover new material primarily, but rather to look again at information that has been gathered in the past. Have there been any changes in thirty years? Mr. Wayne L. Morse, made a nationwide study of grand juries in 1928-1930 while he was at Columbia University. Most of the questions that we asked in 1955 were the same ones that he asked of judges and prosecutors at the earlier date. They were in these two areas -

Informations versus Indictments..

1. Selection qualifications, term of office of grand jurors, statistical information dealing with the physical make up of the grand juries.

2. The use of the "information" system or the "indictment" method of presenting felonious cases to the courts. Is a grand jury always used in determining whether or not there is sufficient evidence for a felony case to be given to the criminal courts? Does a State's Attorney review the case for presentation to the courts?

Investigatory Powers.....

What use does the grand jury make of investigatory power? How much does the grand jury look into criminality in the area over which it has jurisdiction?

Continuity of grand jury.....

a. The continuity of the grand jury. How is information obtained by one grand jury passed on to the next grand jury?

Grand jury visiting public institutions....

b. The extent of grand juries' investigations of public institutions. Do most grand juries visit jails, hospitals, training schools, entertainment places, etc. and how much use is made of the recommendations resulting from such visits?

15 States did not answer.

Two schedules used are included in the appendix of this report.

The following fifteen stated did not answer our 1955 questionnaire:

Arkansas	Michigan	North Carolina
Arizona	Mississippi	South Dakota
Florida	Nevada	Texas
Indiana	North Dakota	Wisconsin
Louisiana	New Jersey	Wyoming

33 States & D.C. replied.

Thirty-three states and the District of Columbia sent answers, and that body of information gives us a reasonably fair picture of current grand juries. There is good geographical distribution as well as adequate spread of old and new states to show the historical development of grand juries in the U.S.A.

Older & newer states in the study.

Newer States

California	Minnesota	Oklahoma
Colorado	Missouri	Oregon
Idaho	Montana	South Dakota
Illinois	Nebraska	Tennessee
Kansas	New Mexico	Utah
Kentucky	Ohio	Washington
		West Virginia

Older States

Alabama	New York
Connecticut	Pennsylvania
Delaware	Rhode Island
Georgia	South Carolina
Maryland	Vermont
Massachusetts	District of Columbia
New Hampshire	

Common Law States & Statute States....

We know the grand juries in the older states took their traditions more directly from England and depended upon common law or long developed custom. The newer states

are more likely to base their legal system upon statute law or to write down exactly what the law of the land is to be. As a result it follows that older states continue to follow custom and newer states are more inclined toward changing their laws.

Accepted statements given in questionnaires.....

In the matter of change and statutes, it became clear that practice does not always follow the written statute precisely. Also, as stated above, some parts of a state may enforce grand jury laws differently from other parts. Sometimes we have been able to give the practice of the large cities and that of the counties. In a few cases we have the statutes pertaining to grand juries for the state. However, in most cases we have usedthe answers as the State's Attorney or Attorney General gave them to us. When it has been possible, material was checked with other sources.

Limitations of study.....

This survey is most unpretentious. It includes only part of the story of grand juries. We learned something of their organizational practices. It excludes the general history of grand juries, what the grand jury does after it is orgainzed, how it becomes informed of its duties, what the foreman does, what its procedures are in the process of arriving at an indictment, its usual relationship to the office of the State's Attorney or the size of its case load. We felt that we needed information on a few specific points, and we shall keep our attention as much as possible on those problems.

I - THE ORGANIZATION OF THE GRAND JURY

Introduction.

Every state of the United States makes some provision for calling a grand jury in each court's jurisdiction. The grand jury's usual responsibility is to make a true presentment and the petty jury's to hear the case tried. Thus the state constitutions make some provision for the organization of a grand jury and for the selection of a new grand jury every few months or once a year.

The court, or town officials, or a jury commission usually appointed by the judges, choose the grand jurors. They serve for three months to a year. Their names are often on the same list as that used for the petty jury.

Source of names for Grand Jury 1928

A - Selection of Grand Jury Panel: Source of names from tax assessments lists or voting lists.

Source of names for Grand Jury lists -	Number of States...
in 1928	22 - Property assessment lists.
	21 - No particular lists.
	6 - Registration books.
	49
1955 in 1955	6 - Voters lists.
	5 - Assessment lists.
	3 - City directory.
	4 - Chosen by Judges.
	1 - Chosen by Sheriff.
	19

The original pool of names for grand jurors comes from a broad basic list of the adult population in the jurisdiction of the court.

Officials who prepare Grand Jury list.

B - How Grand Jury is Selected: Officials who prepare the Grand Jury list. Usually jury commissioners or town officials, but it may be judge or sheriff.

Officials who prepared Grand Jury lists -	Number of States -
1928 in 1928	38 - lists prepared by town officials or a jury commission
	7 - Judge made choice
	1 - court clerk.
	46

1955 in 1955

13 - jury commission or town officials
3 - judges
2 - court clerks
1 - sheriff
19

Person who drew Grand Jurors name -

C - Person who draws Grand Juror's name from jury box. (Jury commissioner or clerk of court.)

Person who drew Grand Juror's name from jury box -	Number of States..
1928 in 1928	17 - clerk of court or county clerk
	11 - jury commissioner
	7 - no jury box
	5 - judges
	4 - town or municipal officer
	3 - child
	2 - sheriff
	49
1955 in 1955	19 - states the same as in 1928

Qualifications for Grand Jurors...

D - Qualifications of grand jurors - Usually a qualified voter of intelligence with no criminal record, up to age 65 or 70. May be either men or women in most states, but South Carolina and a few others may still requiremale jurors only. The qualifications by states vary slightly but the substance is approximately the same.

Qualifications of Grand Jurors.

In 1955 (19 answered)	In 1928
15 - qualified voters	Qualifications about the same, except that 20 states required males only*
10 - moderate intelligence	
6 - no criminal record	
5 - not over 65 or 70 years of age	

Same or different lists for Grand Jurors...

E - Relations of Grand Jury to Petty Jury.

States using different or same lists for petty and grand jurors.

	Total No. States	Same lists	Different lists
In 1928	48	33	15
In 1955	19	13	6

* See Wayne P. Morse, Survey of Grand Jury System, Oregon aw Review 1931 p.p. 180-181

More often than not the same list is used for the large pool of names from which to draw the final list for grand jury and petty jury.

The maximum number of individuals on Grand Jury...

F - In 1955 the states varied in using from 6 to 24 persons on their grand juries, the median being 17 in both 1928 and 1955. At one time Michigan had a so-called one-man jury, but that was declared unconstitutional. Traditionally there were 23 on a grand jury panel and in 1928 this was the number in 13 states.

1955 - Term of Grand Jury in 13 representative states.

G - The term of the grand jury - median three to four months.

	Term	No. of states.
In 1955	Less than 1 mo.	1
	" " 2 mo.	1
	" " 3 mo.	2
	" " 4 mo.	3
	" " 5 mo. to 1 yr.	3
	Varies	3
	Total	13

Many questions were raised about the term of the grand jury. In states where the grand jury is very active, there is the problem of whether the grand jury can complete its investigations in a short term. Some states feel that long terms of the grand jury exclude many occupational groups from serving, because their business would prohibit a long term of office. The majority of states answering, including one of those that said the term varied, have terms from two to four months. The length of term of grand jurors was not considered in the 1928 study. Several states wrote that in 1955 their grand juries are used so seldom that several years may elapse without calling the grand jury.

Extent discretion exercised in selection of grand jury...

H - Extent to which discretion may be exercised in selection of Grand Jury.

	No. of states	Discretion exercised in selecting -
1928	1928 33	Names for jury list from which grand jury panel is selected.
	3	Individual grand jurors from panel.
	8	Panel without reference to any list.
	7	Grand Jurors by judges (includes Baltimore, Md.)
	36	None after selection of jury lists since they are chosen by lot from panel.

1955

1955 Situation by states same as above. However, it was pointed out that if first group of grand jury names from which the panel would be selected were not satisfactory more names could be drawn.

Method of selecting jury commissioners	No. of States	Choice of grand jury commissioners
in 1928	23	Jury commissioners of whom 19 were appointed by judges.
in 1955	19	Jury commissioners of whom 15 were appointed by judges.

In summing up the information on the organization and make up of grand juries, the size of the jury is close to the original panel of 23 grand jurors in the older states. Smaller juries exist in the newer states. Qualifications for jurors do not change appreciably from older states to newer ones. The most marked change in the make-up of grand juries in the past 30 years has been the inclusion of women on grand jury panels in more states.

The typical grand jury is chosen from lists of persons on assessment lists or voters lists or census rolls. Many of the lists are prepared by a jury commission that is usually appointed by a judge. Names for the grand jury panel are usually drawn from the jury list of names that has been prepared for both petty and grand juries. The jurors have a term of three months or longer. These grand jurors are expected to be qualified voters of good character and reasonable intelligence and not over retirement age. There are more than seventeen persons on the grand jury in at least one-half of the states.

II - INFORMATIONS AND INDICTMENTS

Informations and Indictments..

Traditionally all suspicions of criminality under a court's jurisdiction were looked into and reported to the court by the grand jury. The indictment is the grand jury's formal presentment to the court. Now, in some states the state's attorney reviews many cases of felonious crimes as well as misdemeanors, and sends those he thinks should have a "true bill" directly to court as informations in contrast to the indictments by the grand jury.

U.S. origin of informations..

Since newer parts of the United States found the information method to be a convenience, several states started its use as an alternative to the grand jury method. The Constitution of California in 1879 made it possible to try cases under the information method. In 1884 the U. S. Supreme Court decided that "due process of law" in the Fourteenth Amendment was not violated by California in presenting felony cases by information in lieu of indictment, and as a result other states that were not limited by their constitutions initiated the information method.

Indictment in the oldest states..

Most of the 13 original states with the exception of Connecticut are limited to the indictment method. But older states make some use of the information method, viz. Wisconsin, Michigan, Missouri, Vermont, Florida, Indiana, and Minnesota.

Methods of presentment..

Method pf Presentment	No. of States 1928	1955	Names of States-1928
1. No use of informations Indictments only	22	21	Ala., Ark., Ill., Ky. Me., Md., Miss., N.H. N.J., N.Y., N. C., Ohio, Penn., R.I., S. C....,Tex., Tenn., Va., W. Va.
	*3	*5	Unless waived by the accused; Geo., Ill., Penna.
2. Either indictment or information-information for part of felony case procedures.	19	23	Ark.,Cal., Col., Id. Ioi, Kan., Mich., Mo., Mont., Nebr., Nev., N. Mex., N. Dak., Okla., S. Dak., Utah
Informations except in capital punishment cases.		15	Wash., Wis., Wyo.
a. Indictment when pubishment may be death or life imprisonment.	3		Conn., La., Ver.

* Included in figure above.

Methods of Presentment (con't)

Method of Presentment	No. of States 1928	No. of States 1955	Names of States - 1928
b. Indictment for treason or murder; indictment or affidavit for other felonies.	1		Indiana
c. Indictment for capital crimes and in all cases tried in circuit court; Informations for felony cases in criminal courts of record.	1		Florida
d. Indictment when crime is punishable by 5 - 10 years in State prison.	2		Mass. and Minn.

Defendant waives right of grand jury..

The Attorney General's Conference on crime held in Washington D. C. in 1934 suggested that the right to waive grand jury proceedings be given the defendant in states where informations are not constitutionally possible. Only two additional states, Maryland and Virginia reported further rights of waiver. (Waivers are possible in the counties of Maryland but not in Baltimore.) Some states may not have reported on this matter.

In summary, there are three groupings of states in the use of indictments or informations. About one-third use indictment method exclusively, one-third use informations almost exclusively, and of the other third, eleven states use indictments for the more serious crimes and five use indictments except where the defendant waives grand jury proceedings.

Grand Jury vs. States Attorney..

We were interested to find out whether the Grand Jury or the prosecuting attorney carries out presentment of cases with graater justice. The 1928 survey asked two questions in this field.

1928

JUDGES' OPINIONS AS TO HOW OFTEN PROSECUTORS ISSUE INFORMATIONS AFTER GRAND JURIES HAVE REFUSED TO INDICT...

OPINIONS	INDICTMENT STATES	INFORMATION STATES	TOTALS
Often.....	1	0	1
Seldom.....	91	72	163
Never.....	24	86	110
Did not know or failed to answer.....	268	3	271

JUDGES' OPINIONS AS TO HOW OFTEN GRAND JURIES INDICT AFTER PROSECUTORS HAVE REFUSED TO FILE INFORMATIONS....

OPINIONS	INDICTMENT STATES	INFORMATION STATES	TOTALS
Often.....	8	0	8
Seldom.....	87	76	163
Never.....	2	82	84
Did not know or failed to answer.....	287	3	290

It is obvious from the table above that in 1928 judges felt that the prosecutor and the grand jury dealt equally well with their presentments.

1955

In the 1955 study State's Attorneys were asked a question similar to the above.

DOES GRAND JURY RETURN INDICTMENTS WHEN THEY ARE NOT RECOMMENDED BY THE PROSECUTOR?

OPINIONS	INDICTMENT STATES	INFORMATION STATES	TOTALS
No.....	2	3	5
Yes.....	8	5	13
Has the power.....	1	6	7
Possible but seldom does....	1	1	2
Not function of Prosecutor to recommend.....	5	-	5

It is clear from the table above that there was division of opinion in 1955 among State's Attorneys. They thought some grand juries in both indictment and information states bring indictments without instructions from the State's Attorney. Also, in information states, it seemed important to them that grand jury should have power to freely make such indictments.

Prosecutor and Grand Jury in Indictment States..

Five state's attorneys in indictment states pointed out that it is not appropriate for the prosecutor to make "recommendations" to the grand jury. It is up to the grand jury to give the results of their own decisions in the presentment.

Extent to which Grand Juries initate indictments in 1955..

The same group of state's attorneys in 1955 also gave an opinion of the extent to which grand juries initiated indictments in 1955

(Table on next page)

STATE'S ATTORNEYS' OPINIONS IN 1955 OF EXTENT TO WHICH GRAND JURIES INITIATED INDICTMENTS...

OPINIONS	INDICTMENT STATES	INFORMATION STATES	TOTAL
None.....	2	5	7
Has power - rarely used..	10	6	16
Frequently used.....	5	2	7
With agreement of 12 jurors to make accusations against public official.....		1	1
	17	14	31

It appears from the answers of 31 State's Attorneys in 1955 about the power of the grand jury to initiate indictments that one half thought the grand jury has the power to initiate indictments but seldom exercises it. There were seven states in which the state's attorneys indicated the power to initiate indictment was never used while there were seven other states in which it was frequently used. The power of initiation was used somewhat more in the indictment states where the grand jury has the greater responsibility.

Extent Grand Juries initiated indictments in 1928

JUDGES OPINIONS IN 1928 OF EXTENT GRAND JURIES INITIATED INDICTMENTS..

None.....	56
Has power - rarely used.....	290
Frequently used.....	39
	385

The 1928 opinions of 385 judges, and the state's attorneys' opinions in 1955 closely agree.

After a Grand Jury has brought in witnesses and reviewed the evidence in a criminal matter, they decide whether there is a true bill or no true bill. If they consider there is a "true bill" or evidence for a case in criminal court they present the case by indictment to the court. If the indictment should not have all the material in order, if something important has been omitted, usually the case is returned to the grand jury for completion.

Judges opinions 1928 on prosecutor amending an indictment without returning it to the Grand Jury..

In the 1928 survey judges were asked, "In your jurisdiction can the prosecutor amend the indictment without going back to the grand jury?" 269 judges, who answered the question, showed that it was the prevailing custom to amend indictments as to form, and to do it without going back to the Grand Jury. The majority thought the prosecutor should have the right to make amendments only of form, but some thought he should also have the right to change substance.

1955 opinions on prosecutor and amendments to indictments...

Again in 1955 we asked, "Can the prosecutor amend the indictment without returning it to the Grand Jury?"

HOW INDICTMENT CAN BE AMENDED	INDICTMENT STATES	INFORMATION STATES	TOTAL
No amendment possible....	5	8	13
Not in substance.....	7	2	9
With permission of defendant.....	2		2
Lesser pleas.....	1		1
Amendment possible.....	1	3	4
Possible but not done....		2	2
	16	15	31

We find the same situation is true now as in 1928. The form but not the substance can be changed. In 1928 there were judges decidedly on one side or the other. Some said the prosecutor, when he had the decision of the grand jury, should be able to complete the indictments necessary. Others felt that the prosecutor already had too much power, that the tradition of the grand jury should be maintained. Undoubtedly the same questions would still be raised today. At any rate 22 out of 30 answers in 1955 showed that the prosecutor still can make little change in an indictment, after it is presented by grand jury.

However, in summarizing this section , it is clear that few states make wide use of grand juries' power of initiating indictments, or of bringing in indictments when not recommend ed. According to the 1955 answers, a state's attorney should not "recommend" indictments in "indictment" states. The prosecutor can make technical changes only, when an indictment is imperfect in form as presented by the grand jury.

III - GRAND JURY INVESTIGATORY POWERS IN 1955

Grand Jury Investigatory Powers..

Many judges feel that the investigatory powers that have grown up with the grand jury give the people their most democratic institution. When the grand jury has the power to call witnesses to testify on any matter that is brought to its attention in a responsible manner, it becomes a watchdog over justice, over local government, and over public institutions under its jurisdiction. Others feel that the grand jury is out-worn, cumbersome and unnecessary. Apparently grand juries in few states use their investigatory powers to the full.

1955 Survey Opinions use of Grand Jury Investigatory Power..

The last group of questions in 1955 dealt with the grand jury's investigatory powers in several areas. These were not all included in the 1928 study. The first question was general - "Is broad use made of the grand jury's investigatory power?"

USE OF INVESTIGATORY POWER IN 1955	NO. OF STATES
Little use made	18
Broad use made	13
Did not know	2
	33

1928 Question on Grand Jury Investigations..

Seven of the "thirteen original colony" states said little use is made of investigatory powers. There was no distinction in the answers between "indictment" and "information" states. About half the states do not make use of investigatory powers, in the estimation of those states attorneys that answered the questionnaire in 1955. One of the 1928 questions was whether or not the judges thought the Grand Jury is of value in investigating political fraud and corruption in local government.

GRAND JURY OF VALUE IN INVESTIGATING FRAUD AND CORRUPTION	NO. OF JUDGES
Yes	321
No	68
Sometimes	42
Not much	35

At that time the judges placed considerable value on the grand jury investigations.

Blue Ribbon Juries - 1955 Survey Showed Blue Ribbon Jury in New York Only...

From various grand jury investigations that were being made in 1953 and 1954, the question arose as to how to complete investigations under one term of the grand jury. Also there was consideration given to the value of a "hand picked" grand jury. In New York under Governor Dewey, Blue Ribbon grand juries were inaugurated, - an especially chosen panel

to make and complete a given investigation. We wanted to know if there were other "blue Ribbon" juries. Apparently, there are none. At least in the 33 states that answered there were none except in New York. Even in New York, the Blue Ribbon jury is used rarely, but the Westchester gambling investigation is an example of its use.

Continuity in Grand Jury...

In Baltimore, Maryland, various persons connected with the courts have proposed means of making it possible for the grand jury to have continuity, or to bring to completion investigations undertaken. One proposal was to stagger the appointments of the jurors, to always have some experienced persons on the panel who were thoroughly conversant with current investigations. The following question was asked in 1955 to see whether any states had met this problem: Do you have any grand jurors appointed the the mid-term of a panel, for maintaining continuity in the grand jury? Ther were no mid-term appointments in the 33 states and District of Columbia that answered the questionnaire. Judges or other appoint additional members to the grand jury panel when substitutions are necessary, but no regular mid-term appointments are made. Several answers indicated that judges and members of the state's attorneys office assist new grand juries in orienting themselves. Also they showed that it is the responsibility of the state's attorney to give continuity to the grand jury investigations when one group cannot complete its work. In Baltimore it has been suggested that one panel complete its investigatory work concurrently as the new jury carries on the regular agenda. Such an arrangement would be used only for unusually long or complicated investigations.

Financing Grand Jury Investigations..

It was of interest to us to know how special investigations are financed and we asked, "How is money obtained for the services of those who assist the Grand Jury in making special investigations?"

HOW FUNDS ARE OBTAINED	NO. OF STATES
Court order to local budget department.....	10
State's attorney or attorney general obtain through local gov't..	7
No funds available.....	8
	25

Those states that do not make investigations were not considered in the question. Most of the answers indicated that when the grand jury asked for funds for an investigation the court or state's attorney could obtain them from local government budgets.

Grand Jury Visits Public Institutions..

The last two questions asked about grand jury routine investigations of penal and other public institutions. Judges have stated that the layman's voice is heard as far as penal institutions is concerned, through the visits of the grand jury. Many state's attorneys feel that no particular reforms or changes are brought about through these grand jury penal visits. However, needs have often been met and changes have resulted from the grand jury visits. It is rather discouraging, though, to find the same recommendations have been made year in and year out, in report after report resulting from the grand jury visits.

1955 Questions on Grand Jury Visits to Public Institutions..

A - Are grand jury committees regularly appointed to investigate public institutions?

VISITS TO PUBLIC INSTITUTIONS MADE..	NO. OF STATES
Spasmodically.....	13
None.....	11
Regularly.....	10

Actually a small minority (10) of the states have regular grand jury visits to public institutions.

1955 Implementing Grand Jury Recommendations Resulting from Visits to Public Institutions...

B - What methods are used to implement findings of grand jury regarding public institutions?

IN 1955 GRAND JURY FINDINGS IMPLEMENTED BY..	NO. OF STATES	
Public Opinion (Newspaper reports)	9	
Not implemented.....	6	
Report to court.....	3	
Action of subsequent grand juries.	2	
Agency involved.....	1	(D. C.)
	21	

Public opinion resulting from reporting the grand jury visits in newspapers is the most prevalent means of taking action. The only direct action is taken in District of Columbia and one state where the findings are reported to the appropriate agency. In Baltimore, Maryland, the Criminal Justice Commission keeps a card file of grand jury recommendations resulting from visits to public institutions. These are given to the incoming grand jury, thus making it possible for the new grand jury to take action. One assistant state's attorney said, "There's nothing so dead as the report of a grand jury after its term of office is completed." (Compare above findings with similar answers of former grand jurors of Baltimore.) A group of interested citizens are suggesting in Baltimore that - a grand jury memoranda be sent immediately to appropriate agencies after grand jury visits are made, making it possible to get some results during the term of the grand jury making the recommendation.

SUMMARY..

Grand Jury Lists Requirements..	On certain points we have prevailing customs in the grand juries in a majority of states of the U. S. There are many differences within the states. It has been found that grand juries are called regularly in more than half the states, many chosen from the same basic list used for the petty jury. The basis for such lists is the tax assessment list or census lists. The commission usually chooses the names. An average grand jury panel is made up of 17 or more men and women who serve for three months or more. They are not over 65 or 70 years of age; they are on the voting lists; they are intelligent and have not committed a crime.
Indictments and Informations..	Half the states use grand juries exclusively to bring indictments in felonious crime cases. In slightly more than half the states such cases may be initiated by the district attorney through informations or similar presentations to the court. In most states there is little interference between work done by Grand Jury and that done by district attorney. It is usual in indictment states for the district attorney to amend an indictment in form without sending it back to the grand jury.
Grand Jury Investigations..	Actually, the grand jury initiates investigations in only about half the states. There are only a minority of states where the defendant is unable to waive his right to a grand jury hearing. When the grand jury does exercise powers of investigation, city or county funds are made available through court action or requests from the district attorney's office.
Special Grand Juries..	There is little use made of "special" grand juries for investigations outside of New York City. There are no apparent provisions made for maintaining continuity from one grand jury to the next, in case an investigation is not completed by one grand jury. Such continuity is dependent upon reports and the good faith of the district attorney's office.
Inspection of Public Institutions..	About half the states use grand juries regularly to make inspections of one or more types of public institutions, but no specific means is generally employed to implement the findings of these grand jury committees.

GRAND JURORS REPORT

To supplement the national findings on grand juries, a grand jury questionnaire was sent to former Grand Jurors in Baltimore. This questionnaire dealt with questions that the grand juror faces during his term of office, and that the thoughtful person considers as a member of the Grand Jury Association. The answers were received early in 1955 and fortunately some of the problems have been met by 1956.

The following information was gained from this questionnaire:

1. Some type of printed manual for new grand jurors was considered to be necessary or useful by a majority of those answering the questions. Such a manual has been prepared by members of the Supreme Bench of Baltimore and is now in the hands of grand jurors.

2. The physical arrangements for the grand jury were considered adequate for comfort and secrecy since improvements were made a few years ago. There was also agreement that the time for meeting was convenient, and the four month term is satisfactory.

3. There was less agreement on the extent and kind of business to be handled by grand jurors. However, a small majority thought that the incictment method of handling all cases including minor ones, as has been done in the past, should be continued. It was asked whether "informations" under the direction of the State's Attorney should be used for minor offenses in Baltimore. Some former grand jurors may not have understood the question, since they would have had no experience with informations in Baltimore, unless they knew of the work of the Domestic Relations Court.

4. Baltimore's broad use of grand jury investigatory powers was highly approved by those answering the questions. Most of them recommended enlarging these investigatory powers. Various ways for financing special investigations were suggested. A fund maintained for such purposes was the most prevalent idea. However, the Baltimore City budget department has never failed to pay for such investigations costs, and the State's Attorney is hardly able to refuse the grand jury's request to finance an investigation.

5. A. The subject of special grand juries for investigations found this group divided. Half see a need for such special bodies, as New York's Blue Ribbon Jury and half thought them unnecessary or of doubtful use.

   B. There was the greatest interest shown by the jurors on the subject of Grand Jury visiting the public institutions, and the recommendations following such visits. Almost all of them thought the grand jurors whould continue visiting penal and other public institutions. Likewise almost all thought that the reporting of recommendations from such visits should be more effectively used. Most of the suggestions for improving the situation were in two areas:
      (1) Make individual reports to authorities responsible for each institution immediately after the visit. Check upon action taken before grand jury term is over.

(2) Make sure the new grand jury takes follow-up action on the recommendations of the previous grand jury.

C. The Maryland Grand Juries are carefully chosen bodies that meet regularly. They handle a very large volume of business - - bring indictments in all cases of felonies and in many misdemeanor. They have broad investigatory powers and use those powers often. They conscientiously check the conditions of hospitals, penal and other institutions under their jurisdiction. Three general recommendations regarding the activities of the Baltimore grand jury follow as a result of the questionnaire studies:

(1) The Grand Jury should eventually be relieved of the load of indictments in minor cases of crime. More cases should be handled as they are in the Domestic Relations Court.

(2) Since the grand jury undertakes with careful consideration serious investigations of criminal situations under its jurisdiction, the panel making the investigation should in certain cases be given a limited period beyond the four-month term to bring the investigation to completion.

(3) The reports resulting from grand jury visits to public institutions should be speedily prepared, sent to appropriate authorities for each institution, recommending action where necessary. Subsequent grand juries should follow-up such recommendations. Action for criminal negligence should be taken in extreme cases if situation is not improved.

(A) SOURCES OF NAMES FOR GRAND JURY LISTS - 1955 SURVEY

States Participating..	CHOSEN BY AN INDIVIDUAL		CHOSEN BY LOT		
	Judges	Sheriff	City Directory	Tax Assessment Lists	Qualified Voters List
California				X	
Colorado			X		
Connecticut		X			
Delaware					X
District of Columbia			X		
Georgia	X				
Idaho					X
Kansas				X	
Minnesota	X				
Missouri	X				
Montana	X				
Nebraska					X
New Mexico					X
Oklahoma				X	
Rhode Island					X
South Dakota					X
Utah				X	
Vermont			X		
Washington				X	
TOTAL..	4	1	3	5	6

Note:- States answering judge or sheriff may have misunderstood. The judge or sheriff may have used city directory - assessment list or voters list.

(B) OFFICIALS WHO PREPARE GRAND JURY LISTS - 1955 SURVEY

States	Government Officials		Court			
	County	City	Judges	Jury Commission	Court Clerk	Sheriff
California			X			
Colorado				X		
Connecticut						X
Delaware				X		
District of Columbia				X		
Georgia				X		
Idaho	X					
Kansas		X				
Minnesota	X					
Missouri			X			
Montana					X	
Nebraska				X		
New Mexico				X		
Oklahoma	X					
Rhode Island				X		
South Dakota	X					
Utah				X		
Vermont			X			
Washington					X	
TOTAL	4	1	3	8	2	1

(C) PERSON WHO DRAWS GRAND JURY NAMES FROM JURY BOX - 1955 SURVEY

States	County or City Government Officials	Court Clerk	Jury Commission	Sheriff	Judge
California	X				
Colorado			X		
Connecticut				X	
Delaware			X		
District of Columbia			X		
Georgia					X
Idaho		X			
Kansas	X				
Minnesota					X
Missouri					X
Montana					X
Nebraska			X		
New Mexico					X
Oklahoma	X				
Rhode Island			X		
South Dakota				X	
Utah	X				
Vermont				X	
Washington		X			
Total..	4	2	5	3	5

(D) QUALIFICATIONS FOR GRAND JURORS - 1955 SURVEY

States	Tax Payer	Intelligence	Age Limit	No Criminal Record	Qualified Voters
California	X				X
Colorado				X	X
Connecticut					X
Delaware					X
District of Columbia		X	X	X	
Georgia		X			X
Idaho					
Kansas	X	X			
Minnesota		X		X	X
Missouri			X		X
Montana			X		X
Nebraska			X		X
New Mexico					X
Oklahoma		X		X	X
Rhode Island		X		X	X
South Dakota		X	X		X
Utah	X	X			
Vermont		X		X	X
Washington		X			X
TOTALS	3	10	5	6	15

(E) RELATION OF GRAND JURY LIST TO PETTY JURY LISTS
Survey 1955

States	Different Lists	Same Lists
California	X	
Colorado		X
Connecticut	X	
Delaware	X	
District of Columbia		X
Georgia		X
Idaho		X
Kansas		X
Minnesota	X	
Missouri		X
Montana	X	
Nebraska		X
New Mexico		X
Oklahoma		X
Rhode Island	X	
South Dakota		X
Utah		X
Vermont		X
Washington		X
Total	6	13

In 1928, Mr. Morse found the lists were the same in Minnesota, Montana and Rhode Island.

States	Different Lists	Same Lists
Alabama	x	
Illinois		x
Kentucky		x
Maine		x
Maryland		x
Massachusetts		x
New Hampshire		x
New York	x	
Ohio		x
Oregon		x
Pennsylvania		x
South Carolina		x
Tennessee	x	
Virginia	x	
West Virginia	x	
Total	5	10

(F) MAXIMUM NUMBER OF INDIVIDUALS ON GRAND JURY - Survey 1955

States	(6-8)	(9-11)	(12-14)	(15-17)	(18-20)	(21-23)	(24 or more)
Alabama					x		
California					x		
Colorado			x				
Connecticut					x		
Delaware							x
District of Columbia						x	
Georgia						x	
Idaho				x			
Illinois							x
Kentucky			x				
Kansas				x			
Maryland						x	
Maine						x	
Minnesota						x	
Missouri			x				
Montana	x						
New Hampshire						x	
Nebraska				x			
New Mexico			x				
Ohio				x			
Oregon	x						
Oklahoma			x				
Pennsylvania						x	
Rhode Island						x	
South Carolina					x		
South Dakota	x						
Tennessee			x				
Utah	x						
Virginia	x						
Vermont					x		
West Virginia				x			
Washington				x			
Total	5		6	6	5	8	2

(G) TERM OF THE GRAND JURORS - Survey 1955

States..	Varies	(1 wk.-1 mo.)	(2 mo.)	(3 mo.)	(4 mo.)	(1 yr.)
Alabama				x		
Illinois				x		
Kentucky		x				
Maine						x
Maryland					x	
Massachusetts						x
New Hampshire	x					
New York						x
Ohio					x	
Oregon	x					
Pennsylvania	x					
Tennessee					x	
Virginia			x			
Total...	3	1	1	2	3	3

(H) - EXTENT TO WHICH DISCRETION MAY BE EXERCISED IN SELECTION OF GRAND JURORS - Survey 1955

States	States in which qualified jurors must be listed on the jury list.	Judge may exercise discretion in selecting grand jurors.	Discretion may be exercised in selecting names for jury lists from which a grand jury panel is to be selected.	Discretion exercised without reference to any list in selecting panel.
California			x	
Colorado			x	
Connecticut				x
Delaware			x	
District of Columbia	x			
Georgia			x	
Idaho			x	
Kansas	x			
Minnesota	x			
Missouri		x		x
Montana	x			
Nebraska			x	
New Mexico				x
Oklahoma		x		
Rhode Island	x			
South Dakota			x	
Utah				x
Vermont			x	
Washington	x			
Total..	6	2	8	4

(I) HOW ARE JURY COMMISSIONERS CHOSEN? - Survey 1955

States	Elected	Appointed by Bd. of Supervisors	Appointed by Governor	Appointed by Judge
California				x
Colorado				x
Delaware				x
District of Columbia				x
Georgia				x
Nebraska				x
New Mexico				x
Oklahoma				x
Rhode Island			x	
Utah				x
Illinois				x
Kentucky				x
Maine				x
New York		x		
Ohio				x
Pennsylvania	x			
Tennessee				x
West Virginia			x	
Total	1	1	2	14

These states answered the questionnaire but do not have jury commissioners: Connecticut, Idaho, Kansas, Minnesota, Missouri, Montana, Vermont, Washington, Massachusetts, New Hampshire, New York, Oregon, South Carolina and Virginia.

(J) METHOD OF PRESENTING CASES TO COURT - Survey 1955

(for felonious crimes)
Information in lieu of indictments.

	States	Informations Wntirely	Informations Partically	Informations Not at all.
EASTERN	Connecticut		x	
	Georgia		x	
	Rhode Island			x
	Vermont		x	
	District of Columbia		x	
WESTERN	California	x		
	Colorado		x	
	Montana	x		
	New Mexico		x	
	Utah	x		
	Washington	x		
MID-WESTERN	Kansas	x		
	Minnesota	x		
	Missouri		x	
	Nebraska		x	
	Oklahoma		x	
	South Dakota		x	
Total		5	10	1

(K) AFTER GRAND JURY VISITS PUBLIC INSTITUTIONS - HOW ARE RECOMMENDATIONS MADE EFFECTIVE?

States	Filed in court.	By other Grand Juries	Public Opinion	District Attorneys Office	Report to Agencies	Unable
California			x			
Colorado			x			
Connecticut	x					
Delaware -						
District of Columbia					x	
Georgia			x			
Idaho -						
Illinois			x			
Kentucky			x			
Kansas						x
Maryland		x				
Maine		x				
Minnesota						x
Missouri						x
Montana						x
New Hampshire -						
Nebraska						x
New Mexico	x					
Ohio			x			
Oregon			x			
Oklahoma					x	
Pennsylvania			x			
Rhode Island -						
South Carolina						x
South Dakota -						
Tennessee -						
Utah -						
Virginia -						
Vermont						x
West Virginia -						
Washington			x			

States followed by dash do not have grand jury inspection of public institutions.

(L) HOW SHOULD MONEY BE OBTAINED FOR GRAND JURY SPECIAL INVESTIGATIONS?
Survey 1955

States	Mayor	Court	States Attorney or Attorney General	Governor	County Gov't.	None Available
Alabama						x
Connecticut		x				
Colorado	x					
California	x					
District of Columbia			x			
Georgia						x
Illinois					x	
Kentucky						x
Kansas						x
Maryland			x			
Maine			x			
Minnesota		x				
Missouri		x				
Montana		x				
New Hsmpshire						x
Nebraska				x		
New Mexico		x				
Ohio		x				
Oregon			x			
Oklahoma						x
Pennsylvania		x				
South Carolina						x
South Dakota			x			
Tennessee		x				
Utah			x			
Virginia						x
Vermont			x			
West Virginia		x				
Washington					x	
TOTAL -	2	9	7	1	2	8

BALTIMORE LEAGUE OF WOMEN VOTERS

A

SURVEY OF GRAND JURIES

The Baltimore League of Women Voters is interested in general in state wide pratices, except where there are unusual procedural variations in particular counties. Since 1930, have therebeen state wide changes made in your state in Grand Jury proceedures in the following areas:

1. How your Grand Jurors are selected, number on the panel, term of Grand Jury?

   How are the Grand Jury Commissioners chosen?

2. In the use of Information method over Indictment method of presenting cases to court?

3. Is the prosecutor able to amend the indictment without going back to the Grand Jury?

4. Does the Grand Jury return indictments when they are not recommended by the prosecutor?

5. To what extent do Grand Juries initiate indictments?

6. Is broad use made of the Grand Juries' investigatory powers?

7. Are there special Grand Jury panels appointed to make special investigations? With a fixed or indefinite period of office?

Baltimore League of Women Voters

SURVEY OF GRAND JURIES

8. Do you have any Grand Jurors appointed in the mid-term of a panel, for maintaining continuity to the Grand Jury? In orther words do you have any staggered term Grand Jurors?

9. How is money obtained for the services of specialized investigators for assisting the Grand Jury in making special investigations?

10. Are Grand Jury committees regularly appointed to investigate public institutions?

11. What methods are used to implement the Grand Jury's recommendations made in their final reports?

BALTIMORE LEAGUE OF WOMEN VOTERS B

SURVEY OF GRAND JURIES

The Baltimore League of Women Voters is interested, in general, in state-wide practices, except where there are unusual procedural variations in particular counties. Our survey is to cover the following areas of Grand Jury practices:

1. How the Grand Jury is selected -
   a. Sources of names for Grand Jury list.

   b. Different officials who prepare Grand Jury List.

   c. Person who draws Grand Jurors' names from jury box.

   d. Qualifications of Grand Jurors.

   e. Relation of Grand Jury list to Petty Jury list.

   f. Maximum number of individuals composing a Grand Jury.

   g. Extent to which discretion may be exercised in selection of Grand Jurors.

2. How are the Grand Jury commissioners chosen?

3. Is the Information method used in place of Indictment method (in presenting cases to court)? Entirely? Partially? Not at all?

4. Does the Grand Jury return indictments when they are not recommended by the prosecutor?

5. Is the prosecutor able to amend indictments without going back to the Grand Jury?

6. To what extend do Grand Juries initiate indictments?

SURVEY OF GRAND JURIES

7. Is broad use made of the Grand Juries' investigatory powers?

8. Are there special Grand Jury panels appointed to make special investigations? With fixed or indefinite periods of office?

9. Do you have any staggered term Grand Jurors to maintain continuity in the Grand Jury?

10. How is money obtained for the services of specialized investigators for assisting the Grand Jury in making special investigations?

11. Are Grand Jury committees regularly appointed to investigate public institutions?

12. What methods are used to implement the Grand Jury's recommendations in their final reports?

BALTIMORE LEAGUE OF WOMEN VOTERS
411 N. Charles Street

SURVEY OF GRAND JURY
QUESTIONNAIRE FOR FORMER GRAND JURORS

1. Do the Grand Jurors need a written statement to amplify the verbal charges for greater understanding of Grand Jury responsibilities? (The New York Grand Jurors Association issues a manual to all new Grand Jurors.)

2. Are the physical arrangements for the Baltimore Grand Jury hearings adequate? e.g. sound proffing, size, lighting, etc.

   Are the morning hours the most convenient ones for most of the Grand Jurors to meet?

3. Do you think the Information method, in minor offenses, of introducing cases to the Baltimore Court would be efficacious? (The Information method is where the State's Attorney presents the case directly to the court instead of the Grand Jury making the indictment.)

4. Do you believe the Grand Jury should make broader use of its investigatory powers?

   How could the Baltimore Grand Jury make an effective investigation of a complicated problem without special funds being authorized by the mayor and granted by the Comptroller's office?

5. Is the four month term of office satisfactory to most Grand Jurors? Should it be longer? Shorter?

   b) In order to complete investigations that may last more than four months, would it be advisable to have some Grand Jurors on each panel serve a split term, that is have some Grand Jurors appointed in the middle of each four month term?

   c) New York has a so called Blue Ribbon Grand Jury appointed to make special investigations, no time limit is set for the period this Grand Jury serves. Is this type of Grand Jury necessary?

6. Do you think sufficient use is made of the report of the out-going Grand Jury?

7. Should the visiting committees continue their visits to public institutions?

   b) If so, how could their recommendations be acted upon more effectively?

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The League of Women Voters of Minnesota

COUNTY COURT SURVEY

Memo to: Local League Presidents
From: Peggy Gross, Judiciary Chairman
Re: County Court Survey
February 21, 1975

In June, 1972, Chief Justice Oscar Knutson requested the National Center for State Courts to initiate a survey of the Minnesota County Courts. With the support of the County Court Judges and the leadership of Judge Charles E. Cashman, President of the Minnesota County Court Judges' Association, the survey was completed during 1973.

The objective of the survey was to include observation of the organization of the county court system, the utilization of personnel within the system, and the education of personnel within the system. Beyond the monitoring of the system, the Center agreed to provide a description of the county court system as it presently exists along with recommendations to the county court judges, the Judicial Council and the State Court Administrator to make adjustments in rules and practices necessary to get the best results from the new system.

SUMMARY OF IMPORTANT FINDINGS AND RECOMMENDATIONS

The Minnesota County Court has vastly improved the quality and service of the state court system to the people of Minnesota. Throughout the study visits, courts personnel expressed satisfaction with the court's success in meeting its legislative goals: more highly qualified and full time-judges administering justice in each county within the state. It is to the credit of judicial personnel within the system that the majority of problems associated with the rapid implementation of a new and far-reaching system have been resolved so quickly.

More can be done, however, to advance county court organization; in order to get the best results from the new system, the study team recommends several organizational changes or improvements. These improvements are directed toward achieving a more clearly defined organizational structure throughout all levels of the system and toward more flexible and efficient use of personnel within that system. The principal recommendations are highlighted below.

Multi-Judge Redistricting Plan

County Court legislation was drafted to enhance the "effective administration of justice" (M.S. 487.01) This included the consolidation of several counties into a single county court district. Twenty-four such multi-county districts were created from 58 counties with the remaining counties forming single county districts. Legislation provided an option, however, which allowed for the separation of previously combined districts. Although the act is said to have been intended to provide one full-time judge for roughly 25,000 people, twenty-six counties separated into single county districts in which one judge was serving anywhere from an estimated 6,000 to 44,000 people. The creation of these single county-single judge county courts creates problems. One problem is that some of the single judge courts are served by lay judges who are not permitted to perform any more duties than they previously were allowed; they can't take on any of the concurrent jurisdiction that was given to the County Court.

Help from outside the district is then required in those instances and for absence due to disqualification, illness, continuing education attendance and vacation as well. Based on an effort to eliminate single judge county court districts and on other considerations, some of which are to be found in the American Bar Association's Commission on Standards of Judicial Administration Standards Relating to Court Organization, the study team recommends the formulation of multi-judge districts with a minimum of three judges per district. (p. 49)

Administrative Lines and Duties

It is strongly recommended that all administrative lines and duties be clearly defined (p. 53). By recent legislative amendment, the Chief Justice is empowered to appoint a chief judge of county court in districts electing more than one judge. It is recommended that this provision carry over to the recommended district realignment. The chief judges, subject to the approval of the Chief Justice, should have the responsibility to identify administrative tasks and determine which can be delegated to non-judicial personnel. Should the position of regional court administrator be established, this delegation could be done by that person. Duties should then be delegated to specific judicial and support personnel - individuals, not groups - within the county court district.

Within the county court district it is emphasized that administrative lines of authority from county and district court judges to county court clerks and from clerks to remaining judicial personnel should be clearly drawn. It is extremely important that the chief county court judge have input into the hiring and firing as well as the supervision of the clerk and that the clerk has a complete understanding of his or her responsibilities to county court..

Combined Clerical Staff

For more flexible, efficient use of personnel, elimination of duplication of efforts and greater professionalism, it is recommended that clerical and administrative staffs for district and county courts be combined (p. 54) and that these staffs be organized along functional rather than jurisdictional lines.

Statewide Personnel System

It is recommended that a statewide system for non-judicial personnel be developed. A majority of county court judges and clerks throughout the state cited greater organizational and procedural uniformity as a chief requirement for an improved system. At present there is scarcely any development or uniformity among job descriptions, qualifications, application and selection procedures, training and compensation. It is recommended that the ABA Standards Relating to Court Organization be used as a guideline for Minnesota's system (p. 59).

Steps Toward Statewide Uniformity

In responding to the widely recognized need for greater statewide uniformity, the study team has made a number of additional recommendations which aim at greater conformity in rules, procedures and forms used by the court and in accessibility to the court (p. 62).

Statewide Financing

In order to "assure justice which is timely and uniformly applied" (emphasis added), "promote impartial judicial decisions of the highest quality possible" and provide "reasonable availability of judicial services" uniformly throughout

the state, it is recommended that financing of the courts be assumed by state government (p. 79) as prescribed by the ABA Standards Relating to Court Organization 1.50 (tentative draft). As mentioned in the ABA Standards commentary, "financing by local government leads to fragmented and disparate levels of financial support..., to direct involvement of the judiciary in local politics, to rigidity and very often parsimony in provision of needed resources; and to divided and ineffective efforts to make use of the increasing level of financial grants to state government that are being provided by the federal government." A centrally financed and effectively administered system should eliminate these shortcomings and hopefully serve to focus financial responsibility and enhance the organizational structure of the judicial branch.

Statewide Administration of the Courts

It was an intent of this study to express the "attitudes" and "opinions" toward court organization of county court personnel at the administrative and judicial levels.

To this end the following steps were taken. Preliminary to the formal study, visits were conducted with state judicial leadership and county court judges throughout the state to determine areas of particular interest and concern. On this basis, a preliminary draft of the survey instrument was drawn and tested in the pilot area. The questionnaire phase was succeeded by visits to judges, clerks, and deputies within the pilot region. Revisions to the questionnaire and interview format were made. Final copies of the former were distributed. Ninety-three percent of the judges and 88% of the clerks responded. Follow-up visits were conducted in 25 counties with as many courts personnel as possible within the study's time contraints.

As a basis for discussion, then, the study team has drawn on the questionnaire date, on-site empirical date, and widely varying subjective date supplied by courts personnel throughout the state to provide a general understanding of county court operations.

Taken directly from Minnesota County Court Survey, National Center for State Courts, March 1974.

Helene

INTERIM REPORT

Select Committee
on
The Judicial System

February, 1975

INTERIM REPORT

TABLE OF CONTENTS

I. INTRODUCTION

The following report is submitted to the Minnesota Legislature for its consideration and information on behalf of the Judicial Council's Select Committee on the Judicial System. We would like to emphasize that, in the interest of serving the 1975 session of the Legislature and the subsequent time constraints this places upon the Committee and its staff, we are submitting an interim report. Steps are being taken to incorporate Committee recommendations into the format of proposed legislation. The Committee will continue to meet, to consider issues of concern to Minnesota's court system and, perhaps, to make additional recommendations. When this supplementary work is completed, a final report will be issued which will include any further recommendations and necessary refinements and elaboration.

II. BACKGROUND

In the spring of 1974 the State Judicial Council[1] began studying recent suggestions for structural revision of the Minnesota court system. Bills were introduced in the 1973-1974 Legislature which would have effected systemic changes in both the structure and administrative operation of our courts. These sweeping changes collectively assumed the title of "court unification."

"Court unification" soon became a catch-all term for many varieties of court reform. Little comment, however, had been made on how "court unification" would respond to needs specifically identified to exist in the Minnesota court system.

Chief Justice Robert J. Sheran encouraged the Judicial Council to create a broadly based committee to sort through the many previously identified needs of our court system and to recommend appropriate legislative action. Thus the Judicial Council sponsored the creation of the Select Committee on the Judicial System; and with a grant from the Governor's Commission on Crime Prevention and Control, the Chief Justice was asked to appoint to the Select Committee representatives of diverse points of view. The Select Committee on the Judicial System, then, consisted of the following members from all levels of the Bench, the Bar and representatives from numerour public groups:

Hon. Elmer L. Andersen
Rep. Tom K. Berg, District 56B
Hon. Charles E. Cashman, Steele County Court

Thomas Conlin, attorney, St. Paul
William J. Cooper, President, Minnesota Citizens for Court Reform
Peggy Gross, League of Women Voters
Gene W. Halverson, past-president and representative of the Minnesota State Bar Association, Duluth
James Harper, attorney, Duluth
Rep. Neil S. Haugerud, District 35A
Hon. Harvey Holtan, 5th Judicial District
Hon. Charles C. Johnson, Blue Earth County Court
Robert W. Johnson, Anoka County Attorney
Hon. James H. Johnston, Hennepin County Municipal Court
C. Paul Jones, State Public Defender
Hon. Allan R. Markert, Ramsey County Municipal Court
Edward G. Novak, Commissioner of Public Safety
David Roe, President, Minnesota AFL-CIO
Hon. Bruce C. Stone, Hennepin County District Court
Jon Wefald, Commissioner of Agriculture
Hon. Lawrence R. Yetka, Associate Supreme Court Justice and Chairman of the Judicial Council, was appointed to chair the Select Committee

The Select Committee was supported by a research staff. Austin G. Anderson, formerly Minnesota attorney and Regional Director of the National Center for State Courts and now Director of the Institute for Continuing Legal Education at the University of Michigan School of Law, was appointed Project Director for the Select Committee. Susan C. Beerhalter, formerly a research associate for the National Center for State Courts who participated in the Minnesota District and County Court Surveys, and Steven J. Muth, attorney, who assisted Austin G. Anderson in the developmental stages of the Continuing Education program for State Courts Personnel prior to the appointment of the program's permanent director, were appointed research associates. Eleni P. Skevas, formerly a courts specialist for the Governor's Crime Commission and now a University of Minnesota law student, performed additional research activities.

The staff commenced work in July collecting and preparing literature for the Committee to study. A study of major court reform efforts throughout the United States was produced and much documentation of specific court reform attempts was made available to the Committee. Studies of the present court system in Minnesota, the District Court Survey and the County Court Survey produced by the National Center for State Courts in which were identified problems in our present judicial system, were reviewed in detail by the Committee.

The Committee at its first meeting on August 18, 1974, heard from representatives of the Kansas and Colorado court systems, where recent court reform has taken place, and Committee members were given reports and documents including the American Bar Association's Standards on Court Organization, the Minnesota studies by the National Center for State Courts, a 1942 Minnesota Judicial Council report on court unification, the bill introduced in our 1973 Legislature calling for court unification, and many other documents national in scope.

The Select Committee held over seven full days of hearings between August 18, 1974, and its most recent meeting on January 22, 1975. The Committee decided at its first meeting that while it would study recommendations made by the American Bar Association and other national groups, and while it would review court reform efforts in other states, the intent of Committee deliberation would be to define problems in our own court structure and recommend changes tailored to meet our specific needs.

With this background, and after many hours of intense and open discussion, the Select Committee, at its January 22nd, 1975, meeting, made the following recommendations for the improvement of our present court structure and administrative operation of the courts.

III. RECOMMENDATIONS TO DATE

The Committee felt that changes should be made in the operation of our courts, but that these changes should not at this time effect a consolidation of all trial courts into a single level trial court. Thus the Select Committee recommends retention of the two-tiered trial court consisting of the County Court and the District Court. The office of Justice of the Peace would, however, be abolished.

Since it was felt that at present the State is not utilizing judicial manpower to maximum efficiency, it was recommended that the jurisdiction of all judges be statewide jurisdiction within the respective County and District Court. Then, to pave the way for optimal use of judicial manpower, the Chief Judge of each Judicial District in the State would be given broad assignment authority over all judges in the Judicial District. The Chief Judge could, by specific assignment, direct a County Court Judge to hear any matters within the jurisdiction of the District Court and a District Court Judge could be assigned to hear matters within the exclusive jurisdiction of the County Court. An assignment

made by the Chief Judge could be appealed by an aggrieved judge to the Supreme Court. Transfers of judges between the Judicial Districts would be made by the Chief Justice, and the transferred judge would then become subject to the general assignment authority of the Chief Judge into whose District the transfer was made.

The state courts would be organized in judicial districts and the ten districts would be retained as presently constituted. The Committee recommended, however, that Hennepin and Ramsey each would be fixed judicial districts, but that the Supreme Court, with the advice of the Judicial Council or Judicial Conference, could change in size or number the other eight present judicial districts. The Supreme Court would also be given authority to reconstitute County Court districts within each larger Judicial District and to establish residency and chambers requirements for all judges.

The Select Committee recommends furthermore that all judges be paid by the state and that all judges in the state be paid the same salary by the state. Counties could supplement this state wage. As with current statutory language, a county salary supplement would be permitted, acknowledging a higher cost of living in metropolitan areas.

The Committee also recommends that only persons licensed to practice law in the state would be eligible to be a judge in Minnesota. The five remaining lay County Court judges would be retired at the expiration of their present terms. Any judicial vacancy occurring within the state must be certified to exist

by the Supreme Court before it may be filled. Once certified, a vacancy shall be filled as provided by law.

Foremost on the minds of Committee members was the proper administration of the court system. The recommendations above were intended to complement the Committee's recommendations for administrative changes, the absence of which the Committee felt would prohibit delivery of a higher quality of justice to the citizens of Minnesota. Administrative recommendations are intended to form an integrated administrative structure that serve present needs and meet existing problems; however, if future needs dictate great structural revision of the courts, the recommended administrative structure is designed to adapt to such revision with little change.

The administrative recommendations of the Select Committee are as follows:

Administration

§1. CHIEF JUSTICE. Subd. 1. Administrative Authority. The Chief Justice shall exercise general supervisory powers of the court system. These powers shall include (1) supervision of the court system's financial affairs, program of continuing education for judicial and nonjudicial personnel and planning and operations research, (2) serving as chief representative of the court system and as liaison with other governmental agencies and the public and (3) general superintendence of the administrative operations of the court system.

Subd. 2. Authority to delegate. The Chief Justice may designate individual judges and committees of judges to assist him in the performance of these duties.

§2. CHIEF JUDGES. Subd. 1. Appointment. In each Judicial District the Supreme Court shall appoint a Chief Judge who may be a Judge of County, District, Municipal or Probate Court.

Subd. 2. (a) Administrative Authority. In each Judicial District the Chief Judge, subject to authority of the Chief Justice, shall exercise general administrative authority over all courts within the Judicial District.

(b) The Chief Judge shall make assignments of Judges to all cases within the District. A Judge aggrieved by an assignment may appeal the assignment to the Supreme Court.

(c) When temporary caseload requires transfer of a Judge from one Judicial District to another Judicial District, the Chief Justice shall make such a transfer. The transferred Judge shall be subject to assignment powers of the Chief Judge of the district to which transfer was made.

Subd. 3. Appointment of Clerks of Court. The Chief Judge of each district shall appoint the Clerk of Court for each county within his/her Judicial District by selecting from among nominations submitted by the District Administrator after consultation with all Judges serving that county. In Hennepin County, where the office of Clerk of Court has been replaced by that of Court Administrator pursuant to MS488A.025, the Court Administrator shall be appointed by

this process.

Subd. 4. Bimonthly Meetings; Judicial Conference Agenda. The Chief Judges shall meet at least bimonthly for the consideration of problems relating to judicial business and administration. After consultation with the Judges of their district the Chief Judges shall prepare in conference and submit to the Chief Justice a suggested agenda for the yearly judicial conference.

§3. STATE COURT ADMINISTRATOR. Powers and Duties. Subd. 1. The Court Administrator shall, under the supervision and direction of the Chief Justice, have the powers and duties prescribed by this section.

Subd. 2. The Court Administrator shall examine the administrative methods and systems employed in the offices of the Judges, Clerks, Reporters, and Employees of the courts and make recommendations, through the Chief Justice for the improvement of the same.

Subd. 3. The Court Administrator shall examine the state of dockets of the courts and determine the need for assistance by any court.

Subd. 4. The Court Administrator shall make recommendations to the Chief Justice relating to the assignment of Judges where courts are in need of assistance and carry out the direction of the Chief Justice as to the assignments of Judges to counties and districts where the courts are in need of assistance.

Subd. 5. The Court Administrator shall collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the Chief Justice and to the respective houses of the legislature to the end that proper action may be taken in respect thereto.

Subd. 6. The Court Administrator shall prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto.

Subd. 7. The Court Administrator shall collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith.

Subd. 8. The Court Administrator shall obtain reports from Clerks of Court in accordance with law or rules adopted by the Supreme Court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make reports thereof to the Supreme Court of this state and to the respective houses of the legislature.

Subd. 9. The Court Administrator shall formulate and submit to the Judicial Council of this state and to the respective houses of the legislature recommendations of policies for the improvement of the judicial system.

Subd. 10. The Court Administrator shall submit annually, as of February 1, to the Chief Justice and the Judicial Council, a report of the activities of the Court Administrator's office for the preceding calendar year.

Subd. 11. The Court Administrator shall prepare standards and procedures for the recruitment, evaluation, promotion, in-service training and discipline of all personnel in the court system other than Judges and judicial officers.

Subd. 12. The Court Administrator shall promulgate and administer uniform requirements concerning records, budget and information systems and statistical compilation and controls.

Subd. 13. The Court Administrator shall attend to such other matters consistent with the powers delegated herein as may be assigned by the Supreme Court of this state.

§4. DISTRICT ADMINISTRATOR. Subd. 1. Appointment; Term. A District Administrator shall be appointed for each of the judicial districts. A District Administrator may serve more than one judicial district. The administrator shall be appointed by the Chief Judge with the advice and approval of the Judges of that judicial district and shall serve at the pleasure of the Chief Judge.

Subd. 2. Duties. Such administrator shall assist the Chief Judge in the performance of his administrative duties and shall perform such additional duties as are assigned to him by law and by the rules of the court.

Subd. 3. Staff. The District Administrator shall have

such deputies, assistants and staff as the Judges of the district deem necessary to perform the duties of the office.

Subd. 4. Liaison. The District Administrator shall assist the Supreme Court, the Chief Justice, the State Court Administrator, the Chief Judge of the district and other local and state court personnel in (1) the development of and adherence to standards and procedures for the recruitment, evaluation, promotion, in-service training and discipline of all personnel in the court system, other than Judges and judicial officers; (2) the development of and adherence to uniform requirements concerning records, budget and information systems, and statistical compilations and controls; (3) identification of calendar management problems and development of solutions; (4) research and planning for future needs; (5) development of continuing education programs for judicial and nonjudicial personnel; (6) serving as liaison with local government, bar, news media and general public; (7) establishment of a court community relations program including identification of court related public information needs and development of a grievance procedure to settle administrative complaints not related to a specific judicial determination and (8) communication of policy, procedure, relevant rulings, legislative action, needs, developments and improvements between and among county, district and state court officials.

Subd. 5. The District Administrator shall serve as secretariat for meetings of the Judges of that district.

§5. JUDGES MEETINGS. Subd. 1. All of the Judges of a district shall meet in conference at least twice a year at the call of the Chief Judge to consider administrative matters and rules of court and to provide advice and counsel to the Chief Judge of the district.

Subd. 2. All of the Judges of the State shall meet at least once a year in Judicial Conference at the call of the Chief Justice.

IV. FOR FUTURE CONSIDERATION

This interim report of the Select Committee is written to be of use to the Legislature without great delay and before the Legislature is far into its current session. The Select Committee recognizes, however, that additional matters must be considered before its work under its present grant is completed.

The Select Committee will meet again on February 26th to consider two major topics. First, Hennepin County and Ramsey County are unique in the state in that in each county there is a county-wide Municipal Court instead of a County Court. At its next meeting the Select Committee will discuss what changes, if any, should be made to bring Hennepin and Ramsey Counties into conformity with the court structure of the rest of the state. Also at the February meeting, the Committee will discuss what changes, if any, should be made in the appellate structure now residing in the District Courts.

The staff of the Select Committee, with the consultant firm of Arthur Young and Company, are currently conducting a study of all state court nonjudicial personnel and a study of revenues and disbursements for the entire court system in calendar year 1974. As the results of these studies are analyzed, the Select Committee will meet to discuss further recommendations.

The result of these studies and any further recommendations of the Select Committee will be included in the Committee's final report to the Legislature.

FOOTNOTES

[1] The Judicial Council currently has the following membership: Hon. Douglas K. Amdahl, Chief Judge, Hennepin County District Court; Hon. Robert E. Bowen, Hennepin County Municipal Court; Hon. Charles E. Cashman, Steele County Court; Edward Coleman, attorney, Anoka; Thomas Conlin, attorney, St. Paul; James D. Mason, attorney, Mankato; John French, attorney, Minneapolis; Hon. Robert B. Gillespie, Chief Judge, 10th Judicial District; James Harper, attorney, Duluth; C. Paul Jones, State Public Defender; Richard E. Klein, State Court Administrator; Norman Perl, attorney, Minneapolis; Hon. Robert J. Sheran, Chief Justice, Supreme Court; Hon. Lawrence R. Yetka, Supreme Court, Chairman.
(Note: At its January, 1975, meeting, the Council supported the expansion of its membership to 15 by the addition of four legislators, two from the House of Representatives and two from the Senate.)

With this background, and after many hours of intense and open discussion, the Select Committee, at its January 22nd, 1975, meeting, made the following recommendations for the improvement of our present court structure and administrative operation of the courts.

III. RECOMMENDATIONS TO DATE

The Committee felt that changes should be made in the operation of our courts, but that these changes should not at this time effect a consolidation of all trial courts into a single level trial court. Thus the Select Committee recommends retention of the two-tiered trial court consisting of the County Court and the District Court. The office of Justice of the Peace would, however, be abolished.

Since it was felt that at present the State is not utilizing judicial manpower to maximum efficiency, it was recommended that the jurisdiction of all judges be statewide jurisdiction within the respective County and District Court. Then, to pave the way for optimal use of judicial manpower, the Chief Judge of each Judicial District in the State would be given broad assignment authority over all judges in the Judicial District. The Chief Judge could, by specific assignment, direct a County Court Judge to hear any matters within the jurisdiction of the District Court and a District Court Judge could be assigned to hear matters within the exclusive jurisdiction of the County Court. An assignment

made by the Chief Judge could be appealed by an aggrieved judge to the Supreme Court. Transfers of judges between the Judicial Districts would be made by the Chief Justice, and the transferred judge would then become subject to the general assignment authority of the Chief Judge into whose District the transfer was made.

The state courts would be organized in judicial districts and the ten districts would be retained as presently constituted. The Committee recommended, however, that Hennepin and Ramsey each would be fixed judicial districts, but that the Supreme Court, with the advice of the Judicial Council or Judicial Conference, could change in size or number the other eight present judicial districts. The Supreme Court would also be given authority to reconstitute County Court districts within each larger Judicial District and to establish residency and chambers requirements for all judges.

The Select Committee recommends furthermore that all judges be paid by the state and that all judges in the state be paid the same salary by the state. Counties could supplement this state wage. As with current statutory language, a county salary supplement would be permitted, acknowledging a higher cost of living in metropolitan areas.

The Committee also recommends that only persons licensed to practice law in the state would be eligible to be a judge in Minnesota. The five remaining lay County Court judges would be retired at the expiration of their present terms. Any judicial vacancy occurring within the state must be certified to exist

by the Supreme Court before it may be filled. Once certified, a vacancy shall be filled as provided by law.

Foremost on the minds of Committee members was the proper administration of the court system. The recommendations above were intended to complement the Committee's recommendations for administrative changes, the absence of which the Committee felt would prohibit delivery of a higher quality of justice to the citizens of Minnesota. Administrative recommendations are intended to form an integrated administrative structure that serve present needs and meet existing problems; however, if future needs dictate great structural revision of the courts, the recommended administrative structure is designed to adapt to such revision with little change.

The administrative recommendations of the Select Committee are as follows:

Administration

§1. CHIEF JUSTICE. Subd. 1. Administrative Authority. The Chief Justice shall exercise general supervisory powers of the court system. These powers shall include (1) supervision of the court system's financial affairs, program of continuing education for judicial and nonjudicial personnel and planning and operations research, (2) serving as chief representative of the court system and as liaison with other governmental agencies and the public and (3) general superintendence of the administrative operations of the court system.

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, Minnesota 55102 - January 1975

JUDICIARY

Re: Consenting Adults and Fair Employment

Legislation will be introduced in the 1975 legislative session to remove the offenses of sodomy and fornication between consenting adults in private from the Minnesota criminal statutes. Also to be introduced this session is legislation to include sexual preference in the statutes dealing with fair employment, housing or public accommodations. It would thus be illegal to discriminate on the basis of sexual preference in employment practices, housing or public accommodations just as it is illegal to discriminate on the basis of race, creed, sex, etc.

The trustees of the American Psychiatric Association have ruled that homosexuality "shall no longer be listed as a 'mental disorder' in its official nomenclature of mental disorders. The trustees also urged that homosexuals be given all protections now guaranteed to all other citizens."

Formerly, the Association's official list of mental disorders included homosexuality, listing it as a "sexual deviation" together with fetishism, voyeurism, pedophilia, exhibitionism and others. The category of homosexuality is now replaced by "Sexual orientation disturbance" which is described as follows:

> This category is for individuals whose sexual interest are directed primarily toward people of the same sex and who are either disturbed by, in conflict with, or wish to change their sexual orientation. This diagnostic category is distinguished from homosexuality which, but itself, does not constitute a psychiatric disorder. Homosexuality per se is one form of sexual behavior and, like other forms of sexual behavior which are not by themselves psychiatric disorders, is not listed in this nomenclature of mental disorders.

Regarding discrimination against homosexuals, the Association adopted the following resolution:

> Whereas homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities, therefore, be it resolved that the American Psychiatric Association deplores all public and private discrimination against homosexuals in such areas as employment, housing, public accommodation and licensing and declares that no burden of proof of such judgment, capacity, or reliability shall be placed upon homosexuals greater than that imposed on any other persons. Further, the American Psychiatric Association supports and urges the enactment of civil rights legislation at the local, state, and federal level that would offer homosexual citizens the same protections now guaranteed to others on the basis of race, creed, color, etc. Further, the American Psychiatric Association supports and urges the repeal of all discriminatory legislation singling out homosexual acts by consenting adults in private.

The Minnesota Committee of Gay Rights presents the following arguments in favor of the proposed legislation:

> RIGHT TO FAIR EMPLOYMENT
>
> Gay people do not face the same sorts of discrimination in employment as do Blacks - They can hide. They can pretend that they are heterosexual, laugh at anti-Gay jokes. But to do so is to internalize all the guilt and hatred society would place upon the Gay person, and it is self-destructive. To hide or pretend that you are something you are not, is to admit, if only to yourself, that there is something wrong with being who you are. That sort of double life leads people to deny their feelings and deny themselves.
>
> Refusing to hide or to be discovered to be Gay means that he or she may very well lose their job, housing or public accommodations without legal recourse until legislation guaranteeing fair employment protection is passed. Fair employment for Gay people would (1) provide legal recourse to arbitrary discrimination, (2) alleviate the oppression and alienation caused by being forced to live a double

life in order to maintain one's livelihood and (3) begin to create a climate of openness which would break down the ignorance and stereotypes that cause discrimination and bigotry.

CONSENTING ADULTS

1. Right to Privacy - The American Law Institute stresses the all-importance of privacy and of freedom for the individual to choose his own course of action as long as it does not infringe on the liberty of others. In the view of the prestigious ALI, private sexual acts between consenting adults cannot be shown to have a sufficiently adverse effect upon society to warrant limiting an individual's freedom or invading his or her privacy.
2. Sin Versus Crime - Sin and crime are not always identical; Gayness may or may not be a sin, but it should not be a crime; guilt and penalties are matters between the person and his spiritual advisors.
3. Ineffective and Unenforceable - (a) Leads to discriminatory, arbitrary, capricious enforcement, (b) Could require the police to employ objectionable methods if they were to enforce the laws against private consensual sexual activity, (c) Takes valuable time from the important and serious problem of violent crime enforcement and (d) Leads to a disrespect for such laws in particular and a general breakdown of respect for the law.
4. By repeal of the present sodomy law you not only remove the stigma of "criminal" for one whose only crime is preference for the same sex, but also eliminates a law that restricts what a man and woman (including married) may do legally in the privacy of their own bedroom.

Appropriate bills have already been enacted in Washington, DC, Seattle, Detroit, Toronto, Ann Arbor, Minneapolis, Alfred (NY), Berkeley, Columbus, East Lansing and San Francisco barring discrimination in employment.

The National Gay Task Force answers arguments against enactment of the proposed legislation as follows: (May 1974)

1. "Such legislation would endorse homosexual behavior." This is a civil rights bill which deals with the rights of 10% of American women and men to hold jobs and homes. Those who dislike homosexuals will remain free to do so, but will not be allowed to deprive gays of jobs and housing because of personal prejudices. The legislation does not deal with on-the-job behavior, either heterosexual or homosexual. People could still be fired for cause, but not merely for sexual orientation.
2. "This legislation would allow men to dress in women's clothes on the job." This viewpoint is erroneous on two grounds. First, very few gays are transvestites and most transvestites are in fact heterosexual. Second, such legislation does not deal with business or government dress codes and in no way limits the right of employers to prescribe dress codes.
3. "This bill would let gays into schools, summer camps and other situations where children could be harmed by them." All scientific research on the subject agrees that child molestation is primarily the activity of neither homosexuals nor heterosexuals, but of a distinct category of men (child molestation by women, either of males or females, is either extremely rare or, for various reasons, unreported) who are known as "pedophiles." These men are exclusively attracted to children, without regard to their sex, and it is noted in all studies that the majority of those apprehended for molesting young boys also have a history of molesting young girls.

Though some cases of child molestation are not committed by pedophiles, the myth that homosexuals are more likely to have such lapses of judgment is disproved by statistics. Most molestation takes place away from a school or camp setting and no greater percentage of males are molested in these sensitive settings. In the entire history of the New York City school system as of May 1974, there have been many reported cases of molestation of females but only one case of molestation of a male.

Homosexuals join heterosexuals in agreeing that young people as well as adults must be protected from unwanted sexual advances. The idea that a homosexual teacher or counselor is less trustworthy is just another example of the society's refusal to see gay women and men as responsible human beings.

In May 1972, the Board of Education of the District of Columbia adopted a resolution prohibiting discrimination in hiring based on sexual orientation.

In September 1974, the National Education Association went on record saying that "personnel policies and practices must guarantee that no person be employed, retained, paid, dismissed, or demoted because of race, color, national origin, religious beliefs, residence, political activities, professional association activity, age, marital status, family relationship, sex or sexual orientation." The Association urged governing boards to employ minority persons and women at all administrative levels, saying that it may be necessary to give preference in the hiring, retention and promotion policies to certain racial groups or women or men to overcome past discrimination.

Other groups which have adopted resolutions supporting the concept of such proposed legislation include the American Personnel and Guidance Association, the American Bar Association, National Organization of Women, Minneapolis TRIBUNE, Minneapolis STAR, and a number of church related organizations.

LWV positions on which support of proposed legislation is based include:

JUDICIARY: "... alternatives for sentencing; alternatives for handling behavior now defined as 'status offenses' and 'social (or victimless) crimes.'" (p. 5, PROGRAM FOR ACTION)

EQUALITY OF OPPORTUNITY: Support of policies to ensure equality of opportunity in employment, real property, public accommodations, education and other public services for all persons. Support of administrative enforcement of antidiscrimination laws. (p. 7, PROGRAM FOR ACTION)

According to the National Gay Task Force, the Repeal of the State Laws Against Consensual Sodomy is advocated for the following reasons:

1. Such laws criminalize all those women and men who are suspected of violation, even if they are only presumed to be homosexually oriented. Consequently, parents, friends, employers and gay people themselves find it difficult to judge an individual at his or her own worth, free of the stigmatization of "lawbreaker." The stigmatized include a large number of people. According the the Kinsey reports, 13% of women and 37% of men have engaged in homosexual acts as adults, acts which are presumptively in violation of these laws. Ten percent of all men and women in American are predominately homosexual throughout adulthood.

2. "Equal protection under the law," a constitutional guarantee, is violated. It is impossible to enforce the law uniformly and no attempt is made to do so. Nonmarried heterosexuals to whom the law (in some states) also applies are rarely arrested or convicted even though all research data indicate that a large percentage engage in proscribed activities. Indeed, these acts are encouraged in most serious marriage manuals and counseling guides.

3. They violate constitutional rights to privacy.

4. They constitute an attempt by the state to establish standards of private morality, a morality which is at odds with the standards and practices of an estimated 20 million predominantly homosexual American women and men, and, as evidenced by a wide range of studies, many millions of heterosexual women and men. Church groups have increasingly objected to legal fortification of moral precepts. Among these have been the New York Society of Friends and the Unitarian Church.

5. Knowing they are "lawbreakers" causes many innocent people deep emotional anguish. Within the health field, repeal has been urged by formal resolution of the American Psychiatric Association, the American Medical Association and the American Mental Health Foundation.

6. With the legal profession, repeal has been urged by formal resolution of the American

Bar Association, the American Law Institute, the International Congress of Criminal Law, the American Law Committee and the National Commission on Revision of the Penal Laws.

7. These laws constitute the foundation for frequent attempts at blackmail and shakedowns.

8. These laws, through their criminalization of gays, are used to bar them from virtually every profession, including practice of law.

9. Minors and nonconsenting adults are fully protected by other laws, just as they are protected from heterosexual offenders.

10. These laws serve no useful purpose.

Several states have eliminated their restrictions on consensual adult relations as of May 1974 and include Illinois, Oregon, Connecticut, North Dakota, Ohio, Delaware, Hawaii and Colorado.

LEAGUE OF WOMEN VOTERS
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WHAT'S HAPPENING IN
THE JUDICIARY ITEM

To: Local League Judiciary Chairmen
From: Peggy Gross, State Judiciary Chairman
January 14, 1976

What's New ----- Currently in the Legislature, there are three bills dealing with proposed reform (reorganization) of the Minnesota Judicial system.

(For background on the current system, refer to Minnesota Judiciary: Structure and Procedures, LWVMN 1972.)

In 1972 in most counties, the lower courts were consolidated into county courts to form the County Court System. Minnesota thus has a two-tier (dual) court sysem of district courts (10 judicial districts) and county courts.

The three bills seek to make varying degrees of changes toward a unified court system (one system of courts - physically and administratively with divisions).

The Voss (HF 793) and Tennessen (HF 815) bills are almost identical in language and intent and propose a one-tier court system. Under these two proposals

1. the number and boundaries of the current 10 judicial districts could be changed;
2. county courts would cease to exist as a separate entity but would become a division of the district court;
3. an appellate division of the district court could be formed;
4. salaries of all judges would be set at the current level of district court judges and would be paid by the state (currently district court judges' salaries are paid by the state, salaries of county judges by the counties);
5. would add four legislators to the Judicial Council;
6. provides for one chief judge of the district court chosen from the current district and county judges.

The Select Committee on Judicial Reform was formed in 1974 by the Supreme Court to study the judicial system and to make recommendations. Many of the recommendations made can be implemented without legislative action.

The Select Committee, however, has incorporated those recommendations requiring legislative change into proposed bill HF 1796 (Arlandson). Generally speaking, the proposed bill advocates maintaining the present two-tier system of district and county courts but making administrative changes toward a more centralized administration of the present court system. Among the provisions of the bill are the following:

1. Maintain the present 10 judicial districts of the district court;
2. Extend the supervision and coordination duties of the chief justice of the Supreme Court to all courts (not just district court);
3. Provide for salaries of all judges (county, probate and municipal in addition to district) to be paid by the state at the current level of district court judges; however, allows counties to supplement salaries of judges with the approval of the Legislature to compensate for cost of living differences;
4. Adds number of duties to the duties of the state court administrator
5. Provides that a conference of judges shall (instead of may) be held at least once a year;
6. Provides that district courts shall be open at all times except Sundays and legal holidays and that their terms shall be continuous;
7. Provides for appointment of the clerk of district court;

8. Provides for appointment of a chief judge in each district, who may be a judge of county, probate, municipal or district court, to exercise administrative authority over all courts in the district;

9. Provides for district administrators.

Public hearings on the bills have been held in several parts of the state and in most cases were covered by the League in the area. Metropolitan hearings are scheduled for later this winter.

To date, we have not testified on the bills, but would anticipate testifying this legislative session along the lines of our Judiciary position which supports the following:

Support of a judicial system with the capacity to assure a speedy trial and equal justice for all, through:

. administrative reforms
. improved judicial quality
. procedural reforms
. community alternatives as an adjunct to the judicial system.

If possible, reprint the above information in your local bulletin.

Financial Study ----- At the request of the Select Committee on Judicial Reform, a financial study was made of the Minnesota judicial system. The study involved development of a system to collect financial data on courts and the collection of some data. The main objective of the study was to develop a system to obtain financial information on a continuing basis. Information was collected by sending questionnaires to clerks of court. The information contained in the study relies on the replies made by the clerks and the reports were not tested for accuracy. The report summarizes data for each of the 10 judicial districts. Statewide data shows that courts collected $10.3 million in 1974, that counties spent $31.2 million and the state $2.1 million on courts in 1974.

Non-Judicial Staffing Study ----- Also made at the same time was a Non-Judicial Staffing Study, intended to develop a system to provide information on staffing requirements for courts, on personnel systems, classifications of personnel and on their pay. The study used questionnaires in 17 counties and attempted to learn the amount of time it took to process cases of various kinds and caseloads in these courts. From this was developed average caseload values for the various types of cases for court peronnel. These ranged from 4.4 minutes to process traffic violations to 283.6 minutes to process criminal violations. From these were calculated the necessary staff levels based on the court caseload. According to the report, the system could be applied as a guide for court staffing in all courts. (No response to the financial questionnaire was received from the clerk of the district court in St. Louis County, who generally refused to provide such information.)

The study of the organization, classification and compensation of non-judicial court staff was made by questionnaire. From this study, it appeared that courts are organized in many ways, that most courts have no employee classification system, that the pay of court personnel is equated with the pay of other county personnel, that generally district and county court staffs are not integrated, and that very seldom were there up-to-date job descriptions for court personnel. Based on this study, recommendations were made that similar activities in county and district courts be combined, that there is a need for specialization in larger courts, and that there is no one right way to organize a court. The study developed classifications for various non-judicial personnel, developed salary ranges for the various court personnel and developed cost of living variations for these salary ranges for the various counties. Currently, there is no consistency from county to county on what a court employee is paid.

Back to School for Minnesota Lawyers*----- Graduation from law school is no longer the end of formal education for Minnesota lawyers. After three years of study, on April 3, 1975, the Supreme Court promulgated a rule making Minnesota the first state to require continuing education for members of the legal profession.

Recently, Iowa became the second state to require its lawyers to go back to school; a number of other states are moving in the direction of mandatory continuing legal education. The concept is not unique to the legal profession: dentists, doctors, nurses, accountants and court reporters for years have been obliged, either by statute or by professional association membership requirements, to take formal courses designed to bring them up to date in their fields.

While continuing education for lawyers is something new, the goal is the same as in other professions - to increase competence. Under the new rule, all lawyers who maintain an active practice, or who are employed by the State of Minnesota, including judges, must complete at least 45 hours of approved course work every three years.

The new State Board of Continuing Legal Education is now ready to issue a final version of its rules and standards which it hopes will answer many of the questions lawyers have about the new program. So far, the Board has approved more than 200 programs and has denied credit to about 15. Most of the established and well-recognized agencies both in Minnesota and outside the state have little trouble receiving approval for their programs. New sponsors, however, may find the Board a little more inquisitive about them and the nature of their programs.

Among the criteria employed by the Board in passing on programs are: (1) the course must deal with the practice of law or the lawyer's professional responsibility; (2) competent faculty must serve as lecturers; (3) suitable classroom or laboratory settings must be provided; (4) well-written and carefully prepared printed materials must be furnished to each participant.

If the program appears to satisfy these and other requirements, credit will be awarded on the basis of one hour for each hour actually spent in attendance by the lawyer. The program can receive approval either in advance or after it is held. With increasing frequency, agencies are applying for advance approval, especially out-of-state sponsors who are just finding out about the Board's existence.

To receive individual credit, each lawyer must submit an affidavit to the Board stating that he attended the program and the number of hours he actually spent in classes.

Although the ultimate sanction for refusal to comply with the Supreme Court's rule is possible disbarment, the success of the programs depends upon the cooperation of the lawyers. Most of the reaction to the concept of continuing education so far has been favorable. Many lawyers are already fulfilling the 15 hours/year and for them it will be a matter of reporting what they have done.

The State Board of Continuing Legal Education is comprised of 10 lawyers and three lay members and has two part-time staff members.

Bills for Court Reform ----- Voss bill - Supreme Court may redistrict the district courts to the number of geographic districts within the boundaries of the state it deems reasonable and workable. Each district is to contain at least nine resident judges who shall be district court judges with identical jurisdiction.

The Supreme Court may establish an appellate division within the district court and may provide by rule that any appeal from the district court shall be to an appellate division of the district court. The Supreme Court shall promulgate rules governing procedure in such appeals. The Supreme Court shall appoint panels of district judges to consider and decide such appeals. Appeal from the decision of such panels shall be to the Supreme Court at its discretion.

* Taken from article in Interchange, November 1975, Vol. 3, No. 9

Chief Justice of Supreme Court shall have the following increased duties:

a. to appoint the chief judge of each district court who shall serve at the pleasure of the chief justice and for a term of two years and who shall be responsible for assigning the work of the court.
b. to designate the general terms of court in various districts established. Terms shall be continuous unless otherwise designated by the chief justice.
c. may designate the locations within each district where a district judge shall be in chambers.

Judicial Council shall consist of Chief Justice of Supreme Court or some other justice or former justice appointed from time to time by the chief justice for such service; three (instead of two) judges or former judges of the district court to be designated by the judges of the district court in annual meeting; and seven other persons appointed by the governor of whom (instead of and) not less than four shall be attorneys at law of wide practical experience.

Judicial Council shall also consist of four legislators two of whom shall be members of the state senate and appointed by the senate majority leader and the remaining two of whom shall be of the state house of representatives and appointed by the speaker.

Judicial Council shall recommend to the Supreme Court a redistricting of the district courts of this state to a number within the boundaries of the state it deems reasonable and workable.

Jurisdiction - There shall be one general trial court having statewide jurisdiction to be known as the district court. The district court may hold sessions anywhere in its geographical area where adequate facilities exist for the disposition of court business and at the times and in the places the judges of the district deem advisable.

District court shall/may establish a probate division, a family court division, a civil division and a criminal division, and shall establish within the civil division a conciliation court and may establish within the criminal division traffic and ordinance violation bureaus at such locations as it determines.

Judges - All persons who are licensed to practice law in the state and who are judges of a probate, county or municipal court existing pursuant to a municipal ordinance, charter or legislative act located in the state as of June 1, 1976, shall thereafter be designated as judges of the district court with the same jurisdiction and salary as those persons currently serving as district judges.

Upon receipt of a written request by a chief judge of a district of the district court, the Chief Justice of the Supreme Court may appoint and assign to the district a retired judge. When such retired judge undertakes such service, he shall be provided with a reporter, selected by such retired judge, a clerk, a bailiff, if the judge deems a bailiff necessary, and a courtroom or hearing room for the purpose of holding court or hearings, and shall be paid in addition to his retirement compensation.

Temporary transfer of Judge - Chief Justice may for good cause temporarily assign a judge of district court to another district court. Such assignment shall extend for a maximum of two months with a 12-month period unless consented to otherwise by the district judge.

Select Committee Bill - Judicial districts will remain the same. When public convenience or necessity requires, Chief Justice may assign any judge of any court to serve and discharge duties of a judge of any other court in a judicial district not his own.

To promote and secure more efficient administration of justice, the Chief Justice of the Supreme Court of the state shall supervise and coordinate the work of the courts (not just district court) of the state.

a. Supervise courts' financial affairs, programs of continuing education for judicial and nonjudicial personnel and planning and operations research
b. Serve as chief representative of the courts and as liaison with other governmental agencies and the public

c. Supervise the administrative operations of the courts. He may designate individual judges and committees of judges to assist him in the performance of his duties.

Salaries - County, probate and municipal judges to be added to the state salaries at the district judge level. All judges' salaries to be paid by the state at $32,000 level; counties may supplement the salaries of any judges with the approval of the Legislature. In supplementing the salaries of any judges, counties may consider the differences in cost of living within the state.

Adds # of duties of court administrator -

a. shall prepare standards and procedures for the recruitment, evaluation, promotion, in-service training and discipline of all personnel in the court system other than judges and judicial officers.
b. shall promulgate and administer uniform requirements concerning records, budget and information systems and statistical compilation and controls.

Conference of judges - At least once a year the Chief Justice shall call (instead of provision allowing Chief Justice to call one) an annual conference of the judges of the court.

Supreme Court may establish residency and chambers requirements for judges of all courts in the state.

District Courts to be open at all times - except on legal holidays and Sundays for the transaction of all business as may be presented. The terms of the district court shall be continuous.

Clerk of the district court for each county within the judicial district shall be appointed by a majority of the district court judges in the district upon recommendation of the chief judge of the judicial district who shall select a candidate from nominations submitted by the district administrator.

A combined county court district may be separated into single county courts by the Supreme Court. For more efficient administration of justice, the Supreme Court may combine two or more county court districts into a single county court.

Qualifications - deletes allowance for probate judges now in office who are not learned in the law.

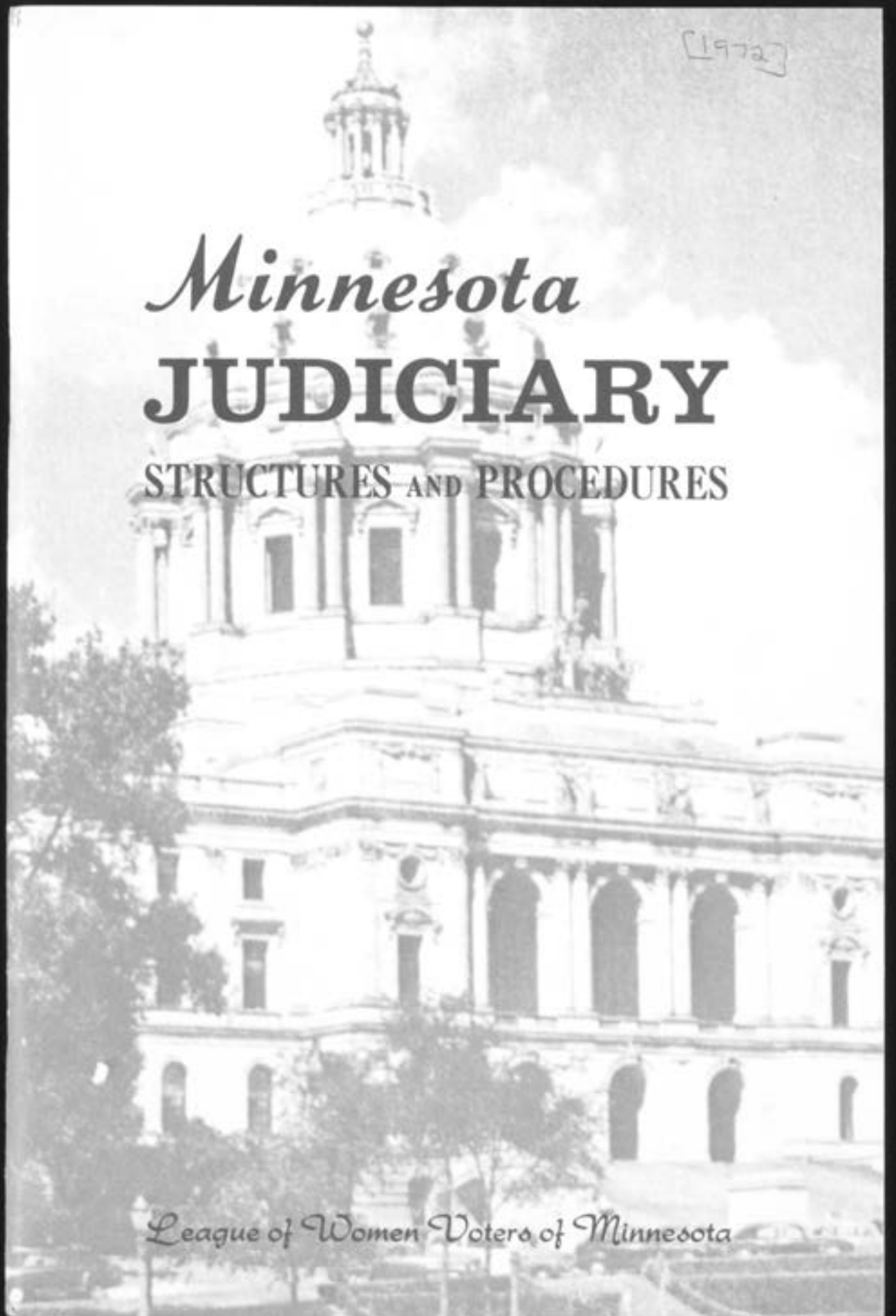
Chief Judge - In each judicial district, the Supreme Court shall appoint a chief judge who may be a judge of county, district, municipal or probate court. Chief judge shall exercise administrative authority over all courts within the judicial district. The chief judge shall make assignments of judges to all cases within the judicial district. A judge aggrieved by an assignment may appeal the assignment to the Supreme Court.

The chief judges shall meet at least bimonthly for the consideration of problems relating to judicial business and administration. After consultation with the judges of their judicial district, the chief judge shall prepare in conference and submit to the Chief Justice a suggested agenda for the judicial conference.

The chief judge shall convene a conference at least twice a year of all judges of the judicial district to consider administrative matters and rules of court and to provide advice and counsel to the chief judge.

District Administrator - One shall be appointed for each of the judicial districts by the chief judge with the advice and approval of the judges of that judicial district and shall serve at the pleasure of the chief judge. A district administrator may serve more than one judicial district. (Also provides for staff.) The district administrator shall assist the chief judge in the performance of his administrative duties and shall perform any additional duties that are assigned to him by law and by the rules of the court. (Outlines specific areas of responsibilities.)

[1972]



Minnesota
JUDICIARY
STRUCTURES AND PROCEDURES

League of Women Voters of Minnesota

Minnesota Judiciary:

Structures and Procedures

1972

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It is impossible to recognize individually the many people whose interest and cooperation have facilitated the preparation of this publication. However, we wish to express our gratitude to the many state officials, judges, members of the University of Minnesota Law School faculty, lawyers and interested citizens without whose efforts this endeavor could never have been realized.

INTRODUCTION

Courts are being called upon increasingly to provide solutions to problems which other social institutions have failed to solve. Conflicting demands for law and order, for safeguarding individual rights, for speedy trials, for adequate investigation, for punishment, for rehabilitation are addressed variously to the police, the legislators, the courts and the prisons of the United States.

Numerous commissions at a number of levels have studied the adequacy of American courts in meeting current problems and suggested reforms which would better equip them to perform their tasks. The range of problems facing the courts today and the widespread citizen confusion about the courts have given impetus to this study of the Minnesota court system by the League of Women Voters of Minnesota.

Since September 1971 members of the Minnesota League of Women Voters in various Minnesota communities have observed courtroom procedure and interviewed court personnel. This firsthand knowledge of the courts is an initial step toward understanding how courts function. This study should serve as useful general background for citizens interested in acquiring an understanding of the judicial system in Minnesota.

Public interest in the judicial system extends to the police and prisons as well as to methods for financing the courts. This study, however, addresses itself only to the structure and procedures of the courts of Minnesota.

Although this study is limited to the court system in Minnesota, it is important to recognize that federal district courts, directly responsible to the federal government and headed by the United States Supreme Court, co-exist with state courts in all fifty states. Federal courts are financed by the United States Government. Federal judges are chosen by the President, with the consent of the Senate and hold office for life. Federal courts are served by United States Attorneys.

This publication is divided into two main sections. The first section describes the various courts composing the judiciary in Minnesota. The second section defines some of the more important procedures and practices in the court system and discusses how those procedures seem to affect justice.

TABLE OF CONTENTS

PROCEDURES AND PRACTICES (Continued)

ORGANIZATION AND STRUCTURE OF STATE COURT SYSTEMS

A striking feature of state court systems is their hierarchical basis of organization. A division of labor exists among three or four layers of courts. The great mass of cases are decided at the lower level courts. These lower level or "inferior" courts are courts of limited jurisdiction. They include probate, county, municipal, magistrate, conciliation or small claim, justice of the peace and police courts. These courts hear minor matters in civil and criminal law. In civil actions jurisdiction is often limited to cases below a designated monetary sum and in criminal action to cases which do not involve lengthy sentences or substantial fines. In cases where they do not have final jurisdiction, they are courts of "first instance" from which cases proceed up the hierarchy to the court with appropriate and/or final jurisdiction for the matters involved. Decisions from this first level of courts may be appealed to a higher court.

Courts of the next level are the most important courts for major civil and criminal actions at the state level. These trial courts of general jurisdiction are called "circuit," "superior" or "district" court, depending upon the state in which they function. (In Minnesota, this is the District Court.) They have appellate power over lower courts. Courts on this intermediate level are geographically distributed within a state to provide convenient citizen access. In large metropolitan areas these courts may have specialized divisions or departments, e.g., juvenile and family. Decisions from this level of courts can be appealed.

The state supreme court is at the top of the judicial hierarchy. It hears appeals from lower courts and in certain cases may have original jurisdiction. The court which has original jurisdiction hears the case first. In both civil and criminal proceedings lower courts and trial courts of general jurisdiction resolve questions of facts and apply the law covering those facts in reaching a decision. Appellate courts, i.e. state supreme courts, are not directly involved with finding the facts; they decide whether or not errors in procedure or in application of the rules have occurred.

By December, 1970, 24 states (not including Minnesota) had established an intermediate court of appeals to handle routine appeals and appeals of limited importance. This additional level of courts cuts down on delay in hearing appeals and permits the state supreme court to concentrate its efforts on cases involving broad scope and precedent-setting

importance. However, such a court may increase the costs to a litigant, if he further appeals to the supreme court and is granted a hearing.

One of the important distinctions made between different kinds of cases in American courts is whether they are *civil* or *criminal*. Criminal cases are those where a crime against society is involved; a violation of the criminal code is generally involved. In criminal cases the state provides a prosecutor who conducts the case against the defendant. Civil cases involve individuals who cannot settle a dispute out of court or areas such as estates or adoption proceedings where it is necessary to go through the court system to achieve a recognized settlement.

The Minnesota Judiciary

LOWER LEVEL COURTS IN MINNESOTA

The lower state courts do not correspond to any perfect logic or symmetry in their organization. The present organization of Minnesota courts is partly a result of historical patterns, partly a response to current political realities and, increasingly, a reflection of differences among areas according to population density and number of court cases. The legislature has responded to the wishes of some communities to preserve accessible and informal justice of the peace courts. The size and population density of some counties preclude the kind of specialization that some reformers hold advisable among different kinds of cases. The heavy court calendars and congested conditions in larger communities mean that despite court specialization according to certain kinds of cases an urban individual may find experience in court more perplexing than a rural counterpart.

1971 COUNTY COURT ACT

Before July 1, 1972, lower level courts in Minnesota were a confusing mixture of justice of the peace courts, small municipal courts, county probate courts, some of which served as general county courts, and large municipal courts. This arrangement of lower level courts meant that there were many part-time judges.

The 1971 Minnesota legislature passed a County Court Act which abolished all municipal courts and created county courts as the major lower level courts in 84 counties. Hennepin, Ramsey and St. Louis counties were excluded from this act. In these counties municipal courts are still the major lower level courts.

The following discussion of lower level courts in Minnesota will begin with the new county courts, progress through the municipal courts in the three most urban counties, discuss conciliation courts and traffic and ordinance violation bureaus and conclude with some discussion of the justice of the peace courts.

COUNTY COURTS

Since July 1, 1972, county courts have been established in the county seat of each county. The legislature originally grouped a number of coun-

ties together to create multi-county districts, but many of these counties chose to form single county courts.[1] Two or more counties may also combine later into one county court district if their county boards agree.

The law provides for incumbent probate judges to serve as county court judges if they wish. If they choose not to serve in the new county courts, the governor may choose the new county court judge from among the municipal court judges or magistrates in the area.

Each county board supports the court financially. All persons running for election as county court judges must be "learned in the law" with the exception of incumbent probate judges. Judges who are not lawyers, however, are restricted in their powers under the act.

Each county court has a probate division, a family court division which also handles juvenile matters, and a civil and criminal division. Each county court may also establish a conciliation court and a traffic and ordinance violation bureau.

Jurisdiction

County courts have exclusive jurisdiction where administration of estates of deceased persons are concerned and in all guardianship and incompentency proceedings; these are traditional functions of the probate court. They also have jurisdiction in juvenile court matters.

They have jurisdiction in all cases previously handled by municipal courts. In civil matters county courts rule on actions where the contested amount does not exceed $5,000. In criminal matters county courts hold trials for misdemeanors committed within their county. They deal with violations of municipal ordinances and with cases involving charter provisions and government rules within the county. In addition, county courts conduct preliminary hearings in cases where persons are charged with having committed more serious criminal acts: gross misdemeanors and felonies.

The county courts also have *concurrent jurisdiction* with the district courts in a number of areas: cases involving the administration of trust estates, divorce, annulment and separate maintenance proceedings and adoption.

Parties may appeal the decisions of county courts to the district court. If the county court judge concerned is not a lawyer, the district court will hear the case as a new trial, *trial de novo*. Otherwise, the district court rules on the basis of the written record of the lower court proceedings and, perhaps, on the basis of oral arguments by the attorneys concerned.

On the basis of experience with the smaller municipal courts which the county courts largely replace, it is safe to assume that the vast majority of cases tried before the county courts will be settled at that level. The largest number of cases considered by most of these lower level courts has been traffic violations, a majority of which are settled administratively. Other common categories or cases seen are petty theft, disturbing the peace and various minor ordinance violations.

Many professionals within the judiciary and citizens are hopeful that the new county courts, with full-time judges, will be able to provide more uniform justice throughout the state. Such consolidation of the courts should also permit the provision of more efficient and expanded administration and use of court services.

CONCILIATION COURTS

The county courts created by the 1971 County Court Act may establish conciliation courts if they choose. Such courts exist in Hennepin, Ramsey and St. Louis counties as divisions of the municipal courts.

Conciliation courts are "small claims" courts. They are limited to the consideration of claims not exceeding $300 in the county courts or $500 in the Hennepin, Ramsey or St. Louis County municipal courts.

Conciliation courts are characterized by informality. It is not necessary to have an attorney. Rules of procedure and evidence are relaxed. Records are not kept. Referees, who are practicing attorneys, preside on a part-time basis in Hennepin County Conciliation Court to relieve judges of the municipal court for more important cases. However, judges in Hennepin County Municipal Court do sit on conciliation court when those judges have an assignment in one of the four suburbs.

The plaintiff, the person making the claim, pays a $2 to $5 filing fee to have his case heard in conciliation court. After he has given his side of the story he is notified by mail of the judgment reached in his case. He may appeal to the county or municipal court within ten days. No juries are used in this court.

The number of cases taken to Hennepin County Conciliation Court showed a 37 per cent increase in recent years. There was a 12 per cent increase in cases in St. Paul. This is attributed at least partially to the economic climate since many of the cases considered are claims filed for unpaid bills by collection agencies.

Other common types of cases are claims arising from minor traffic collisions, which accounted for approximately one-third of the cases filed in Hennepin County Court in 1970, and landlord-tenant disputes.

Most cases are decided in conciliation court by default; the defendant does not appear. One criticism leveled against present practices in Hennepin County Conciliation Court is its failure to hold night sessions. Some contend that this places a disproportionate hardship on people who would lose wages by leaving their work during the day and gives an advantage to companies, like collection agencies, which have so many cases that they send attorneys to the court.[2]

The conciliation court has the advantage of settling relatively routine matters simply and inexpensively by providing an arena for people to "have their day in court" quite easily. By delegating most small claims to this kind of court, the municipal and county courts are able to efficiently use the judge's time for more serious cases.

TRAFFIC AND ORDINANCE VIOLATION BUREAUS

Traffic and ordinance violation bureaus simplify the process of paying and collecting fines for traffic and simple ordinance violations. Frequently tags are mailed to the traffic and ordinance violation bureau, entered by a clerk of the court, and thereby disposed. This system presupposes a uniform fine schedule and thereby meets one generally accepted criterion of a justice system, i.e., to provide uniform penalties for all citizens. Use of such simple administrative procedures saves a great deal of time in court for more serious matters.

JUSTICE OF THE PEACE COURTS

Justice of the peace courts, the least formal courts in the Minnesota court system, have been drastically modified in recent years. The 1963 Act setting up the county-wide municipal court in Hennepin County abolished the office of Justice of the Peace in Hennepin County. The 1971 County Court Act greatly curtailed the powers of the justice of the peace courts in the 84 counties to which it applied; it abolished them entirely in those municipalities where the county court regularly holds sessions or established a traffic and ordinance violations bureau. There were 408 active justices of the peace and 300 inactive justices of the peace in 1970. This figure has doubtless been greatly reduced as of the July 1, 1972, court reorganization. Justices of the peace are elected for two year terms.

Serious observers of the American court system have been almost unanimous in their criticism of justice of the peace courts. In 1968 the *Report of the Committee on the Administration of Justice* of the Minnesota Governor's Commission on Law Enforcement, Administration of Justice pointed to the justice of the peace court as a major obstacle to achieving unified law enforcement at the misdemeanor level, particularly in conforming to U.S. Supreme Court decisions in this area.[8]

In particular, justice of the peace courts in the rural areas of the state were accused of dispensing inadequate justice. Frequently justices of the peace were not attorneys, were employed only part time, and were compensated according to the number of fines they imposed. Their judgments often differed greatly from each other.

The County Court Act of 1971 restricts the powers of the justice of the peace courts considerably. They may now receive and accept only guilty pleas under municipal ordinances, charter provisions and state traffic laws; impose fines according to a county court schedule; and perform marriage ceremonies. If imprisonment is judged necessary the case must be referred to the county court. If a defendant pleads "not guilty" the case is transferred to the county court. No justice of the peace may conduct a preliminary hearing on any violation of criminal law even if he is a lawyer.

MUNICIPAL COURTS

As previously stated, the 1971 County Court Act abolished municipal courts in 84 counties where there are now county courts. It did not apply,

however, to Hennepin, Ramsey or St. Louis counties where municipal courts remain the major lower level courts. The arrangements in these three counties, however, differ to some degree.

In Hennepin County a 1963 act of the legislature which took effect in 1965 terminated all separate municipal courts and created a county-wide municipal court. There are now 16 full-time judges in the Hennepin County Municipal Court. There are five divisions of the Hennepin County Municipal Court: Minneapolis, Bloomington, Wayzata, St. Louis Park and Crystal. Court meets regularly in all divisions. In 1971, 72,890 cases appeared before Hennepin County Municipal Court.

In Ramsey and St. Louis counties there is a large municipal court in the large cities and smaller courts with part-time judges in smaller communities in the county. Ramsey County municipal courts had seven full-time judges and five part-time judges in 1971, while St. Louis county had two full-time judges and nine part-time judges. Duluth had two part-time and two full-time judges.

Both Hennepin County and St. Paul municipal courts have court administrators in addition to clerks and clerical staffs.

Jurisdiction

Municipal courts, like the county courts, have jurisdiction in both civil and criminal matters. In the smaller municipal courts in Ramsey County jurisdiction in civil disputes extends to matters involving $1,000. In Hennepin County, St. Paul and Duluth jurisdiction extends to matters involving $6,000.

In criminal matters jurisdiction of the municipal courts extends to misdemeanors (violations of statutes or ordinances punishable by penalties not exceeding 90 days in jail and/or a $300 fine). In a number of areas the municipal court has concurrent jurisdiction with the district court.

Like the county court, the municipal court holds preliminary hearings for gross misdemeanors and felonies where the trial will be held in district court. Jury trials are held in municipal court on both civil and criminal matters. A six-man jury is ordinarily used.

Appeals from the municipal courts go to the district court if a violation of a municipal ordinance is involved. In the three large municipal courts, however, an appeal from a decision in a case involving a state statute may go directly to the state supreme court.

The case loads of large municipal courts have increased considerably over the last decade. The vast majority of criminal cases are settled without jury trials. In the St. Paul Municipal Court, for instance, only 21 per cent of the criminal cases were tried. However, this means that more people are pleading "not guilty" than previously since formerly only 14 per cent of criminal cases were brought to trial. The greater number of persons pleading "not guilty" is partially responsible for an increasingly crowded court calendar at the municipal court level.

The current philosophy of court administration has led a number of

observers to recommend that the large municipal courts in Hennepin County and the municipal courts in Ramsey County should be combined with the district court for those counties. It is argued that such a consolidation would permit more economical and efficient use of judges and other services. In some areas there is already substantial coordination of services.

Some lower level courts are characterized by relatively informal proceedings; attorneys are not always necessary and records of the proceedings are not always kept. Until quite recently a number of these courts, particularly in rural areas, were headed by persons who were not lawyers. Frequently, the small case loads have made the service of judges necessary only on a part-time basis. Ideally, justice at this level is both inexpensive and accessible to the average citizen.

Recent major studies of American court systems have expressed distress at the situation prevailing in many lower courts. This is true of the 1971 *Report on State-Local Relations in the Criminal Justice System* of the Advisory Commission on Intergovernmental Relations.[4] The authors stress the fact that while major criminal cases are not decided at this level, the great bulk of cases entering the court system are decided at this level. Frequently in the past these courts have been more understaffed and overworked proportionately than other courts in the system. The fact that they are known as "inferior" courts and that their judges are ordinarily paid less than judges in the "superior" courts has not enhanced their prestige or their effectiveness.

Another reason for concern about the inadequacy of courts on this level is the fact that most persons who commit serious crimes have had their first contact with the judicial system in a lower court. It is argued that if lower level courts were adequately staffed and strongly supported by social services they might be more effective in working with defendants by providing a positive experience.

SPECIALIZED COURTS

The following discussion centers on courts which handle quite specialized matters: probate, juvenile and family courts. In terms of court hierarchy these courts are located at different levels in different counties. However, the character of the cases in these courts and the procedure applied is the same regardless of the level.

PROBATE COURTS

Separate county-wide probate courts exist in Hennepin, Ramsey and St. Louis counties. In the other 84 counties the original county-wide probate courts have now become general county courts with probate divisions.

Traditionally, the jurisdiction of probate courts has concerned the transfer of property to people after a person's death. *Probate* refers to the "proving" of a will. Probate courts in Minnesota, however, also have jurisdiction over guardianship proceedings for minor children and persons judged incompetent to manage their own affairs. In Hennepin, Ramsey and St. Louis counties probate courts also have authority over commitment proceedings; in the other 84 counties this is a function of the family division of the county court. It will be discussed in this section, however, for the sake of simplicity.

Estates and Wills

Most of the business of probate courts in Minnesota is concerned with determining the inheritance of assets in estates, with making certain all valid claims against them are met, with ensuring that taxes are paid and with supervising the administration of the estate during this period.

It is necessary for property and assets in the *sole* name of the deceased to go through probate before the transfer of property to heirs is legal. Probate proceedings do not cover insurance with a designated beneficiary nor do they cover jointly owned property. (Property owned jointly does not go through probate but this arrangement may in certain cases involve heavier taxes than sole ownership which does go through probate.)

If a person has made a valid will disposing of his property and assets, the case goes into probate *testate*. If a person does not leave a valid will his estate is said to be *intestate*, and the court orders his property divided among his heirs according to the formula prescribed by the Minnesota law of descent. In the relatively rare instances where the deceased has no next of kin or where none of the beneficiaries named in the will survive, the proceeds of the estate go to the State of Minnesota.

If an estate is relatively small, with probate assets of $15,000 or less, and uncomplicated, the executor may request a *summary disposition* which means the estate can probably be probated in nine months. It may take two or three years, however, to settle an estate involving many thousands of dollars where there are questions of valuation or where property must be sold before clearance can be obtained.

There are several steps involved in the settlement of an estate in probate court:

First, someone, ordinarily a beneficiary, executor or someone with a legal interest in the estate, must *petition* the court to have the will admitted to probate. After the will is located and submitted to probate, a list of beneficiaries is drawn up and a list of estate assets, divided into probate and nonprobate categories is drawn up.

Second, there is a *hearing to "prove" the will*. A notice of this hearing must be printed and all beneficiaries and creditors entitled to settlement of claims must be notified. At this hearing the judge

appoints the executor or executors named in the will if he is satisfied that the person is suitable and competent. If no will exists, the judge confirms the line of descent and appoints an administrator.

At this hearing the judge issues "letters testamentary" which give the executor the authority to carry out orders of the will under the court's direction. The court makes arrangements for the financial support of the survivors if necessary.

Third, there is a *hearing on the final account* when most of the obligations against the estate have been met. At this time, the court approves the transactions undertaken by the executor. After the federal estate tax and Minnesota inheritance tax, if applicable, are paid the executor appears in court for the next step.

Fourth, the *final decree of distribution*. If everything is satisfactory, the court grants a discharge of the executor and the estate is out of probate.

One reform sometimes suggested in the area of probate is the substitution of a simpler, more administrative procedure for the handling of simple estates.

Guardianships

Probate judges in Minnesota also appoint guardians for persons not deemed capable of managing their own affairs, for minor children who have no living parents or for those whose parents have been deemed unfit. Any person of legal age may file a petition to appoint a guardian. After a hearing, usually in consultation with the ward, the court appoints a guardian of a person, his estate or both. The guardian then has the right to act on behalf of the ward, subject to court approval. When a minor reaches 21 years of age, guardianship ceases. In other instances guardianships may be terminated by the ward, the guardian, or an interested party by filing a petition with the court for "restoration" of the person's rights.

Commitment

The commitment of certain persons to institutions is the responsibility of probate courts in Hennepin, Ramsey and St. Louis counties and of the family court division of the county courts elsewhere. This area has received considerable attention from those interested in making certain that the rights of the individual are adequately safeguarded during the commitment process. These rights must be balanced against the rights of society to commit dangerous persons and also, presumably, to protect certain persons from themselves. The Minnesota law on commitment is relatively recent and incorporates a number of safeguards for the individual.

In Minnesota persons may be committed to state institutions if they are judged mentally ill, inebriate, deficient or dangerous to the public.

Any interested person may file a petition for commitment in the relevant court where the proposed patient resides or is located. A copy of the petition must be delivered to the county welfare department before it is filed. This gives the welfare agency an opportunity to talk with the petitioner and consider possible alternatives to commitment; if commitment is clearly appropriate it gives the agency an opportunity to initiate a plan which minimizes the traumatic effects of commitment or hospitalization procedures. The petition must be accompanied by a statement of a medical doctor that he has examined the proposed patient and believes that he needs hospitalization or by a statement that it has not been possible to obtain such an examination.

The court appoints two licensed physicians as examiners after a petition is filed. The court also directs the county welfare department to investigate the background of the patient and file a written report for use by the head of the hospital to which the patient may be admitted.

A court hearing must be held within 14 days from the time the petition is filed, although exceptions may be made in some cases. An immediate hearing may be demanded by the proposed patient. If he is unable to provide his own counsel the court appoints a lawyer to represent him.

The hearing on commitment is held before a judge, a referee or county-appointed court commissioner; the petitioner, and, if requested by the petitioner and the judge, a representative of the county attorney's office who may represent the petitioner; the proposed patient and his lawyer; two medical examiners and anyone else the court may deem necessary. There is no formal transcript of these proceedings.

If the court finds the proposed patient is not to be committed, the proceedings are immediately terminated. However, if the court finds the proposed patient mentally ill or inebriate and finds that commitment to a hospital is necessary for the welfare of the patient or the protection of society, the court shall commit the patient to either a public hospital or a consenting private hospital subject to a mandatory review by the head of the hospital within 60 days from the date of the commitment order.

If the hospital rules that a committed person no longer needs institutional care and treatment it may release him, after notifying the court, without further court action. A patient may also be released on "provisional discharge" on a temporary trial basis. This becomes complete discharge after a year unless the hospital revokes the provisional discharge before that time.

A second court order is required either to release a patient before the 60 day period expires or to hold him beyond it. The second court order may either order the patient's release or commit him to the hospital for an indeterminate period. Such an order may be made without a hearing, but a patient may request a hearing.

If a person has voluntarily committed himself to a hospital and wishes to leave he may also be committed. If the head of the hospital feels the patient's release would not be in the best interests of the patient or society he may file a 72 hours "hold" and file a petition for commitment.

JUVENILE COURTS

Juvenile court matters are handled in the juvenile court divisions of the district court in Hennepin and Ramsey counties. In St. Louis county they are handled in the probate court. They are handled in the family court division of county courts in the remaining 84 counties. In all instances, however, the application of the laws differs for juveniles from that of adults.[5]

Juvenile courts have jurisdiction over all children under 18 who have committed infractions of ordinances, traffic violations or violations of the criminal code which applies also to adults. They also have jurisdiction, however, over a number of specific "juvenile status offenses" including truancy, chronic absenting and incorrigibility. They also have jurisdiction in cases where children are judged to be "neglected" or "dependent" where, in effect, the parents rather than the child were judged at fault.

Juvenile courts, established in Minnesota in 1905, deal in special ways with the problems and offenses of young people. Fundamental to the philosophy of juvenile law is that adjudication is not deemed a conviction and no child is deemed a criminal as a result of any action taken in juvenile court. Juvenile court differs in several respects from adult criminal court. The philosophy of juvenile court holds that a child should be protected and rehabilitated, not punished. Procedural informality is substituted for the adversary system (see Practices and Procedures), and social service investigations have great impact on the disposition of cases.

Juvenile proceedings are generally closed to the public, but exceptions may be made by the presiding judge. If a juvenile is judged guilty of having committed a criminal offense, the child's record is not made public and juvenile court records are sealed when he reaches 18. No juries are present at trials in juvenile courts and the names of juvenile offenders are not released to the press.

There are a number of steps involved in juvenile court proceedings which are described here:

A child can be taken into custody when he has run away, is a danger to himself or has violated probation. He may also be referred to the court by social agencies, the police, the welfare department, by his parents or interested citizens.

The child in custody must be informed of his constitutional rights. Except when he may be a danger to himself or the community, he must be released to the custody of his parents. A detention hearing for a child in custody may be held not later than 72 hours after his apprehension.

A *petition for delinquency* listing the facts of the case, approved by if not written by the county attorney, is filed with the court. The parent or guardian is ordinarily served with a full statement of charges with the hearing notice.

Hearings may be conducted in two steps: (1) the *adjudicatory* hearing

for finding of fact of law and the (2) *dispositional* hearing where a treatment plan is proposed and approved. Not all of Minnesota's juvenile courts conduct their hearings in this manner.

The court must appoint counsel if the child and his parents cannot afford one. However, since not all districts have public defenders assigned to the juvenile division, the availability of counsel is sometimes very limited, particularly for consultation before the hearing itself. Verbatim recordings are made of all hearings except traffic offender cases.

In cases where offenders over 14 are charged with very serious offenses, they may be turned over to adult court. The county attorney must file a petition to have this done. Only five motions for adult prosecutions were granted in 1971 in Hennepin County Juvenile Court.

At the adjudicatory hearing the child is asked to admit or deny the allegations in the petition. If he denies the petition, there is a full presentation of the case, including witnesses. The county attorney presents the case for the state. At the conclusion of the hearing a date is set for the disposition of the case, although in some cases this may take place immediately.

A social study of the case is required before the disposition is decided. The child's family, home and school environment are investigated. Psychological or medical tests may be taken. Alternative dispositions, similar to sentencing in an ordinary court, might be probation; transfer of legal custody to the Youth Conservation Commission (YCC), the youth division of the Department of Corrections which controls the reformatories in the state; referral to the county welfare department of family counseling. Drivers licenses may be cancelled until the eighteenth birthday for traffic offenses.

There is an alternative available to having the child judged delinquent. If he admits to the facts in the petition the case may be continued for 90 days during which the juvenile must conform to certain rules under the supervision of the probation officer. The court then reviews the case and if it finds the child's conduct and adjustment satisfactory it may dismiss the delinquency petition. This avoids creating a damaging record. If the court finds the juvenile's conduct unsatisfactory it may continue the matter for 90 days more and repeat this process until his behavior is satisfactory. The 1968 *Report of the Governor's Committee on the Administration of Justice* recommended greater use of this procedure.

In 1967, the U.S. Supreme Court *In re Gault*, held that juvenile offenders were entitled to the full protection of "due process" of law. (See Practices and Procedures) The *Gault* decision served notice that children must be accorded all procedural rights that adults have in the system of criminal justice. Many protested that this put an end to the unique features of the juvenile courts designed to treat children as special offenders, to be protected from criminal charges and treatment. However, a decision written by Mr. Justice Fortas, noted, "There is evidence that there may be grounds for concern that the child receives the worst in both worlds; that

he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."

The difficulty of assessing juvenile justice in Minnesota is the disparity between the language of what is promised and what is actually delivered. The 1968 *Governor's Committee on Administration of Justice* stated that "one reason for the failure of the juvenile courts has been the community's continuing unwillingness to provide the resources – the people and the facilities and concern – necessary to permit them to realize their potential and prevent them from taking on some of the undesirable features of lower criminal courts in this country."

Some of the recommendations of study commissions in the juvenile area included more adequate probation services, more counseling and psychological services and more community services, particularly group and foster homes, available to the juvenile offender.

FAMILY COURT

In Hennepin and Ramsey counties family court matters are heard at the district court level. In Ramsey County a family court judge is appointed annually from among the district court judges; in Hennepin County a family court judge is elected. In St. Louis County there is no family court per se; cases which would fall within that division are heard by the district court. In the remaining 84 counties family court divisions are part of the county court.

Jurisdiction

Family courts have jurisdiction over divorce, separate maintenance, annulment, child custody, child support and paternity matters. In the 84 counties covered by the County Court Act they also have jurisdiction over commitments.

Family court proceedings in Hennepin and Ramsey counties are generally heard in small courtrooms with relatively few people present; these family courts also make use of referees, who are ordinarily lawyers, to conduct many hearings. In Hennepin County there are now four family court referees. Only judges may sign the final orders. Persons whose cases have been heard by referees may ask for a rehearing before a judge.

The length of time between the initial filing and the date of the final hearing varies considerably depending on the nature of the action involved. Uncontested divorces may take from 4 to 5 months, contested divorces from 9 to 12 months, contempt charges instigated by the county attorney 5 weeks (where Aid to Families with Dependent Children is involved) and contempt complaints instigated by a private party one week.

The sensitive problems which family court faces require specialized counseling and services. In Hennepin County, for instance, the counseling services of the Department of Court Services, Domestic Relations Unit, are available for marriage counseling, supervising visitations, post-divorce adjustments. The Hennepin County Welfare Department is used for collection of child support payments which are not met and also does investigative reports for the family court.

One frequently suggested reform in family court procedures is a revision of the Divorce Statute to include no "fault," recognition that the marriage was irretrievably broken. At present it is not complicated to get a divorce in Minnesota but one party must establish that the other was "at fault." Some observers feel that uncontested divorce proceedings would best be handled outside the courtroom altogether. The cost of going through family court, with attorneys' fees, may cause considerable hardship for many families. In addition, they also would like to see the jurisdiction of the family court extended to include certain disputes now handled in the criminal courts. It is argued that domestic assault cases, in particular, would benefit from an approach more treatment oriented than they now receive in regular courts.

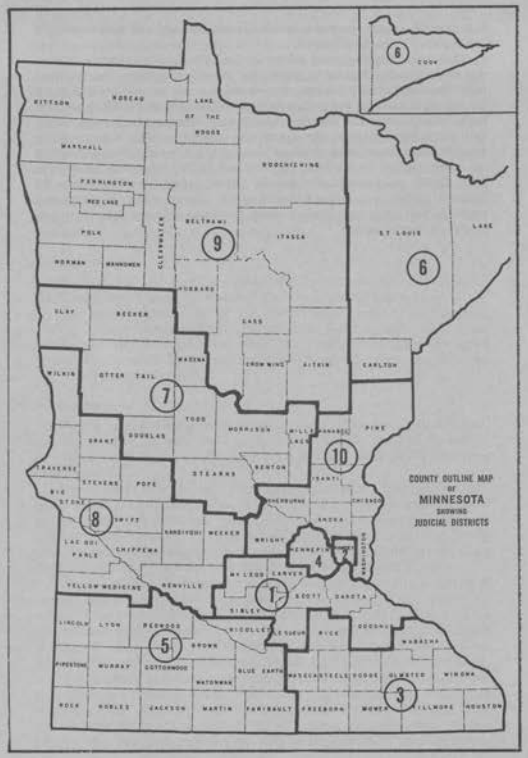


Figure One

DISTRICT COURT

Article VI of the Minnesota State Constitution establishes the district court as the trial court of general jurisdiction in Minnesota. Minnesota is divided into ten judicial districts. (See figure 1) Each is served by a district court. The number of judges for each district court varies from 19 in the Fourth District, Hennepin County, to three in the Eighth District, which consists of 13 counties. The Minnesota legislature in its 1971 session created one new judge each for the Second and Fourth Districts.

The salaries of the district court judges are paid by the legislature; other court costs are paid by the counties on per capita basis.

JURISDICTION

The district court has original jurisdiction in all civil and criminal cases, including jurisdiction over boundary waters. In practice they limit their jurisdiction to civil cases exceeding $100 and to criminal cases exceeding 90 days imprisonment. District courts also have appellate jurisdiction. They hear appeals from decisions reached in lower courts – from justice of the peace, probate, county and most municipal courts. The large municipal courts in Hennepin County, St. Paul and Duluth, however, appeal directly to the supreme court in civil and criminal cases where a violation of a state statute is involved.

An appeal to the district court may be based on a question of law or of fact. If only a question of law is involved, the case is returned to the lower court for final judgment. If the question is one of both law and fact the district court hears the entire case as a new trial.

In each district, the judges elect one judge as chief judge. He is then responsible to the Chief Justice of the State Supreme Court. The chief judge in each district decides where judges are assigned for the court term. Court is held regularly in all county seats. Some districts hold continuous sessions; others have sessions during the spring and fall terms. District courts with continuous sessions may have several courtrooms in one building.

CASE LOAD

A persistent concern of those involved in the courts has been the crowded condition of district court calendars in recent years. If the calendars are very crowded the right to a "speedy trial" is jeopardized. With increasing urbanization the district courts in the metropolitan area of Hennepin, Ramsey, Anoka, Washington and Dakota counties have built up a considerable backlog of cases. Since 1967, however, the backlog has declined.

The Chief Justice of the Supreme Court may assign district court

judges to other districts to equalize the case loads if necessary. He may also assign retired judges to the district court. In 1971 eleven individual retired judges were assigned to five different district courts.[6] The use of these measures, the addition of better administrative services and the addition of the two new district judges have helped relieve the crowded situation. According to Richard Klein, State Court Administrator, there is no place in the state where a criminal defendant cannot get a trial within three months, unless he desires a delay. Klein said the longest average delay in civil jury trials is 13.3 months in Ramsey County and, in civil cases tried by a judge, 8.6 months in Anoka County. He stated the average delay in Hennepin District Court is 11.7 months.[7]

SUPREME COURT

The Minnesota Supreme Court consists of one chief justice and six associate justices. Since 1963 it has been served by an Administrative Assistant, now the State Court Administrator. The legislature has also provided funds for court commissioners who serve in the prehearing screening of cases. District court judges are also appointed, one at a time, to serve on the supreme court for limited periods of time.

In addition to serving as the major appellate court for the state the supreme court also has original jurisdiction in the case of certain writs — habeas corpus, mandamus and prohibition. These serve to make sure that a person is not being held unlawfully, that a lower court must perform a certain action or that it must refrain from a certain action. The supreme court may also review the decisions of certain departments of state government including the Workmen's Compensation Commission, Tax Court, Department of Manpower Services and Commerce Department. Unlike the United States Supreme Court, the Minnesota Supreme Court must consider all the appeals brought before it.

To appeal a case to the supreme court a notice of appeal must be filed with the supreme court according to certain rules of procedure. Upon the receipt of the transcript and a brief containing the salient legal issues from the appellant's attorney, the case is placed on the court calendar. The respondent then files a brief containing the issues he wishes to raise or defend. In criminal appeals an indigent person is represented by the Public Defender and the expenses of providing his transcript are borne by the court.

PROCEDURES

Unlike the lower state courts which utilize one judge for each case several supreme court judges consider each case. The supreme court hears

cases with either the chief justice and three justices or all seven of the justices present. When the entire court hears a case it is called *en banc;* when the chief justice and three justices hear a case it is said to be heard *in division*. The practice of dividing the court developed as a means of more efficiently dealing with increasing case loads. The number of opinions written by the supreme court justices has increased from 178 in 1957 to 322 in 1971.[8]

The court commissioner prescreens cases to determine if they are sufficiently important to be heard by the whole court or if they may be heard *in division*. The court commissioner also recommends to the court that certain cases may be disposed of by *per curiam* (short) opinions which are subject to review by all the justices. The prescreening process is flexible and any justice may request that a case be reassigned to the *en banc* calendar if he wishes.

Before it is heard each case is assigned to one justice. After the attorneys' arguments are heard the court retires to the privacy of the conference room where the assigned judge reviews the legal issues. Then each justice in order of seniority discusses the case. After open debate or dialogue the court reaches a tentative decision. The assigned justice writes the opinion on the case and circulates it to the other judges concerned. If all agree, a decision has been reached. If there is disagreement, a justice may write a dissenting opinion which will be circulated among all the justices involved. If the majority agree with the dissent, this becomes the court's decision. The original opinion, if unchanged by that writer, then becomes the dissenting opinion.

A majority of the justices must agree for decision to be reached on a case heard *en banc*. Four justices must agree in a case heard *in division*. If four justices cannot agree the case is rescheduled for *en banc* hearing or is decided *en banc* on the basis of the briefs or written arguments.

Opinion writing is the most important and time-consuming work of the court staff, judges and law clerks. It requires both extensive research and concise explicit expression. Time required to complete an opinion varies from one day in some cases to several months in others. In 1971, the number of regular matters heard required more than 48 opinions to be written by each member of the court. According to the *Eighth Annual Report — Minnesota Courts,* "This number of opinions is almost twice as many per justice as is generally regarded as the maximum that should be required of a supreme court justice."[9]

THE SUPREME COURT AS LEADER OF THE STATE COURT SYSTEM

In terms of legal decisions the Minnesota Supreme Court is superior to lower courts. If it overrules the decision of a lower court, the lower court must change its ruling.

The supreme court, however, and particularly the chief justice does have certain important powers in terms of the court system as a whole. In 1948 the legislature authorized the supreme court to regulate practice and procedure in all courts except probate. In 1951 the supreme court adopted

a new set of Rules of Civil Procedure patterned on federal court rules. In 1955 the chief justice was given the power to assign district judges to serve in other districts where a serious imbalance of case loads exist. He can also call up a district court judge to serve on the supreme court. The supreme court also sets the rules for the Commission of Judicial Standards and may remove county and municipal court judges on the basis of its recommendations. The Supreme Court Chief Justice also heads the Judicial Council, established in 1937, for the "continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the state." [10]

SUGGESTED REFORMS

The Supreme Court Report in 1971 recommended the appointment of two more justices to the supreme court or the appointment of two court commissioners to handle the heavy case load. But, according to the report, "The ultimate solution is the creation of a court of appeals whose decisions would be final except where appeals are accepted by the Supreme Court on *Writ of Certiorari*." [11]

Another possible solution, mentioned in the President's Commission *Task Force Report: the Courts*, might be the creation of some mechanism whereby sentences could be reviewed. Many criminal cases are appealed now, it is argued, not because the defendant felt there was really anything unconstitutional about the trial but because the sentence seemed too harsh. This need could be met by a panel of lower court judges reviewing sentences or by the supreme court itself.

COURT PERSONNEL

JUDGES

Judges are vital and central to the court system. Their calibre and behavior have much to do with the quality of justice in the courts. A judge has considerable discretion in setting bail, in creating a compassionate or a punitive atmosphere in the courtroom and in sentencing. Yet in Minnesota, as in most of the United States, there is much opinion which holds that the present system of selecting judges and maintaining them in office is imperfect.[12]

Selection

In Minnesota, as in many other states, judges are elected on a nonpartisan basis. Often judges are first appointed by the governor when a vacancy occurs on the bench through death or retirement. According to the biographies of judges in the 1971-72 *Legislative Manual of Minnesota*

only one of the seven justices on the supreme court was first elected to the supreme court. Sixty-one of the 72 district judges whose biographies are listed were appointed to the bench.[13]

Since each judge is deemed, under Minnesota law, to hold a separate nonpartisan office, when one or more judges in a judicial district are to be elected at the same general election, the ballot is required to state the name of each judge whose successor is to be elected. The official ballot designates each office as "for the office of judge . . . to which (name of judge) was elected for the regular term" or "to which (name of judge) was appointed," as the case may be. When a judge is a candidate to succeed himself, the word "incumbent" is printed after his name in the list of candidates for the office. Incumbents are almost always re-elected.

All judges in Minnesota are lawyers, with the exception of probate judges in office when the County Court Act went into effect. In Minnesota judges' salaries have recently been increased making the career a somewhat more attractive one for attorneys who might otherwise go into private practice.

The election of judges in many states is a legacy from the Jacksonian era of American politics which was violently opposed to elitism in any form. It is much criticized today because voters are often insufficiently informed about the records of different judges. Moreover, the necessity of running for office may tend to incline judges toward sudden shifts in popular opinion rather than to upholding the law.

Another problem facing judges in this country, according to some, is the virtual lack of training for judges beyond an apprentice "on the job" effort. The few training institutes which exist for trial judges cannot sufficiently meet the need.

Tenure

Another problem noted by observers of court systems throughout the United States is the extreme difficulty of removing judges who are either mentally incapable of performing their duties or simply bad judges. At present supreme court justices in Minnesota, if they are re-elected, can only be removed by impeachment. District court judges may be removed by impeachment or by the governor after hearing a petition on mental or physical incapacity. County and municipal court judges may be removed by the governor for malfeasance or non-feasance in performance of official duties. They may also be removed by the supreme court on recommendation of the Commission on Judicial Standards.

The Commission of Judicial Standards was established in Minnesota by the 1971 legislature. It consists of nine members: one district, one municipal and one probate judge; two lawyers appointed by the Minnesota State Bar Association; and four citizens appointed by the governor. The commission has the power to recommend the retirement of a judge for disability to the supreme court. It also investigates complaints against a judge for "action or inaction that may constitute persistent failure to perform his duties, habitual intemperance or conduct prejudicial to the ad-

Figure 2

JUDGES

Court	*Number of Judges*	*Salary*	*System* of Electing***	*Length of Term*	*Mandatory Retirement Age*	*Retirement Pay*	*Judicial Qualifications*	*System of Removal*
Supreme	7	Chief $35,000 Assoc. $32,500	Statewide Elections	6 years	none	At age 70 after serving two full terms; at age 65 with minimum of 15 years service. Benefits equal to one-half salary plus 2½ percent for each year of service in excess of two terms. (The 2½ percent increment is limited to a maximum of 10 years.)	Learned in the law (a)	Impeachment
District	72	$29,000 except $30,500 in Henn. Ramsey, St. Louis	District Elections	6 years	none (e)	At age 70 with 15 years or at age 65 with 25 years as judge of a court of record. Benefits equal to one-half compensation alloted for the office.	Learned in the law	Impeachment; removal by governor after hearing on petition alleging physical or mental incapacity.
County	87	$24,000 if not learned in law $20,000	County Elections	6 years	none	Same as for Probate	Learned in the law (b)	By Commission on Judicial Standards (d)
Probate	4	$24,000 except $26,000 in Henn. Ramsey, St. Louis Counties	County Elections	6 years	none	At age 70 with 20 years of service in a court of record, or at age 65 with 24 years of service. Benefits equal to one-half compensation but subject to diminution by amount of other pension.	Learned in the law (b)	By Commission on Judicial Standards
Municipal	*Part Time* Hennepin 0 Ramsey 5 St. Louis 9	*Full Time* 16 7 2	$24,000 except $26,000 in Henn. Ramsey, St. Louis Counties	Municipal Elections (c)	6 years	none	No uniform retirement plan	Learned in the law	By Commission on Judicial Standards

*All elections on nonpartisan basis.

**Governor may fill vacancy in between elections. Then appointee appears on ballot at next election. Most judges in Minnesota were appointed first by governor.

(a) This is interpreted by the Minnesota Supreme Court to mean lawyer.

(b) Prior to 1956, this was not required; therefore, some incumbent probate and county judges are non-lawyers.

(c) Except in Hennepin County where court is unified and serves entire county. Election is county-wide.

(d) Established by 1971 legislature. A proposed constitutional amendment to be voted on November 1972 contains provision for extending commission's power to district and supreme court. This commission can only make a recommendation to the State Supreme Court, which has the ultimate removal power.

(e) A district judge forfeits his pension if he does not retire by age 71.

ministration of justice that brings the judicial office into disrepute." After completing its investigation, the commission may recommend censure or removal of a judge to the supreme court. At present the commission's powers extend only to probate and municipal judges, justices of the peace, and supreme court and district court judges who are incapacitated. (Their powers may be extended to apply to district court and supreme court judges if a constitutional amendment to that effect is adopted at the 1972 general election.)

The commission is not empowered to make public rebukes to judges. According to an article in the New York *Times*, on June 9, 1972, similar commissions established in other states beginning with one in California in 1960 have not been very effective in ridding the bench of bad judges. They are ordinarily very limited in their powers since the only resource at their disposal, the recommendation for dismissal, is too drastic for frequent use. They are usually not empowered to investigate whether or not the judge knows how to go about the business of judging. The understandable reluctance of many lawyers to criticize judges before whom they will probably continue to appear is another difficulty in looking for solutions in this area. Recently, a lawyer in New York was ruled in contempt of court for general comments of a critical nature he had made about judges in print.[14]

Another topic frequently discussed concerning judges is the appropriate retirement age. At present age 70 is the age at which most judges in Minnesota retire. There is no mandatory age for retirement of judges in Minnesota. However, district court judges forfeit their pension if they do not retire by age 71. Some argue that even this age may create a gap of attitude and life style between the judge and those who appear before him.

The whole area of the method for choosing judges is a delicate one. It is clearly desirable to ensure some degree of independence on the part of judges from the tides of public opinion. On the other hand, it is also desirable for judges to be aware of broad public attitudes toward justice and meet the increasing demand on all institutions for public accountability.

OTHER PERSONNEL

Bailiffs, court reporters, court commissioners, clerks of court and administrators also are among those employed by the court. Refer to the glossary for a brief description of their roles.

Procedures and Practices

This section of the study describes some of the more important procedures which occur in Minnesota courts. A knowledge of the structure of the courts is important, but the experience of the individual in court and the quality of justice dispensed by the courts are profoundly affected by the practices and procedures in court.

This will not be an exhaustive discussion of the proceedings in Minnesota courts. Most of these procedures relate primarily to the *criminal* justice system; however, consideration of some areas also pertains to civil procedure, e.g. prosecution and defense, jury, sentencing. In addition, most cases in criminal law are settled by a guilty plea and most cases in civil law are settled out of court before trial. Much of this discussion, however, focuses on procedures affecting contested trials.

In order to discuss court practices with perspective, it is important to understand the concept of "due process" in American law. The Fourteenth Amendment to the United States Constitution states that no state shall "deprive any person of life, liberty, or property, without due process of law." The United States Supreme Court has used this phrase to guarantee citizens certain rights in their state courts. "Due process" means generally that a person can only be held in jail on a specific charge; that he may have counsel if imprisonment would result from his conviction; that he has the right to remain silent, to produce witnesses, to cross-examine witnesses for the prosecution and to appeal his case. It also includes the right to a trial by jury if he desires it. The notion of "due process" has also been interpreted to mean that evidence used to produce a conviction must have been legally obtained. "Due process" means that a person is presumed innocent until proved guilty and that the burden of proof is on the prosecution.

In theory all the safeguards of "due process" of law are provided by courts in Minnesota; in practice in an imperfect world there is reason to believe there may be some lapses from this ideal. It is also important to bear in mind that the majority of criminal offenders come from less-advantaged sectors of society. It is unrealistic to expect the courts to right all of society's wrongs; it is equally unfair to expect the courts to ignore behavior which is generally recognized as harmful to society. Courts are, therefore, faced with the delicate task of balancing these differing expectations. It is the citizens from all levels of society who need assurance that the justice in our courts is dispensed in a consistent and scrupulous manner.

THE ADVERSARY SYSTEM

The court system in Minnesota, like other American court systems and systems in Great Britain and the British Commonwealth, utilizes the adversary system of justice. This system assumes that two lawyers arguing the opposite points of view will establish the facts of the case. The judge is supposed to maintain impartiality.

If the adversary system of justice is to be workable, it is important that there be an adequate presentation of both sides of a case. One lawyer's abilities should not vastly overshadow those of his opponent. Both sides should be vigorous and aggressive in presenting their cases. Each lawyer should have the ability to perform adequate investigations to build a strong case. Obviously, in real life situations there may be discrepancies between this ideal and the actual situation. Increasingly, however, it is accepted that one should be represented by an attorney to make an effective case in court.

CRIMINAL CASES—The Prosecution and the Defense

In criminal cases the "state" or the prosecution represented by a city or county attorney or someone from the Attorney General's office attempts to demonstrate that the defendant is guilty as charged. He has at his disposal the investigatory powers of the police department. It is only recently that there has been a requirement for counsel for indigent defendants in other than capital cases, where the sentence might be death or life imprisonment. In 1963, however, in *Gideon v. Wainwright* the supreme court ruled that counsel must be appointed for any defendant accused of a felony. In the spring of 1972 the court extended this doctrine to apply to misdemeanors as well if a conviction would result in imprisonment ~~for six months or a year~~. (Minnesota policy had already met this requirement.)

The implementation of these decisions in Minnesota, as elsewhere, has resulted in a decrease in the number of guilty pleas, an increase in the number of requests for jury trials and an increase in the number of criminal appeals to the supreme court.

THE PROSECUTION

Attorney General

Although the attorney general and his department are a part of the executive branch of Minnesota state government, he performs functions very

important to the state court system. The attorney general is the chief legal officer of the state. He can initiate and conduct criminal proceedings on his own initiative if he deems it necessary to enforce state laws, to preserve order or to protect public rights. He may initiate or intervene in criminal proceedings at the request of the governor or a county prosecutor. He is also the legal adviser to the state legislature, its committees and all state boards and commissions.

The attorney general is nominated with political party designation, elected on a state-wide basis and serves a four-year term. He is assisted by a chief deputy attorney general, a solicitor general, a number of deputy attorney generals and a staff of some 50 lawyers. The solicitor general is in charge of all suits.

The attorney general's office handles the prosecution, both the preparing of briefs and the oral argument, for the prosecution of most appeals coming to the supreme court from most counties. Ordinarily the county attorneys from the three large metropolitan counties provide their own appeal services. The attorney general's staff also frequently helps county attorneys in prosecution at the district court level, since most county attorneys are part-time and do not have sizable staffs.

County Attorney

The county attorney is elected in each county for a four-year term as the chief legal officer of the county. He must be "learned in the law." In civil cases he represents the county or city boards and handles defense and appellate work for the local unit of government.

As prosecutor in criminal cases the county attorney occupies a crucial position in the law enforcement system. He exercises considerable discretion in deciding which charges to press and which to drop, what specific charges to bring against an offender, how to prosecute the case and what disposition to recommend. He has discretion in calling grand juries to determine probable cause for charging defendants.

The President's Commission on Law Enforcement and the Administration of Justice found that the great dependence upon and use of part-time prosecutors proportionately interfered with informed and intelligent prosecution. The lack of time and the possible conflict of interest for a part-time attorney who also practices law in the county are obstacles to a thoroughgoing professionalism. The highly political interests of many prosecutors who aspire to higher political office may also be inconsistent with weighing the long-term interests of justice in a given case.[18]

Only four of Minnesota's 87 counties have full-time prosecutors. A district prosecutor system was funded by the Ford Foundation and tried on an experimental basis in the Fifth and Ninth Judicial Districts to furnish full-time assistance to part-time county attorneys. The 1970 Judicial Council reported that this experiment improved the prosecution in these districts, despite the initial hesitancy of some county attorneys to accept it. When the funding for this experiment expired, the Minnesota legislature did not provide funds for its continuance.

Another suggestion for improving the quality of the prosecution is the use of third year law students in prosecution projects. Law students are now used in public defender and legal aid offices. Their use in prosecution might prepare some of them for future careers in prosecution in addition to improving the preparation of current prosecution cases.

City Attorney

City attorneys, elected or appointed by municipalities, are the chief legal officers of the cities. They are ordinarily responsible for prosecuting violations of municipal ordinances in county and municipal courts. Like county attorneys, city attorneys are ordinarily part-time officials. There is occasional confusion as to where their authority ends and that of the county attorney begins.

Criticisms of the calibre of prosecution does not necessarily mean that prosecutors are always too lenient with offenders. It may mean, on the contrary, that they pursue charges against individuals which should be dropped, causing hardship for the defendant, crowding of the court calendar and annoyance on the part of the judge. Judge Neil Riley, of the Hennepin County Municipal Court, in sentencing a defendant after a disturbance on Plymouth Avenue in Minneapolis made the following remarks which were quoted in the Minneapolis *Star*, November 20, 1969:

> One of the weaknesses of our system of justice is that defendants who never should have been prosecuted have no right of redress. Their lost wages and attorney's fees simply come out of their own pocket. One wonders if the community were to be held liable for these expenses, complaints would be more carefully screened. . . . It is obvious that the criminal division of the city attorney's office is overworked, understaffed, and underpaid, a situation that must be corrected if blunders like the complaints and prosecution here are to be avoided in the future.

PUBLIC DEFENDER

Following the supreme court decision in *Gideon v. Wainwright* regarding the necessity of providing defense to indigent defendants, the legislature established the Minnesota Public Defender System by law in 1965, effective January 1966.

State Public Defender

The state public defender is appointed by the State Judicial Council for a four-year term on a full-time basis. He must be a licensed attorney. Four of his professional staff of 14 are assigned to Hennepin County Municipal Court to assist with the defense of indigent persons on misdemeanor or traffic violation charges. (One-third of these cases in the state are handled by the Hennepin County Municipal Court.) Ten other lawyers are on an annual retainer basis. One of these does full-time investigative work.

The state public defender's office performs a number of functions: (1) It represents without charge an indigent defendant appealing to the

supreme court from a conviction or pursuing a post-conviction proceeding after the time for appeal has expired when directed to do so by a judge of the district or supreme court. (2) It assists district public defenders in performing their duties when requested. (3) It furnishes investigative services to overburdened local public defenders. (4) It provides continuing legal education for all state and district public defenders.

The office works only with persons charged with having committed felonies, except for the Hennepin County traffic and misdemeanor cases. It processes approximately 250 cases annually.

District Public Defender

The 1965 law establishing a public defender system in Minnesota also provided for the participation of all judicial districts in the state public defender system by the unanimous decision of its district court judges. Six of Minnesota's ten judicial districts participate in the state system. The second and fourth districts already had public defender systems before the law was passed. The third and eighth districts have no established public defender system. They assign counsel to indigent defendants on an individual basis. There are 50 district public defenders. They are all qualified attorneys who are appointed for a four-year term on a part-time basis by the State Judicial Council on the recommendation of the district judges.

Any person charged with a felony or a gross misdemeanor who is financially unable to obtain counsel is entitled to representation by the public defender. The court determines who is indigent either through an affidavit stating the defendant's financial status or through questioning by the judge. All defendants appearing in court without counsel must be advised of their constitutional right to counsel. Since a decision by the Minnesota Supreme Court, predating the June 1972 United States Supreme Court decision, counsel must also be appointed for indigent defendants if they are accused of a misdemeanor which could result in imprisonment ~~of six months to a year~~. In practice this is often handled on an *ad hoc* basis.

C. Paul Jones, the Minnesota Public Defender, believes that the Minnesota state-wide public defender system is one of the best in the country and surpasses the minimum standards set by the American Bar Association (ABA). He feels, however, that his office needs more investigative staff. The staff member who is assigned to this job spends all his time doing interrogation work and there is no one to investigate other areas. There are no investigators on the staff of any public defender in the state. Jones feels that Hennepin, Ramsey and St. Louis counties, at least, should each have a full-time investigator. Funds for these positions had been requested of the legislature but were denied. Jones says it is "not brilliance but facts" that win cases.

Access to Attorneys in Civil Cases

The right to counsel for indigents in criminal cases established by decisions of the United States Supreme Court is not paralleled by similar guarantees in civil cases. The public defender's office in Minnesota, how-

ever, is studying the need for public civil defenders. At present, however, in Minnesota the Legal Aid Society established as a private corporation in Minneapolis, St. Paul and Duluth furnishes the main systematic delivery of civil legal services to the poor. The Legal Aid Society can be regarded as the private counterpart in civil law to the public defender's office in the criminal field. In Minneapolis it is funded by the United Fund, the Hennepin County Bar Association, the City of Minneapolis and Hennepin County; a staff in the neighborhood of 20 lawyers is employed. The St. Paul and Duluth offices are smaller.

Much of the work done by Legal Aid involves tenant-landlord relationships, divorce law and the handling of appeals from decisions of welfare agencies. The prevalence of the number of divorce cases would seem to point again to the possibility of changing to a no-fault system minimizing attorneys' involvement.

All cases ordinarily handled by attorneys on a contingent basis, where the attorney is paid out of the settlement if he wins the case, are referred by the Legal Aid Society to private lawyers.

BAIL AND PRETRIAL DETENTION

Authorities on American courts today are in general agreement that too many persons are being held in jail for minor infractions of the law and that too many people are held simply because they cannot meet bail.

The President's Commission recommended:

1. Bail projects should be undertaken at the state, county, and local levels to furnish judicial officers with sufficient information to permit the pretrial release without financial condition of all but that small portion of defendants who present a high risk of flight or dangerous acts prior to trial.

2. Each state should enact comprehensive bail reform legislation after the pattern set by the Federal Bail Reform Act of 1966.

3. Each community should establish procedures to enable and encourage police departments to release, in appropriate classes of cases, as many arrested persons as possible promptly after arrest upon issuance of a citation or summons requiring subsequent appearance.[18]

Traditionally bail was a sum of money required of the defendant to ensure his later appearance at trial. After his arrest the accused must be brought before a judge "promptly" which means within 24 hours. The judge then sets the amount of bail for the individual defendant. If he is unable to raise the amount himself, the bail bondsman may agree to post it for him for a fee varying from 10 per cent for a bond of $1,000 or more to $25 for a $100 bond. The fee is due when the bond is posted. If the defendant fails to appear at trial the money is forfeited. If the defendant appears, however, the bondsman still keeps the fee.

The practice of money bail has been criticized for a number of reasons:

First, requiring a sum of money to gain release from jail puts poor defendants at a great disadvantage. If they are able to pay the fee to the bondsman, this fee amounts essentially to a fine which only the poor have to pay.

Second, a long pretrial confinement for those unable to raise bail works great hardship on those defendants. They may be at a greater disadvantage once they get to trial. They have not had an opportunity to seek out witnesses. There is also evidence that juries may be less favorably disposed to defendants who obviously have come from jail than those who obviously have been released. Since the jailed defendant often loses his job, the state must frequently support his family as well as him. Being confined to jail is very much like being in prison while innocent, except that jails are generally even more lacking in rehabilitative and recreational facilities than prisons.

Third, and most important, is the criticism that money bail is not a very appropriate means to ensure the appearance of an individual at trial in any case.

Projects in Hennepin County District Court and elsewhere have established that more complete investigation of offenders to identify the good risks can result in a system which places little if any reliance on money to secure release from jail.

ALTERNATIVES TO MONEY BAIL

Alternatives to a total reliance on money bail, however, require an independent fact-finding agency to interview defenders and estimate the risks involved in releasing them. They may also require the availability of post-bail control or supervision of persons released. They also include procedures for promptly releasing persons charged with petty offenses.

A number of alternative plans to the traditional reliance on money bail have been enacted. The best known plans are the Bail Reform Act and the District of Columbia Bail Agency Act passed by Congress. This system requires the magistrate to release the defendant upon his personal recognizance *unless* he decides other conditions shall be imposed to ensure the defendant's appearance for trial. In determining the conditions of release the judge takes into consideration such factors as family ties, employment, and record of convictions of the defendant.

An experimental bail project with the essential features of these two federal acts was carried on in the District of Columbia for two and one half years. It was quite successful. Forty-nine per cent of the 5,144 defendants in the study were released on personal recognizance; 85 per cent were released by the courts. Only 3 per cent of those released failed to appear for trial.

The *Illinois* or *ten per cent plan* enacted in 1963 allows a defendant to be released on bond upon depositing in cash 10 per cent of the amount of

bail fixed by the court. However, if the defendant appears in court 90 per cent of the cash deposit is refunded.

The Illinois Criminal Code authorizes a court to issue a summons in lieu of a warrant for arrest and in certain cases police may issue notices to appear instead of making arrests.

An experimental bail project was also tried in Illinois. Only 2.7 per cent of the defendants released on personal recognizance failed to appear for trial. A smaller percentage of the 10 per cent cash bonds were forfeited than of the ordinary surety bonds. The number of defendants in jail awaiting trial during the period was also drastically reduced.

The *Manhattan Bail Project* and the *Manhattan Sumons Project* was one of the first experiments with bail reform. It was conducted by the Vera Foundation in cooperation with the New York University School of Law and the Institute of Judicial Administration. Except for certain narcotics violations and murder, all felony suspects were interviewed by investigators using a form to elicit information particularly on the existence of roots in the community, employment, etc. Verification was sought if this information seemed relatively satisfactory. A number of factors were weighed in the decision on whether or not to release him on personal recognizance. The results of the Vera Foundation project indicated that only 1 per cent of those released on personal recognizance failed to appear in court.

MINNESOTA PRACTICES

Hennepin County municipal and district courts have initiated bail reforms by rule or order of court under existing statutes. The Hennepin County Department of Court Services investigates defendants arraigned on felony charges in the district court and recommends some as eligible for release on personal recognizance (RPR). From February 1966 through March 1967 of the 497 defendants interviewed 20.3 per cent were recommended and released without bail—only one of these failed to appear in court. The invesigation is useful later for those defendants for whom a presentence investigation is requested, or who are later put on probation.

The Hennepin County Municipal Court has ruled that defendants charged only with misdemeanor or ordinance violations may be released to their attorneys upon the personal recognizance of the attorney. If a client so released fails to appear for trial, his attorney is denied use of this privilege for one year.

The Governor's Committee on the Administration of Justice recommended that Ramsey and Hennepin Counties take further steps toward bail reform by court order or rule by the district and municipal courts in both counties.

Standards determining the bail decision are not uniform but vary widely according to the individual views of each committing magistrate. Outside the Twin Cities bail may still be set without independent pre-bail investigations or measures to supervise defendants released on bail or on their own recognizance.

It was the opinion of those responding to the Governor's Commission's

request for information on this subject that the bail system was working reasonably well in securing the appearance of accused persons at trial. It has held that the poor defendants remaining in jail were bad risks as well as being poor.

The Governor's Commission recommended the adoption of statewide bail reform, either by statute or court rule, to meet the needs of other areas in Minnesota as well as of the Twin Cities area particularly in regard to the availability of facilities and personnel to accomplish the reform. The committee recommended that Minnesota require money bail only in situations "where such is necessary to insure a defendant's appearance or to prevent interference with the prosecuting witnesses."

PREVENTIVE DETENTION

These bail reform alternatives do not deal directly with the problem of keeping the defendant in jail because he is likely to commit another crime while awaiting trial for the first. This concept called "preventive detention" is considered of dubious constitutionality since it departs from the legal doctrine of charging a person only with specific acts he has already committed, rather than with future acts or with being a "criminal type." There are, however, a limited number of instances where people released to await trial for one charge commit another offense. Therefore, in practice, bail has often been set with this problem in mind. One way to lessen this difficulty, some argue, is to ensure speedy trials for all defendants.

The District of Columbia Court Reform and Criminal Procedures Act passed by Congress in 1970 provides for the pretrial detention of a person charged with a "dangerous crime" for up to 60 days. An advisor to the Deputy Attorney General was quoted as saying that this was actually a more honest method of detaining defendants than setting very high bail since it includes provision for a full hearing on the issue of "dangerousness" with a right to counsel, right to appeal and the right to present witnesses.

JURIES

Although the functions of grand and petit juries are quite different in court procedure, both have traditionally been regarded as bastions of protection for the rights of the individual against arbitrary authority. The right to indictment by a grand jury in the case of a serious crime is included in the Fifth Amendment to the United States Constitution. The right to a trial by jury is guaranteed by the Sixth and Seventh Amendments to the federal constitution.

SELECTION

Although the functions of grand and petit juries differ, the process used in their selection is similar. In Hennepin, Ramsey and St. Louis counties juries are selected from lists compiled from lists of registered voters. In practice city directories are also used. A majority of the district and municipal judges each submit two lists of a designated number of names for grand jury and petit jury duty. The total number of names required by statute for grand jury is 135 and for petit jury 2,000 or more.

In all other counties in Minnesota, the jury commission selects from voter lists 72 names for the grand jury and one name for each 100 persons residing in the county, totaling no less than 150, for petit jury duty. In both instances lists of certified jurors are prepared and called. Certain categories of citizens are exempted from jury duty by law, others may gain exemption in case of hardship. Any woman may be excused from jury duty.

Petit jurors are paid $10 daily except in Hennepin, Ramsey and St. Louis counties where they are paid $6 a day. Grand jury members are paid $6 per day and 7½¢ per mile for travel to and from their homes to the meeting place.

JURIES AS REPRESENTATIVES

One persistent criticism of both petit and grand juries has focused on their tendency to overrepresent white, prosperous, middle aged and relatively well educated citizens and to underrepresent less-advantaged, minority and young citizens. This is a serious criticism since, in fact, criminal offenders come disproportionately from these groups in society. In some instances, as in the case of grand juries investigating possible offenses by public officials, this distorted representation may not be serious. In criminal cases, however, where an understanding of life-styles or circumstances may be important in determining the facts it could be a serious drawback. The United States Supreme Court has ruled that an "impartial" jury need not include exact replicas of the defendant but that it must be formed from a list that does not systematically exclude some groups.

Some commentators have suggested that Minnesota change from the present system, where judges supply the names from which the grand jury list is drawn, to a more automatic random sampling. It has been pointed out, however, that the selectivity now available actually permits judges to submit the names of more minority persons than would probably be chosen through a random sampling. (Random sampling does not pick up members of very small minorities, for example, racial minorities in Minnesota.)

Actually, as long as voter registration lists and city directories form the basic lists from which jury members are chosen, there is bound to be some underrepresentation of poor, minority and young citizens since these groups are both highly transient and less likely to vote than many other groups in society.

THE GRAND JURY

The main function of grand juries in Minnesota is to decide whether or not "probable cause" as to the guilt of the defendant exists. If probable cause is found the grand jury returns an indictment and a warrant for the person's arrest is issued. If probable cause is not found a "no bill" is issued and the complaint is dropped.

The Minnesota Constitution originally required that a grand jury initiate all indictments. In 1904, however, this was changed to require only that persons must be charged by "due process" of law. The grand jury, however, must be used in cases where the charge is treason or murder in the first degree. The alternative means of securing probable cause, the prosecutor's appearance at a preliminary hearing, is used much more frequently in Minnesota than the grand jury. The Hennepin County Attorney's Office used the grand jury in approximately 200 of the 5,620 criminal cases it handled in the ten-year period from 1961 through 1971. A grand jury may be used, however, in matters of particular interest to the public.

The grand jury was specifically included in the United States Constitution because its abolition in England had made possible the political prosecutions in the seventeenth and eighteenth centuries. It is sometimes criticised today, however, for furnishing great power to the prosecution.

A main criticism of grand jury deliberations today is the disadvantage encountered by the defense in their proceedings. The grand jury meets in secret and in Minnesota rarely asks a defendant to testify. They cannot compel him to testify but if he does so he must waive his immunity in later trials and agree to answer all questions although the testimony may later be used against him in a criminal trial. Also witnesses can be subjected to investigation at a later time on the basis of their testimony unless granted specific immunity. The defense attorney ordinarily has no access to grand jury proceedings so he is not in a position to hear the evidence of witnesses the prosecution produces and prepare a defense accordingly as he might be in a preliminary hearing.

In addition to finding whether or not "probable cause" exists, the grand jury is empowered to conduct investigations of the prison system or

public officials on its own initiative. In some states this power has sometimes been used effectively against corruption in government.

THE PETIT JURY

The petit jury is a group of twelve or six men and women who decide the facts in a civil or criminal case. As stated earlier in this study, jury trials are far less common in the court system than guilty pleas on criminal charges or settlements in civil cases. In the district courts in Minnesota in 1971 only 11 per cent of all criminal cases were resolved by jury trials as opposed to 84 per cent settled by guilty pleas and 5 per cent tried before judges. In Hennepin and Ramsey counties slightly larger percentages of defedants chose jury trials, 14 and 12 per cent respectively, as opposed to 1 and 2 per cent which chose trials by judges alone, but again the overwhelming percentage of cases, 85 per cent and 86 per cent, were settled by guilty pleas. In civil cases most cases were settled before the trials actually began.[17]

The use of petit juries has been criticized as a time consuming and expensive procedure in a period when courts are overcrowded and underfinanced. Supporters contend, however, that it is essential that those accused of a serious crime retain the right to trial by jury.

Controversy now centers on the appropriate size for juries and on the question as to whether or not unanimity is essential for the jury's decision to be final. Federal courts require twelve-man juries which must be unanimous in criminal cases, but states use six-man juries, particularly in civil cases and in cases involving minor offenses. In 1970 the United States Supreme Court ruled that a six-man petit jury was constitutional in all civil and criminal cases except gross misdemeanors and felonies which require a twelve-man jury unless waived by the defendant. In 1971 Minnesota passed legislation to bring the state in conformity with that decision.

In 1972 the United States Supreme Court ruled that state legislation permitting decision by divided juries in criminal cases was not unconstitutional. They implied, however, that at least a three-fourths majority was necessary to convict or acquit. The cases under consideration were not capital crimes. Minnesota has retained a unanimity rule in criminal cases though five-sixths of a jury is sufficient to reach a verdict in civil cases.

Great Britain abandoned the principle of jury unanimity in 1967 and ceased use of the jury for civil cases. It is recognized that admission of verdicts by divided juries will save time and shorten trials, but that it will also make it easier to reach a decision for conviction without the prevously required unanimity.

PLEA BARGAINING

Plea bargaining is an arrangement between the prosecutor and the defendant or his attorney whereby the defendant pleads guilty to a lesser charge in exchange for a predictable, lesser sentence than might otherwise be available. The purpose of plea bargaining is to reduce court time and delay before trial, to give the defendant some certainty in the disposition of his case, to confine the upper limits of the judge's sentence or to decrease pretrial confinement. Both prosecution and defense participate because they are interested in limiting the risks inherent in adversary proceedings. (It is also known in the vernacular as "copping a plea.") It is important to recognize that plea bargaining, which is essentially the criminal counterpart to the common civil practice of "settling out of court" makes possible the ability of courts to manage their case loads as fast as they do.

Minnesota was one of the first states to sanction open plea negotiations in 1968. Minnesota law permits a plea to be withdrawn if the state does not carry out its promise. The judge makes an effort to establish that the defendant is indeed guilty before accepting the reduced sentence. In theory a judge has complete discretion in sentencing and is not obligated to honor the negotiations. However, the judge must allow the defendant to withdraw the guilty plea if the judge refuses to honor the negotiated sentence. In practice most judges accept the negotiated plea if it is substantiated by the finding of facts in the pre-sentence investigation.

In Minnesota there appears to be general agreement among lawyers from both the public defender's office and from the prosecution that plea bargaining is a workable, fair procedure as it is practiced. Plea bargaining is defended since its permits an assessment of individual factors in sentencing and provides some flexibility within the penal code. It also helps in greatly decreasing congestion in the courts.

In general, discussions of the practice of plea bargaining in American courts are almost unanimous in cautioning that its use be surrounded with careful guarantees since its abuse may throw the quality of justice dispensed by the court system into disrepute. There are two major kinds of problems which may arise from overly used and unsupervised plea bargaining:

> First, an innocent person may be penalized more heavily than a guilty person under the plea bargaining system and is given a very strong incentive to plead guilty. Particularly under a traditional money bail system the defendant pleading innocent may have a much longer stay in jail than his guilty counterpart. Chief Judge David Bazelon, of the United States Court of Appeals for the District of Columbia and a frequent critic of plea bargaining, quotes a defend-

ant as saying, "You mean if I'm guilty, I get out, but if I'm innocent I stay in jail?" Moreover, since the prosecutor must offer an attractive reduction in sentence to get his bargains accepted the person pleading innocent but later found guilty may get a much heavier sentence than the defendant willing to plead guilty at the outset. Ideally, a final sentence should be substantially the same whether it was negotiated or not.

Second, the practice of plea bargaining may result in a situation where public respect for the law is further reduced, both among criminal offenders and among the public at large. There are frequently a number of possible criminal charges among which the prosecutor must choose and the lines are not always clearcut. This is not always readily apparent to the public to whom a serious crime is seen as a total picture rather than in its component aspects. The reduction of a charge from a felony to a misdemeanor, a very attractive reduction of sentence because of the far less serious consequences of having a misdemeanor on one's record, may seem a very serious matter to the public. *The Bust Book*, a counter-culture handbook, considers the realities also: "Plea copping has several advantages for a person who is likely to be convicted . . . the fact that you are innocent but are pleading guilty should not bother you, as long as the deal is good."

In some courts, particularly in the New York City and other large city courts, where overcrowding has reached crisis proportions, the pressure on prosecutors to clear the jails is very great. Defendants accused of very serious crimes regularly plead guilty to much less serious violations and are released with light sentences. This seems particularly serious in a period when crime rates appear to be rising and adds to the mounting public concern about law and order.[18]

SENTENCING

Sentencing of a defendant by the judge can be viewed as the final product of the judicial system; the sum of sentences imposed by the courts can be seen as the production of the system. Sentences are the principal means at the disposal of courts to bring about lawful behavior in society. They reflect trends in public opinion, the availability of community resources and the statutory levels set for given crimes in a state.

In sentencing defendants, the judge is faced with a number of serious difficulties as outlined by the President's Commission on Law Enforcement and the Administration of Justice.

> The difficulty of the sentencing decision is due in part to the fact that criminal law enforcement has a number of varied and often conflicting goals: the rehabilitation of offenders, the isolation of offenders who pose a threat to community safety, the discouragement of potential offenders, the expression of the community's condemnation of the offenders' conduct, and the reinforcement of the values of law-abiding citizens.

ALTERNATIVES AVAILABLE

A judge has considerable discretion in choosing what he considers an appropriate sentence for a given criminal act.

Most Minnesota crimes specify maximum sentences only. There are very few mandatory sentences: first degree murder carries mandatory life imprisonment and some narcotics violations carry minimum terms of five to ten years. There is a three year minimum sentence for a felony involving intent if the defendant was in possession of a firearm. Probation is possible even in minimum term cases but not for first degree murder. The Supreme Court Study Committee notes, however, that the Minnesota legislature is not immune from public reaction to the "law and order issues and the attempt to deal with 'coddling' criminals by the courts" through the mandatory or minimum sentence device.

Minnesota criminal code revision in 1963 cut the maximum terms for a number of crimes, but the present maximum far exceeds the ABA standards. The supreme court notes, however, that since there are generally no minimum terms and since the length of commitment is determined by the commissioner of corrections, who has the legal authority to release all but first degree murderers the next day, the real issue is not the maximum terms of the sentence but the parole policy of the adult authority.

There are five general classifications of sentences in Minnesota: sentences not involving confinement, involving partial confinement (released time for employment under the Huber Law), involving total confinement, special treatment of certain types of offenders and fines. In choosing a sentence for a given defendant the judge takes into consideration the character of the crime, the previous behavior of the defendant, and the apparent factors accounting for his having committed the crime. He attempts to impose a sentence that will reduce "recidivism" by helping the person overcome the problems that accounted for his antisocial acts originally. Increasingly, he may choose probation or release to some community facility in order to help the defendant cope with the environment in his community.

There may be many reasons for imprisoning some defendants for lengthy periods of time, such as to protect society from them or perhaps to deter future offenders, but there does not seem to be very much evidence that a lengthy prison term leads to an offender's rehabilitation. Many penologists contend that it is unrealistic to expect an environment composed almost entirely of persons having committed antisocial acts to serve this purpose. Moreover, there are a number of offenders who seem to adjust very well in confinement, but who are unable to make a satisfactory adjustment back to the real world. In many cities where adequate probation facilities are available 75 per cent of criminal offenders may be sentenced to probation.

PRE-SENTENCE INVESTIGATIONS

To make a sensitive individualized decision in applying a sentence to a defendant it is imperative that the judge have background information at his disposal. Such information is generally supplied by a "presentence investigation" (PSI) conducted in Minnesota by a probation officer.

The Minnesota Criminal Code of 1963 provides that pre-sentence investigations by probation officers may be ordered in every felony case except first degree murder, where there is a mandatory life sentence, but not in the case of lesser crimes. There must also be a presentence report if the trial judge wishes to place a youthful offender on probation. The American Bar Association standards would require that such reports be made whenever (1) it is possible that a person may be imprisoned for more than a year, (2) the defendant is less than 21 years of age or (3) the defendant is a first offender. A study commissioned by the Minnesota Supreme Court states that Minnesota practice is generally in accord with the standards set in this area by the American Bar Association. Presentence investigations are done rather routinely throughout the state. Ramsey and Hennepin counties have a wide spectrum of diagnostic services available while those in other parts of the state are more limited.

A presentence report, as stated in *The State Trial Judge's Book*, "normally includes the background of the offender, his family, his home, school and community relationships, to indicate whether there are factors to his social history which will account for his behavior."

The results of the investigation are presented to the judge who may or may not follow its recommendations. One criticism sometimes made of this practice as it is used in Minnesota is that there is insufficient time for the defense to familiarize itself with the report and question it, if necessary. Since the judge may attach considerable weight to the report it is held that the defense should have ample opportunity to challenge any inaccuracies which might be detrimental to the client.

SENTENCING DISPARITIES

It is generally agreed that sentences should take into account individual factors in each case. Few people agree, however, that the court system should dispense widely differing sentences for the same kind of crime. The problem of serious disparities among sentences has traditionally been recognized as a grave obstacle to conveying to the public the essential fairness of the court system. It also leads to inefficiency in court calendars since lawyers seek out the judge thought to be least severe in a particular kind of case. Seminars of judges have shown clearly that they often differ considerably among themselves on the appropriate sentence for the same hypothetical crime.

In large part differences in sentences reflect differences in the attitudes and background of judges as observed by Ramsey Clark, former United States Attorney General:

> One judge, because of his personal values, thinks homosexuality the most heinous of crimes and gives long sentences. Another hates prostitution. A third judge would never jail juveniles for either offense. Some judges regularly give juvenile offenders prison terms for first-offense car theft, while others turn them over to the custody of their parents.

A limited study by the Governor's Commission seemed to show that there was not a great deal of disparity among sentences given for certain crimes in Minnesota.[19] However, glaring examples of disparities in at least a few cases do exist.

> (1) Minnesota corrections officials cited two similar cases of aggravated robbery (where a weapon was used). An offender from Duluth was sentenced to 20 years and one from Minneapolis to 5 years. (2) A former operator of a Minneapolis car repair garage who was convicted of cooperating with an insurance claims adjustor in collecting false auto accident claims totaling $23,000 drew 10 years in prison from one Hennepin County judge. Another Hennepin County judge sentenced the insurance adjustor, the "principal perpetrator" of the fraud, to probation and allowed him to leave the state. Neither man had a prior criminal record.

SENTENCING REMEDIES

A number of remedies from disparate sentences have been suggested. The ABA recommends, for instance, that much lower maximum sentences be established by statute so that the judge's discretion would be limited and disparities thus automatically reduced.

Another possibility would be the adoption of a statute whereby all sentences would be of "indeterminate length" to be adjusted later by a separate board. However, some observers of courts feel it would be more difficult to hold a board responsible than a judge who needs to be responsive to the electorate.

The ABA also recommends that persons accused in the same crime be sentenced by the same judge. The Minnesota Supreme Court's committee notes that this standard is probably not being met in metropolitan areas in Minnesota where judge shopping is common, joint trials are discouraged and judge assignments are rotated.

Another alternative, used in New York, California and certain federal courts, is the establishment of "sentencing councils" – panels of judges which meet regularly to consider recommended sentences before they are imposed. This method has resulted in a considerable reduction of sentencing disparities. However, a committee of the Minnesota Governor's Commission on Law Enforcement and the Administration of Justice reported that such councils are not practical in Minnesota because district judges are geographically scattered except in the Twin Cities.

One of the most popular remedies suggested to combat disparities in sentencing is the opportunity for sentence review by higher courts. At present this is possible in fewer than half the states. The Minnesota Supreme Court has consistently held that it does not have the power to review the propriety of sentences. The court asked that the 1971 legislature provide such authority, but it was not given.

Since the case load of the state supreme court is so heavy, it is thought that appeals of sentences could only be accomplished through panels of district court judges or through the creation of a lower level appeal court in the state court system.

The ABA recommends that only specific sentences could be appealed. There is some disagreement as to whether an appeal court should have the power to lengthen the sentence or just to lower it.

PROBATION

Probation is the release of a convicted offender under supervision of a probation officer for a term set by the court. Probation is revocable; failure to fulfill its conditions may mean commitment to a correctional institution for the term of the original sentence. It is increasingly felt that probation is a more desirable alternative than imprisonment in many cases. As the President's Commission on Law Enforcement and the Administration of Justice argued, it facilitates the reintegration of the offender into the community, avoids the negative aspects of imprisonment and reduces the financial burden on the state.

Although increasing numbers of cases are being referred to various diversion centers, a majority of convicted criminal offenders are placed on probation. Probation conditions vary from court to court, from county to county, and even from agent to agent. Today's probation requirements are usually reasonable in terms of expectations for the individual's behavior. They are determined on the basis of the individual's past record, age and personal responsibility. The majority of persons operate under minimal restrictions. They must (1) report to the probation officer as directed, (2) keep the probation officer informed at all times of place of their residence and employment and (3) obey all laws. Additional restrictions may be placed upon a person who does not seem capable of assuming responsibility.

Probation officers often have very heavy case loads forcing them to select those cases which they must see most frequently. However, it is felt many offenders operate successfully under a relatively inactive probation and keep in contact mainly through letters or phone calls. A minority need greater supervision and considerable counseling.

Probation policy generally places a person who is on probation for the second or third time under the supervision of the original probation officer to provide continuity. This has been criticized by some penologists on the grounds that it may encourage the repeating of former errors.

Volunteers are now being used on an experimental basis in probation work with Hennepin County Juvenile Court. The current trend in correction, involving the community and its resources, has provided impetus to the expanded use of volunteers in probation services.

PROBATION SERVICES

Probation was first established in Minnesota in the juvenile courts of Hennepin, Ramsey and St. Louis counties. In 1931 state-wide probation was established at the district court level; this was extended to the 84 rural counties in 1949. In 1959 the legislature created the Department of Corrections, combining adult and youth corrections under one authority.

The Department of Corrections is headed by a commissioner appointed by the Governor on a nonpartisan basis. Two deputy commissioners are appointed to head the Division of Adult Corrections and the Youth Corrections and the Youth Conservation Council (Y.C.C.). The Department of Corrections is in charge of all penal institutions in Minnesota.

The Department of Corrections has a Field Services Unit with three regional offices to provide supervision of individual offenders in their communities. Twenty-six correctional supervisors in field offices are responsible for supervising 101 probation and parole officers throughout the state. Nine of these supervisors also provide supervision to county probation officers serving juvenile courts. During fiscal year 1970-71, the Department of Corrections worked with 3,122 probationers and parolees within their communities. County probation officers also worked with 2,413 boys and 456 girls.

The 1959 County Probation Act required that every county acting as an individual unit or in conjunction with other counties, should provide probation services itself or contract with the state for probation. The law provides a subsidy to counties whose probation officers also supervise juveniles under the Y.C.C. The subsidy, which changes from one legislative session to the next, has ranged from 37 per cent to 50 per cent of the total cost of the county probation office and currently provides 50 per cent of probation officers' salaries.

Rural counties are organized into probation districts which usually contain one to three counties, though they may include as many as seven counties. A district may have from one to six agents depending on the population of the area. The average case load of a county probation agent includes 80 to 90 county probation cases and 10 to 20 Y.C.C. wards. Case load varies widely among counties.

Until recently, few probation services were provided for adults convicted of minor offenses in the smaller municipal courts. It is likely that consolidation of courts through the 1971 County Court Act will result in the extension of more probation services to minor adult offenders in those areas. Quite extensive services to minor offenders are provided in the larger municipal courts.

PROBATION OFFICERS

Educational requirements for probation officers on all levels are not consistent. In some parts of the state they are almost nonexistent. Some agencies have no entry level educational requirements or require less than a high school education. State probation and parole agents, however, and those county agents whose salaries are subsidized by the state must have

a B.A. or B.S. degree and are usually recruited from people who have majored in the social sciences. Educational background in criminology or penology is not required.

As mentioned earlier, probation officers are responsible for preparing presentence investigation reports as well as for supervising convicted offenders. Some officers spend up to 70 per cent of their time doing reports while others average only 17 per cent. This means that some officers spend as little as 8 hours a week on actual probation supervision. In many parts of the state the officer who researched the PSI also supervises the defendant who is placed on probation.

OTHER ALTERNATIVES FOR THE OFFENDER

Minnesota is expanding the use of probation services, work release programs and group homes and is upgrading correctional institutions. New programs are being initiated to utilize more community resources.

Traditional imprisonment in large penal institutions has proved very expensive. Moreover, the rate of recidivism indicates that such imprisonment may not have effected any change in the offender's behavior.

Alternative treatments may include the use of volunteers; academic and vocational educational programs; constructive employment opportunities; and providing psychological, psychiatric and other services indicated for treatment. Many of these are funded at least partially by federal funds. Many of the federal funds are allocated by the Governor's Crime Commissioner.

Some of the innovative projects currently being undertaken in Minnesota are:

1. Project Newgate – a college level program conducted by the University of Minnesota for men serving time in or on parole from the State Reformatory for Men in St. Cloud.
2. PORT of Rochester – a post-trial diversion center. It is a community based residential treatment center for offenders who would otherwise be in prison but who seem to involve a minimal danger to society and a high likelihood of rehabilitation.
3. Institution Community Continuum – a short-term intensive group therapy program for boys 15 to 18 years old in Hennepin and Ramsey counties.
4. Operation De Novo – a pre-trial diversion project in Hennepin County offering intensive counseling, job placement, vocational and educational training for those age 18 and older charged with a misdemeanor or felony. It operates on a voluntary basis for non-drug users.

Trends in Court Reform

"Judicial reform is not for the short-winded."
A. T. VANDERBILT

The process of court reform is a continuous one. Courts are by their very nature steeped in tradition, essentially protective of their own spheres of influence, and rather resistant to change which is not generated internally. Moreover, as one set of problems is solved another arises. In 1970, Chief Justice Warren E. Burger of the United States Supreme Court expressed his intent to promote direction and leadership in court reform. His voice is added to that of many distinguished jurists and lawyers and groups of eminent laymen charged to recommend changes in the American courts.

The following list incorporates some of the most frequently discussed reforms which were encountered in publications and interviews for this study. It is not all inclusive, nor should it be construed as recommendations of the League of Women Voters.

Court Organization and Administration

- Unified court system: this would abolish all courts except one which would have general jurisdiction over all matters. This court would sit in divisions, such as family, probate, traffic, trial, appellate, etc. Each court would be centrally administrated and use fewer judges whose time would be more effectively used and whose compensation would be more adequate. (This recommendation was made in the 1942 Judicial Council Report.)
- Intermediate appellate court: this is generally a division of a unified court system; however, it has been established in many states to effect some needed reform while working toward constitutional changes.
- Judicial administration: the need is recognized nationally for a full-time court administrative director having a staff of full-time court administrators to develop and maintain methods for handling the non-judicial aspects of the different courts or divisions. Coordinated court administration would encourage establishment of uniform rules and procedures.

Court Jurisdiction

- Changes in the penal code: to consider removing social crimes from

the statutes, e.g. prostitution; evaluation of juvenile status offenses, e.g. truancy.

- Removal of some procedural matters from the court: consider alternative procedures for no-fault divorce, personal injury cases (no-fault insurance), commitment, change of name.

Judicial Selection, Tenure, Discipline and Removal

- Merit selection of judges: this method utilizes selection, appointment and election by the following means: judges are appointed by the governor from a list of candidates supplied by a nonpartisan commission composed of professional and laymen. The appointed judge then is periodically required to go before the voters to determine if a majority of the voters wish to retain him in office.
- Judicial discipline and removal: the recently established Commission on Judicial Conduct now affects only judges in courts inferior to the district court. The proposed constitutional amendment to be voted on in November 1972 would extend the Commission's authority to the district and supreme court.

Adversary System

- Provide free and/or moderately priced legal assistance in civil cases.
- Strengthen both prosecutor's office and public defender system.

Court Procedures

- Bail reform: adopt state-wide policies to identify good risks and release them to await trial, minimize jail arrest for petty offenses.
- Jury: consider more equitable selection of jurors; consider alternatives to jury in civil cases.
- Sentencing alternatives: encourage innovative projects; study methods for reducing sentencing disparities.

State-wide Community Planning

- The development of an agency or commission, public or private, to catalogue community resources, coordinate overlapping programs, promote comprehensive state-wide planning, determine where deficiencies exist and document the need, and attempt to obtain funding to establish state-wide pilot projects in the area of courts and justice.

Court Financing

- Study of the financial structure of court support and relationship of various governmental units to that support in order to provide the most efficient and adequate method for financing the courts.

CONCLUSION

Our system of justice plays a major role in the life of the average citizen. Yet public ignorance of the structure and function of the courts surpasses the public ignorance of other processes of government. The daily decisions made by our courts and the procedural practices they maintain, have an immediate impact on the value structure in our society.

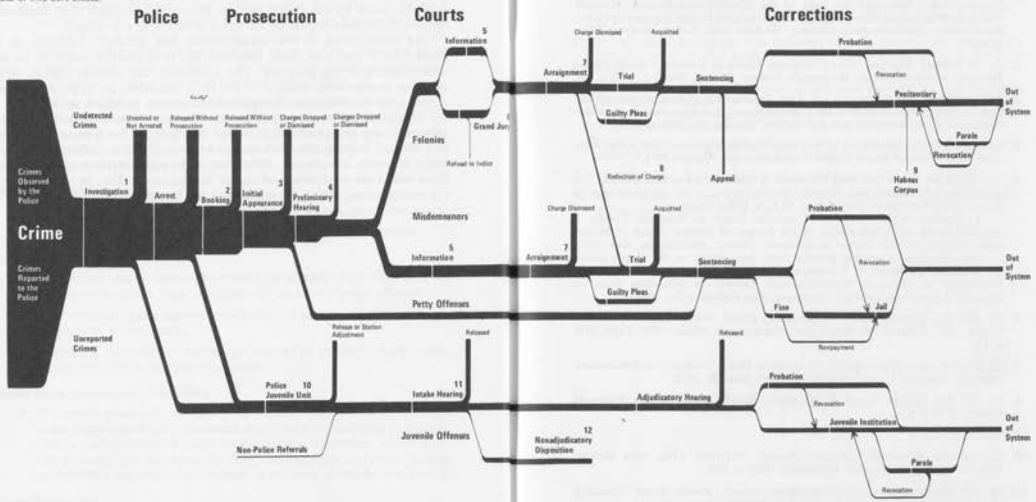
An examination of the constitutional and statutory functions of a court system and how those functions are performed is essential to an understanding of the judiciary. This knowledge can provide citizens with the tools to determine whether or not these objectives are appropriate and germane to the changing demands of the society in which we live.

This publication has tried to describe the Minnesota judiciary, its structures and procedures. It is hoped that this will be a meaningful first step toward helping citizens become more qualified to differentiate "between inherent, ineradicable, difficulties in the administration of justice and those which are eradicable and should be eliminated. For, in a democracy, the courts belong not to the judges and the lawyers, but to the citizens." [29]

A general view of The Criminal Justice System

This chart seeks to present a simple yet comprehensive view of the movement of cases through the criminal justice system. Procedures in individual jurisdictions may vary from the pattern shown here. The differing weights of line indicate the relative volumes of cases disposed of at various points in the system, but this is only suggestive since no nationwide data of this sort exists.

From: "THE CHALLENGE OF CRIME IN A FREE SOCIETY"
A Report by the President's Commission on
Law Enforcement and Administration of Justice
February, 1967



May continue until trial.

Administrative record of arrest. First step at which temporary release on bail may be available.

3 Before magistrate, commissioner, or justice of peace. Formal notice of charge, advice of rights. Bail set. Summary trials for petty offenses usually conducted here without further processing.

4 Preliminary testing of evidence against defendant. Charge may be reduced. No separate preliminary hearing for misdemeanors in some systems.

5 Charge filed by prosecutor on basis of information submitted by police or citizens. Alternative to grand jury indictment; often used in felonies, almost always in misdemeanors.

6 Reviews whether Government evidence sufficient to justify trial. Some States have no grand jury system; others seldom use it.

7 Appearance for plea; defendant elects trial by judge or jury (if available); counsel for indigent usually appointed here in felonies. Often not at all in other cases.

8 Charge may be reduced at any time prior to trial in return for plea of guilty or for other reasons.

9 Challenge on constitutional grounds to legality of detention. May be sought at any point in process.

10 Police often hold informal hearings, dismiss or adjust many cases without further processing.

11 Probation officer decides desirability of further court action.

12 Welfare agency, social services, counsel, medical care, etc., for cases where adjudicatory handling not needed.

NOTES

1. (p. 8) According to an interview with Richard Klein in June 1972 all of the outstate counties chose single county districts except for the following counties which agreed to combine: Big Stone - Traverse - Wilkin; Chisago - Isanti - Pine; Douglas-Grand; Hubbard-Cass; Lake of the Woods-Kittson-Roseau; Marshall-Red Lake-Pennington; Mille Lacs-Kanabec; Olmstead-Dodge; Pipestone-Murray; Rock-Nobles; Sherburne-Benton-Stearns; Wadena-Todd; Yellow Medicine-Chippewa.

2. (p. 9) Howard Erickson, "Courts Dispense Justice in Quantity," Small Claims Hearings are truly informal. Minneapolis *Tribune*, Sunday, March 5, 1972 p. 1E.

3. (p. 10) Governor's Commission on Law Enforcement, Administration of Justice and Corrections, *Report of the Committee on the Administration of Justice*, Section on "Court Reorganization and Reform," January 22, 1968, pp. 1-3.

4. (p. 12) Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Washington, D.C., August 1971.

5. (p. 16) Much of the following discussion is based on the section entitled "Juvenile Court Procedures and Facilities" in the *Report on the Administration of Justice* of the Governor's Commission on Law Enforcement.

   A complete recent treatment of juvenile justice in Hennepin County is available in the recent publication of the League of Women Voters of Minneapolis entitled *Juvenile Justice in Hennepin County*, Minneapolis, May 1971.

   The procedures governing juvenile court proceedings in the county courts are contained in "Rules of Procedure and Official Forms for Juvenile Court Proceedings in Minnesota Probate-Juvenile Courts," in *Minnesota Rules of Court* 1971, Desk Copy, St. Paul, Minnesota, West Publishing Co., 1971.

6. (p. 22) The Supreme Court of Minnesota, *Eighth Annual Report Minnesota Courts*, 1971, Office of the State Court Administrator, March 1972, Table XIII, p. 14.

7. (p. 22) Klein quoted in an article by Gwenyth Jones, "Central Law Enforcement Agencies, Judiciary Urged," Minneapolis *Star*, June 29, 1972.

8. (p. 23) The Supreme Court of Minnesota, *Eighth Annual Report Minnesota Courts*, 1971, p. 6.

9. (p. 23) *Ibid.*, p. 4.

10. (p. 24) *The Minnesota Legislative Manual*. 1971-1972, (The "Blue Book"), State of Minnesota, St. Paul, Minnesota, 1972, p. 296.

11. (p. 24) The Supreme Court of Minnesota, *Seventh Annual Report Minnesota Courts*, 1970, letter submitting report from Richard Klein, p. 1.

12. (p. 24) See *Report of the Committee on the Administration of Justice*, Section "Court Reorganization and Reform," pp. 5-7 and *Task Force Report: The Courts*, Task Force on the Administration of Justice of the President's Commission on Law Enforcement and the Administration of Justice, U.S. Government Printing Office, Washington, D.C., 1967, pp. 65–72.

13. (p. 25) *Legislative Manual of Minnesota*, 1971-1972, the biographies of Supreme Court and district court judges appear on pages 274–275 and 286–295, respectively.

14. (p. 28) A comparative discussion of machinery for judging judges in different states is given in an article by Lesley Oelsner, "Reformers See Lag in Judging of Judges," The New York *Times*, June 9, 1972.

15. (p. 31) *Task Force Report: The Courts*, pp. 72-74.

16. (p. 34) Quoted in the *Report of the Committee on the Administration of Justice*, of the Governor's Commission, section on "Reform of the Bail System," p. 1. This section of the study relies heavily on this section of the *Report*.

17. (p. 40) These percentages were computed using the figures from tables on district court cases in 1971 in *Eighth Annual Report Minnesota Courts*, 1971, pp. 22–23.

18. (p. 42) A recent thoughtful article on problems presented by plea bargaining is "101,000 defendants were convicted of misdemeanors last year. 98,000 of them had pleaded guilty – to get reduced sentences" by Peter L. Zimroth, in the *New York Times Magazine*, May 29, 1972, p. 14ff.

   A discussion of desirable safeguards for the plea bargaining process is contained in *Task Force Report: The Courts*, pp. 91–92.

19. (p. 45) *Report of the Committee on Administration of Justice*, Appendix F.

20. (p. 51) Frank, Jerome, *Courts on Trial: Myth and Reality in American Justice*, Atheneum, New York, 1970, p. 239.

JUDICIAL GLOSSARY

ADVISORY OPINION – An opinion rendered by a court to a lower court or, in some cases, to the legislative or executive branch of government which is not binding or decisive of a controversy.

AFFIDAVIT – A written or printed declaration or statement of facts made voluntarily and confirmed by oath of the party making it and taken before an officer having authority to administer such oath.

APPELLATE JURISDICTION – The authority of a court to hear a case that has been tried in a lower court.

ARRAIGNMENT – Bringing a prisoner to the bar of the court to answer to a criminal charge.

ATTACHMENT – If the losing defendant has no money but does have some property, the plaintiff can bring suit to have the property sold at a public auction with all or part of the proceeds used to satisfy the judgment.

BAILIFF – Person in charge of the jury whose duty is to ensure that the jury can deliberate in private.

BILL OF PARTICULARS – A written statement from the plaintiff who made the original complaint explaining the charges in greater detail.

BOOKING – Entries made in a special book regarding the name of the prisoner, the time he was brought in and the nature of charges.

BRIEF – A concise statement of the facts of the case and the legal arguments involved prepared by the lawyer.

CALENDAR – A list of cases which are to be heard by a court during the court term.

CASE OR CAUSE – A suit in law or equity; in appellate procedure, the trial record made in the lower court, including the papers and testimony.

CERTIORARI – A writ issued by a higher court requiring the record of a case in the court below to be sent up to itself for redetermination.

CHANGE OF VENUE – The removal of a suit begun in one court and the placing of it in another court for trial under a different judge or in a locale other than that in which the action arose.

CHARGE – A liability, an accusation; to create a claim against property, to accuse, to instruct a jury on matters of law.

CIVIL ACTION – An action which seeks the establishment, recovery, or redress of private and/or civil rights. Civil suits relate to and affect only individual rights, whereas criminal prosecutions involve public wrongs.

CIVIL SUIT – Any legal action other than a criminal prosecution.

CLASS ACTION – A lawsuit in which one person or a small group are permitted by the court to represent a very large group of people who find themselves in a similar legal position.

CLERK OF THE COURT – Handles much of the administrative paper work of the court such as keeping judicial calendars, recording judgments, sending out official notifications, keeping track of motions for appeal, scheduling hearings of the trials, and sending for transcripts and other records of the trials. He does not make decisions affecting the parties but carries out the orders of the judges.

CLERK OF DISTRICT COURT – An elected official in the county (a proposed Constitutional Amendment in November will have the clerk appointed by a majority of judges in that district); the duties of this office are to keep the necessary records and indices of all proceedings, enter orders, sentences and judgments, issue commitments.

COMMON LAW – The unwritten law of a country based on custom, usage, and judicial decisions, now largely codified.

CONCURRENT JURISDICTION – When two courts have the power to determine the same issues.

CONTEMPT CITATION – A finding by the court that someone under its authority has willfully and without justification violated its order (e.g. Connie Trimble was cited for contempt for refusing to obey the court's order to identify the conspirator known to her).

CONTRACT – An agreement between people, groups, companies, governments or any combination of these.

COURT COMMISSIONER – An elected official in the county for a four year term (except Hennepin and St. Louis Counties with none and Ramsey County with an appointed one); he has the judicial power of a judge of district court in chambers (issuing writs of habeas corpus, taking acknowledgments, performing marriages). Remedy of any court commissioner order is application to the district court to vacate.

COURT OF FIRST INSTANCE – A court in which a case must originally be brought, usually a trial court.

COURT OF RECORD – A court which keeps a written record of the contents of its proceedings. The testimony is recorded and preserved. (e.g. District Court, Municipal Court, Probate Court)

COURT TERM – A division of the year during which the court holds its sessions.

DE NOVO – Case retried completely with record of previous trial in-admissable.

DEFENDANT – A person who is being sued in a civil action or is prosecuted in a criminal action.

DIVERSITY OF JURISDICTION – Authority to hear and decide cases which involve citizens of different states.

EN BANC – Judges sitting together to hear a case and jointly issuing a decision or opinion.

FELONY – Serious crimes including murder, theft, kidnapping, arson, sale of narcotics, burglary, etc. which are more serious than misdemeanors and which are punishable by death, imprisonment for more than a year and/or heavy fines.

FIRST IMPRESSION – Situation faced by a court in which prior decisions by higher courts do not cover the facts at hand.

FOREMAN – Juror who acts as spokesman.

GARNISHMENT – The employer of the defendant is placed under a legal obligation to deduct a small percentage of the defendant's salary from each paycheck and pay it to the court officer who will in turn pay it to the plaintiff. The amount that can be garnished is usually, although not always, controlled by state statute.

GOVERNOR'S COMMISSION ON CRIME PREVENTION AND CONTROL – A group of 29 people appointed by the Governor for indeterminate terms who formulate an annual plan for the prevention and control of crime. Assisted by a professional staff of 30, they funnel federal grants to local governmental units and set program priorities.

GROSS MISDEMEANOR – A crime for which the offender may be sentenced to imprisonment of more than thirty days but less than a year.

HABEAS CORPUS – Literally, "you have the body," it is the name given a variety of writs whose object it is to bring a person before a court or judge so that court may determine if such person has been denied his liberty without due process of law.

HEARSAY EVIDENCE – Evidence which is not admissible in court if the person quoted is not present to be cross-examined.

INDICTMENT – A formal, written accusation made by a grand jury to the court charging a person with having committed a crime.

IN DIVISION – A situation in which some but not all of the justices of a court sit with the power to render a binding decision. *En banc* means the entire court sits. Generally a court will be convened *en banc* only in particularly important cases where all the justices wish to take part in the decision.

INJUNCTION – Judicial order requiring the person or persons to whom it is directed not to do a particular thing.

JUDICIAL ADMINISTRATION – The organization and procedure of the judicial branch of the government.

JUDICIAL STANDARDS COMMISSION – Established in 1971, this group of nine recommends discipline and removal of judges; two lawyers appointed by the Bar Association; one District Judge, one Municipal Judge and one Probate Judge appointed by their respective associations; and four lay people appointed by the Governor. A proposed Constitutional Amendment in November will make this commission applicable to all judges in Minnesota. It now only pertains to county, probate and municipal courts.

JUDICIARY – The branch of government which has judicial power. Also, the name for all the courts of a jurisdiction taken collectively.

JURISDICTION – The authority of a court to exercise its judicial power in a specific case.

JURISPRUDENCE – The science or philosophy of law.

JURY COMMISSION – Selects names from voter lists for grand jury and petit jury duty in all counties of the state except Hennepin, Ramsey and St. Louis. Each jury commission is composed of the Clerk of the District Court of the county who also serves as chairman, the Chairman of the County Board, and a county resident appointed to an indefinite term by the chief judge of the judicial district.

LAW – Body of rules or principles, prescribed by authority or established by custom, which a society recognizes as binding on its members.

LAW CLERK – A judge's only personal assistant (usually a recent honor graduate of law school) who researches the law of the cases which the judge must decide and discusses legal points with the judge.

LEGAL AID SOCIETY – A federally-funded professional corporation that exists to provide certain legal services to the indigent residents of that county. No-fee-generating cases are accepted, nor criminal cases (they go to the public defender). Careful guidelines govern the salary and number of defendants a client can have. Legal Aid provides services at the trial level and at the appellate level.

LEGATEE – A named beneficiary in a will.

LEGISLATIVE COURT OR STATUTORY COURT – A court created by the legislature pursuant to constitutional power.

LIEN – Claim on specific property of another for satisfaction of debt or charge.

LITIGATION – Suing in court for the purpose of enforcing right.

LOCAL COURT – A court whose jurisdiction is limited as to a specific place.

MANDAMUS – Judicial order requiring the person or persons to whom it is directed to do a particular thing.

MISDEMEANORS – Less serious crimes such as speeding and breach of peace which are punishable by small fines and short jail sentences.

MIS-TRIAL – An erroneous or invalid trial; a trial which cannot stand in law be-

cause of lack of jurisdiction, wrong drawing of jurors, or disregard of some other fundamental requisite.

OFFICERS OF THE COURT – Lawyers, police officers and those paid to work for the court.

OPEN PLEA NEGOTIATIONS – (plea bargaining) – A process in which the defendant attempts to minimize his punishment by agreeing to plead guilty in return for the prosecution's agreeing either to reduce the charge or to request a lighter sentence.

ORIGINAL JURISDICTION – The authority of a court to hear cases of the first instance as opposed to appellate jurisdiction.

PAROLE – Suspension of part of the sentence for good behavior. Conditions can be imposed on the paroled convict; if he does not live up to the conditions, he can be returned to jail for the remainder of his term.

PEREMPTORY CHALLENGES – Lawyers for the defendant and the plaintiff each can arbitrarily reject a given number of potential jurors for any reason whatsoever.

PETITION – An application to a court.

PLAINTIFF – A person who brings a law suit in law or equity.

PLEADINGS – Successive statements by which litigants set forth the allegations upon which they base their own claims or challenge the claims of their opponents.

PRELIMINARY HEARING – A routine procedure held for information before but not after an indictment. The purpose of the hearing is for the judge to determine (1) whether or not an offense has been committed, and (2) whether or not there is reason enough (probable cause) to believe the defendant committed the offense. During the hearing, both sides are presented, cross-examination may be held, and the defendant may attack the sufficiency of the complaint. The preliminary hearing is a routine formality held with lesser crimes unless the right according to statute is waived. The usual result in a municipal court is that the defendant is bound over to district court for arraignment and trial.

PRE-SENTENCE INVESTIGATION – Often follows a conviction in felony (except for first degree murder and treason) or gross misdemeanor cases and is mandatory when the defendant is under 21 at time of arrest and has been found guilty of a felony or gross misdemeanor. The investigation is conducted by the probation officers. The written report directed to the court concerns the individual's characteristics, needs, circumstances and social history and, if so desired, may indicate possibilities for potential rehabilitation. All law enforcement officers must cooperate in providing necessary records. The result of the investigation is open to court officials, which include the Commissioner of Corrections, the two attorneys, and the judge. Either attorney may make a summary hearing on any matter not in agreement.

PRE-TRIAL PROCEDURE – A device which consists of conferences between the attorneys for the parties to a law suit and a judge of the court. The chief purpose of this is to prepare the case for an effective trial by formulating the issues and stating them in a pre trial order which then, in effect, becomes the chart for the trial.

QUO WARRANTO – A legal proceeding by which the government commences an action to recover an office, franchise or privilege from the person or corporation in possession of it.

RECEIVER – A neutral party who directs the affairs of a company or estate in litigation.

REFEREE – A man appointed by a judge and approved by the full bench who aids

and assists a judge in the preliminary review of a case. Family court referees, for example, can hear default divorces.

REPORTER – A trained and skilled lawyer responsible for the publication of all the opinions and decisions of the court.

RESTORATION TO CAPACITY – Procedure under the Minnesota Commitment Act of 1967, for restoring to a mentally ill, mentally deficient or inebriated person the power to exercise his citizenship and handle his own personal and financial affairs. This proceeding may be initiated by an interested person, is under the jurisdiction of the Court of Commitment or a court to which it has been adjudicated, and requires a court order.

RESTORATION TO CAPACITY (Guardianship) – Ruling by the Probate Court that a person formerly adjudged incompetent to manage his own affairs is now capable of doing so.

RULE-MAKING – Power to make rules pertaining to the administration of the courts; practice, procedures, and evidence in the courts.

STATE COURT ADMINISTRATOR (Formerly Administrative Assistant to Supreme Court) – Assists the Chief Justice of the Supreme Court in supervising and coordinating the work of the district courts, collects and compiles statistics and data on the courts, and makes recommendations to the Chief Justice regarding the assignment of judges, and budget estimates for the Supreme Court, etc. The Administrator also works with the houses of the state legislature serving as a source of information for the legislature and lobbies for and recommends legislation for the improvement of the judicial system.

STATUTE OF LIMITATIONS – Time period within which a law suit may be brought.

STATUTORY SUITS – Suits brought because someone claims a right conferred on him by a statute such as suits instituted to challenge the actions of corporations, to recover money unreasonably charged by "common carriers" such as railroads, to secure divorces or to recover from a union which breached its duty of "fair representation" of its members.

SUMMARY JUDGMENT – Decision made by judge in disputes of law only without sending the case to trial.

SUMMONS – Authoritative notice to appear before a court.

SURROGATE – A judicial officer having jurisdiction over the probate of wills, the administration of estates, etc.

THE AMERICAN JUDICATURE SOCIETY – The Society aims to "promote the efficient administration of justice and its improvement." With 47,000 members in the U.S. and abroad, it promotes reforms by publishing a Journal, sponsoring meetings, seminars and consultations. Early reforms sponsored include the pre-trial conference and the judicial council.

THE VERA INSTITUTE OF JUSTICE – The Institute, founded in 1961, by a chemical engineer and an industrialist, exists to further equal protection of the law for the indigent – mainly by examining the criminal justice system, proposing improvements and publicizing them.

TORT – Any wrongful injury either committed intentionally or through carelessness. Usually two courses of action are possible. A civil suit can be brought to recover damage to property or to a person; the state can bring a criminal suit to prosecute the wrongdoer for breaking the law. Any civil (as opposed to criminal) wrong committed either intentionally or through negligence, although some actions can constitute both a tort and a crime. Not every act which is a tort is a crime.

WRIT – Formal order under seal, issued in name of the court or other legal authority, directing a public officer or private person to do or refrain from doing some specified act.

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September 1972

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, Minnesota 55102
November, 1972
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Address before Conference on "Justice--For Whom? / For You? of the League of Women Voters of Minnesota and the American Judicature Society, Holiday Inn Central, Minneapolis, October 9, 1972. Glenn R. Winters is executive director of the American Judicature Society, Chicago, Ill., and editor of JUDICATURE, the Journal of the American Judicature Society.

JUSTICE FOR WHOM? / FOR YOU?

by Glenn R. Winters

Madam Chairman, Members of the Conference:

I will begin by expressing the gratification of my organization, the American Judicature Society, over the privilege of collaborating with the League of Women Voters of Minnesota in staging this fine conference, and my personal pleasure over the opportunity to have a part in it. The American Judicature Society works for court improvement and modernization in all parts of the country and I am proud to bear witness to the very effective cooperation and support we have had from the League in Indiana, Illinois, New York, Pennsylvania, New Mexico, Massachusetts, Texas, Iowa, and a dozen more states I could name. We really wouldn't know how to manage without the kind of tireless enthusiasm and dedication that the ladies of the League put into whatever they undertake. I'm all for women's liberation, but any good thing can be carried too far, and it would be a disaster to the cause of justice, as well as education, environment and a lot of things, if the fair sex ever liberated themselves to the extent of discontinuing this distinctively feminine identity and activity.

This is ny second conference here in this Holiday Inn. Six years ago, in the fall of 1966, the American Judicature Society co-sponsored with the Minnesota State Bar Association the first Minnesota Citizens' Conference on the Courts, just about the time that this fine hotel first joined the Holiday Inn chain. Justice Sheran was there, and many of the leaders of the League of Women Voters, along with more than a hundred citizens from all walks of life and all parts of the state. That conference presented three days of lectures and discussion on the same topics you are dealing with today--court organization and administration, judicial selection and tenure, the lower courts, and other things. The substantial accomplishments that have taken place in Minnesota in recent years, particularly in the minor courts, are traceable in part to that conference, as well as to a second one held in Bloomington a couple of years ago.

The 1966 Minnesota conference was the 26th in a series which began in 1959 and which will number 92 next week when a second South Dakota conference takes place in Sioux Falls. This distinguishing characteristic of all of these has been that they are citizens' conferences in which people who are neither lawyers nor judges gather to learn about their system of justice and how they can help to improve it. I know this seems eminently fitting and proper to members of the League of Women Voters, but it is not equally obvious to everybody, and in every citizens' conference there are some people who can't understand why they are there, since they have not studied law, and who come feeling sure that they must be there as a result of somebody's mistake.

A few months ago I sat at dinner with a hospital administrator who said he had it all figured out that his invitation to a conference on the courts must have been due to a computer error. As the dinner conversation progressed, however, he recalled that his hospital has an advisory council and several of its members are lawyers and he was quick to say that these lawyers added a useful dimension to the thinking about hospital problems which the doctors and nurses could not provide.

Doctors and nurses stand in the same relation to the courts that lawyers and judges do to hospitals--they are customers, consumers, users of their services. I was standing on a street corner in the Chicago loop one day when a pretty girl came up and showed me some pictures of automobiles and asked me which ones I liked the best. I was quite excited for a moment. I picked one out and then I asked her why she had asked. She explained that she was working for an opinion research firm which was conducting a public opinion survey of automobile body styles for General Motors Corporation. General Motors knows that it can't rely solely on the ideas of its designers. They have to be tested against the preferences of the man in the street, and that day I was that man.

Who else besides doctors and nurses may properly be considered to have a "consumer" interest in the courts and in the justice which is their product? Big corporations of course are in court all the time and have their legal departments to look out for their interests there. Every business, large or small, must live with the law and the judicial establishment to a greater or lesser degree. Every individual who owns or drives a car may any day be looking to a court for compensation for damages suffered in a collision. In fact wouldn't it be easier to turn the question around and ask, who in this city or this state does <u>not</u> have a consumer's interest in this state's judicial system?

I have mentioned motorists, and in this day and age that includes probably a majority of the population. However, some people don't own, drive or ride in automobiles. They may live quiet, secluded lives and avoid altercations with other people, they may let wrongs go unredressed rather than pursue a claim in court. Are these people so remote from the judicial world that they can afford to be indifferent to it? Well, too many people are indifferent to it, but even the secluded and reticent ought not to be. For one thing, even though they may resolve never to go to court as a plaintiff, there is no way any person can make sure that he will not find himself in court as a defendant. You say you've wronged no one. That's good; but it's not enough to keep you out of court--only to get a judgment in your favor if the judicial machine functions properly. The man who thinks you wronged him has the power to summon you there, and it has to be that way.

But suppose you are lucky and never have to go to court, as plaintiff, defendant, witness, juror or anything. You just stay home and mind your business. Then, surely, the judicial system is for others to be concerned about. Well, do you have a telephone? I do, and when I wrote the monthly checks last month I found this little note tucked in with my September telephone bill. It says:

"To our Illinois subscribers (I live in a Chicago suburb): A federal court in Chicago recently ruled that it is improper for the United States to impose the federal communications excise tax on the amounts of additional charges due to Illinois state and local taxes. The court also ruled that one telephone subscriber could not claim an excise tax refund on behalf of other telephone subscribers. These rulings are not final and do not affect your legal obligation to pay the tax as presently assessed. The amount of the

excise tax refund to which an individual subscriber would be entitled under the ruling would, with some exceptions, be 10 per cent of the amount shown on the monthly bill under the heading ' due to other taxes'. Under the present court rulings a subscriber, in order to obtain an excise tax refund, would be required to file a claim with the Unites States with proof of the amount of the refund due. While it is necessary to send in your payment card with your payment, we suggest, in view of the court rulings, that you do not destroy your past and future telephone bills until final decision by the reviewing courts."

You say you want me to read it again more slowly? Well, I haven't the time. My point is that even though I am not a party to that litigation now pending in that Chicago court, I have a direct monetary interest in its outcome. I have computed that if the case is decided my way the amount of refund due me from last month's telephone bill will be 12.3 cents. If I save my telephone bills faithfully for two or three years I will get enough refund money to buy a dinner in the Holiday Inn dining room--the meat loaf dinner, not the steak dinner. For that it would take a year or two more.

Other court decisions affect all of us in less direct but equally real ways. If you own your home, the probabilities are that more than one of the decisions of the Supreme Court of Minnesota since last New Year's Day affect your rights as a property owner or the rights of your heirs who will inherit it from you. A court decision may make an act that is legal one day a criminal act the next day, the very same act. Some of these may make themselves felt immediately; you may be unaware of some for many years.

It is a common illusion that the matters on which lawyers and judges spend their time and energy are stuffy, complex, incomprehensible, and far removed from the daily life of ordinary people like you and me. The example I gave you was a problem in taxation--a protest against what is essentially a tax on a tax. However, it arises out of the telephone service, and surely if anything is a part of the daily lives of all of us, the telephone is. The fact is, no part of human life is exempt from the all-pervading reach of the law, and therefore of the courts as they interpret and apply the law.

Most of you League members, when you are not working on League projects, are doing the ordinary things from day to day that most people do. One of these is shopping at the corner grocery or the supermarket. Right now, in the Chicago area where I live, a controversy is boiling up and almost certainly will end up in court, over the insistence of the butchers' union that no fresh meat may be sold after 6:00 p.m. When that rule was first instituted the butcher cut and weighed your purchase while you stood and watched, weighing and selling you his thumb in the process. Today most fresh meat is plastic wrapped in convenient packages and laid out for the shopper to pick up and drop in her cart, yet at 6:00 p.m. she may no longer pick them up. The butcher would not have to stick around to enable her to do that, yet the rule persists and will persist until it is changed. It won't be changed without a fight, sooner or later a legal fight.

Many of the cases that make up the calendars of today's courts deal with timeless topics that have occupied the attention of judicial authorities for generations--the dissolution of marriages, reimbursement of persons who have been injured as a result of the wrongdoing or negligence of another; compelling the fulfillment of the terms of a contract, and so on. Yet the courts are also involved in the new as well as the old. About five years ago one of my daughters gave me for Christmas a copy of a new best-seller, Silent Spring, by Rachel Carson. Rachel is now gone, but her book sparked the current nationwide and world-wide crusade against pollution and toward protection of the

environment in which all of us live. This crusade takes many forms. I have been amused to observe that just as the soft drink companies had got us reconciled to paying a little more for the luxury of the no-deposit-no-return bottle, the recycling craze struck and now we are again being asked to return our bottles, so they won't lie around and clutter the landscape.

That's fine as far as it goes, but where are the big battles against pollution being fought? Where else but in the courts? Attorney General Bill Scott of Illinois has made a crusade of anti-pollution suits against some of the biggest industrial and manufacturing concerns in Illinois, and the pre-election polls show that the people like what he has been doing and are giving him a big advantage over his opponent in the November election. My point is that whatever the constantly unfolding panorama of human life brings on the scene from year to year, almost from week to week, it finds itself sooner or later represented in the caseloads of the courts, because nowhere is there a more faithful mirror of the whole broad panorama of life than in the courts.

It is one of the paradoxes of life that most of the ways in which the work of the courts affects us are unnoticed by us. Indeed that is one of the blessings of democracy. People who live under the heavy-handed rule of a dictatorship are hemmed in and constrained by the law on all sides. Law is our servant and it serves us best when it serves us inconspicuously. This is the basic reason for this conference, and for gratitude on the part of all citizens that the League of Women Voters in this state and in many states is helping the public to assume its proper responsibility with respect to the courts and their work.

Yes, I said responsibility. Most of us are inclined to think of the law, when we do think of it, in terms of rights, not responsibilities. Yet a California law professor named Hohfeld years ago in his course in legal philosophy pointed out what we all have to recognize as inherently true--that rights and responsibilities are inseparable reciprocals. You can't have the one without the other. Under a dictatorship someone else assumes the burden of the responsibilities, and for a while that looks like a good thing, but it's time for second thoughts when the citizens of that country discover that their rights are gone, too. This is a lesson that our friends in the Philippines are going to be learning in the near future, now that martial law has been imposed.

What are our responsibilities as citizens with respect to the administration of justice? I will venture to suggest a few:

First, we owe to ourselves and to our fellow-citizens a basic respect for law and justice. This is indeed one area in which the new developments of modern life affect the work of the courts. There is a generally contemptuous attitude toward many of the established values we have taken for granted, including the lessons of history and of precedent on which law is based, and toward authority itself, and we may see all this in the spread of the hippie movement. It manifests itself in the frightening rise in crime, which is willful transgression of the law, and in the contempt for the judicial process itself which we saw in the trial of the Chicago Seven. It carries over to what has become actual unpopularity of patriotism among high school and college youth today. This is a road that must end in ruin, and I don't want to say that our course in that direction can't be checked. A part of checking it is renewing our own realization that law and justice and respect for law and justice are necessary prerequisites to an orderly and free society, which is what most of us really want.

Second, we must distinguish between law and justice--two related but different things. In Hitler's Germany and in most dictator-ruled regimes it has been approximately true that the more law there was the less justice there was. This distinction is similar to that between "law and order" and freedom. Policemen bring law and order; courts, free courts, independent courts, alone can bring justice, and with justice, freedom.

Third, we must recognize that a universal natural law applies to the courts as well as to nearly everything else--things improve as a result of attention, care and effort; while inattention and neglect are usually rewarded with deterioration. Think of your garden. It takes hoeing, weeding and watering to produce flowers and vegetables; go away on a vacation trip and when you get back the flowers will be struggling but the weeds will be flourishing. That's simply the way of life.

The way our system of government is set up, the executive and the legislative departments tend to get the attention. The anti-pollution laws are enacted by the legislature and everybody applauds them. They are enforced by the governor and the attorney general, and the public applauds again. But only when they get to court and judges say what those laws really mean do we know whether they will do the job or be circumvented. The judiciary is the keystone, the fulcrum, of the governmental system, and yet of the three it is the least known and understood by the citizenry.

If you want a well-kept and productive garden, you can have it. All you have to do is roll up your sleeves, grab the hoe and go to work. The weeds are not going to keel over and wilt by themselves.

Your judicial system is doing its job now; doing it better than many judicial systems in many countries. Most people don't know, however, how well it is doing, where its weak points are, and how these have been remedied in other states. That is why the American Judicature Society, the League of Women Voters, and other organizations are engaged in a great public education program to make people aware of the courts, of the part they play, seen and unseen, in our lives, of their need for public understanding and support.

Today you will be looking, in the workshop sessions, at specific aspects of the administration of justice, and in each of them you'll be looking at the existing system, its strengths and weaknesses, and alternatives that have been adopted elsewhere and proposed here. I'm sorry you can't all attend all four workshops. You will get a summary at the end, and I hope and believe you'll leave the conference better equipped to bear your share of the responsibility for the improvement of the administration of justice in your state. Also, since time is short, I hope your appetite will be whetted to learn more about the courts and their problems than could possibly be presented in a one-day conference.

Freedom has been the watchword of our Republic, and we all rightly cherish freedom. But maybe we have thought too much about freedom and not enough about justice. Freedom means doing as we please; justice means doing what is right. Freedom without justice is anarchy. We need both freedom and justice, and these, too, are inseparable--we can't have the one without the other. In striving to improve the administration of justice we are protecting the heritage of freedom which our fathers left for us, and preserving it for our children and our children's children in the years to come.

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, Minnesota 55102 - January 1975

Memo to: Local Leagues
From: Peggy Gross, State Judiciary Chairman
Re: Consenting Adults and Fair Employment
January 27, 1975

Legislation will be introduced in the 1975 legislative session to remove the offenses of sodomy and fornication between consenting adults in private from the Minnesota criminal statutes. Also to be introduced this session is legislation to include sexual preference in the statutes dealing with fair employment, housing or public accommodations. It would thus be illegal to discriminate on the basis of sexual preference in employment practices, housing or public accommodations just as it is illegal to discriminate on the basis of race, creed, sex, etc.

The trustees of the American Psychiatric Association ruled(1973)that homosexuality "shall no longer be listed as a 'mental disorder' in its official nomenclature of mental disorders. The trustees also urged that homosexuals be given all protections now guaranteed to all other citizens."

Formerly, the Association's official list of mental disorders included homosexuality, listing it as a "sexual deviation" together with fetishism, voyeurism, pedophilia, exhibitionism and others. The category of homosexuality is now replaced by "Sexual orientation disturbance" which is described as follows:

> This category is for individuals whose sexual interest are directed primarily toward people of the same sex and who are either disturbed by, in conflict with, or wish to change their sexual orientation. This diagnostic category is distinguished from homosexuality which, by itself, does not constitute a psychiatric disorder. Homosexuality per se is one form of sexual behavior and, like other forms of sexual behavior which are not by themselves psychiatric disorders, is not listed in this nomenclature of mental disorders.

Regarding discrimination against homosexuals, the Association adopted the following resolution:

> Whereas homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities, therefore, be it resolved that the American Psychiatric Association deplores all public and private discrimination against homosexuals in such areas as employment, housing, public accommodation and licensing and declares that no burden of proof of such judgment, capacity, or reliability shall be placed upon homosexuals greater than that imposed on any other persons. Further, the American Psychiatric Association supports and urges the enactment of civil rights legislation at the local, state, and federal level that would offer homosexual citizens the same protections now guaranteed to others on the basis of race, creed, color, etc. Further, the American Psychiatric Association supports and urges the repeal of all discriminatory legislation singling out homosexual acts by consenting adults in private.

The National Gay Task Force answers arguments against enactment of proposed legislation as follows: (May 1974)

1. "Such legislation would endorse homosexual behavior." This is a civil rights bill which deals with the rights of 10% of American women and men to hold jobs and homes. Those who dislike homosexuals will remain free to do so, but will not be allowed to deprive gays of jobs and housing because of personal prejudices. The legislation does not deal with on-the-job behavior, either heterosexual or homosexual. People could still be fired for cause, but not merely for sexual orientation.
2. "This legislation would allow men to dress in women's clothes on the job." This viewpoint is erroneous on two grounds. First, very few gays are transvestites and most transvestites are in fact heterosexual. Second, such legislation does not deal with business or government dress codes and in no way limits the right of employers to prescribe dress codes.

3. "This bill would let gays into schools, summer camps and other situations where children could be harmed by them." All scientific research on the subject agrees that child molestation is primarily the activity of neither homosexuals nor heterosexuals, but of a distinct category of men (child molestation by women, either of males or females, is either extremely rare or, for various reasons, unreported) who are known as "pedophiles." These men are exclusively attracted to children, without regard to their sex, and it is noted in all studies that the majority of those apprehended for molesting young boys also have a history of molesting young girls.

Though some cases of child molestation are not committed by pedophiles, the myth that homosexuals are more likely to have such lapses of judgment is disproved by statistics. Most molestation takes place away from a school or camp setting and no greater percentage of males are molested in these sensitive settings. In the entire history of the New York City school system as of May 1974, there have been many reported cases of molestation of females but only one case of molestation of a male.

Homosexuals join heterosexuals in agreeing that young people as well as adults must be protected from unwanted sexual advances. The idea that a homosexual teacher or counselor is less trustworthy is just another example of the society's refusal to see gay women and men as responsible human beings.

Appropriate bills have already been enacted in Washington, DC, Seattle, Detroit, Toronto, Ann Arbor, Minneapolis, Alfred (NY), Berkeley, Columbus, East Lansing and San Francisco barring discrimination in employment.

<u>According to the National Gay Task Force</u>, the Repeal of the State Laws Against Consensual Sodomy is advocated for the following reasons:

1. Such laws criminalize all those women and men who are suspected of violation, even if they are only presumed to be homosexually oriented. Consequently, parents, friends, employers and gay people themselves find it difficult to judge an individual at his or her own worth, free of the stigmatization of "lawbreaker." The stigmatized include a large number of people. According to the Kinsey reports, 13% of women and 37% of men have engaged in homosexual acts as adults, acts which are presumptively in violation of these laws. Ten percent of all men and women in America are predominately homosexual throughout adulthood.

2. "Equal protection under the law," a constitutional guarantee, is violated. It is impossible to enforce the law uniformly and no attempt is made to do so. Nonmarried heterosexuals to whom the law (in some states) also applies are rarely arrested or convicted even though all research data indicate that a large percentage engage in proscribed activities. Indeed, these acts are encouraged in most serious marriage manuals and counseling guides.

3. They violate constitutional rights to privacy.

4. They constitute an attempt by the state to establish standards of <u>private</u> morality, a morality which is at odds with the standards and practices of an estimated 20 million predominantly homosexual American women and men, and, as evidenced by a wide range of studies, many millions of heterosexual women and men. Church groups have increasingly objected to legal fortification of moral precepts. Among these have been the New York Society of Friends and the Unitarian Church.

5. Knowing they are "lawbreakers" causes many innocent people deep emotional anguish. Within the health field, <u>repeal has been urged by formal resolution</u> of the American Psychiatric Association, the American Medical Association and the American Mental Health Foundation.

6. With the legal profession, <u>repeal has been urged by formal resolution</u> of the American Bar Association, the American Law Institute, the International Congress of Criminal Law, the American Law Committee and the National Commission on Revision of the Penal Laws.

7. These laws constitute the foundation for frequent attempts at blackmail and shakedowns.

8. These laws, through their criminalization of gays, are used to bar them from virtually every profession, including practice of law.

9. Minors and nonconsenting adults are fully protected by other laws, just as they are protected from heterosexual offenders.

10. These laws serve no useful purpose.

Several states have eliminated their restrictions on consensual adult relations as of May 1974 and include Illinois, Oregon, Connecticut, North Dakota, Ohio, Delaware, Hawaii and Colorado.

The Minnesota Committee for Gay Rights presents the following arguments in favor of the proposed legislation: *

"RIGHT TO FAIR EMPLOYMENT

Gay people do not face the same sorts of discrimination in employment as do Blacks - They can hide. They can pretend that they are heterosexual, laugh at anti-Gay jokes. But to do so is to internalize all the guilt and hatred society would place upon the Gay person, and it is self-destructive. To hide or pretend that you are something you are not, is to admit, if only to yourself, that there is something wrong with being who you are. That sort of double life leads people to deny their feelings and deny themselves.

Refusing to hide or to be discovered to be Gay means that he or she may very well lose their job, housing or public accommodations without legal recourse until legislation guaranteeing fair employment protection is passed. Fair employment for Gay people would (1) provide legal recourse to arbitrary discrimination, (2) alleviate the oppression and alienation caused by being forced to live a double life in order to maintain one's livelihood and (3) begin to create a climate of openness which would break down the ignorance and stereotypes that cause discrimination and bigotry.

CONSENTING ADULTS

1. Right to Privacy - The American Law Institute stresses the all-importance of privacy and of freedom for the individual to choose his own course of action as long as it does not infringe on the liberty of others. In the view of the prestigious ALI, private sexual acts between consenting adults cannot be shown to have a sufficiently adverse effect upon society to warrant limiting an individual's freedom or invading his or her privacy.

2. Sin Versus Crime - Sin and crime are not always identical; Gayness may or may not be a sin, but it should not be a crime; guilt and penalties are matters between the person and his spiritual advisors.

3. Ineffective and Unenforceable - (a) Leads to discriminatory, arbitrary, capricious enforcement, (b) Could require the police to employ objectionable methods if they were to enforce the laws against private consensual sexual activity, (c) Takes valuable time from the important and serious problem of violent crime enforcement and (d) Leads to a disrespect for such laws in particular and a general breakdown of respect for the law.

4. By repeal of the present sodomy law you not only remove the stigma of "criminal" for one whose only crime is preference for the same sex, but also eliminates a law that restricts what a man and woman (including married) may do legally in the privacy of their own bedroom."

* Quoted from HUMAN DIGNITY, CIVIL RIGHTS, AND EQUAL JUSTICE FOR ALL IN OUR SOCIETY. Prepared by Minnesota Committee for Gay Rights, 1975

(over)

Action by groups in support of the fair employment proposals:

In May 1972, the Board of Education of the District of Columbia adopted a resolution prohibiting discrimination in hiring based on sexual orientation.

In September 1974, the National Education Association went on record saying that "personnel policies and practices must guarantee that no person be employed, retained, paid, dismissed, or demoted because of race, color, national origin, religious beliefs, residence, political activities, professional association activity, age, marital status, family relationship, sex or sexual orientation." The Association urged governing boards to employ minority persons and women at all administrative levels, saying that it may be necessary to give preference in the hiring, retention and promotion policies to certain racial groups or women or men to overcome past discrimination.

Other groups which have adopted resolutions supporting the concept of such proposed legislation include the American Personnel and Guidance Association, the American Bar Association, National Organization of Women, Minneapolis TRIBUNE, Minneapolis STAR, and a number of church related organizations.

The League of Women Voters of Minnesota has been contacted by the Minnesota Committee for Gay Rights. LWVMN positions could appear to touch on this issue:

JUDICIARY: "... alternatives for sentencing; alternatives for handling behavior now defined as 'status offenses' and 'social (or victimless) crimes.'"
(p. 5, PROGRAM FOR ACTION)

EQUALITY OF OPPORTUNITY: Support of policies to ensure equality of opportunity in employment, real property, public accommodations, education and other public services for all persons. Support of administrative enforcement of antidiscrimination laws.
(p. 7, PROGRAM FOR ACTION)

The Board of Directors is reviewing the proposals.

If there are any questions about the information included in this memo, call Peggy Gross, (612)926-9087, or the state office.