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NOMINATE
APPOINT
ELECT



The Missouri Plan for Judicial Selection



American Judicature Society
to promote the efficient administration
of justice

Nominate . . . Appoint Elect . . .

A Method of Selecting Judges

The Missouri plan is not a new idea. At the time of the founding of the American Judicature Society in 1913, selection of judges was one of the first items on the new organization's research program. Within a few months thereafter Albert M. Kales, one of the Society's founders and the director of its research program, produced a draft embodying his judicial selection proposals.

In brief, he proposed that an elected officer fill vacancies by appointment from a list of names submitted by an impartial non-partisian nominating body, that the appointees go before the voters at stated intervals thereafter on the sole question of their retention in office, and that any vacancy created by the voters' rejection of a judge be filled by the same appointive method.

The judicial selection debate centered around the Kales plan for 20 years before action finally came in 1934 when California adopted a plan differing quite sharply from the Kales plan but obviously influenced by it. The California plan, still in use, substituted a confirming body for the most important feature of the Kales plan—the nominating body.

In 1937, the House of Delegates of the American Bar Association approved a pattern for selection of judges based on the Kales plan which has since been known as the American Bar Association plan. Its text appears on another page of this brochure.

Three years later, in 1940, the Missouri plan, as described below, was adopted. Judge Hyde's answers to the questions submitted to him tell the story of its success there.

Although constitutional changes as basic as judicial selection never come quickly or easily, and a number of years elapsed before other states followed Missouri's example, the plan has shown increasing popularity in recent years. In 1950, Alabama adopted the nominating commission for filling vacancies on the trial bench of the state's largest city. The 1956 Alaska constitutional convention, determined to give the new state a model constitution in every respect, carefully studied all judicial selection methods and adopted a plan based on the A.B.A. pattern and very similar to Missouri's plan. The Alaska plan applies to judges of all appellate and major trial courts of the state. In 1958, a plan substantially similar to Missouri's was adopted for selection of supreme court justices in Kansas.

In 1962, voters of Iowa and Nebraska will pass on Missouri-type plans submitted to them by their state legislatures, and Illinois voters will pass on a plan which includes the feature of tenure in office by periodic non-competitive election. In numerous other states, judicial selection plans based on these patterns have been drafted and will be coming before legislatures, constitutional conventions and voters in future years.

The Missouri Non-Partisan Plan

by Laurance M. Hyde

Chief Justice, Supreme Court of Missouri

QUESTION—*Would you explain briefly what the Missouri plan for selecting judges is?*

ANSWER—It is a plan for the maintenance of a thoroughly qualified and independent judiciary by taking the selection and tenure of judges out of politics. Selection is by appointment by the Governor, but from a list of three nominees named by a commission composed of both lawyers and laymen, who do not hold any public office or any official position in a political party. The Governor's appointment must be confirmed by a vote of the people at the next general election held after the appointed judge has served twelve months in office.

The plan's intent is to make selection on the basis of the essential judicial qualities of personal integrity, judicial temperament and adequate legal training; and to make tenure depend upon satisfactory service in office. Judges have definite terms, six years on trial courts and twelve years on appellate courts; and at the end of each term the judge must receive a favorable vote of the people to get another term. The people vote "yes" or "no" on the question: "Shall Judge _____ of the _____ Court be retained in office?" We believe this plan contains the best features of other appointive and elective systems and provides safeguards which they do not have.

Q.—*What occasioned the adoption of the Missouri plan? Was it inability to get good judges, or was it fear of a link between judges and politicians or was it a general desire to elevate the tone of the bench?*

A.—All of these were factors. However, most important was the situation in our two large cities, St. Louis and Kansas City, where selection and tenure of judges was mainly controlled by politicians, and political machines, very apparently not working in the public interest. Conditions were continuously getting worse so that it was rather generally felt that something had to be done about it. Then, too, it was realized that under the party primary and election system, in statewide and large city elections, selection and tenure of judges depended upon issues wholly irrelevant to any judge's ability, record or qualifications. This was illustrated by the experience in Missouri, where, in twenty years between the first and second world wars (1919 to 1939) only twice (1922 and 1936) was a judge of the Supreme Court of Missouri, who had served a full term, re-elected to another term. This result was due to the fact that the ten elections during this period turned on national political issues and the judges got only the party vote regardless of individual merit.

Q.—*Did the bar lead the fight for the reform? If not, who did?*

A.—The organized bar took the lead in preparing the plan and sponsoring it. However, efforts of the bar alone could not have been successful. Outstanding civic leaders joined with the bar in organizing an educational corporation, with one third of its membership lawyers and two thirds laymen, to promote public awareness of the plan and its advantages.

This organization, called the Missouri Institute for the Administration of Justice, set up the statewide county organizations under active county chairmen, and enlisted both lay and bar support for the plan. It was financed by contributions of interested citizens and employed a professional public relations counselor to prepare its publications and direct its press relations. (The same man later was public relations director for the successful 1947 campaign for a new constitution in New Jersey.) Support was obtained from civic, labor, farm and industrial organizations throughout the state. Many laymen were effective speakers for the plan. The League of Women Voters and groups of women precinct workers did remarkable work in arousing interest and getting out the favorable vote.

Excellent newspaper support was given both by large city and small town papers. It took this kind of diversified leadership and effort to obtain the successful result.

Q.—*You say judges are nominated by non-partisan, non-salaried commissions of laymen and lawyers. How are those commissions chosen?*

A.—The Commission for the Appellate Courts (Supreme Court and three Courts of Appeals) has seven members. The Chief Justice of the Supreme Court is the chairman. Three lawyer members are elected by the bar, one from each Court of Appeals District elected by the bar of the District. Three lay members are appointed by the Governor, each being a resident of the Court of Appeals District he represents. The trial court commissions (one in St. Louis and one in Kansas City) have five members with the Presiding Judge of the Court of Appeals of the District as chairman. Two lawyer members are elected by the bar and the two lay members are appointed by the Governor. All members, except the chairman, have six-year terms (expiring in different years) and cannot succeed themselves.

Q.—*Has experience demonstrated the wisdom of naming only three candidates for the Governor to choose from?*

A.—Yes. Sometimes it would be difficult to find available more than three nominees of the highest qualifications at the particular time for the judicial office to be filled. Experience has shown that this number gives the Governor a reasonable choice. Nominating more than three would increase the chance of getting less qualified judges.

Q.—*Is it better to have a judge run without opposition on his record or would you advise permitting the nomination of opposition candidates?*

A.—I certainly would not advise nomination of opposition candidates. That would be an almost sure way to get the courts back into politics. As Dean Pound once said: "Too much thought has been given to the matter of getting less qualified judges off the bench. The real remedy is not to put them on." We believe we have found that remedy under the way our plan operates. Furthermore, one of its important features is that it permits judges to put in all of their time on their judicial work. When judges must campaign for re-election, justice is delayed. This is shown by our Missouri experience, when prior to the adop-

tion of our plan our Supreme Court was always two to three years behind with its docket. Under the present plan, the docket has been brought up to date and is being kept current.

Q.—*Has there been any attempt by partisan political groups or leaders to interfere in judicial appointments or elections under this plan?*

A.—No. In elections under the plan, both political parties always endorse retention of the judges who have received a favorable vote in the poll of all of the lawyers taken by the integrated bar. Previous party affiliations mean nothing in elections under the plan. In selection, the commissions let it be known that they welcome suggestions from any citizen on the basis of ability and qualifications of prospective nominees. The press helps to keep the matter out in the open before the people.

Q.—*We understand that the plan is applicable only to the Supreme Court and three Courts of Appeal and Circuit Courts of St. Louis and Kansas City, also to the Probate Courts of those two cities and the Court of Criminal Correction in St. Louis. Why was the plan not applied on a statewide basis?*

A.—The two largest cities were the trouble spots. In 1940, we had no other cities over 75,000 and only two close to 75,000. We had many rural circuits of small population with few lawyers where voters knew their judicial candidates personally and judges were not nominated by political machines. These people wanted something done about the situation in St. Louis and Kansas City and on the appellate courts but they felt their own local conditions were satisfactory.

Q.—*We understand that the Missouri plan was adopted in 1940. Has any attempt been made to repeal or alter the system since that date?*

A.—Yes. After the plan was adopted in 1940 as a constitutional amendment by initiative petition, opponents said the voters did not understand it and got the 1941 legislature to submit its repeal. The plan got twice the majority in the second election in 1942 that it did in the first election in 1940. Thereafter, in 1944, we had a constitutional convention which submitted an entire new constitution. Some effort was made to get the convention to leave out the plan but the convention kept it and the new constitution containing it was adopted by an overwhelming favorable vote. No further effort was made against the plan until 1955 when a repeal measure was offered in the legislature. It was voted down by a two-to-one vote in the House and was never even considered in the Senate.

Q.—*Would you say that judges chosen under the Missouri plan have been better qualified professionally than they were before 1940?*

A.—Yes. Considering all those appointed as a whole I would say the new plan has a much better batting average than the old system in selection of judges of high qualifications. Furthermore, those who came into the judiciary under the old system were given an opportunity to be better judges than they might have been under the old system and that has been the result.

Q.—*Is it easier to get good lawyers to accept appointments to the bench now than it was under the old system?*

A.—Yes. We have had outstanding able lawyers accept judicial appointments under the plan who never would have made a campaign for a party nomination.

Q.—*Are there further points you would like to make which have not been covered up to now?*

A.—It should be noted that one of our recent governors in his four-year term made fifteen appointments under the plan and appointed about the same number from each political party (seven Republicans, eight Democrats) thereby eliminating the objection once made that governors acted on a partisan basis in making these appointments whenever possible.

It should also be said that some good judges will be obtained under almost any system. This is true because under any system some high-minded, conscientious lawyers will aspire to judicial office and some of them will be chosen. Furthermore, the respect of the bar and the American people for the bench, and the great patriotic responsibility of a judge under our government of laws, is likely to bring out the best in any conscientious lawyer who obtains judicial office. We do not claim that our plan has brought or will bring about perfection. That is impossible to achieve with human beings. We do claim, not only that our plan has a higher batting average in selecting able judges than our former political system, but also that it affords every judge an opportunity to be a better judge than he possibly could have been under the old system which required him to put in much of his time campaigning for a party nomination and for election of his party ticket; requiring him to be a politician to remain a judge. Under our present plan, he can use his time to improve his judicial work and legal knowledge, working on the next case instead of on the next election.

The American Bar Association Plan

The American Bar Association in 1937 approved the following plan as the most acceptable substitute available for direct election of judges:

a) The filling of vacancies by appointment by the executive or other elective official or officials, but from a list named by another agency, composed in part of high judicial officers and in part of other citizens, selected for the purpose, who hold no other public office.

b) If further check upon appointment be desired, such check may be supplied by the requirement of confirmation by the state senate, or other legislative body, of appointments made through the dual agency suggested.

c) The appointee after a period of service should be eligible for reappointment periodically, or periodically go before the people on his record, with no opposing candidate, the people voting upon the question, "Shall Judge ..... be retained in office?"

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RETIREMENT, DISCIPLINE AND REMOVAL OF JUDGES

Courts for 20th Century America . . .

THE CALIFORNIA COMMISSION STORY

by

LOUIS H. BURKE

Reprinted from the
Journal of the American Judicature Society

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Retirement, Discipline and Removal of Judges

THE CALIFORNIA COMMISSION STORY

by LOUIS H. BURKE

Courts for 20th Century America . . .

"GRANTED that the selection and appointment of judges on merit would be a big improvement over electing them on a partisan political basis, mistakes could still be made! How would you get rid of such a judge once you had cemented him in office for a long term or for life?

"Many judges now choose to remain in office beyond a reasonable retirement age, and even after their physical and mental capacities have deteriorated. Others, with too great security in office, have become arbitrary, impatient and even incompetent. If such judges are removed from the crucible of facing the electorate periodically, what other means is there to keep them humble, attentive and in touch with the people? Through the use of the ballot box the people retain in hand the means of



LOUIS H. BURKE, justice of the Supreme Court of California and vice president of the American Judicature Society, served as an original member of the California Commission on Judicial Qualifications.

removal of such judges."

These queries and statements are often heard in the wake of the nationwide movement to improve the methods of selection and tenure of judges on a nonpartisan, nonpolitical basis of merit, a movement of grand proportions and accomplishment headed by Mr. Justice Tom C. Clark of the United States Supreme Court as Chairman of the Joint Committee for the Effective Administration of Justice. This committee, hand in hand with the American Judicature Society, a fifty-year leader in the national efforts to promote the efficient administration of justice, was immeasurably aided by a generous public service grant of the Kellogg Foundation. The educational program of the Joint Committee followed in the footsteps of a National Conference on Judicial Selection and Court Administration, held in Chicago in 1959, which recommended that "a system providing appointment of a judge for a definite term followed by election for a succeeding term in which he runs only against his record, and without competing candidates, is much to be preferred over an elective system in which a judge must run against opposing candidates." This national conference was followed by the work of the Joint Committee which harnessed in one operation all the resources of 17 national organizations concerned with judicial administration.

Conferences, both state and regional, of civic leaders, lawyers and judges have been held in all parts of the Union for the purpose of study of their respective state judi-

cial systems and constitutional provisions with a view of modernizing methods for the selection of judges, at the conclusion of which conferences a consensus of conferees has been published, and by way of example may I quote briefly from one of the more recent of these conferences the consensus of the "Citizens' Conference on Florida's Judicial System":

"Judges must be taken out of politics. Political election and one-man judicial selection must be abolished. A tested method of securing the best judges to serve the courts of Florida must be found.

"Whenever a judicial vacancy occurs, a slate of highly qualified nominees for that office should be selected by an independent nominating commission. The Governor should appoint one of these nominated candidates to fill the vacant office. The nonpartisan commission should be composed of lay citizens and lawyers.

Removing judges from politics and assuring them of tenure in office based upon performance requires some reasonable system for the retirement or removal of such judges when circumstances warrant such action. These matters are interrelated and should be a part of a unified program. In the Florida conference, to which I have alluded, the consensus states:

Florida Consensus

"Florida has no reliable method of removing or retiring judges who are unfit because of misconduct or infirmity, whether physical or mental. A fair and economical plan to discipline or remove such judges is needed in Florida today.

"There should be an independent commission, composed of lay citizens, judges and lawyers, charged with investigating complaints against judges of any state court. Every citizen should have the right to complain about any judicial behavior to the commission.

"All complaints and commission proceedings should be confidential in order to pro-

tect all parties concerned. The commission should make any necessary recommendations to the Supreme Court of Florida for appropriate action.

"This commission plan, which has also been approved in principle by The Florida Bar, is approved in principle by this Conference. It should be in addition to, and not in lieu of, the present impeachment procedures.

"The Conference approves the present method of mandatory retirement of judges at a specified age and temporary assignment of retired judges who are physically and mentally able to properly perform judicial duties. This Conference urges the adoption of a uniform system of retirement benefits for judges. These benefits should be sufficient to allow the retired judge to live with dignity."

California, like most states of the Union, did not have an adequate method for the removal of judicial officers. It did have the three major methods contained in many state constitutions, those of impeachment, recall and judicial action. Generally speaking, however, students of government have concluded that these methods have proved effective only in the few instances where a judge has been involved in a major scandal which has aroused widespread adverse public reaction.[1]

None of these methods provide an effective means for a private citizen to seek relief against the wrongful act of a judge. There is no board or agency to which he can complain with some expectation that

1. *Impeachment* is a legislative action generally brought by the lower house and tried by the upper house, with conviction requiring a two-thirds vote. Impeachment proceedings are cumbersome, often political, and with no right of appeal.

Recall requires the incumbent to submit to the vote of the electorate as to whether he shall be removed on petition of a certain percentage of the voters, and it is also essentially political.

Removal by judicial action is a much less expensive, more expedient and effective method, and in recent years is meeting with considerable support. In the New Jersey and Puerto Rican Constitutions justices of their highest courts are subject to removal by the impeachment process; all other judges are subject to removal for cause, or to retirement for incapacity, by the Supreme Court after appropriate hearing. The Model Judicial Article for state constitutions developed by the Section of Judicial Administration of the American Bar Association, and endorsed by the latter in 1962, contains provisions similar to the constitutional provisions just referred to.

Leading examples of states which employ judicial action as a means of removal of judges are New York, Illinois, Texas, Louisiana and Alabama.

his complaint will be investigated and heard. To expect such a person to seek relief through the urging of impeachment proceedings by his state legislature, or to resort to petitions for recall is not realistic. These are methods which are beyond the reach of the ordinary citizen and particularly in populous states.

In 1960 California amended its constitution at the behest of the Chief Justice, Phil S. Gibson, the State Judicial Council, the Legislature, the State Bar and State Conference of Judges, and the amendment provided for a system quite similar to the one recently recommended by the consensus of the Florida conference. The system creates a special commission charged with the responsibility of receiving, investigating and considering complaints concerning judges of courts of all levels in the state's judicial system and recommending to the Supreme Court the retirement of any judge for disability or his removal from office for wilful misconduct. When it was initially proposed, there were a few judges who conscientiously felt the establishment of such a commission constituted a threat to the independence of the judiciary, and they raised their voices in opposition to its passage. Most judges were strongly in favor of the proposal, as was the Conference of Judges which supported it. Now that the plan has been in operation for approximately four years, pratically all opposition to it has disappeared and it has met with uniform and widespread support. As Chief Justice Gibson of the State Supreme Court stated: "No

honest and industrious judge who has the mental and physical capacity to perform his duties has anything to fear from" the commission method of removal. "Surely the people have the right to expect that every judge will be honest and industrious and that no judge will be permitted to remain on the bench if he suffers from physical or mental infirmity which seriously and permanently interferes with the performance of his judicial duties."

The commission established by the constitutional amendment is called "The Commission on Judicial Qualifications," a misnomer since the commission does not participate in the qualifying of judges but only in their disqualification—their removal. The commission consists of nine members: five judges, two lawyers and two laymen. The judges are appointed by the Supreme Court, two from the intermediate appellate courts, two from the trial court of unlimited jurisdiction and one from the trial court of limited jurisdiction. No members of the Supreme Court are eligible for appointment to the commission, since the Supreme Court itself acts in a sense as an appellate body to review the actions of the commission and since it has the final power to remove or retire a judge upon recommendation of the commission. The two lawyers are appointed by the Board of Governors of the State Bar, which is an integrated bar, and the two laymen are appointed by the governor. These persons all serve for staggered terms which provide for a measure of continuity.

The Duties of the Commission

The duty of the commission is to recommend to the Supreme Court for removal from his judicial office any judge in any court of the state, including the Supreme Court, who is found by the commission to be guilty of wilful misconduct in office, of wilful and persistent failure to perform his duties, or of habitual intemperance. Likewise, the commission may recommend for

retirement any judge having any disability which seriously interferes with the performance of his duties, and which is, or is likely to become, of a permanent character. The commission has the power to subpoena witnesses, make investigations, take evidence and to make findings.

As of the end of 1964 the commission has been in existence for approximately four years during which it has received 344 complaints against judges; the commission has directly caused the resignation or retirement of 26 judges. Indirectly, as a result of complaints being filed and of commission action investigating such complaints, it has induced the resignation or retirement of a small number of judges who saw the handwriting on the wall. As over this period there were more than a thousand judges in California, one can readily perceive that the percentage of judges who are unfit for one reason or another is exceedingly small.

Justice A. Frank Bray, presiding Justice of the District Court of Appeal, First Appellate District, Division One, who acted as chairman of the commission during the first four years of its existence, in speaking on the work of the commission stated that in his judgment the California procedure meets four important needs:

"(1) The Commission recommends the removal or forced retirement of judges who, for any reason, are no longer able to properly perform their official duties or have been guilty of misconduct.

"(2) The very existence of the Commission with the powers given it acts as a deterrent to the occasional recalcitrant judge and minimizes absence from judicial duties for extended periods.

"(3) The Commission provides a medium through which the disgruntled litigant, and even the crank, may air his grievances against the courts or judges without publicity affecting the particular judge singled out. In most instances the complaints are so groundless that we do not even notify the judge charged that a complaint against him has been made. In a

sense, the Commission offers an apparently sympathetic shoulder upon which these complainants may cry. While they are never satisfied with our actions, nevertheless, you would be surprised to find how much more content they are than they would have been had there not been a public agency to give them consideration. In many of these complaints the complainant is seeking a retrial of the action which he contends was improperly determined against him. We, of course, have no appellate jurisdiction.

"(4) In quite a number of instances, these complaints disclose situations, which, while not serious enough to warrant the removal of the judge designated, nevertheless disclose practices indicating that the particular judge has a poor idea or none at all, of public relations, or the proper relationship between judge and counsel, or judge and witness, or party; or they may indicate a lack of knowledge of the Code of Judicial Ethics of the American Bar Association and of the Conference of California Judges, of such matters, for example, as continued failure to start court on time, taking unlimited recesses, constant wisecracking in court, short court hours, etc. In these instances, we notify the judge of the charge and tactfully suggest that if the practice complained of exists, it be discontinued. Thus, the Commission, in cases of improper judicial conduct not serious enough to warrant removal, does have a sort of disciplinary power. This is important in preventing the judicial image from losing the respect of the people.

"It should be pointed out that there is no red tape or formal restrictions on the making of a complaint against a judge. Any person may make such complaint by letter or other writing. Of the 344 complaints in four years, only 118 required any kind of investigation. The rest were groundless on their faces. If there appears to be the slightest indication of conduct by, or incapacity of, the judge which would justify the action of the Commission, an investigation is made, and the matter of probable

cause for proceeding further is determined.

The Value of a Commission

"Our experience of four years of the Commission's existence has proved, we think, the value of this system of removal. In every instance, save one, where the Commission, after investigation, has felt that a judge's actions or condition might require a recommendation for removal or retirement, the judge, upon being confronted by the fact that he would have to appear at a hearing before the Commission, has either retired, if eligible, or has resigned. In only one instance has a formal hearing been had. In that instance, the Commission held a seven day hearing at which a Deputy Attorney General presented the charges, and the defendant and his attorney resisted them. Forty-seven exhibits were introduced, and 48 witnesses heard. The Commission recommended to the Supreme Court the removal of the judge.

"The Commission's work is entirely confidential. We may not inform anyone of the charges except the judge himself, until the Commission has recommended removal to the Supreme Court. Then, for the first time, the records are open to public inspection."

As I have indicated, when the record of proceedings before the commission is filed with the Supreme Court with a recommendation for removal or retirement of a judge, the Supreme Court conducts its own review of the proceedings and may, if it deems necessary, permit the introduction of additional evidence. At the conclusion of its review the Supreme Court may order the removal or retirement of the judge if it finds just cause, or it may wholly reject the recommendation of the commission. It is interesting to note that in the single instance referred to by Justice Bray, where the commission at the conclusion of its formal hearing recommended to the Supreme Court that a judge be removed, the court as a result of its own review of the

proceedings rejected the recommendation, evidently disagreeing with the commission that there were sufficient grounds to warrant the removal of the particular judge from office. This result certainly gave evidence that the appellate process whereby the recommendations of the commission are subject to the review of the Supreme Court on both the law and the facts is wholly independent, as it should be, and is similar to the final review accorded litigants in ordinary court proceedings by the highest court of the state.

I was privileged to serve on the first commission appointed under the constitutional amendment in California and was very favorably impressed with the operation of the system. I was particularly interested in the active participation in the affairs of the commission by the two outstanding lay leaders appointed by the Governor to serve on the commission. They entered into the work of the commission with the same enthusiasm and deep sense of responsibility which typified the attitude of the professional members of the commission.

Based on the California experience, I would certainly stress that any such plan include within it a provision for confidentiality with respect to all complaints, inquiries, investigations and hearings up to the point of the taking of action by a commission recommending to the state's highest court the actual removal or retirement of a judge. This protects the innocent judge from irreparable damage by publicity resulting from the filing of a complaint which an investigation proves to be groundless, and, equally important, it removes fear of reprisal from potential complainants.

It is essential that of all human beings in our society the judge must remain the most incorruptible because it is he who in the last analysis is the final protector of our rights to life, liberty and property under law. This is the image which, in general, the public has in this country of its judges, and so deeply ingrained is it that when in fact a scandal does involve a judge it be-

comes a matter of national attention and concern. That this image may not be unjustifiably tarnished, great care must be exercised that complaints against judges do not receive publicity until and unless upon screening by an independent and qualified commission they are shown to have merit. Even then it is better that the action of such a commission result in the relinquishment of office by such a judge, than to have the fine reputation of the hundreds of able men and women to whom judicial office has been entrusted tarnished by the shortcomings of a single judge.

By the establishment of a program for the removal or retirement of those judges who fail to measure up to these high standards, similar to the California plan, which we are advised is now being studied in more than a dozen states, the independence of the judiciary is fully protected and at the same time the public is assured of the continued service of capable, efficient and conscientious judges.

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Printed and Distributed as a Service of the
American Judicature Society

to promote the efficient administration of justice

Founded in 1913, the American Judicature Society has gained a reputation for leadership in judicial reform. The Society's membership consists of more than 21,000 lawyers, judges and laymen in every state and many foreign countries. Through research, publication, consultation service and action programs, the Society seeks to work for better lawyers and judges, better courts, better justice, a better America.

Additional Copies of this brochure may be obtained by writing the Society's offices at 1155 East Sixtieth Street, Chicago 37, Illinois. Larger quantities can be obtained at minimum cost.

Courts for 20th Century America



A BETTER WAY TO SELECT JUDGES

By SAMUEL I. ROSENMAN

President, Association of the Bar of the City of New York (1964-1965); Co-Chairman, Mayor's Committee on the Judiciary (1962-1964); Special Counsel to Presidents Franklin D. Roosevelt and Harry S. Truman (1943-1946); Justice of the New York Supreme Court (1932-1943).

Including the Model Judicial Article for State Constitutions



AMERICAN JUDICATURE SOCIETY

to promote the efficient administration of justice

America's only national organization devoted exclusively to the improvement of the administration of justice, the American Judicature Society was founded in 1913. Since that time it has gained an enviable reputation for leadership in judicial reform and has pioneered in developing and advocating the modified appointive-elective system of selecting judges, the unified state court system, modern civil and criminal procedures, and more efficient administrative methods for the courts.

The Society's membership today consists of more than 20,000 lawyers, judges and laymen in every state and many foreign countries. Among them are judges of the United States Supreme Court and nearly every state supreme court; prominent leaders of the organized bar, national, state, and local; along with thousands of practicing lawyers; law teachers; government officials; and civic and community leaders—all sharing a common interest in the administration of justice and its improvement.

Through research, publication, consultation service and action programs, the Society seeks to work for better lawyers and judges, better courts, better justice, a better America.

This is one of a series of brochures prepared by the American Judicature Society to suggest ways of improving the administration of justice. Among the many topics included in this series are judicial selection, the unified court, and modernized procedure.

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By SAMUEL I. ROSENMAN

Courts for 20th Century America . . .

SO MANY men of greater learning and wisdom have written and spoken on the subject of a way to select a better judiciary, that I wondered why I was picked by your distinguished President to make any additional comment — and particularly before this organization which for 50 years has been the leader in seeking this objective.

The only reason I could think of was that my 35 years of close personal association with this problem might add to your thinking the weight of experience.

During that time, I have served twice as an appointed judge, and 10 years as an elected judge. After my first appointment, the leaders of my own political party, solely for political reasons and in furtherance of a political deal, refused to nominate me for a full term. So I know quite personally what is meant by political control of the judicial nominating and elective process.

As a judicial candidate, I have been through one hotly contested election. In this election, a Mayor of New York was to be elected to succeed a Mayor who had resigned under charges. The chief issue—if not the only one—was municipal government corruption. The qualifications of the judicial candidates received scant, if any, attention. In this campaign, I learned at

first hand what it means for a judicial candidate to have to seek votes in political club houses, to ask for the support of political district leaders, to receive financial contributions for his campaign from lawyers and others, and to make nonpolitical speeches about his own qualifications to audiences who could not care less—audiences who had little interest in any of the judicial candidates, of whom they had never heard, and whom they would never remember.

As counsel to one Governor, and later to two successive Presidents, I also had personal, active experience in judicial appointments by the Governor to fill vacancies, and with the judicial appointive power of the Presidents. In both cases, I could observe the practical workings of the theory of checks and balances by Senate confirmation.

For several years, as a member and later as chairman of the Committee on the Judiciary of the Association of the Bar of the City of New York, I had a close view of the effectiveness of referral by an executive to a bar association of a candidate already selected by him; and the meagre results of publishing bar association reports on the qualifications of candidates who had already been nominated by political parties.

Finally and more recently, I have served as co-chairman of the Mayor's Committee on the Judiciary, organized by Robert F. Wagner, mayor of the City of New York, as a voluntary project. In that capacity, I had two years' experience watching at close hand what in a general sense is in essence —but with some substantial differences— the plan originally suggested by Professor Albert M. Kales, first advanced by your Society in 1913, urged by the American Bar Association in 1937 and since then by many legal scholars and thinkers, and now generally known by the name of the state which in 1940 was the first to adopt it—



JUDGE ROSENMAN delivered this address before the 51st annual meeting of the American Judicature Society on August 12, 1964 in New York City. It is reprinted from the Society's Journal.

the Missouri Plan.

I have been given all of 20 minutes this morning to state my views based on this long experience on this subject, the bibliography of which covers scores of volumes. Obviously in this time I can give you only my barest conclusions, without elaboration and without any specific examples on which they are based.

When we talk about reform in judicial selection, we should first determine what it is that we are seeking. We must acknowledge, on the basis of a long history, that any system of judicial selection, no matter how bad, will, from time to time, produce many qualified judges—and even some outstanding judges. This has certainly been true of my own State of New York, which still uses the political, elective system. However, the election of some excellent judges does not prove that the best—or even that a good — method of selecting them is in operation.

Let us face this sad fact: that in many— in far too many—instances, the benches of our courts in the United States are occupied by mediocrities—men of small talent, undistinguished in performance, technically deficient and inept.

Most of the agitation to change methods of selection comes from a desire to keep out this type of judge.

But it is not enough for a system of judicial selection to aim at exclusions. It should

not be designed negatively as a "keep out" system. It should be affirmative and positive—providing a means of bringing to the bench, not haphazardly or occasionally but as consistently and routinely as possible, the very best talent available and willing to serve.

The Different Methods of Selection

Let me first summarize the different methods of selection that are in effect in the various states today.

Nineteen states have elective systems under which some or all judges run for office on a partisan, political ballot. Sixteen states have elective systems involving the use of a non-partisan ballot.

In nine states, Puerto Rico and the federal courts, judges are appointed by the chief executive, with confirmation by a legislative or other body. Even in the elective states, vacancies are filled by appointment. Indeed, it has been estimated that, in practice, fully 50 per cent of the judges in elective states in this country first come to the bench by appointment to fill vacancies.

In four states, some or all of the judges are appointed by the legislature.

And in 10 states, some form of the Missouri Plan is in operation.

It is common belief that the presently predominant, elective system has always been the American method of choosing judges. This is a mistake. The almost universal method in the original states was by appointment. In all but one of the 29 states in 1846, judges were still selected by appointment. In my own State of New York, the change from appointment to election did not come about until 1846.

A variety of forces in this country—too many to enumerate here—operated to change the prevailing appointive system to the elective system in the years after 1846.

The reasons for the change were almost entirely political and sociological; none of them involved primarily any concern about getting the most qualified men for the bench.

Most disinterested students of the subject are in accord that this elective system is the least likely of all the methods that have been used or suggested to bring to judicial office the most qualified men. I agree. It was not devised for that purpose in theory. It has no mechanism to seek out the ablest men. And in practice, ability has only been an incidental consideration in nominating a candidate for judicial office. The controlling considerations in nomination, with rare exceptions, have been political and partisan.

These considerations, I repeat, sometimes by accident almost, produce a fine competent judge; more often they produce mediocrities or worse. And in some instances, as in our own Judicial District Convention here in New York City two weeks ago, they bring about political manipulation and trading of judicial office which are revolting to decent citizens. And although this latest example in this district is not very much worse than many other similar instances of political judicial nominations in New York and other states, it has, fortunately, deeply aroused the public and the press as well as the bar. I hope it will create a more militant public support for our bar associations in this city, which have been pressing for reform and will, I am sure, continue to press with renewed vigor.

I am not suggesting that active participation in partisan politics should ever be a disqualification for judicial office. The fact that a man has performed public service with distinction, the fact that he has gained experience and vision by honorably serving in political office, should not be viewed as diminishing his capacity for judicial work.

On the contrary, this type of activity should be regarded as a definite qualification. What I am decrying is a selection solely or even primarily as a reward for political or party service, or to carry out the political or other purposes of party leaders.

My own experience and observations have convinced me of the absurdity of the feeling in some places that it is somehow not democratic to select judges by any other method than popular political elections. If this were true, then our method of selecting federal judges ever since our Republic was founded has been undemocratic. The fact is that our system of electing judges, as we now have it in practice, has become the very antithesis of democratic.

The Real Electors

The idea that the voters themselves select their judges is something of a farce. The real electors are a few political leaders who do the nominating. It is practically impossible for the public, especially in large centers of population, to know anything about the qualifications for judicial office of those who practice at the bar. Political leaders nominate practically whom they choose. Sometimes the districts are so overwhelmingly dominated by one political party that the nomination by these leaders must result in election; even in doubtful districts, interparty political deals often deprive the voters of any real choice. After nomination, the voters, as a whole, know little more about the candidates than what their campaign pictures may reveal. Nor do they have any great desire to get to know much more—although bar associations do try to give them information. Their concern is centered on the executive and legislative candidates because these candidates are identified with the only issues and causes which interest the voters. Most often, when they reach the judicial candidates

down on the ballot, they vote blindly for the party emblem.

This is a matter of general knowledge; but there is plenty of concrete evidence. For example, promptly after the 1954 elections, the Association of the Bar of the City of New York, with some other organizations, employed a well-known concern, skilled in the field, to conduct a poll of voters in New York City, in upstate Buffalo, and in upstate semi-rural Cayuga County. The poll showed that not more than 1 per cent of the voters in New York City could remember the name of the man whom they had just elected Chief Judge of the Court of Appeals—our highest judicial post. In Buffalo, not a single voter polled could recall his name. In Cayuga County, only 1 per cent could remember his name, and only 4 per cent could remember the name of any judicial candidate for whom they had voted.

Does the straight appointive system meet all these objections? It is recognized at least by most non-political observers, and it is definitely my own opinion, that it usually brings to the bench a better quality of judge than the elective system does. I do not refer to any one state or to any one court or to any particular set of judges, but I am taking the bench as a whole when I say that it is generally acknowledged, for example, that the calibre of federal judges is higher than the calibre of state judges. This may be due in great part to other factors than the method of selection—to the fact, for example, that the federal judiciary, because of the greater prestige and more challenging character of its work, has more appeal for the talented lawyer; to the fact that, because of the great sweep of the federal powers, the bar and the press concern themselves more deeply with federal judicial appointments; and to the F.B.I.'s thorough procedures of investigation. But, in

larger part, it is the method of selection that is responsible.

In place of the anonymous party machine dominated by a few political leaders who are not elected by, or responsible to, the public, one man must assume the responsibility for selection. A mayor, a governor or a president cannot escape that personal responsibility. Normally his great concern is to act in the public interest and to maintain his reputation and standing by his appointments as well as by his other actions. While he can afford an occasional mistake, a series of bad appointments can politically be seriously damaging. They are all out there in the open—right at his own door. He can be sure that his mistakes will not be buried, or even ignored; and he dare not risk making many of them—even if he wanted to.

But there are also serious disadvantages in the straight appointive system. Political considerations operate here also—though to a smaller degree. Governors and mayors are subject to the political pressures from their party leaders and managers, and can resist them only up to a point. Often there is not enough interest in resisting them so long as the candidate is not too obviously unfit.

And in the case of federal judicial appointments, other than to the Supreme Court itself, the president, in addition to getting political pressures, often relies on the local United States senators. Indeed, some excellent judicial appointments never even reach the Senate because of the opposition of a senator to whom it might be "obnoxious"—for reasons which have nothing to do with qualifications.

The fundamental defect, however, in the purely appointive system is that it does not provide a regularized method of actively seeking out talent for the bench in a non-political way, so that there will be

consistently brought to the attention of the appointive power highly qualified individuals.

This basic defect is met in the so-called Missouri Plan, now in effect, with variations, in 10 states.

The Missouri Plan

That plan is characterized by four elements:

1. The nomination of a panel of judicial candidates by a non-partisan commission composed of conscientious, qualified laymen and lawyers.

2. The limitation on the executive to appoint judges only from the panel submitted by the commission.

3. The review of the appointment by the voters after a short probationary term of service in which the only question is whether the judge's record warrants his retention in office.

4. Periodic review of the appointment at the end of each term of office by the voters in which the only question is whether the judge's record warrants his continued retention in office.

Of all methods of judicial selection, this is, in my opinion, the best. It eliminates, perhaps not entirely but as far as possible, the wrong political considerations. It sets up a mechanism for actively searching out the best talent by non-political people whose objective is to beat the bushes in an attempt to find the most qualified men. It leaves the final responsibility in the executive, where it belongs.

There is, however, one feature of the Missouri Plan which I personally think is inappropriate and unnecessary. That is the requirement that after a judge has been on the bench for a period of a year or more, he submit himself to popular election for approval without political label. and, as it is said, run against his record.

There is no reason to believe that the general public will be any better informed about the judge or his qualifications after a year in office than they were before he took office. I suspect that this requirement is primarily intended as a sop to those who still have the false notion that there is something undemocratic in a non-elective process. The record in the states using the plan shows that never has a judge after an initial appointment under the Missouri Plan been rejected in the election after the short probationary period.*

I would substitute for this election feature of the plan a suggestion that, after some substantial probationary period, the judge be carefully reappraised on his performance by the nominating commission itself. If, on the basis of clearly-defined objective standards, he is found to be unfit for the office by a greater than majority vote, the governor would have the right after a hearing to terminate his tenure.

No method will be perfect. The most that we can do is to elminate the worst and strive for the best. In my opinion, the basic elements of the Missouri Plan, with the elimination of the election after the probationary period, form the closest approximation to the best that has yet been found.

The Mayor's Committee

There is a variant of the Missouri Plan which has been operating in this city for the last two and a half years with whose operations I am quite familiar—the Mayor's Committee on the Judiciary.

This committee and its functions were suggested to Mayor Wagner by some leading members of the bar in this city. He

*It is true that one judge in Missouri was rejected for reelection at the end of his term on allegations of unjudicial conduct; however he had gone on to the bench before the plan went into effect.

adopted them voluntarily. The committee has operated without compulsion of law; but the Mayor has cooperated with it completely. The committee consists of 25 members—lawyers and laymen—all appointed by the Mayor. Some of the lawyers are acknowledged leaders of the bar; they include two former judges of the Supreme Court of the state and one former chief judge of our Court of Appeals. The lawyers were appointed after consultation with the presiding justices of the Appellate Division in the two departments included in the city. The lay members are all prominent in various civic organizations, and were selected by the Mayor largely for that reason. Each of the five counties in the city is represented on the committee.

This is the way it operates. When a vacancy occurs in any of the courts which has to be filled by the Mayor, he so informs the committee. The committee within a reasonable time recommends five names for the vacancy. The Mayor has agreed to appoint only from among those names —and to date he has scrupulously carried out that voluntary agreement.

How are those five names selected to be presented to the Mayor? They come from a file of many names which the committee has collected and investigated. Names are recommended to the committee from time to time by anyone who wishes to do so—by individual lawyers or laymen, civic groups, political organizations of any party, by members of the committee or by the Mayor himself. In this way a growing file of proposed candidates has been built up and investigated. Each candidate fills out a long and searching questionnaire as to his academic and professional education, experience and activities. The committee has an executive director and one investigator, paid by the City of New York.

The investigation is as thorough as it

can be with these limited facilities, which should of course be increased. The candidate furnishes the names of five lawyers who were recently his adversaries in any litigated or other professional matter, who are interviewed on the assumption that a lawyer's adversary ought to be familiar with his character and ability. Judges are also asked about the man, as are court clerks and anyone who might know him. The members of the committee themselves often recommend candidates, who are given the same kind of investigation. The committee, by notices in legal publications and by circularization of bar association members, has actively sought out qualified candidates.

The first selection of the five to be sent to the Mayor is made by a separate subcommittee for each of the courts in which the Mayor is involved. The five selected candidates will have been interviewed fully by the sub-committee; and before the names go to the Mayor the individuals also appear before the full committee for interviews. The full committee, at the time of interviewing and voting on the five names, has before it the questionnaire, the investigative report and the report of the sub-committee.

From these five names, the Mayor selects one. He has also followed the practice of sending that one name to the bar association for further investigation and report before he finally makes the appointment.

The five names recommended to the Mayor are kept confidential, so that the final selection of one cannot be considered a reflection on the other four. For that reason, no public hearings are held, and, in my view, none should be. Publicity of this type would make many qualified lawyers hesitant to have their names considered.

There could be improvements in the committee: there are now too few laymen,

and too many active Democrats; not all the members should be appointed by the Mayor as at present, but since the responsibility is his, he should appoint the majority of the committee; the members should be appointed for fixed terms so staggered that its membership changes from time to time. The courts and the bar associations should have a greater voice in the selection of the lawyer members of the committee. It should have a more adequate budget for much more thorough investigation.

So far as I have been able to discover, this is the first voluntary project of its kind. The Mayor deserves the appreciation of the bar and all other citizens of New York for setting it up.

The Plan Has Worked Well

I was co-chairman of this committee from its beginning and until my election as President of the Association of the Bar of the City of New York. Even with its shortcomings, I firmly believe that it has affirmatively improved the calibre of the judges appointed in this city. And, negatively, it has helped by the discouragement which it has given to political district leaders who used to recommend obviously unqualified followers to the Mayor, but who are now deterred by the realization that before their candidates can even be considered by the Mayor they must pass the scrutiny of this nominating committee.

The Mayor's committee has tried also to pay attention to the one political motive which, in my view, has been an asset of the elective system—the recognition of ethnic and other groups of the community in the lists which it has submitted. I am not suggesting that a man should be appointed to judicial office merely because he belongs to some particular ethnic, religious or other group. But practical politics require that a man be not overlooked merely because he

belongs to one of those groups—and this realism the committee has sought to preserve in its lists of recommendations. As a result, the Mayor has been able to make his appointments from all such groups—religious, racial and foreign born.

In line with what I have already said, the Mayor's committee has never considered political activity as a disadvantage to a candidate but rather an asset. It has publicly so stated; but, at the same time, it has rejected political service as the sole, or even the major, qualification for recommendation.

In the case of reappointments at expiration of terms, if the Mayor's committee finds the sitting judge qualified, it does not submit additional names but merely recommends his reappointment.

Even in federal appointments, the Mayor, as the titular head of his party, has taken recommendations from the committee of names which he might submit to the president as qualified candidates. Three recent appointments to the United States District Courts in this district have been on these lists of recommendations.

The plan has worked so well that our bar associations and others are now trying to make this voluntary project a statutory one for the City of New York—not that that is necessary for the present Mayor but to insure its continuance by future Mayors.

Fixed Responsibility

To date, the Mayor has made 28 appointments – excluding reappointments – from 124 persons recommended by the committee. In spite of this nominating process, the Mayor and the general public still feel that a high degree of responsibility rests upon the Mayor for the judges finally appointed by him. This is not only because the one out of five is selected by

him alone, but because he is the one responsible for the calibre of the membership of the nominating committee. This sense of fixed responsibility should always continue. That is the reason why I urge that at least a majority of any nominating group should be designated by the appointing power.

I think that lawyers should constitute at least a majority of any nominating committee. The bar should have a dominant voice in the selection of judges. No one knows a candidate's professional qualifications better than those who, in professional practice, have worked with him or against him. Besides lawyers have a unique concern about the ability, temperament and character of judges.

Nothing is more important in our democracy than the continuing improvement of our administration of justice. This Society is now celebrating its golden anniversary; for 50 years it has been sounding the tocsin, calling all citizens to take up the burdens of that task. Ten states now have some form of the Missouri Plan. In at least 10 other states, the bar is actively at work to secure adoption of similar plans, some with prospects of early action. This is a pace which we must maintain and even accelerate, to make up for the long delay in the past. Here in New York we of the organized bar are doing our best. What happened here two weeks ago should spur our efforts.

But the bar can never do the job alone. Only an aroused citizenry can overcome the entrenched political forces which will always oppose. This has been true of so many reforms which looked hopeless at one time but have now become commonplace, that we should not be discouraged at past failures. They should only multiply our determination to succeed—and to succeed soon.

Model State Judicial Article

THE complexity of present day court organizations along with an ever increasing number of legal controversies has led to delay and confusion in the administration of justice. This situation cannot long endure if justice under law is to be continued as the foundation upon which Americans construct their democratic way of life.

Effective revisions for a judicial system must have as a core for growth at least the following: controls for efficient administration of the courts built into the system itself, competent judges selected on a non-partisan, non-political basis and simplified and unified court structure. These elements are not sufficient but they are a necessary beginning if the role of the law is to be one equal to society's demands.

Incorporating the principles of the Statewide Judicature Act published by the American Judicature Society in 1914, the model judicial article was approved by the House of Delegates of the American Bar Association in February, 1962. It represents the official policy of that organization and is set forth as a guide for the improvement of state judicial systems and the more efficient administration of justice.

Text

Sec. 1. The Judicial Power.

The judicial power of the State shall be vested exclusively in one Court of Justice which shall be divided into one Supreme Court, one Court of Appeals, one Trial Court of General Jurisdiction known as the District Court, and one Trial Court of Limited Jurisdiction known as the Magistrate's Court.

Sec. 2. The Supreme Court.

Par. 1. *Composition.* The Supreme Court shall consist of the Chief Justice of the State and (four) (six) Associate Justices of the Supreme Court.

Par. 2. *Jurisdiction.*

A. *Original jurisdiction.* The Supreme Court shall have no original jurisdiction, but it shall have the power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

B. *Appellate jurisdiction.* Appeals from a judgment of the District Court imposing a sentence of death or life imprisonment, or imprisonment for a term of 25 years or more, shall be taken directly to the Supreme Court. In all other cases, criminal and civil, the Supreme Court shall exercise appellate jurisdiction under such terms and conditions as it shall specify in rules, except that such rules shall provide that a defendant shall have an absolute right to one appeal in all criminal cases. On all appeals authorized to be taken to the Supreme Court in criminal cases, that Court shall have the power to review all questions of law and, to the extent provided by rule, to review and revise the sentence imposed.

Sec. 3. The Court of Appeals.

The Court of Appeals shall consist of as many divisions as the Supreme Court shall determine to be necessary. Each division of the Court of Appeals shall consist of three judges. The Court of Appeals shall have no original jurisdiction, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies of the State and it may be authorized by rules of the Supreme Court to issue all writs necessary or appropriate in aid of its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rules which shall, however, provide that a defendant shall have an absolute right to one appeal in all criminal cases and which may include the authority to review and revise sentences in criminal cases.

Sec. 4. The District and Magistrate's Courts.

Par. 1. *Composition.* The District Court shall be composed of such number of divisions and the District and Magistrate's Courts shall be composed of such number of judges as the Supreme Court shall determine to be necessary, except that each district shall be a geographic unit fixed by the Supreme Court and shall have at least one judge. Every judge of the District and Magistrate's Courts shall be eligible to sit in every district.

Par. 2. *District Court Jurisdiction.* The District Court shall exercise original general jurisdiction in all cases, except in so far as original jurisdic-

tion may be assigned exclusively to the Magistrate's Court by the Supreme Court rules. The District Court may be authorized, by rule of the Supreme Court, to review directly decisions of State administrative agencies and decisions of Magistrate's Courts.

Par. 3. *Magistrate's Court Jurisdiction.* The Magistrate's Court shall be a court of limited jurisdiction and shall exercise original jurisdiction in such cases as the Supreme Court shall designate by rule.

Sec. 5. Selection of Justices, Judges and Magistrates.

Par. 1. *Nomination and Appointment.* A vacancy in a judicial office in the State, other than that of magistrate, shall be filled by the governor from a list of three nominees presented to him by the Judicial Nominating Commission. If the governor should fail to make an appointment from the list within sixty days from the day it is presented to him, the appointment shall be made by the Chief Justice or the Acting Chief Justice from the same list. Magistrates shall be appointed by the Chief Justice for a term of three years.

Par. 2. *Eligibility.* To be eligible for nomination as a justice of the Supreme Court, judge of the Court of Appeals, judge of the District Court, or to be appointed as a Magistrate, a person must be domiciled within the State, a citizen of the United States, and licensed to practice law in the courts of the State.

Sec. 6. Tenure of Justices and Judges.

Par. 1. *Term of Office.* At the next general election following the expiration of three years from the date of appointment, and every ten years thereafter, so long as he retains his office, every justice and judge shall be subject to approval or rejection by the electorate. In the case of a justice of the Supreme Court, the electorate of the entire State shall vote on the question of approval or rejection. In the case of judges of the Court of Appeals and the District Court, the electorate of the districts or district in which the division of the Court of Appeals or District Court to which he was appointed is located shall vote on the question of approval or rejection.

Par. 2. *Retirement.* Every justice and judge shall retire at the age specified by statute at the time of his appointment, but that age shall not be fixed at less than sixty-five years. The Chief Justice is empowered to authorize retired judges to

perform temporary judicial duties in any court of the State.

Par. 3. *Retirement for Incapacity.* A justice of the Supreme Court may be retired after appropriate hearing, upon certification to the governor, by the Judicial Nominating Commission for the Supreme Court that such justice is so incapacitated as to be unable to carry on his duties.

Par. 4. *Removal.* Justices of the Supreme Court shall be subject to removal by the impeachment process. All other judges and magistrates shall be subject to retirement for incapacity and to removal for cause by the Supreme Court after appropriate hearing. No justice, judge, or magistrate shall, during his term of office, engage in the practice of law. No justice, judge, or magistrate shall, during his term of office, run for elective office other than the judicial office which he holds, or directly or indirectly make any contribution to, or hold any office in, a political party or organization, or take part in any political campaign.

Sec. 7. Compensation of Justices and Judges.

Par. 1. *Salary.* The salaries of justices, judges, and magistrates shall be fixed by statute, but the salaries of the justices and judges shall not be less than the highest salary paid to an officer of the executive branch of the State government other than the governor.

Par. 2. *Pensions.* Provision shall be made by the legislature for the payment of pensions to justices and judges and their widows. In the case of justices and judges who have served ten years or more, and their widows, the pension shall not be less than fifty per cent of the salary received at the time of the retirement or death of the justice or judge.

Par. 3. *No Reduction of Compensation.* The compensation of a justice, judge or magistrate shall not be reduced during the term for which he was elected or appointed.

Sec. 8. The Chief Justice.

Par. 1. *Selection and Tenure.* The Chief Justice of the State shall be selected by the Judicial Nominating Commission from the members of the Supreme Court and he shall retain that office for a period of five years, subject to reappointment in the same manner, except that a member of the court may resign the office of Chief Justice without resigning from the court. During a vacancy in the office of Chief Justice, all powers and duties of that office shall devolve upon the member of

the Supreme Court who is senior in length of service on that court.

Par. 2. *Head of Administration office of the Courts.* The Chief Justice of the State shall be the executive head of the judicial system and shall appoint an administrator of the courts and such assistants as he deems necessary to aid the administration of the courts of the State. The Chief Justice shall have the power to assign any judge or magistrate of the State to sit in any court in the State when he deems such assignment necessary to aid the prompt disposition of judicial business, but in no event shall the number of judges and justices exceed the number of justices provided in section 2. The administrator shall, under the direction of the Chief Justice, prepare and submit to the legislature the budget tor the court of justice and perform all other necessary administrative functions relating to the courts.

Sec. 9. Rule Making Power.

The Supreme Court shall have the power to prescribe rules governing appellate jurisdiction, rules of practice and procedure, and rules of evidence, for the judicial system. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

Sec. 10. Judicial Nominating Commissions.

There shall be a Judicial Nominating Commission for the Supreme Court and one for each division of the Court of Appeals and the District Court. Each Judicial Nominating Commission shall consist of seven members, one of whom shall be the Chief Justice of the State, who shall act as chairman. The members of the bar of the State residing in the geographic area for which the court or division sits shall elect three of their number to serve as members of said commission, and the governor shall appoint three citizens, not admitted to practice law before the courts of the State, from the residents of the geographic area for which the court or division sits. The terms of office and compensation for members of a Judicial Nominating Commission shall be fixed by the legislature, provided that not more than one-third of a commission shall be elected in any three-year period. No member of a Judicial Nominating Commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a State judicial office so long as he is a member of a Judicial Nominating Commission and for a period of five years thereafter.

The Causes of

POPULAR DISSATISFACTION

with the

ADMINISTRATION OF JUSTICE

by

Roscoe Pound



A Golden Anniversary
Reprint
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DISSATISFACTION with the administration of justice is as old as law. Not to go outside of our own legal system, discontent has an ancient and unbroken pedigree. The Anglo-Saxon laws continually direct that justice is to be done equally to rich and to poor,[1] and the king exhorts that the peace be kept better than has been wont,[2] and that "men of every order readily submit . . . each to the law which is appropriate to him."[3] The author of the apocryphal Mirror of Justice gives a list of one hundred and fifty-five abuses in legal administration, and names it as one of the chief abuses of the degenerate times in which he lived that executions of judges for corrupt or illegal decisions had ceased.[4] Wyclif complains that "lawyers make process by subtlety and cavila-

*Address delivered at annual convention of American Bar Association in 1906. Roscoe Pound is now dean emeritus of the Harvard Law School.

1. e.g., Secular Ordinance of Edgar, Cap. 1; Secular Ordinance of Cnut; 2; Laws of Ethelred, VI, 1; Laws of Edward, preface.
2. Laws of Athelstan, IV; Laws of Edward, 4.
3. Laws of Ethelred, V, 4.
4. Mirror, chap. 5, sec. 1.

tions of law civil, that is much heathen men's law, and do not accept the form of the gospel, as if the gospel were not so good as pagan's law."[5] Starkey, in the reign of Henry VIII, says: "Everyone that can color reason maketh a stop to the best law that is beforetime devised."[6] James I reminded his judges that "the law was founded upon reason, and that he and others had reason as well as the judges."[7] In the eighteenth century, it was complained that the bench was occupied by "legal monks, utterly ignorant of human nature and of the affairs of men."[8] In the nineteenth century the vehement criticism of the period of the reform movement needs only to be mentioned. In other words, as long as there have been laws and lawyers, conscientious and well-meaning men have believed that laws were mere arbitrary technicalities, and that the attempt to regulate the relations of mankind in acordance with them resulted largely in injustice. But we must not be deceived by this innocuous and inevitable discontent with all law into overlooking or underrating the real and serious dissatisfaction with courts and lack of respects for law which exists in the United States today.

In spite of the violent opposition which the doctrine of judicial power over unconstitutional legislation at first encountered, the tendency to give the fullest scope to the common law doctrine of supremacy of law and to tie down administration by common law liabilities and judicial review, was, until recently, very marked. Today, the contrary tendency is no less marked. Courts are distrusted, and the executive boards and commissions with summary and plenary powers, freed, so far as constitutions will

5. See Maitland, English Law and the Renaissance, 53.

6. Id. 42.

7. Conference between King James I and the Judges of England, 12 Rep. 63.

8. Lord Campbell, Lives of the Chief Justice (3 Ed.) IV, 119.

permit, from judicial review, have become the fashion. It will be assumed, then, that there is more than the normal amount of dissatisfaction with the present-day administration of justice in America. Assuming this, the first step must be diagnosis, and diagnosis will be the sole purpose of this paper. It will attempt only to discover and to point out the causes of current popular dissatisfaction. The inquiry will be limited, moreover, to civil justice. For while the criminal law attracts more notice, and punishment seems to have greater interest for the lay mind than the civil remedies of prevention and compensation, the true interest of the modern community is in the civil administration of justice. Revenge and its modern outgrowth, punishment, belong to the past of legal history. The rules which define those invisible boundaries, within which each may act without conflict with the activities of his fellows in a busy and crowded world, upon which investor, promoter, buyer, seller, employer and employee must rely consciously or subconsciously in their every-day transactions, are conditions precedent of modern social and industrial organization.

With the scope of inquiry so limited, the causes of dissatisfaction with the administration of justice may be grouped under four main heads: (1) Causes for dissatisfaction with *any* legal system, (2) causes lying in the peculiarities of our Anglo-American legal system, (3) causes lying in our American judicial organization and procedure, and (4) causes lying in the environment of our judicial administration.

It needs but a superficial acquaintance with literature to show that all legal systems among all peoples have given rise to the same complaints. Even the wonderful mechanism of modern German judicial administration is said to be distrusted by the people on the time-worn ground that there is one law for the rich and another for the

poor.[9] It is obvious, therefore, that there must be some cause or causes inherent in all law and in all legal systems in order to produce this universal and invariable effect. These causes of dissatisfaction with any system of law I believe to be the following: (1) The necessarily mechanical operation of rules, and hence of laws; (2) the inevitable difference in rate of progress between law and public opinion; (3) the general popular assumption that the administration of justice is an easy task, to which anyone is competent, and (4) popular impatience of restraint.

The Mechanical Operation of Laws

The most important and most constant cause of dissatisfaction with all law at all times is to be found in the necessarily mechanical operation of legal rules. This is one of the penalties of uniformity. Legal history shows an oscillation between wide judicial discretion on the one hand and strict confinement of the magistrate by minute and detailed rules upon the other hand. From time to time more or less reversion to justice without law becomes necessary in order to bring the public administration of justice into touch with changed moral, social or political conditions. But such periods of reversion result only in new rules or changed rules. In time the modes of exercising discretion become fixed, the course of judicial action becomes stable and uniform, and the new element, whether custom or equity or natural law becomes as rigid and mechanical as the old. This mechanical action of the law may be minimized, but it cannot be obviated. Laws are general rules; and the process of making them general involves elimination of the immaterial elements of particular controversies. If all controversies were alike or if

9. Dr. v. Liszt, Professor at Berlin, delivered an address in the Rathaus in Berlin on this very subject recently, if we may credit press accounts.

the degree in which actual controversies approximate to the recognized types could be calculated with precision, this would not matter. The difficulty is that in practice they approximate to these types in infinite gradations. When we eliminate immaterial factors to reach a general rule, we can never entirely avoid eliminating factors which will be more or less material in some particular controversy. If to meet this inherent difficulty in administering justice according to law we introduce a judicial dispensing power, the result is uncertainty and an intolerable scope for the personal equation of the magistrate. If we turn to the other extreme and pile up exceptions and qualifications and provisos, the legal system becomes cumbrous and unworkable. Hence the law has always ended in a compromise, in a middle course between wide discretion and over-minute legislation. In reaching this middle ground, some sacrifice of flexibility of application to particular cases is inevitable. In consequence, the adjustment of the relations of man and man according to these rules will of necessity appear more or less arbitrary and more or less in conflict with the ethical notions of individuals.

In periods of absolute or generally received moral systems, the contrast between legal results and strict ethical requirements will appeal only to individuals. In periods of free individual thought in morals and ethics, and especially in an age of social and industrial transition, this contrast is greatly intensified and appeals to large classes of society. Justice, which is the end of law, is the ideal compromise between the activities of each and the activities of all in a crowded world. The law seeks to harmonize these activities and to adjust the relations of every man with his fellow so as to accord with the moral sense of the community. When the community is at one in its ideas of justice, this is possible. When the community is divided and diversified,

and groups and classes and interests, understanding each other none too well, have conflicting ideas of justice, the task is extremely difficult. It is impossible that legal and ethical ideas should be in entire accord in such a society. The individual looks at cases one by one and measures them by his individual sense of right and wrong. The lawyer must look at cases in gross, and must measure them largely by an artificial standard. He must apply the ethics of the community, not his own. If discretion is given him, his view will be that of the class from which he comes. If his hands are tied by law, he must apply the ethics of the past as formulated in common law and legislation. In either event, judicial and individual ethical standards will diverge. And this divergence between the ethical and the legal, as each individual sees it, makes him say with Luther, "Good jurist, bad Christian."[10]

The Difference in Rate of Progress Between Law and Public Opinion

(2) A closely related cause of dissatisfaction with the administration of justice according to law is to be found in the inevitable difference in rate of progress between law and public opinion. In order to preclude corruption, to exclude the personal prejudices of magistrates, and to minimize individual incompetency, law formulates the moral sentiments of the community in rules to which the judgments of tribunals must conform. These rules, being formulations of public opinion, cannot exist until public opinion has become fixed and settled, and cannot change until a change of public opinion has become complete. It follows that this difficulty in the judicial administration of justice, like the preceding, may be minimized, but not obviated. In a rude age the Teutonic moots in which every free man took a hand might be possible. But

10. Courtney Kenny, *Bouns Jurista, Malus Christa*, 19 Law Quart. Rev. 326.

these tribunals broke down under pressure of business and became ordinary courts with permanent judges. The Athenians conceived that the people themselves should decide each case. But the Athenian dikastery, in which controversies were submitted to blocks of several hundred citizens by way of reaching the will of the democracy, proved to register its caprice for the moment rather than its permanent will. Modern experience with juries, especially in commercial causes, does not warrant us in hoping much from any form of judicial referendum. Public opinion must affect the administration of justice through the rules by which justice is administered rather than through the direct administration. All interference with the uniform and automatic application of these rules, when actual controversies arise, introduces an anti-legal element which becomes intolerable. But, as public opinion affects tribunals through the rules by which they decide and these rules once made, stand till abrogated or altered, any system of law will be made up of successive strata of rules and doctrines representing successive and often widely divergent periods of public opinion. In this sense, law is often in very truth a government of the living by the dead.[11] The unconscious change of judicial law making and the direct alterations of legislation and codification operate to make this government by the dead reasonably tolerable. But here again we must pay a price for certainty and uniformity. The law does not respond quickly to new conditions. It does not change until ill effects are felt; often not until they are felt acutely. The moral or intellectual or economic change must come first. While it is coming, and until it is so complete as to affect the law and formulate itself therein, friction must ensue. In an age of rapid moral, intellectual and economic changes, often crossing

11. Spencer, Principles of Sociology, II, 514.

one another and producing numerous minor resultants, this friction cannot fail to be in excess.

The Assumption That Justice Is an Easy Task

(3) A third perennial source of popular dissatisfaction with the administration of justice acording to law may be found in the popular asumption that the administration of justice is an easy task to which anyone is competent. Laws may be compared to the formulas of engineers. They sum up the experience of many courts with many cases enable the magistrate to apply that experience subconsciously. So, the formula enables the engineer to make use of the accumulated experience of past builders, even though he could not work out a step in its evolution by himself. A layman is no more competent to construct or to apply the one formula than the other. Each requires special knowledge and special preparation. None the less, the notion that anyone is competent to adjudicate the intricate controversies of a modern community contributes to the unsatisfactory administration of justice in many parts of the United States. The older states have generally outgrown it. But it is felt in extravagant powers of juries, lay judges of probate and legislative[12] or judicial law making against *stare decisis,* in most of the commonwealths of the South and West. The public seldom realizes how much it is interested in maintaining the highest scientific standard in the administration of justice. There is no more certain protection against corruption, prejudice, class feeling or incompetence. Publicity will avail something. But the daily criticism of trained minds, the knowledge that nothing which does not conform to the principles and received doctrines of scientific jurisprudence will escape notice,

12. See an instance noted in the address of Mr. Justice Brown, Rep. Am. Bar Assn., 1889, 282.

does more than any other agency for the every-day purity and efficiency of courts of justice.

Popular Impatience with Restraint

(4) Another necessary source of dissatisfaction with judicial administration of justice is to be found in popular impatience of restraint. Law involves restraint and regulation, with the sheriff and his posse in the background to enforce it. But, however necessary and salutary this restraint, men have never been reconciled to it entirely. The very fact that it is a compromise between the individual and his fellows makes the individual, who must abate some part of his activities in the interest of his fellows, more or less restive. In an age of absolute theories, monarchical or democratic, this restiveness is acute. A conspicuous example is to be seen in the contest between the king and the common law courts in the seventeenth century. An equally conspicuous example is to be seen in the attitude of the frontiersman toward state-imposed justice. "The unthinking sons of the sage brush," says Owen Wister ,"ill tolerate anything which stands for discipline, good order and obedience; and the man who lets another command him they despise. I can think of no threat more evil for our democracy, for it is a fine thing diseased and perverted, namely, the spirit of independence gone drunk."[13] This is an extreme case. But in a lesser degree the feeling that each individual, as an organ of the sovereign democracy, is above the law he helps to make, fosters everywhere a disrespect for legal methods and institutions and a spirit of resistance to them. It is "the reason of this our artificial man the commonwealth," says Hobbes, "and his command that maketh law."[14] This man, however, is abstract.

13. Quoted in Ross, Foundations of Sociology, 388.
14. Leviathan, chap. 26.

The concrete man in the street or the concrete mob is much more obvious; and it is no wonder that individuals and even classes of individuals fail to draw the distinction.

A considerable portion of current dissatisfaction with the administration of justice must be attributed to the universal causes just considered. Conceding this, we have next to recognize that there are potent causes in operation of a character entirely different.

Under the second main head, causes lying in our peculiar legal system, I should enumerate five: (1) The individualist spirit of our common law, which agrees ill with a collectivist age; (2) the common law doctrine of contentious procedure, which turns litigation into a game; (3) political jealousy, due to the strain put upon our legal system by the doctrine of supremacy of law; (4) the lack of general ideas or legal philosophy, so characteristic of Anglo-American law, which gives us petty tinkering where comprehensive reform is needed, and (5) defects of form due to the circumstance that the bulk of our legal system is still case law.

Individualist Spirit of the Common Law

(1) The first of these, conflict between the individualist spirit of the common law and the collectivist spirit of the present age, has been treated of on another occasion.[15] What was said then need not be repeated. Suffice it to point out two examples. From the beginning, the main reliance of our common law system has been individual initiative. The main security for the peace at common law is private prosecution of offenders. The chief security for the efficiency and honesty of public officers is

15. Do We Need a Philosophy of Law? 5 Columbia Law Rev. 339; The Spirit of the Common Law, *Green Bag*, January, 1906.

mandamus or injunction by a tax payer to prevent waste of the proceeds of taxation. The reliance for keeping public service companies to their duty in treating all alike at reasonable price is an action to recover damages. Moreover, the individual is supposed at common law to be able to look out for himself and to need no administrative protection. If he is injured through contributory negligence, no theory of comparative negligence comes to his relief; if he hires as an employee, he assumes the risk of the employment; if he buys goods, the rule is *caveat emptor*. In our modern industrial society, this whole scheme of individual initiative is breaking down. Private prosecution has become obsolete. Mandamus and injunction have failed to prevent rings and bosses from plundering public funds. Private suits against carriers for damages have proved no preventive of discrimination and extortionate rates. The doctrine of assumption of risk becomes brutal under modern conditions of employment. An action for damages is no comfort to us when we are sold diseased beef or poisonous canned goods. At all these points, and they are points of every-day contact with the most vital public interests, common law methods of relief have failed. The courts have not been able to do the work which the common law doctrine of supremacy of law imposed on them. A widespread feeling that the courts are inefficient has been a necessary result. But, along with this, another phase of the individualism of the common law has served to increase public irritation. At the very time the courts have appeared powerless themselves to give relief, they have seemed to obstruct public efforts to get relief by legislation. The chief concern of the common law is to secure and protect individual rights. "The public good," says Blackstone, "is in nothing more essentially interested than in the protection of every

individual's private rights."[16] Such, it goes without saying, is not the popular view today. Today we look to society for protection against individuals, natural or artificial, and we resent doctrines that protect these individuals against society for fear society will oppress us. But the common law guaranties of individual rights are established in our constitutions, state and federal. So that, while in England these common law dogmas have had to give way to modern legislation, in America they stand continually between the people, or large classes of the people, and the legislation they desire. In consequence, the courts have been put in a false position of doing nothing and obstructing everything, which it is impossible for the layman to interpret aright.

The Doctrine of Contentious Procedure

(2) A no less potent source of irritation lies in our American exaggerations of the common law contentious procedure. The sporting theory of justice, the "instinct of giving the game fair play," as Professor Wigmore has put it, is so rooted in the profession in America that most of us take it for a fundamental legal tenet.[17] But it is probably only a survival of the days when a lawsuit was a fight between two clans in which change of venue had been taken to the forum. So far from being a fundamental fact of jurisprudence, it is peculiar to Anglo-American law; and it has been strongly curbed in modern English practice. With us, it is not merely in full acceptance, it has been developed and its collateral possibilities have been cultivated to the furthest extent. Hence in America we take it as a matter of course that a judge should be a mere umpire, to pass upon objections and hold counsel to the rules of

16. Bl. Comm. 139.
17. Wigmore, Evidence, 127.

the game, and that the parties should fight out their own game in their own way without judicial interference. We resent such interference as unfair, even when in the interest of justice. The idea that procedure must of necessity be wholly contentious disfigures our judicial administration at every point. It leads the most conscientious judge to feel that he is merely to decide the contest, as counsel present it, acording to the rules of the game, not to search independently for truth and justice. It leads counsel to forget that they are officers of the court and to deal with the rules of law and procedure exactly as the professional football coach with the rules of the sport. It leads to exertion to "get error into the record" rather than to dispose of the controversy finally and upon its merits. It turns witnesses, and especially expert witnesses, into partisans pure and simple. It leads to sensational cross-examinations "to affect credit," which have made the witness stand "the slaughter house of reputations."[18] It prevents the trial court from restraining the bullying of witnesses and creates a general dislike, if not fear, of the witness function which impairs the administration of justice. It keeps alive the unfortunate exchequer rule, dead in the country of its origin, according to which errors in the admission or rejection of evidence are presumed to be prejudicial and hence demand a new trial. It grants new trials because by inability to procure a bill of exceptions a party has lost the chance to play another inning in the game of justice.[19] It creates vested rights in errors of procedure, of the benefit whereof parties are not to be deprived.[20] The inquiry is not, What do substantive law and justice require? Instead, the inquiry is, Have the rules of the game been carried

18. Wigmore, Evidence, 1112.
19. Holland *vs.* Chicago, B. & Q. R. R. Co., 52 Neb. 100.
20. De Graw *vs.* Elmore, 50 N. Y. 1.

out strictly? If any material infraction is discovered, just as the football rules put back the offending team five or ten or fifteen yards, as the case may be, our sporting theory of justice awards new trials, or reverses judgments, or sustains demurrers in the interest of regular play.

The effect of our exaggerated contentious procedure is not only to irritate parties, witnesses and jurors in particular cases, but to give to the whole community a false notion of the purpose and end of law. Hence comes, in large measure, the modern American race to beat the law. If the law is a mere game, neither the players who take part in it nor the public who witness it can be expected to yield to its spirit when their interests are served by evading it. And this is doubly true in a time which requires all institutions to be economically efficient and socially useful. We need not wonder that one part of the community strain their oaths in the jury box and find verdicts against unpopular litigants in the teeth of law and evidence, while another part retain lawyers by the year to advise how to evade what to them are unintelligent and unreasonable restrictions upon necessary modes of doing business. Thus the courts, instituted to administer justice acording to law, are made agents or abettors of lawlessness.

(3) Another source of irritation at our American courts is political jealously due to the strain put upon our legal system by the doctrine of the supremacy of law. By virtue of this doctrine, which has become fundamental in our polity, the law restrains, not individuals alone, but a whole people. The people so restrained would be likely in any event to be jealous of the visible agents of restraint. Even more is this true in that the subjects which our constitutional polity commits to the courts are largely matters of economics, politics and sociology upon which a democracy is peculiary sensitive. Not only are these matters made into legal questions, but they are tried as incidents of private litigation. This phase of the common law doctrine was felt as a grievance in the seventeenth century. "I tell you plainly," said Bacon, as attorney general, in arguing a question of prerogative to the judges, "I tell you plainly it is little better than a by-let or crooked creek to try whether the king hath power to erect this office in an assize between Brownlow and Michell."[21] King Demos must feel much the same at seeing the constitutionality of the Missouri Compromise tried in an action of trespass, at seeing the validity of the legal tender laws tried on pleas of payment in private litigation, at seeing the power of the federal government to carry on the Civil War tried judicially in admiralty, at seeing income tax overthrown in a stockholder's bill to enjoin waste of corporate assets and at seeing the important political questions in the Insular Cases disposed of in forfeiture proceedings against a few trifling imports. Nor is this the only phase of the common law doctrine of supremacy of law which produces political jealously of the courts. Even more must the layman be struck with the spectacle of law paralyzing administration which our polity so frequently presents. The difficulties with writs of *habeas corpus* which the federal government encountered during the Civil War and the recent case of the income tax will ocur to you at once. In my own state, in a few years we have seen a freight rate law suspended by decree of a court and have seen the collection of taxes from railroad companies, needed for the every-day conduct of public business, tied up by an injunction. The strain put upon judicial institutions by such litigation is obviously very great.

(4) Lack of general ideas and absence of

21. Collectanea Juridica, I, 173.

any philosophy of law, which has been characteristic of our law from the beginning and has been a point of pride at least since the time of Coke,[22] contributes its mite also toward the causes of dissatisfaction with courts. For one thing, it keeps us in the thrall of a fiction. There is a strong aversion to straightforward change of any important legal doctrine. The cry is *interpret it.* But such interpretation is spurious. It is legislation. And to interpret an obnoxious rule out of existence rather than to meet it fairly and squarely by legislation is a fruitful source of confusion. Yet the Bar are trained to it as an ancient common law doctrine, and it has a great hold upon the public. Hence if the law does not work well, says Bentham, with fine sarcasm, "it is never the law itself that is in the wrong; it is always some wicked interpreter of the law that has corrupted and abused it."[23] Thus another unnecessary strain is imposed upon our judicial system and courts are held for what should be the work of the legislature.

Defects of Form—Bulk of Our System Is Still Case Law

(5) The defects of form inherent in our system of case law have been the subject of discussion and controversy too often to require extended consideration. Suffice it to say that the want of certainty, confusion and incompleteness inherent in all case law, and the waste of labor entailed by the prodigious bulk to which ours has attained, appeal strongly to the layman. The compensating advantages of this system, as seen by the lawyer and by the scientific investigator, are not apparent to him. What he sees is another phase of the great game; a citation match between counsel, with a certainty that diligence can rake up a decision

22. Co. Lit. Preface.
23. Fragment on Government, XVII.

somewhere in support of any conceivable proposition.

Passing to the third head, causes lying in our judicial organization and procedure, we come upon the most efficient causes of dissatisfaction with the present administration of justice in America. For I venture to say that our system of courts is archaic and our procedure behind the times. Uncertainty, delay and expense, and above all, the injustice of deciding cases upon points of practice, which are the mere etiquette of justice, direct results of the organization of our courts and the backwardness of our procedure, have created a deep-seated desire to keep out of court, right or wrong, on the part of every sensible business man in the community.

Our system of courts is archaic in three respects: (1) in its multiplicity of courts, (2) in preserving concurrent jurisdictions, (3) in the the waste of judicial power which it involves. The judicial organizations of the several states exhibit many differences of detail. But they agree in these three respects.

The Multiplicity of Courts

(1) Multiplicity of courts is characteristic of archaic law. In Anglo-Saxon law, one might apply to the Hundred, the Shire, the Witan, or the king in person. Until Edward I broke up private jurisdictions, there were the king's superior courts of law, the itinerant justices, the county courts, the local or communal courts and the private courts of lordships; besides which one might always apply to the king or to the Great Council for extraordinary relief. When later the royal courts had superseded all others, there were the concurrent jurisdictions of King's Bench, Common Pleas and Exchequer, all doing the same work, while appellate jurisdiction was divided by King's Bench, Exchequer Cham-

ber and Parliament. In the Fourth Institute, Coke enumerates seventy-four courts. Of these, seventeen did the work that is now done by three, the County Courts, the Supreme Court of Judicature and the House of Lords. At the time of the reorganization by the Judicature Act of 1873, five appellate courts and eight courts of first instance were consolidated into the one Supreme Court of Judicature. It was the intention of those who devised the plan of the Judicature Act to extend the principle of unity of jurisdiction by cutting off the appellate jurisdiction of the House of Lords and by incorporating the County Courts in the newly formed Supreme Court as branches thereof.[24] The recommendation as to the County Courts was not adopted, and the appellate jurisdiction of the House of Lords was restored in 1875. In this way the unity and simplicity of the original design were impaired. But the plan, although adopted in part only, deserves the careful study of American lawyers as a model modern judicial organization. Its chief features were (1) to set up a single court of final appeal. In the one branch, the court of first instance, all original jurisdiction at law, in equity, in admiralty, in bankruptcy, in probate and in divorce was to be consolidated; in the other branch, the court of appeal, the whole reviewing jurisdiction was to be established. This idea of unification, although not carried out completely, has proved most effective. Indeed, its advantages are self-evident. Where the appellate tribunal and the court of first instance are branches of one court, all expense of transfer of record, or transcripts, bills of exceptions, writs of error and citations is wiped out. The records are the records of the court, of which each tribunal is but a branch. The court and each branch thereof knows its own records, and no duplication

24. Report of Judicature Commission, 1869, p. 13.

and certification is required. Again, all appellate practice, with its attendant pitfalls, and all waste of judicial time in ascertaining how or whether a case has been brought into the court of review is done away with. One may search the recent English reports in vain for a case where an appeal has miscarried on a point of practice. Case on appellate procedure are wanting. In effect there is no such thing. The whole attention of the court and of counsel is concentrated upon the cause. On the other hand, our American reports bristle with fine points of appellate procedure. More than four percent of the digest paragraphs of the last ten volumes of the American Digest have to do with Appeal and Error. In ten volumes of the Federal Reporter, namely volumes 129 to 139, covering decisions of the Circuit Court of Appeals from 1903 till the present, there is an average of ten decisions upon points of appellate practice to the volume. Two cases to the volume, on the average, turn wholly upon appellate procedure. In the ten volumes there are six civil cases turning upon the question whether error or appeal was the proper mode of review, and in two civil cases the question was whether the Circuit Court of Appeals was the proper tribunal. I have referred to these reports because they represent courts in which only causes of importance may be brought. The state reports exhibit the same condition. In ten volumes of the Southwestern Reporter, the decisions of the Supreme Court and Courts of Appeals of Missouri show that nearly twenty percent involve points of appellate procedure. In volume 87, of fifty-three decisions of the Supreme Court and ninety-seven of the Courts of Appeals, twenty-eight are taken up in whole or in part with the mere technics of obtaining a review. All of this is sheer waste, which a modern judicial organization would obviate.

(2) Even more archaic is our system of concurrent jurisdiction of state and federal courts in causes involving diversity of citizenship; a system by virtue of which causes continually hang in the air between two courts, or, if they do stick in one court or the other, are liable to an ultimate overturning because they stuck in the wrong court. A few statistics on this point may be worth while. In the ten volumes of the Federal Reporter referred to, the decisions of the Circuit Court of Appeals in civil cases average seventy-six to the volume. Of these, on the average, between four and five in a volume are decided on points of federal jurisdiction. In a little more than one to each volume, judgments of Circuit Courts are reversed on points of jurisdiction. The same volumes contain on the average seventy-three decisions of Circuit Courts in civil cases to each volume. Of these, six, on the average, are upon motions to remand to the state courts, and between eight and nine are upon other points of federal jurisdiction. Moreover, twelve cases in the ten volumes were remanded on the *form* of the petition for removal. In other words, in nineteen and three-tenths percent of the reported decisions of the Circuit Courts the question was whether those courts had jurisdiction at all; and in seven percent of these that question depended on the form of the pleadings. A system that permits this and reverses four judgments a year because the cause was brought in or removed to the wrong tribunal is out of place in a modern business community. All original jurisdiction should be concentrated. It ought to be impossible for a cause to fail because brought in the wrong place. A simple order of transfer from one docket to another in the same court ought to be enough. There should be no need of new papers, no transcripts, no bandying of cases from one court to another on orders of

removal and of demand, no beginnings again with new process.

The Waste of Judicial Power

(3) Judicial power may be wasted in three ways: (1) By rigid districts or courts or jurisdictions, so that business may be congested in one court while judges in another are idle, (2) by consuming the time of courts with points of pure practice, when they ought to be investigating substantial controversies, and (3) by nullifying the results of judicial action by unnecessary retrials. American judicial systems are defective in all three respects. The Federal Circuit Courts and Circuit Courts of Appeals are conspicuous exceptions in the first respect, affording a model of flexible judicial organization. But in nearly all of the states, rigid districts and hard and fast lines between courts operate to delay business in one court while judges in another have ample leisure. In the second respect, waste of judicial time upon points of practice, the intricacies of federal jurisdiction and the survival of the obsolete Chinese Wall between law and equity in procedure make our federal courts no less conspicuous sinners. In the ten volumes of the Federal Reporter examined, or an average of seventy-six decisions of the Circuit Courts of Appeals in each volume, two turn upon the distinction between law and equity in procedure and not quite one judgment to each volume is reversed on this distinction. In an average of seventy-three decisions a volume by the Circuit Courts, more than three in each volume involve this same distinction, and not quite two in each volume turn upon it. But many states that are supposed to have reformed procedure scarcely make a better showing.

Each state has to a great extent its own procedure. But it is not too much to say that all of them are behind the times. We

struck one great stroke in 1848 and have rested complacently or contented ourselves with patchwork amendment ever since. The leading ideas of the New York Code of Civil Procedure marked a long step forward. But the work was done too hurriedly and the plan of a rigid code, going into minute detail, was clearly wrong. A modern practice act lays down the general principles of practice and leaves details to rules of court. The New York Code Commission was appointed in 1847 and reported in 1848. If we except the Connecticut Practice Act of 1878, which shows English influence, American reform in procedure has stopped substantially where that commission left it. In England, beginning with 1826 and ending with 1874, *five* commissioners have put forth *nine* reports upon this subject.[25] As a consequence we have nothing in America to compare with the radical treatment of pleading in the English Judicature Act and the orders based thereon. We still try the *record,* not the *case*. We are still reversing judgments for nonjoinder and misjoinder. The English practice of joinder of parties against whom relief is claimed in the alternative, rendering judgment against any that the proof shows to be liable and dismissing the rest, makes an American lawyer rub his eyes. We are still reversing judgments for variance. We still reverse them because the recovery is in excess of the prayer, though substained by the evidence.[26]

But the worst feature of American procedure is the lavish granting of new trials. In the ten volumes of the Federal Reporter referred to, there are, on the average, twenty-five writs of error in civil cases to

25. Lord Eldon's Commission, 1826; Royal Commission, 1829, 1830, 1832; Commission on Pleading and Practice in Courts of Common Law, 1851, 1853, 1860; Chancery Commissioners, 1852, 1854, 1856; Judicature Commissioners, 1869-1874.

26. Brought *vs.* Cherokee Nation (C. C. A.) 129 Fed. 192.

the volume. New trials are awarded on the average in eight cases a volume, or nearly twenty-nine percent. In the state courts the proportion of new trials to causes reviewed, as ascertained from investigation of the last five columns of each series of the National Reporter system, runs over forty percent. In the last three volumes of the New York Reports (180-182), covering the period from December 6, 1904, to October 24, 1905, forty-five new trials are awarded. Nor is this all. In one case in my own state[27] an action for personal injuries was tried six times, and one for breach of contract[28] was tried three times and was four times in the Supreme Court. When with this we compare the statistics of the English Court of Appeal, which does not grant to exceed twelve new trials a year, or new trials in about three percent of the cases reviewed, it is evident that our methods of trial and review are out of date.

A comparison of the volume of business disposed of by English and by American courts will illustrate the waste and delay caused by archaic judicial organization and obsolete procedure. In England there are twenty-three judges of the High Court who dispose on the average of fifty-six hundred *contested* cases, and have before them, in one form or another, some eighty thousand cases each year. In Nebraska there are twenty-eight district judges who have no original probate jurisdiction and no jurisdiction in bankruptcy or admiralty, and they had upon their dockets last year forty-three hundred and twenty cases, of which they disposed of about seventy percent. England and Wales, with a population in 1900 of 32,000,000, employs for the same civil litigation ninety-five judges, that is,

27. Omaha St. R. Co. *vs.* Boesen, 95 N. W. 617; Cf. Mutual Life Ins. Co. *vs.* Hillmon (C. C. A.), 107 Fed 834 (tried six times).

28. Wittenberg *vs.* Molyneaux, 60 Neb. 107.

thirty-seven in the Supreme Court and House of Lords and fifty-eight county judges. Nebraska, with a population in 1900 of 1,066,000, employs for the same purpose one hundred and twenty-nine. But these one hundred and twenty-nine are organized on an antiquated system and their time is frittered away on mere points of legal etiquette.

IV

Causes Lying in Environment of Our Judicial Administration

Finally, under the fourth and last head, causes lying in the environment of our judicial administration, we may distinguish six: (1) Popular lack of interest in justice, which makes jury service a bore and the vindication of right and law secondary to the trouble and expense involved; (2) the strain put upon law in that it has today to do the work of morals also; (3) the effect of transition to a period of legislation; (4) the putting of our courts into politics; (5) the making the legal profession into a trade, which has superseded the relation of attorney and client by that of employer and employee, and (6) public ignorance of the real workings of courts due to ignorant and sensational reports in the press. Each of these deserves consideration, but a few points only may be noticed. Law is the skeleton of social order. It must be "clothed upon by the flesh and blood of morality."[29] The present is a time of transition in the very foundations of belief and of conduct. Absolute theories of morals and supernatural sanctions have lost their hold. Conscience and individual responsibility are relaxed. In other words, the law is strained to do double duty, and more is expected of it than in a time when morals as a regulating agency are more efficaious. Another strain upon our judicial system results from

29. Sidgwick, Methods of Ethics, 6 Ed. 456.

the crude and unorganized character of American legislation in a period when the growing point of law has shifted to legislation. When, in consequence, laws fail to produce the anticipated effects, judicial administration shares the blame. Worse than this is the effect of laws not intended to be enforced. These parodies, like the common law branding of felons, in which a piece of bacon used to be interposed between the branding iron and the criminal's skin,[30] breed disrespect for law. Putting courts into politics, and compelling judges to become politicians, in many jurisdictions has almost destroyed the traditional respect for the Bench. Finally, the ignorant and sensational reports of judicial proceedings, from which alone a great part of the public may judge of the daily work of the courts, completes the impression that the administration of justice is but a game. There are honorable exceptions, but the average press reports distract attention from the real proceeding to petty tilts of counsel, encounters with witnesses and sensational by-incidents. In Nebraska, not many years since, the federal court enjoined the execution of an act to regulate insurance companies.[31] In press accounts of the proceeding, the conspiracy clause of the bill was copied *in extenso* under the headline "Conspiracy Charged," and it was made to appear that the ground of the injunction was a conspiracy between the state officers and some persons unknown. It cannot be expected that the public shall form any just estimate of our courts justice from such data.

V

Reviewing the several causes for dissatisfaction with the administration of justice which have been touched upon, it will have been observed that some inhere in all law

30. Bentham, Theory of Legislation (tr. by Hildreth), 401.

31. Niagara Fire Ins. Co. *vs.* Cornell, 110 Fed. 816.

and are the penalty we pay for uniformity; that some inhere in our political institutions and are the penalty we pay for local self-government and independence from bureaucratic control; that some inhere in the circumstances of an age of transition and are the penalty we pay for freedom of thought and universal education. These will take care of themselves. But too much of the current dissatisfaction has a just origin in our judicial organization and procedure. The causes that lie here must be heeded. Our administration of justice is not decadent. It is simply behind the times. Political judges were known in England down to the last century. Lord Kenyon, as Master of the Rolls, sat in Parliament and took as active a part in political squabbles in the House of Commons as our state judges today in party conventions.[32] Dodson and Foggs and Sergeant Buzzfuzz wrought in an atmosphere of contentious procedure. Bentham tells us that in 1797, out of five hundred and fifty pending writs of error, five hundred and forty-three were shams or vexatious contrivances for delay.[33] Jarndyce and Jarndyce dragged out its weary course in chancery only half a century ago. We are simply stationary in that period of legal history. With law schools that are rivaling the achievements of Bologna and of Bourges to promote scientific study of the law; with active Bar Associations in every state to revive professional feeling and throw off the yoke of commercialism; with the passing of the doctrine that politics, too, is a mere game to be played for its own sake, we may look forward confidently to deliverance from the sporting theory of justice; we may look forward to a near future when our courts will be swift and certain agents of justice, whose decisions will be acquiesced in and respected by all.

32. Lord Campbell, Lives of the Chief Justices, (3 Ed) IV, 70-73.
33. Works, VII, 214.



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The Journal of the American Judicature Society was described by the late Chief Justice Arthur T. Vanderbilt as the "beacon light in the cause of judicial reform." Published regularly since 1917, each issue presents articles by leading authorities, current national and international news and developments in judicial reform, reviews of books and periodicals and other features to interest, stimulate and inform the reader. A new series of special issues provide comprehensive coverage of major areas of court organization and judicial administration.

The Society's membership today consists of more than 20,000 lawyers, judges and laymen in every state and many foreign countries. Among them are judges of the United States Supreme Court and nearly every state supreme court; prominent leaders of the organized bar, national, state and local; along with thousands of practicing lawyers; law teachers; government officials; and civic and community leaders—all sharing a common interest in the administration of justice and its improvement.

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THE AMERICAN JUDICATURE SOCIETY

1155 East Sixtieth Street

Chicago 37, Illinois

JUDICIAL RETIREMENT, DISCIPLINE AND REMOVAL PROVISIONS—FIVE VARIATIONS

		CALIFORNIA (Adopted 1960)	COLORADO (A 1965 Proposal)*	FLORIDA (1965 Legislative Approval)	NEBRASKA (1965 Legislative Approval)	TEXAS (1965 Legislative Approval)
Commission Membership	Number	9	9	9	10	9
	Composition and number	2 intermediate appellate judges 2 general trial judges 1 municipal court judge 2 lawyers 2 non-lawyers	none 3 general trial judges 2 county court judges 2 lawyers 2 non-lawyers	2 intermediate appellate judges 2 general trial judges none 2 lawyers 3 non-lawyers	2 appellate judges 2 general trial judges 1 each, county and municipal 2 lawyers 2 non-lawyers	2 intermediate appellate judges 2 general trial judges none 2 lawyers 3 non-lawyers
Chairman		elected by commission	not specified	elected by commission	elected by commission	elected by commission
Method of Initial Selection	Appellate judges	supreme court appoints	none	judges of those courts appoint	chief justice appoints	supreme court with senate consent
	Trial judges	supreme court appoints	supreme court appoints	judges of those courts appoint	chief justice appoints	supreme court with senate consent
	Other judges	supreme court appoints	supreme court appoints	none	chief justice appoints	none
	Lawyers	board of governors of state bar appoints	appointed by majority vote of chief justice, attorney general and governor	board of governors of state bar appoints	executive council of state bar appoints	board of directors of state bar appoints with senate consent
	Non-lawyers	appointed by governor with consent of senate	appointed by governor	appointed by governor	appointed by governor	appointed by governor with senate consent
Terms		4 year	4 year	fixed by law	not specified	6 year staggered
Compensation		travel expenses	travel and other expenses	fixed by law	not specified	legislature may provide for expenses
Complaints	Who can complain	not specified, but practice is to allow any person to complain	not specified, but presumably is to be same as California	not specified, but presumably is to be same as California	any citizen of state	"from any source"
	Form of complaint	not specified, but practice is to accept any written complaint without regard to form	not specified, but presumably is to be same as California	not specified, but presumably is to be same as California	not specified, but presumably is to be same as California	"complaints or reports, formal or informal"
	Status of complaint	privileged	privileged	supreme court to make rules	privileged	privileged
	Method of investigation	confidential	confidential	supreme court to make rules	confidential	confidential
Causes	Involuntary retirement	"disability seriously interfering with the performance of his duties, which is or is likely to become, of a permanent character"	"disability seriously interfering with the performance of his duties, which is or is likely to become, of a permanent character"	"disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature"	"physical or mental disability seriously interfering with performance of his duties if such disability is . . . likely to become permanent"	"disability seriously interfering with performance of his duties, which is, or is likely to become, permanent in nature"
	Removal	"willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance"	"willful misconduct in office or willful or persistent failure to perform his duties or intemperance"	"willful or persistent failure to perform his duties or habitual intemperance or conduct unbecoming of the judiciary"	"(a) willful misconduct in office or (b) willful disregard of or failure to perform his duties or (c) habitual intemperance or (d) conviction of a crime involving moral turpitude or (e) disbarment as a member of the legal profession licensed to practice law"	"willful or persistent conduct, which is clearly inconsistent with the performance of his said duties or casts public discredit upon the judiciary or administration of justice"
	Discipline	not specified, but practice is to communicate with judge about results of investigation and suggest corrections	not specified, but presumably is to be same as California	private reprimand for same causes as for removal	not specified, but presumably is to be same as California	not specified, but presumably is to be same as California
Procedures	Commission	receives complaints, makes confidential investigation, may order hearing by 3 special masters appointed by supreme court, may recommend retirement or removal to the supreme court	receives complaints, makes confidential investigation, may order hearing or request hearing by 3 special masters appointed by supreme court, may recommend retirement or removal to the supreme court	receives complaints, makes investigation, may order hearing or request hearing by 3 special referees appointed by supreme court, may recommend retirement or discipline or removal to the supreme court	receives complaints, makes confidential investigation, may order hearing or request hearing by one or more special masters, appointed by supreme court, may recommend retirement or removal to the supreme court	"keep itself informed as fully as may be of 'circumstances,'" "receive complaints or reports," "make such preliminary investigations as it may determine," may order hearing or request hearing by a master, may recommend retirement or removal to the supreme court
	Supreme Court	reviews law and fact of hearing, may permit additional evidence, makes final disposition of matter	reviews law and fact of hearing, may permit additional evidence, makes final disposition of matter	"review the record of the proceedings on the law and the facts," makes final disposition of matter	reviews law and fact of hearing, may permit additional evidence, makes final disposition of matter	reviews law and fact of hearing, may permit additional evidence, makes final disposition of matter
What judges covered		"a justice or judge of any court of this state"	"a justice or judge of any court of record of this state"	"every justice of the supreme court and judge of the district courts of appeal and circuit courts"	"any justice or judge"	"justices and judges of appellate courts and district and criminal district courts"

INCREASING dissatisfaction with the traditional methods of removing judges from office coupled with the need to provide for involuntary retirement of judges who become physically or emotionally incapacitated prior to normal retirement age have resulted in accelerated efforts in recent years to find effective methods of judicial removal, discipline and retirement. Since the adoption of the unique California commission plan in 1960, there has been an intensificiation of interest and a proliferation of proposals throughout the country to deal with these problems.

Four such proposals along with California's plan are contained in the chart on pages 1-4. In addition to these states, at least five other states now have the commission plan under study.

The operation of the California commission has been outlined in detail by Justice Louis H. Burke of the Supreme Court of California who served as an original member of the California commission. His article is contained in the February, 1965, issue of the Journal of the American Judicature Society and has been reprinted as a brochure by the Society. The text of the California amendment follows.

CONSTITUTION OF THE STATE OF CALIFORNIA, ARTICLE VI

SECTION 1b. There shall be a Commission on Judicial Qualifications. It shall consist of: (i) Two justices of district courts of appeal, two judges of superior courts, and one judge of a municipal court, each selected by the Supreme Court for a four-year term; (ii) two members of the State Bar, who shall have practiced law in this State for at least 10 years and who shall be appointed by the Board of Governors of the State Bar for a four-year term; and (iii) two citizens, neither of whom shall be a justice or judge of any court, active or retired, nor a member of the State Bar, and who shall be appointed by the Governor for a four-year term. Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of members elected to the Senate, except that if a vacancy occurs when the Legislature is not in session, the Governor may issue an interim commission which shall expire on the last day of the next regular or special session of the Legislature. Whenever a member selected under subdivision (i) ceases to be a member of the commission or a justice or judge of the court from which he was selected, his membership shall forthwith terminate and the Supreme Court shall select a successor for a four-year

term; and whenever a member appointed under subdivision (ii) ceases to be a member of the commission or of the State Bar, his membership shall forthwith terminate and the Board of Governors of the State Bar shall appoint a successor for a four-year term; and whenever a member appointed under subdivision (iii) ceases to be a member of the commission or becomes a justice or a judge of any court or a member of the State Bar, his membership shall forthwith terminate and the Governor shall appoint a successor for a four-year term. No member of the commission shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such.

No act of the commission shall be valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman.

SECTION 10b. A justice or judge of any court of this State, in accordance with the procedure prescribed in this section, may be removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. The Commission on Judicial Qualifications may, after such investigation as the commission deems necessary, order a hearing to be held before it concerning the removal or retirement of a justice or a judge, or the commission may in its discretion request the Supreme Court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter, and to report thereon to the commission. If, after hearing, or after considering the record and report of the masters, the commission finds good cause therefor, it shall recommend to the Supreme Court the removal or retirement, as the case may be, of the justice or judge.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order.

All papers filed with and proceedings before the Commission on Judicial Qualifications or masters appointed by the Supreme Court, pursuant to this section, shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the commission in the Supreme Court continues privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing. The Judicial Council shall by rule provide for procedure under this section before the Commission on Judicial Qualifications, the masters, and the Supreme Court. A justice or judge who is a member of the commission or Supreme Court shall not participate in any proceedings involving his own removal or retirement.

This section is alternative to, and cumulative with, the methods of removal of justices and judges provided in Sections 10 and 10a of this article, Sections 17 and 18 of Article IV, and Article XXIII, of this Constitution.

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☆ ☆ ☆ ☆

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CALIFORNIA
COLORADO
FLORIDA
NEBRASKA
TEXAS

A Comparative Study of The Commission Plan for RETIREMENT DISCIPLINE AND REMOVAL OF JUDGES

by
BOB ALLARD
Director of Special Projects
AMERICAN JUDICATURE SOCIETY

Courts for 20th Century America



The National Movement to Improve the Administration of Justice

by Glenn R. Winters

Including the Model Judicial Article for State Constitutions

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The National Movement To Improve the Administration of Justice

by Glenn R. Winters

Courts for 20th Century America . . .

THE judicial reform movement in America today is assuming the proportions of a mighty crusade, but as in so many other areas of human life and experience, what exists today has meaning only in the light of what has gone before. This movement in America had its beginning just a half century ago. The conditions that called it into being were already in existence and had been building up for a century or more. They had two main aspects.

The first was the rapid growth and industrialization of the country, which made judicial institutions designed and established for pioneer rural life increasingly inadequate to cope with the complex problems occasioned by mobility, technology and urbanization. The second was the widespread change in the 1840's and 50's from an appointive to an elective judiciary

GLENN R. WINTERS is executive director of the American Judicature Society. This article is reprinted from the Society's Journal.

in most of the states—a change which by the turn of the century many people were beginning to view as a mistake.

In his address before the American Bar Association in 1906, Roscoe Pound, now dean emeritus of Harvard Law School but then a young professor from the University of Nebraska, had analyzed the causes for popular dissatisfaction with the administration of justice and suggested the lines along which a reform program might proceed. It remained for Herbert Harley, a lawyer-newspaper editor of Manistee, Michigan, with the help of Dean John H. Wigmore of Northwestern University and a small group of other legal educators, judges and lawyers, to establish in 1913 an organization specifically for the purpose of judicial reform. That organization was and is the American Judicature Society to Promote the Efficient Administration of Justice.

The first work of the American Judicature Society was in the area of research. Roscoe Pound had identified the problems; between 1913 and 1919 the American Judicature Society devoted itself to providing answers—its model plans for statewide and metropolitan court organization; its famous plan for non-political merit selection and tenure of judges; its model code of civil procedure; and other important drafts and proposals involving bar organization, small claims courts, commercial arbitration, etc. In 1917 the Journal of the American Judicature Society was founded as an instrument to waken public and professional understanding of judicial administration problems and to urge adoption of the Society's proposals for solving them.

The decade of the 20's was devoted largely to strengthening the organizations of bench and bar as agencies to sponsor and support the judicial reform movement. The integrated bar, an official organization

of all of the lawyers in a state, made its first appearance in North Dakota in 1921 and by the end of the decade had spread from the Atlantic to the Pacific and from the Canadian to the Mexican border. Meanwhile the first judicial councils were established in 1923 in Massachusetts and Ohio and likewise spread rapidly during the next few years from state to state throughout the country.

The first major break-through in the nation-wide judicial reform program came in the later years of the decade of the 1930's when the federal judicial system set an example for the states by adoption of modern and simplified rules of civil procedure and a unified administrative organization under the Judicial Conference of Senior Circuit Judges and the Administrative Office of the United States Courts. During the succeeding 20 years many states followed the federal example with respect to both court procedure and court administration.

Also in the late 1930's came a major break-through in administration of justice in small cases with adoption in Virginia of its trial justice system in substitution for the justices of the peace.

It was in the 1940's that comparable break-throughs came in the two major fields of judicial selection and state court organization.

Selection of judges had been recognized by Roscoe Pound in 1906 as one of the key reasons for popular dissatisfaction with the administration of justice, and in an historic address before the American Bar Association in 1913, William Howard Taft, who was then an ex-president of the United States and was destined later to be chief justice of the United States Supreme Court, challenged the profession to find some solution to the deterioration of judicial standards in the state courts as a result of popu-

lar election of judges.

That such deterioration existed was quite well recognized, but there was nevertheless strong resistance, both in the profession and in the electorate at large, to taking selection of judges out of the elective process. Professor Albert M. Kales of Northwestern University, director of research for the American Judicature Society, was chiefly responsible for the plan advanced by the Society to reconcile these opposing considerations by providing for effective judicial selection reform while still preserving for the voters an important part of the process.

Under this plan judicial vacancies are filled by appointment by the governor from a list of names submitted by a non-partisan nominating commission composed of lawyers, judges and lay citizens; the judges so nominated and appointed thereafter going before the voters without competing candidates on the sole question of whether or not they shall be kept in office.

The basis of the plan is the fact, proved over and over again in every judicial election, that in all but the most exceptional circumstances voters are virtually helpless to make an intelligent selection among judicial candidates, having no personal knowledge of them nor any adequate way of evaluating their qualifications. It is also a well established fact that voters as a rule have little interest in making the effort. Once a judge has served a term, however, there is a real chance for the voters to find out if he has been so bad as to justify removal, and if so to vote him out of office. The plan has the benefit of informed, intelligent selection in the first instance by persons who are in a position to secure and study the information needed to make an adequate evaluation of the candidates' qualifications, and yet preserves for the

voters the one part that they are best able to do—remove a judge who has demonstrated to them his unfitness for the office.

In spite of strong political opposition, this plan gained steadily in favor from 1914, when it was first announced, to 1934, when a major reform adopted in California narrowly missed including all of its features, to 1937 when it received the formal approval and endorsement of the House of Delegates of the American Bar Association, and 1940, when it was approved by the voters of Missouri for actual use in the selection of supreme court and appellate court judges and judges of the trial courts of the two largest cities of that state.

Looking back from the perspective of a quarter-century later, those days just before the outbreak of the second world war were exciting days for judicial reform. With Arthur Vanderbilt as president of the American Bar Association and Judge John J. Parker as chairman of its Section of Judicial Administration, a tremendous project of setting minimum standards and measuring the extent to which the various states had achieved them was carried out. One can wonder what the story would have been if the great momentum of the federal rules, the federal Judicial Conference, Missouri judicial selection, Virginia minor courts, and the work of the bar under the Parker-Vanderbilt leadership had been able to continue without interruption.

But it was interrupted. War came, and during the years of the early 40's, it was hard to find things to say about judicial administration in the Journal. As soon as possible after the war the campaign was resumed, and in 1948 came the next great triumph—the adoption in New Jersey of the first truly unified state judicial system.

The New Jersey victory was a shot in the arm for judicial reformers in all states. The

very next year, for example, work began on the great Illinois judicial amendment that finally went into operation in that state in 1964, and in a dozen or more states leaders of bench, bar and laity were catching a like vision. In all probability the war set the movement back just about a decade—the impetus to reform in other states which New Jersey provided in 1948 would have come from Missouri in 1940 in somewhat greater measure had not Hitler intervened.

The story of judicial reform in the 50's is one of constantly quickening tempo. In 1950 a limited judicial selection reform measure won approval of the voters of Alabama. During the 1950's our fellow-Americans in Puerto Rico, Alaska and Hawaii wrote and adopted complete constitutions on the basis of which Alaska and Hawaii became states and Puerto Rico achieved the status which we call "commonwealth" and which the Puerto Ricans refer to in Spanish as "free associated state." All three judicial articles have embodied progressive thinking on judicial administration, with an appointive judicary, simplified and unified court organzation, dignified, competent, inexpensive and accessible minor courts, and modern court administration. Judicial selection in Alaska follows the American Judicature Society pattern, with tenure by non-competitive vote of the people. In 1958, the year Alaska became a state, Kansas also adopted the appointive-elective plan for its supreme court justices.

The decade of the 50's saw the lagging minor court reform movement take a forward leap. By a series of local acts over a period of years beginning back in 1937 the Tennessee legislature achieved substantial minor court reform through its General Sessions Courts. California started the new decade with its state-wide comprehensive minor court amendment approved in

1950 and operative in 1952. In addition to the important minor court advances in Alaska, Puerto Rico and Hawaii, there was Ohio's abolition of justices of the peace and establishment of a state-wide system of county and municipal courts in 1957, and legislation in Connecticut in 1959 setting up that state's circuit court system for the same purpose.

The decade of the 60's is in its middle years. What is there to report in it so far? Well, so vigorously has the pace moved up that already the 60's have as much to their credit as the 50's had and there is prospect of a great deal more. In November, 1960, the voters of Arizona approved a Modern Courts Amendment providing improved court organization and administration for that fast growing state. A similar measure met voter approval in New York in 1961. That same year California put the first effective system for discipline and removal of judges into operation. In 1962 judicial reform hit the jackpot. A Model Judicial Article, embodying the principles of the Society's State-wide Judicature Act of 1914, was approved by the House of Delegates of the American Bar Association in February.* In June voters approved appointive-elective selection and tenure for all of Iowa's trial and supreme court judges, and on one November day major court reorganization amendments were approved by the voters of Illinois, North Carolina and Colorado, and a constitutional roadblock to justice of the peace reform was voted away in Idaho. Nebraska that same day adopted Missouri-type judicial selection and Washington voters approved administrative improvements. November 6, 1962, was easily the greatest day in history for judicial reform.

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*The full text of the Model Judicial Article begins on page 12.

tory for judicial reform.

Since that day the momentum for judicial reform has stepped up its pace from coast to coast. State court reorganization, minor court reform, improvements in compensation, retirement, discipline and removal provisions for the judiciary, and judicial selection and tenure are being advanced in more than half of the states. Mention has already been made of major court organization achievements in New Jersey, Puerto Rico, Alaska, Hawaii, New York, North Carolina, Illinois and Colorado. Michigan's new judicial article, which became effective on January 1, 1964 should also be included. States which may yet be added to that list during the 60's are Arkansas, Connecticut, Florida, Georgia, New Mexico, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Washington, West Virginia and Wisconsin.

The list of minor court reforms in Alaska, California, Connecticut, Hawaii, Ohio, Puerto Rico, Tennessee and Virginia should be enlarged to include the magistrate courts of Missouri, important legislative reforms in the justice of the peace courts of New Mexico and Washington, the fine new district court systems of Maine and New Hampshire, and the minor court features of the recent state-wide reorganizations of Colorado, Illinois and North Carolina. By 1970, the minor court reform picture will include some or all of these: Arkansas, Florida, Idaho, Iowa, Michigan, New Jersey, New Mexico, Oklahoma, Pennsylvania, Texas, Vermont, Washington, Wisconsin and Wyoming.

Adequate compensation and pension plans for judges have lagged far behind during the inflationary years since the war. Only in the 60's has substantial progress been made. Beginning in November, 1961, the Society launched a nationwide campaign to increase judicial salaries and retirement benefits. In 1962 and 1963, 24 states and Puerto Rico enacted laws increasing salaries of some or all of the judges of their major courts. During the same period, 35 states and Puerto Rico improved their pension plans for judges.

Appropriate methods of disciplining or removing judges with physical or mental disabilities or in the exceptional instance of judicial misconduct received only minimum attention prior to the 60's. A few states, including Alabama, Louisiana and Texas, have had a method for years which, in effect, employs judicial action for removal of judges. New Jersey and Puerto Rico provided for judicial hearings in their constitutions. Michigan and New York adopted somewhat similar plans. In Ohio and Wisconsin, grievance committees were empowered to consider complaints about judicial misconduct. Only limited use was made of these removal provisions. In 1961, California put into effect a new commission plan to provide for confidential investigation of all complaints about misconduct among its more than 900 judges. If the complaint is justified, the judge is informed and given the opportunty to resign or retire before any public proceedings are initiated. This plan is now being studied in more than a dozen states. By 1970, some provision other than impeachment or address for dealing with judicial misconduct may well be established in more than 15 states.

The greatest impetus, however, in the remaining years of the 60's will be in the field of judicial selection and tenure. To the major reforms involving all or part of the judges of Alabama, Alaska, California, Illinois, Iowa, Kansas, Missouri and Nebraska should be included the adoption of the Society's plan for merit selection and ten-

ure in Dade County, Florida, for all the judges of its municipal courts. The voluntary actions of the mayors of New York City and Denver, Colorado, in appointing nominating commissions should also be mentioned along with the appointment of a commission in Pennsylvania in 1964 by the Governor to fill certain judicial vacancies in Philadelphia. In no less than 20 states, active movements are now afoot looking toward adoption of major reforms in judicial selection and tenure. Those states include: California, Colorado, Florida, Idaho, Indiana, Kansas, Louisiana, Maryland, Missouri, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas and Wisconsin. Not all of these states can be expected to adopt reforms right away; but some will, and the faster a bandwagon rolls, the more they climb aboard. This bandwagon is picking up speed and passengers all the time.

What are the reasons for the present boom in judicial reform? They are many and complex, but these are outstanding:

1. In many areas the need has reached crisis proportions. Court congestion and delay and other evils of judicial inefficiency and ineffectiveness have simply passed the limits of tolerance and something has had to be done about it.

2. A great new ally, the Joint Committee for the Effective Administration of Justice, financed by a generous grant from the Kellogg Foundation and led by Supreme Court Justice Tom C. Clark has mobilized and coordinated the work of more than a dozen national organizations in the field, and this has been most gratifyingly effective and successful.

3. The devoted labors of lawyers and judges in behalf of better administration of justice have been augmented by the informed and intelligent support and enthusiasm of thousands of non-lawyers in many states, due, in large measure, to a national program of state conferences sponsored by bar associations and other interested groups along with the Joint Committee and the Society. These non-lawyers include hard-headed businessmen who know how disastrous obsolescence is in their own plants and factories, and how much they need modern, efficient judicial administration to carry on their own activities successfully. Responsible members of the press and other media, enlightened labor leaders, educators, doctors, bankers, merchants and leaders of women's groups have been alerted to the necessity of improving their courts. In some states they are lending vital moral and financial support to the efforts of bench and bar; in others they have actually been prodding the profession to action.

For nearly two centuries now America has been the land where government of, by and for the people has brought blessings never before enjoyed by any nation in the history of mankind. From every corner of the globe the hungry, the helpless, the oppressed look to us as their great beacon light of hope. During the last war Charles Evans Hughes reminded those who did not go abroad to fight that they had a responsibility to those who did to "make the institutions of democracy work as they were intended to work." If this duty was owed then to them, today every citizen has the same duty to those in every land who look to us for hope for a better life.

There is no such thing as freedom without justice. If freedom is to be enjoyed, justice must be freely within reach of everybody. Every citizen must dedicate himself to doing what can be done to insure prompt, economical and equal justice under law, efficiently administered in the courts of America.

Model State Judicial Article

THE complexity of present day court organizations along with an ever increasing number of legal controversies has led to delay and confusion in the administration of justice. This situation cannot long endure if justice under law is to be continued as the foundation upon which Americans construct their democratic way of life.

Effective revisions for a judicial system must have as a core for growth at least the following: controls for efficient administration of the courts built into the system itself, competent judges selected on a non-partisan, non-political basis and simplified and unified court structure. These elements are not sufficient but they are a necessary beginning if the role of the law is to be one equal to society's demands.

Incorporating the principles of the Statewide Judicature Act published by the American Judicature Society in 1914, the model judicial article was approved by the House of Delegates of the American Bar Association in February, 1962. It represents the official policy of that organization and is set forth as a guide for the improvement of state judicial systems and the more efficient administration of justice.

Text

Sec. 1. The Judicial Power.

The judicial power of the State shall be vested exclusively in one Court of Justice which shall be divided into one Supreme Court, one Court of Appeals, one Trial Court of General Jurisdiction known as the District Court, and one Trial Court of Limited Jurisdiction known as the Magistrate's Court.

Sec. 2. The Supreme Court.

Par. 1. *Composition.* The Supreme Court shall consist of the Chief Justice of the State and (four) (six) Associate Justices of the Supreme Court.

Par. 2. *Jurisdiction.*

A. *Original jurisdiction.* The Supreme Court shall have no original jurisdiction, but it shall have the power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

B. *Appellate jurisdiction.* Appeals from a judgment of the District Court imposing a sentence of death or life imprisonment, or imprisonment for a term of 25 years or more, shall be taken directly to the Supreme Court. In all other cases, criminal and civil, the Supreme Court shall exercise appellate jurisdiction under such terms and conditions as it shall specify in rules, except that such rules shall provide that a defendant shall have an absolute right to one appeal in all criminal cases. On all appeals authorized to be taken to the Supreme Court in criminal cases, that Court shall have the power to review all questions of law and, to the extent provided by rule, to review and revise the sentence imposed.

Sec. 3. The Court of Appeals.

The Court of Appeals shall consist of as many divisions as the Supreme Court shall determine to be necessary. Each division of the Court of Appeals shall consist of three judges. The Court of Appeals shall have no original jurisdiction, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies of the State and it may be authorized by rules of the Supreme Court to issue all writs necessary or appropriate in aid of its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rules which shall, however, provide that a defendant shall have an absolute right to one appeal in all criminal cases and which may include the authority to review and revise sentences in criminal cases.

Sec. 4. The District and Magistrate's Courts.

Par. 1. *Composition.* The District Court shall be composed of such number of divisions and the District and Magistrate's Courts shall be composed of such number of judges as the Supreme Court shall determine to be necessary, except that each district shall be a geographic unit fixed by the Supreme Court and shall have at least one judge. Every judge of the District and Magistrate's Courts shall be eligible to sit in every district.

Par. 2. *District Court Jurisdiction.* The District Court shall exercise original general jurisdiction in all cases, except in so far as original jurisdic-

tion may be assigned exclusively to the Magistrate's Court by the Supreme Court rules. The District Court may be authorized, by rule of the Supreme Court, to review directly decisions of State administrative agencies and decisions of Magistrate's Courts.

Par. 3. *Magistrate's Court Jurisdiction.* The Magistrate's Court shall be a court of limited jurisdiction and shall exercise original jurisdiction in such cases as the Supreme Court shall designate by rule.

Sec. 5. Selection of Justices, Judges and Magistrates.

Par. 1. *Nomination and Appointment.* A vacancy in a judicial office in the State, other than that of magistrate, shall be filled by the governor from a list of three nominees presented to him by the Judicial Nominating Commission. If the governor should fail to make an appointment from the list within sixty days from the day it is presented to him, the appointment shall be made by the Chief Justice or the Acting Chief Justice from the same list. Magistrates shall be appointed by the Chief Justice for a term of three years.

Par. 2. *Eligibility.* To be eligible for nomination as a justice of the Supreme Court, judge of the Court of Appeals, judge of the District Court, or to be appointed as a Magistrate, a person must be domiciled within the State, a citizen of the United States, and licensed to practice law in the courts of the State.

Sec. 6. Tenure of Justices and Judges.

Par. 1. *Term of Office.* At the next general election following the expiration of three years from the date of appointment, and every ten years thereafter, so long as he retains his office, every justice and judge shall be subject to approval or rejection by the electorate. In the case of a justice of the Supreme Court, the electorate of the entire State shall vote on the question of approval or rejection. In the case of judges of the Court of Appeals and the District Court, the electorate of the districts or district in which the division of the Court of Appeals or District Court to which he was appointed is located shall vote on the question of approval or rejection.

Par. 2. *Retirement.* Every justice and judge shall retire at the age specified by statute at the time of his appointment, but that age shall not be fixed at less than sixty-five years. The Chief Justice is empowered to authorize retired judges to

perform temporary judicial duties in any court of the State.

Par. 3. *Retirement for Incapacity.* A justice of the Supreme Court may be retired after appropriate hearing, upon certification to the governor, by the Judicial Nominating Commission for the Supreme Court that such justice is so incapacitated as to be unable to carry on his duties.

Par. 4. *Removal.* Justices of the Supreme Court shall be subject to removal by the impeachment process. All other judges and magistrates shall be subject to retirement for incapacity and to removal for cause by the Supreme Court after appropriate hearing. No justice, judge, or magistrate shall, during his term of office, engage in the practice of law. No justice, judge, or magistrate shall, during his term of office, run for elective office other than the judicial office which he holds, or directly or indirectly make any contribution to, or hold any office in, a political party or organization, or take part in any political campaign.

Sec. 7. Compensation of Justices and Judges.

Par. 1. *Salary.* The salaries of justices, judges, and magistrates shall be fixed by statute, but the salaries of the justices and judges shall not be less than the highest salary paid to an officer of the executive branch of the State government other than the governor.

Par. 2. *Pensions.* Provision shall be made by the legislature for the payment of pensions to justices and judges and their widows. In the case of justices and judges who have served ten years or more, and their widows, the pension shall not be less than fifty per cent of the salary received at the time of the retirement or death of the justice or judge.

Par. 3. *No Reduction of Compensation.* The compensation of a justice, judge or magistrate shall not be reduced during the term for which he was elected or appointed.

Sec. 8. The Chief Justice.

Par. 1. *Selection and Tenure.* The Chief Justice of the State shall be selected by the Judicial Nominating Commission from the members of the Supreme Court and he shall retain that office for a period of five years, subject to reappointment in the same manner, except that a member of the court may resign the office of Chief Justice without resigning from the court. During a vacancy in the office of Chief Justice, all powers and duties of that office shall devolve upon the member of

the Supreme Court who is senior in length of service on that court.

Par. 2. *Head of Administration office of the Courts.* The Chief Justice of the State shall be the executive head of the judicial system and shall appoint an administrator of the courts and such assistants as he deems necessary to aid the administration of the courts of the State. The Chief Justice shall have the power to assign any judge or magistrate of the State to sit in any court in the State when he deems such assignment necessary to aid the prompt disposition of judicial business, but in no event shall the number of judges and justices exceed the number of justices provided in section 2. The administrator shall, under the direction of the Chief Justice, prepare and submit to the legislature the budget for the court of justice and perform all other necessary administrative functions relating to the courts.

Sec. 9. Rule Making Power.

The Supreme Court shall have the power to prescribe rules governing appellate jurisdiction, rules of practice and procedure, and rules of evidence, for the judicial system. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

Sec. 10. Judicial Nominating Commissions.

There shall be a Judicial Nominating Commission for the Supreme Court and one for each division of the Court of Appeals and the District Court. Each Judicial Nominating Commission shall consist of seven members, one of whom shall be the Chief Justice of the State, who shall act as chairman. The members of the bar of the State residing in the geographic area for which the court or division sits shall elect three of their number to serve as members of said commission, and the governor shall appoint three citizens, not admitted to practice law before the courts of the State, from the residents of the geographic area for which the court or division sits. The terms of office and compensation for members of a Judicial Nominating Commission shall be fixed by the legislature, provided that not more than one-third of a commission shall be elected in any three-year period. No member of a Judicial Nominating Commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a State judicial office so long as he is a member of a Judicial Nominating Commission and for a period of five years thereafter.

The Judicial Nominating Committee

by *Glenn R. Winters*

AMERICAN JUDICATURE SOCIETY

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COURTS FOR 20th CENTURY AMERICA

The Judicial Nominating Committee

Courts for 20th Century America . . .

Governor John A. Volpe of Massachusetts astonished members of the legislature, some lawyers and judges, and citizens at large last January when he included in his inaugural message a pledge to appoint a non-partisan committee to make nominations of persons for proposed new judgeships and further pledged himself to limit his appointments to persons so nominated.

"Should the Legislature, in its wisdom, see fit to enlarge the Superior Court in accordance with this bill," he said, "I shall appoint a non-partisan committee, composed not only of members of the legal profession, but also of leading laymen in the community.

"The duty of this committee would be to submit to me names of lawyers best qualified by ability, temperament and experience to serve as justices of the Superior Court. I pledge to consider as additional justices so authorized only those whose names are so submitted, without reservation. I further pledge that the names finally selected from among the committee's recommendations will be submitted to the appropriate bar associations for their evaluation.

"This committee would investigate prospective candidates' availability, credentials, abilities and state of health. It would process applications and recommendations from all sources. Its considerations would be on a strictly confidential basis so as to preserve the integrity of its deliberations as well as the reputations of those involved.

"By this pledge, I hope to remove political considerations from future debate concerning the need for enlarging our Superior Court."

The effort was not successful, in that the legislature, for other reasons, did not create the new judgeships that were requested. The Governor's pledge was itself nevertheless, in the words of Walter H. McLaughlin, president of the Massachusetts Bar Association, "a great step forward." This was, he said, "the first time in this commonwealth that any governor has made a nonpartisan, nonpolitical approach to judicial appointments."

The device which Governor Volpe proposed to use was not simply a product of his own imagination. A judicial nominating commission has been successfully employed by Mayor Robert H. Wagner of New York City for several years and is a feature of the judicial establishments of nine states, one of them for 25 years, the others for shorter periods of time.* Its use has spread rapidly during the decade of the sixties, at least two more states will vote on its adoption in 1966, and there is every reason to anticipate that it will be an increasingly important factor in the administration of justice in the future. Consequently, it is something that every lawyer and judge today and every future lawyer and judge should be informed about.

Any exposition of the judicial nominating commission should begin with one important disclaimer. When the American Bar Association gave its official approval to the commission principle in 1937, it offered it as "the most acceptable substitute for direct election of judges," and it coupled commission nomination with tenure by non-competitive election. Several of the jurisdictions that have adopted the commission plan have followed that pattern, and some people who are only casually or partially informed do not realize that the two are separable, have been

adopted separately, and should be considered on their own separate merits. In states like Massachusetts and New Jersey, where judges have never been elected, it should be clearly understood that sentiment against the elective judiciary is quite irrelevant to a discussion of the desirability of the judicial nominating commission.

Nominating commissions, or committees, are very widely used throughout human life and activity. They are a standard feature of the democratic process in churches, clubs, and voluntary organizations of all kinds. The members make their selection by ballot as between rival candidates, but they want some assurance that the right people are candidates. Without a nominating comittee to survey the field, ascertain which of the members are best suited for the office of president, secretary, or treasurer, and get those persons to agree to serve if elected, many organizations would fold up under the inexpert management of unqualified but aggressive persons.

More significantly in the present connection, committees, boards and commissions are used in the armed forces and in large corporations to select individuals for promotion to high office, and for the hiring of school teachers and principals, hospital superintendents, prison wardens, and thousands of public and semi-public service officials.

There are two basic reasons for use of a nominating commission for any kind of appointment, one affimative and one negative. The affirmative one is that the combined wisdom and efforts of a group of people are most likely to produce better results than can be expected from one alone. The negative reason is that the mistakes, prejudices, blind spots, and shortcomings of any single individual can be neutralized, counteracted or compensated for by the differing characteristics of the various individuals in a group.

The biggest reason for use of a commission in judicial appointments is the one referred to by Mr. McLaughlin, the almost invariable tendency of governors to base their appointments on political considerations. For political offices this is quite proper, but the administration of justice should be non-political, and if so, then judicial appointments should be non-political. High-minded and conscientious governors know this quite well, but are often unable to avoid the pressures of a political system, and that is why leading governors like Volpe of Massachusetts, Scranton of Pennsylvania, Love of Colorado and Sanchez Vilella of Puerto Rico, along with Mayor Robert H. Wagner of New York and his newly-elected successor, John V. Lindsay, have been willing to support and adopt voluntarily the principle of a non-partisan commission.

Non-partisanship is just one of the features of a good judicial nominating commission. The others all appear in Governor Volpe's statement, and we may notice them briefly in order as they appear there.

Some plans have undertaken to achieve a non-partisan result by means of the intermediate step of bi-partisanship, either in the makeup of the commission or in the nominations or both. This is not without merit, since it offers reasonable assurance, as Arthur T. Vanderbilt observed, that at least half of the appointments will be on merit. However, half is not enough. One hundred per cent non-partisanship is perhaps in the nature of an ideal, and yet in Missouri, Iowa, and Pennsylvania commissions have nominated and governors appointed from both parties on a non-partisan rather than a bipartisan basis. This should be an uncompromising objective.

The second feature of a judicial nominating commission should be members from the legal profession. Judicial office is a technical job involving knowledge of the law, judicial temperament, and a host of qualifications which are best evaluated by others having similar qualifications and working with them. Only a lawyer's professional associates are able to pass intelligently on how well he would be able to handle the technical aspects of judging. Furthermore, there is a difference between advocacy and judging, between bar and bench, not fully realized except by a person who held both positions. This suggests the wisdom of having at least one judge on the commission, as most do.

The third characteristic of the commission is members drawn from the leading laymen of the community. Judging is a technical job, to be sure, but it is more than that. It is an important position of com-

munity leadership, in which all segments of the population have a vital interest. Lawyers are so apt to be impressed with the technical legal skills of the so-called "lawyers' lawyer" that they may overemphasize these traits to the disadvantage of other important factors of general education, character, and community standing. Laymen on the commission will serve as a balance wheel to make sure that important non-legal qualifications are not neglected.

The fourth point to notice in the Volpe proposal is that the commission is to submit names to the governor, and not the governor to the commission. This identifies it as a nominating rather than a confirming body.

Various means for approval or confirmation of appointments have been utilized ever since the first state constitutions were written. These were a reaction to the king's tight one-man control which was one of the grievances set forth in the Declaration of Independence. Some states gave this power to the state legislature, some to the governor's council, and the federal Constitution, as we know, vested it in the U.S. Senate.

Experience has disclosed major weaknesses in the confirmation system. It offers no affirmative assistance toward finding the right man for the post, but operates only as a check or veto against bad appointments. In rare instances, as in the recent nomination of Francis X. Morrissey to the federal bench, this may be effective, but most of the time appointments are confirmed in spite of doubts, rather than make a fuss and embarrass the appointee. Furthermore, when confirmation is by a political body, its actions are usually for political reasons. For more than a year now, badly needed judicial appointments in New Jersey have been blocked because under the practice of "senatorial courtesy" the senate has backed an individual senator in his purely political opposition to the governor's selections.

At its best, the confirmation system operates only negatively to reject the bad, in contrast with the nominating commission which has the affirmative opportunity of finding and presenting good judicial talent for appointment. The New York Mayor's Committee gets names from many sources — individual lawyers and laymen, civic groups, political organizations, members of the committee or the mayor himself. The committee has actively sought names of qualified candidates by notices in legal publications and circularizing bar association members. Each candidate fills out a lengthy questionnaire and is the subject of a thorough investigation. In the end, five names are submitted to the mayor, from which he makes the appointment.

It is important that the commission's deliberations be kept confidential, the fifth point to be noted. It is an honor to be nominated, but good lawyers would not consent to be considered if their rejection and the reasons for it were publicized.

The sixth feature of the commission plan is the governor's obligation not to go outside of the panel of nominations in making his appointments. Although this sounds like a restriction on the governor, it is actually a welcome one. Judicial appointments are not the best kind of patronage for a governor. The person who gets the appointment cannot be depended on as a friend, since the job is supposed to be out of politics, while the disappointment of those who wanted it and did not get it remains to be reckoned with. Governors are learning that they may well give up the uncertain benefits of the former in order to be rid of the latter. Under the commission plan the governor still has a fair chance of placing the man he really wants, if he is really qualified, and at the same time he has a perfect answer to the importunate office seeker: "Sorry, I can only appoint from the commission's list. Get someone to suggest your name to the commission."

The most frequent criticism of the judicial nominating commission is that it is simply a device sponsored by bar associations to enable the lawyers to pick the judges. This is based on the argument that in a commission like those in Missouri with equal numbers of lawyers and laymen and a judge as a chairman, the lawyers-and-judge comprise a majority that can dominate and outvote the laymen.

This, however, is no argument against the commission as such, for it is entirely possible to have the lawyers in the minority or leave them out entirely. An all-layman commission of high caliber could be trusted to secure adequate professional appraisal of the candidates.

In Missouri, however, the lawyers do not overshadow or dominate the laymen. Judge Elmo B. Hunter, a former commission chairman, has explained that the lawyers tend to do most of the talking at first, but eventually the laymen after listening and comparing are able to point out the oversights, weaknesses and inconsistencies in the lawyers' observations and strongly influence the final decision. Any system of judicial selection that does not provide for adequate representation of the lawyer's viewpoint is defective. Lawyers have a unique opportunity to know the legal skills of the candidates and a vital concern in having able men on the bench.

Another frequently-heard objection to the commission plan is that it would tend to favor wealthy and conservative lawyers. It is probably true that a certain element of the bar which emphasizes identification with and advocacy of certain viewpoints and causes resents the necessity of competing for judicial office on the basis of qualifications alone, since, unfortunately for them, talent often leads to wealth and prestige. From the standpoint of the public interest, however, while it is important that no qualified lawyer be excluded from consideration because he represents a minority, it is not important that any particular group be represented on the bench, but only that every judge be competent, qualified, and fair to everybody.

Again referring to the Missouri experience, however, a thorough study of its operation for 25 years in that state reveals that appointments have not favored large-firm, conservative or defense lawyers, nor have they favored any particular cause or philosophy. This is just as it ought always to be.

A third criticism of the judicial nominating commission is that it is not really taking the judges out of politics, but only substituting commission politics for the politics of the ballot box or the governor's chair. The practical difficulties of complete and utter insulation of judicial selection from all political influence are probably at least as great as those faced by the mother of Achilles in her effort to dip her son completely in the river. It depends largely on what you mean by politics. It is a necessary part of the system for non-members to be able to make suggestions to the commission members. It is not proper, however, to bring pressure of any kind to bear on the commission in favor of a certain candidate, and if this is done, and if the commission responds to such pressure then an indefensible situation exists. This appears to boil down to a matter of the character and caliber of the commission members. If the commission plan is not entirely proof against abuses, it is in that respect no worse than any rival system. In this respect also, however, the Missouri record is reassuring.

I have referred repeatedly to Missouri because the 25 years experience in that state does provide convincing answers to most of the questions and objections that are raised. The excellent experience of the Mayor's Committee in New York City is equally convincing, however. I close with a description of that committee and its work by the Honorable Samuel I. Rosenman, distinguished New York lawyer, former special counsel to Presidents Roosevelt and Truman and former co-chairman of the Mayor's Committee.

"The committee consists of 25 members — lawyers and laymen — all appointed by the Mayor. Some of the lawyers are acknowledged leaders of the bar; they include two former judges of the Supreme Court of the state and one former chief judge of our Court of Appeals. The lawyers were appointed after consultation with the presiding justices of the Appellate Division in the two departments included in the city. The lay members are all prominent in various civic organizations and were selected by the Mayor largely for that reason. Each of the five counties in the city is represented on the committee.

"This is the way it operates. When a vacancy occurs in any of the courts which has to be filled by the Mayor, he so informs the committee. The committee within a reasonable time recommends five

names for the vacancy. The Mayor has agreed to appoint only from among those names — and to date he has scrupulously carried out that voluntary agreement . . .

"The five selected candidates will have been interviewed fully by a subcommittee, and before the names go to the Mayor the individuals also appear before the full committee for interviews. The full committee, at the time of interviewing and voting on the five names, has before it the questionnaire, the investigative report, and the report of the subcommittee.

"There could be improvements in the committee. There are too few laymen and too many active Democrats; not all the members should be appointed by the Mayor as at present, but since the responsibility is his, he should appoint the majority of the committee; the members should be appointed for fixed terms so staggered that its membership changes from time to time. The courts and the bar association should have a greater voice in the selection of the lawyer members of the committee. It should have a more adequate budget for much more thorough investigation.

"So far as I have been able to discover, this is the first voluntary project of its kind. The Mayor deserves the appreciation of the bar and all other citizens of New York for setting it up."

Mayor John V. Lindsay has replaced Mayor Wagner's 23 man panel with a 15 man panel of his own. The new committee will operate on the same basis as its predecessor, i.e. acceptance of its recommendations by the Mayor is voluntary, but varies in that Mr. Lindsay will appoint only a minority of the membership. Two Presiding Justices of New York's Appellate Division will each appoint four members. The panel as presently constituted, consists entirely of members of the legal profession.

As merit selection of judges through use of a nominating commission spreads rapidly throughout the country, the bar and the citizens of many states and cities will have cause to be grateful to the state of Missouri for pioneering the commission plan by constitutional amendment and to Mayor Wagner for demonstrating that any high-minded governor or appointing authority can have it at once by his own voluntary action and find it advantageous to do so.



Presently Executive Director of the American Judicature Society and editor of its Journal, Mr. Winters is a member of the Bars of Illinois, Michigan, and Missouri and of numerous law and judicial organizations on national and international levels. Since 1940, Mr. Winters has been active in all areas of judicial administration and reform and has written extensively on these and related subjects.

This is one of a series of brochures prepared by the American Judicature Society to suggest ways of improving the administration of justice.

Other brochures currently available from the Society are:

A Missouri Judge Views Judicial Selection and Tenure, *Elmo B. Hunter.*

The Missouri Plan for Judicial Selection, *Laurance M. Hyde.*

A Better Way to Select Judges, *Samuel I. Rosenman.*

Two Dozen Misconceptions About Judicial Selection and Tenure, *Glenn R. Winters and Robert E. Allard.*

Selection and Tenure of Judges, *Glenn R. Winters.*

One-Man Judicial Selection, *Glenn R. Winters.*

The California Commission Story, *Louis H. Burke.*

Retirement, Discipline and Removal of Judges, *Robert E. Allard.*

The Crisis in the Courts, *Louis Banks.*

The Rule of Law and the Administration of Justice, *Henry R. Luce.*

The Causes of Popular Dissatisfaction With the Administration of Justice, *Roscoe Pound.*

The National Movement to Improve the Administration of Justice, *Glenn R. Winters.*

Principles and Outlines of a Modern Unified Court Organization, *Roscoe Pound.*



AMERICAN JUDICATURE SOCIETY

to promote the efficient administration of justice

America's only national organization devoted exclusively to the improvement of the administration of justice, the American Judicature Society was founded in 1913. Since that time it has gained an enviable reputation for leadership in judicial reform and has pioneered in developing and advocating the modified appointive-elective system of selecting judges, the unified state court system, modern civil and criminal procedures, and more efficient administrative methods for the courts.

The Society's membership today consists of more than 23,000 lawyers, judges and laymen in every state and many foreign countries. Among them are judges of the United States Supreme Court and nearly every state supreme court; prominent leaders of the organized bar, national, state, and local; along with thousands of practicing lawyers; law teachers; government officials; and civic and community leaders—all sharing a common interest in the administration of justice and its improvement.

Through research, publication, consultation service and action programs, the Society seeks to work for better lawyers and judges, better courts, better justice, a better America.

Additional copies of this brochure may be obtained by writing the Society's offices at 1155 East Sixtieth Street, Chicago 37, Illinois. Large quantities can be obtained at minimum cost.

Judge: Applied for Liquor License as Protest Against Pay Schedule

By BOB LUNDEGAARD
Minneapolis Tribune Staff Writer

ROCHESTER, Minn. — A district court judge said Wednesday he applied for an off - sale liquor license "as an emotional reaction to our legislative pay fiasco."

Judge Donald T. Franke of Olmsted County District Court said he was planning to withdraw the application, which he made in July with a Rochester attorney, George Kerr.

He conceded that he had used "dubious judgment" in making the application, but he insisted that the 1969 Minnesota Legislature, by denying a pay raise to district court judges, "in effect told us we needed outside income."

Another reason for withdrawing the application, he said, was that "the mayor told me that even if the liquor license was granted, we'd be the last ones they'd consider."

JUDGE FRANKE said he and Kerr were having lunch one day nad "we decided it would be interesting to test the public reaction. Unfortunately we got almost no reaction."

One reaction came from the Austin Daily Herald, which criticized the propriety of the application in an editorial.

In a letter to the newspaper last month, Judge Franke argued that "judges of district court, who are paid $1,000 a month less than lawyers of their same age and experience are able to earn, must look to outside activities as a source of income to support their families and send their kids to college."

(District court judges receive $22,000 annually. Judge Franke estimated that a good attorney could earn $35,000 a year.)

"DISTRICT judges are prohibited by law from practicing law," Judge Franke's letter continued. "An essential requirement, we all agree. But no one agrees on what they should do — just what they shouldn't do (always easier).

"The problem would be solved if we were paid as lawyers or other professionals who have invested seven years in college and 15 years or more in practical training before going on the bench."

The application by Judge Franke and Kerr, who is president of the Rochester Chamber of Commerce, was one of several received for a license at the New Apache Mall Shopping Center.

THEY SAID they had planned to own the store as an investment and hire a manager to operate it. The Rochester city clerk said the council has laid over any action on the license until next year.

Judge Franke said he is in the last year of his six-year term, and will decide next year whether to seek reelection.

What reaction there has been, he said, has coalesced along age lines, with older people offended by the idea of a judge owning a liquor store and the younger set unbothered by it.

"No one was more upset than my mother," he said. "She doesn't drink, and she practically disowned me when she heard about it."



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Version 2
December 6, 2016

6:00 P.M. DINNER (Arcade Ballroom)

Presiding Officer: Honorable Gunnar H. Nordbye, United States District Judge

JUSTICE IS EVERYBODY'S BUSINESS
by Glenn R. Winters, Esq., Executive Director, American Judicature Society, Chicago, Illinois

7:45 P.M. GROUP DISCUSSIONS – Final Round – PRIORITIES FOR IMPROVEMENT – All groups will discuss this topic simultaneously in their respective home rooms.

SATURDAY, September 10, 1966

9:00 A.M. FINAL GENERAL ASSEMBLY (Arcade Ballroom)

Presiding Officer: O. Meredith Wilson, President, University of Minnesota

SUMMARY OF CITIZENS' DISCUSSIONS

11:00 A.M. ADJOURNMENT

DISCUSSION TEAMS

TEAM A – Judicial Selection and Tenure
- Chairman: Philip Neville, Esq., Minneapolis, Minnesota
- Panelist: Charles T. Hvass, Esq., Minneapolis, Minnesota
- Panelist: Barnabas F. Sears, Esq., Chicago, Illinois
- Reporter: James L. Hetland, Jr., Esq., Minneapolis, Minnesota

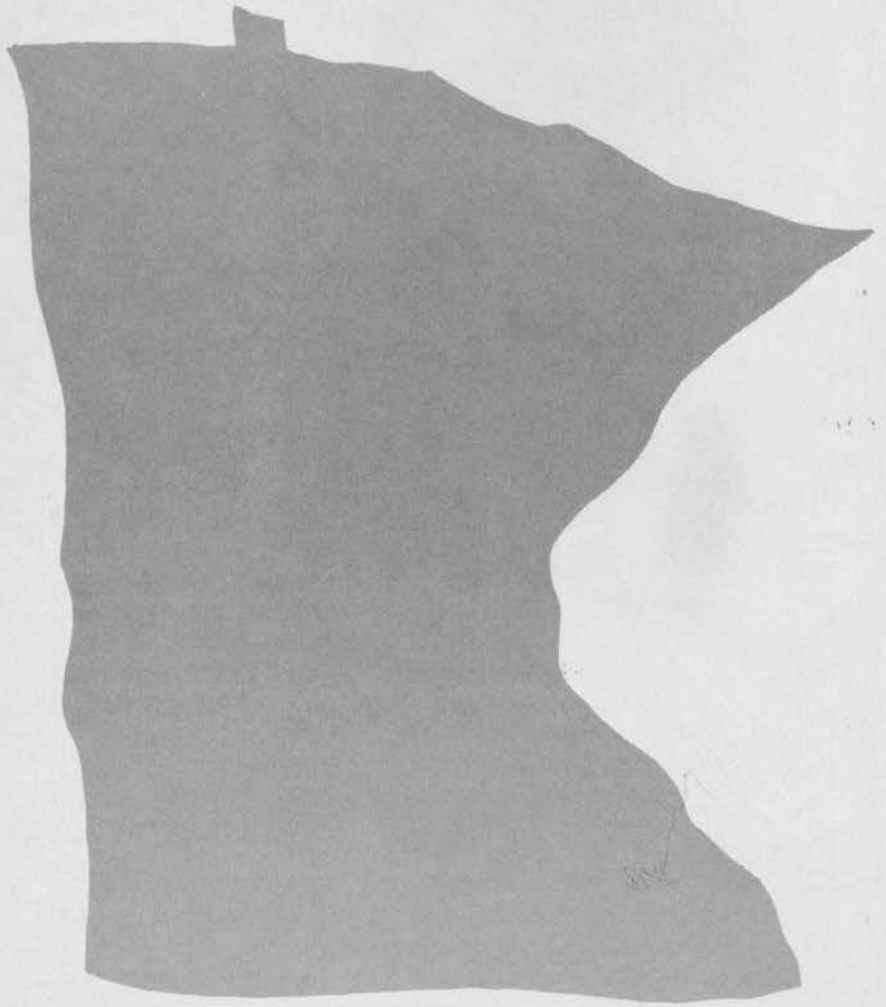
Hon Elmo B Hunter, Kansas City, Missouri

TEAM B – Judicial Compensation, Retirement, Discipline and Removal
- Chairman: Professor Maynard E. Pirsig, Minneapolis, Minnesota
- Panelist: Jack E. Frankel, Esq., San Francisco, California
- Panelist: William A. Stevenson, Esq., Edmonton, Alberta
- Reporter: William J. Nierengarten, Esq., Austin, Minnesota

TEAM C – Court Organization and Administration
- Chairman: John Finn, Esq., Minneapolis, Minnesota
- Panelist: Honorable Robert H. Hall, Atlanta, Georgia
- Panelist: William C. Klein, Esq., Vancouver, Washington
- Reporter: John McMillan, Esq., Minneapolis, Minnesota

TEAM D – Courts of Limited and Special Jurisdiction
- Chairman: Honorable Elmer J. Tomfohr, Red Wing, Minnesota
- Panelist: Honorable William H. Burnett, Denver, Colorado
- Panelist: Robert S. Lowe, Esq., Rawlins, Wyoming
- Reporter: Professor William Danforth, Esq., St. Paul, Minnesota

MINNESOTA CITIZENS' CONFERENCE ON COURTS



September 8-10, 1966, Holiday Inn Central – Minneapolis

MINNESOTA CITIZENS' CONFERENCE ON COURTS

Holiday Inn Central, Minneapolis
September 8-10, 1966

THURSDAY, September 8, 1966

4:00 P.M. REGISTRATION (Arcade Ballroom Foyer)

5:30 P.M. RECEPTION (Arcade Ballroom)

6:00 P.M. DINNER (Arcade Ballroom)

Presiding Officer: Sheldon S. Larson, President, Minnesota State Bar Association

THE IMAGE OF THE JUDGE
by Honorable Tom C. Clark, Associate Justice of the United States Supreme Court, Washington, D.C.

COMMENTS ON THE CITIZENS' CONFERENCE
by Honorable Oscar R. Knutson, Chief Justice of Minnesota Supreme Court

THE FACTS ABOUT MINNESOTA COURTS AND JUDGES TODAY
by Honorable Robert J. Sheran, Associate Justice Minnesota Supreme Court, St. Paul, Minnesota

8:00 P.M. GROUP DISCUSSION – First Round – Hall of Avenues, Rooms 2, 3, 4 and 5 – MINNESOTA TODAY
(All groups will discuss this topic simultaneously in their respective home rooms)

FRIDAY, September 9, 1966

9:00 A.M. GENERAL ASSEMBLY (Arcade Ballroom)

Presiding Officer: Sidney S. Feinberg, President-Elect, Minnesota State Bar Association

COURT ORGANIZATION AND ADMINISTRATION
by Honorable Robert H. Hall, Court of Appeals, Atlanta, Georgia

COURTS OF LIMITED AND SPECIAL JURISDICTION
by Honorable William H. Burnett, Presiding Judge, Denver County Court, Denver, Colorado

JUDICIAL COMPENSATION, RETIREMENT, DISCIPLINE AND REMOVAL
by Jack E. Frankel, Executive Secretary, Commission on Judicial Qualifications, San Francisco, California

10:30 A.M. COFFEE BREAK (Lower Arcade Foyer)

10:45 A.M. GROUP DISCUSSIONS – Second Round – Hall of Avenues Rooms 2, 3, 4 and 5

Group	Team	Topic
I	A	Judicial Selection and Tenure
II	B	Judicial Compensation, Retirement, Discipline and Removal
III	C	Court Organization and Administration
IV	D	Courts of Limited and Special Jurisdiction

12:00 Noon LUNCH (Arcade Ballroom)

Presiding Officer: John C. McNulty, Chairman of the Citizens' Conference, Minneapolis, Minnesota

JUDICIAL SELECTION AND TENURE – TWO POINTS OF VIEW
by Honorable Elmo B. Hunter, United States District Judge, Kansas City, Missouri, and Charles T. Hvass, Minneapolis, Minnesota

2:00 P.M. GROUP DISCUSSIONS – Third Round – Hall of Avenues Rooms 2, 3, 4 and 5

Group	Team	Topic
I	B	Judicial Compensation, Retirement, Discipline and Removal
II	A	Judicial Selection and Tenure
III	D	Courts of Limited and Special Jurisdiction
IV	C	Court Organization and Administration

3:00 P.M. GROUP DISCUSSIONS – Fourth Round – Hall of Avenues Rooms 2, 3, 4 and 5

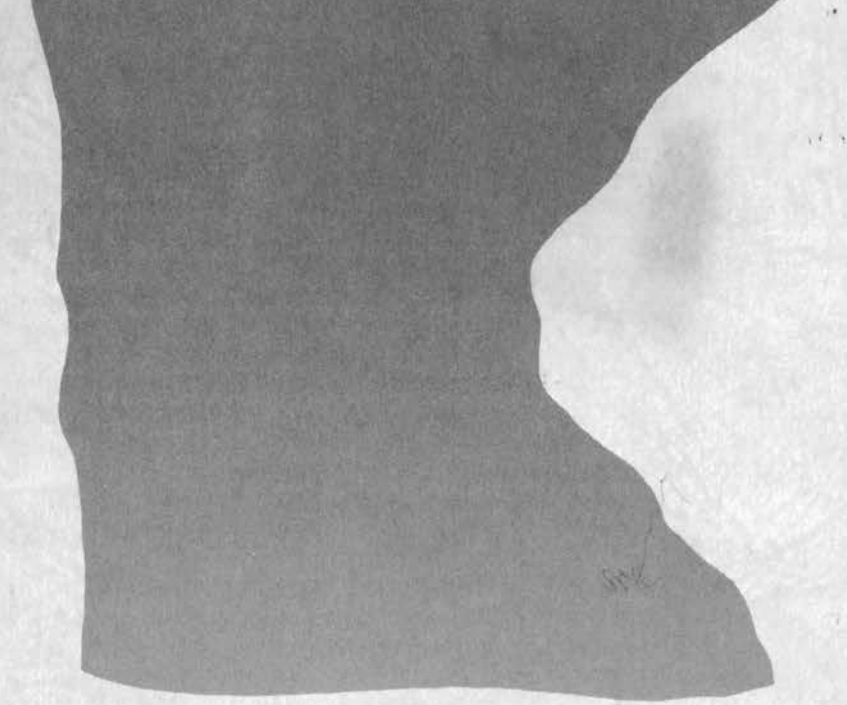
Group	Team	Topic
I	C	Court Organization and Administration
II	D	Courts of Limited and Special Jurisdiction
III	A	Judicial Selection and Tenure
IV	B	Judicial Compensation, Retirement, Discipline and Removal

4:00 P.M. COFFEE BREAK (Lower Arcade Foyer)

4:15 P.M. GROUP DISCUSSIONS – Fifth Round – Hall of Avenues Rooms 2, 3, 4 and 5

Group	Team	Topic
I	D	Courts of Limited and Special Jurisdiction
II	C	Court Organization and Administration
III	B	Judicial Compensation, Retirement, Discipline and Removal
IV	A	Judicial Selection and Tenure

MINNESOTA CITIZENS' CONFERENCE ON COURTS



September 8-10, 1966, Holiday Inn Central — Minneapolis

6:00 P.M. DINNER (Arcade Ballroom)

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by Glenn R. Winters, Esq., Executive Director, American Judicature Society, Chicago, Illinois

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- Reporter: Professor William Danforth, Esq., St. Paul, Minnesota

Municipal courts and
District Courts Set the
image of Courts.

⑤ Judges set the level of
justice.

Justice is everybody's
Business

Try to eliminate politics from
your courts.

Compromise w/ appointive
System - Merit System
Look out

Justice Knutson.

Take a good look at our system.
Room for improvement in
method of selection. Merit?
Security of Tenure

Justice Sheran

1 Chief + 6 associate (Supreme Court)
Run every 6 years
65 District Judges
generally arrive by appointment

Justice Tom Clark

A system of justice rises no higher than the judges who sit on the bench.

Reasons for lawlessness

1) Have lost sight of obedience to law as a cardinal principle. Has society provided training in respect for law and constituted authority

2) We have neglected criminal law

3) Chief problem we face today – we have neglected our courts. We give little time & little money. Image of law and order has suffered

1) We do not have an integrated court system. Courts need modernization (not reform)

- Have prior -
Eliminated J P's
Judges must be learned in law
Reduced judicial dist's
Special Juvenile Ct.

of gov. and gov. alone. - Must run every 6 years.

Approx 100 municipal judges
14 in Hennepin

probate judges - 87 (1 in each of the counties)

Question of removal

Retirement - no compulsary age -

Time lag between inception & determination of cases in Henn. & Ramsey Cos.

Integrated court

Intermediate court

Compensation

Bartholet May Enter Plea Soon

Dakota County Probate Judge Francis L. Bartholet may enter a plea sometime this week to three charges stemming from an alleged kickback during an estate appraisal in 1966, it was repored today.

The judge, who has held the position since 1965, was indicted about 4:30 p.m. Saturday at Hastings on one count of soliciting a bribe and two counts of violating the Minnesota Corrupt Practices Act.

ACCORDING to the state claims, made public in a January report by Public Examiner Robert Whitaker, Bartholet appointed three appraisers to evaluate a $10 million estate and part of the fees, were returned to him.

A grand jury investigation last week resulted in Saturday's indictment. The jury heard testimony for four days and deliberated for a day and a half.

Dakota County District Judge Robert J. Breunig said today that he had granted a continuance for "about a week" when Bartholet appeared before him Saturday. He said no schedule has been set down for the arraignment, pending the agreement of the defense and prosecution upon a convenient time.

THE ARRAIGNMENT may come later this week, Breunig said.

Appraisal fees to the three public officials appointed by Bartholet reported were $19.800. About $6.600 of that amount was returned to Bartholet, it is alleged, presumably earmarked for his campaign fund.

Appraisals Aided Kin of Two Judges

By BOB LUNDEGAARD
Minneapolis Tribune Staff Writer

The chemist son-in-law of Judge James G. Kehoe, late probate judge of Hennepin County, earned more than $18,400 in appraisal fees during the late 1950s, a study of probate records reveals.

And the judge who filled in for Judge Kehoe on vacations helped put his own son through medical school by naming him to appraise up to 10 estates a year.

The substitute judge, O. J. Anderson, Wright County, himself received more than $20,000 in appraisal fees during the same period, when he served two months annually as a replacement for Judge Kehoe.

Judge Anderson, who died in 1960, named his son, Oscar D., as an appraiser while the youth was attending medical school.

"WHEN DAD got an easy appraisal, he'd give it to me," said Anderson, now an ophthalmologist in Mankato, Minn. "It was a big help to me going through school."

Anderson said he couldn't recall a fee of more than $150.

But William J. Richard, a chemist for Control Data Corp. and the husband of Judge Kehoe's daughter, Kathleen, regularly appraised million-dollar estates and none under $100,000, according to a spot survey of probate records for the period.

Richard, who moved to the Control Data plant in Omaha, Neb., last October, said in a telephone interview that he had had no experience as an appraiser before his first appointment. He said he did no appraisals after Judge Melvin J. Peterson, the present probate judge, succeeded Judge Kehoe.

AMONG THE estates appraised by Richard as shown in a spot check of records — were those of Lawrence S. Donaldson II, son of the founder of the department store; Francis O. Bean, chairman of the board of International Milling Co.; Bean's wife, Bertha; Carl Waring Jones, publisher of the Minneapolis Journal, and Austen

Appraisers
Continued on Page 6A

Appraisers

Continued From Page One

S. Cargill, chairman of the board of Cargill, Inc.

During the same period, Judge Anderson, who died in 1960, coappraised the Donaldson and Jones estates with Richard and appraised the estates of Clive T. Jaffray, president of First National Bank Corp., and Wheelock Whitney Sr., businessman.

THE PROBATE appraiser system has come under attack recently because of a report by the Minnesota public examiner that the Dakota County probate judge received "kickbacks" from three public officials he appointed to appraise a $10-million estate.

A grand jury will begin investigating the charges Monday.

A bill pending in the Minnesota Legislature would abolish the court-appointed appraiser, allowing the state's executor to hire appraisers as needed.

Present law sets no qualifications for the post. It says only that "two or more disinterested persons" should be named, and that the judge should set "reasonable" fees.

THE USUAL rule - of - thumb is one-tenth of one percent of the probate assets, or $1,000 to each appraiser for each million dollars in an estate.

The most celebrated estate appraised by Richard and Judge Anderson was that of Mary Edith Williams, widow of the president of Minneapolis National Bank.

Judge Anderson received $1,000 as a guardianship appraiser, while Richard was given $1,750 to appraise much the same assets after Mrs. Williams died in 1955.

The coappraiser for each man, who thus received $2,750, was Romeo Riley, then an alderman.

A HENNEPIN County District Court judge called these fees "extravagant" in a decision finding the estate's attorneys had committed a fraud by collecting $245,000 in court-approved fees over a six-year period.

He ordered the attorneys, Oscar A. Nordquist and Frank Durham, to repay $140,000 to the estate. Eventually they paid $70,000, but back taxes and attorneys' fees wiped out most of the repayment.

Here are some of the other sizable estates appraised by Richard, with the year of the person's death and the appraisal fee:

1954 — Mrs. Bertha Boynton Bean: $787.38.

1955 — Charles C. Bovey, a director of General Mills: $2,165.

1956 — Willis Nash, a founder of Nash Finch Co., wholesale grocers: $840.
Francis O. Bean: $2,721.
Mrs. Bessie P. Douglas, daughter of State Rep. Curtis Pettit: $1,648.

1957 — Austen S. Cargill: $1,815.
Carl Waring Jones: $1,041.
Charles F. Haglin, owner of Haglin Equipment Co.: $1,500.

1958 — Donaldson: $1,825.

Judge Anderson, in addition to the Donaldson and Jones estates, received twice as much as Richard, or $3,296, for appraising Mrs. Douglas' estate.

Among the other large estates he appraised were:

1957 — Whitney: $3,500.
Jaffray: $1,360.

1958 — James R. Stewart Minneapolis grain dealer $1,780.

TIME MAGAZINE, MARCH 26, 1965
(pp. 63 and 63A)

THE LAW

JUDGES

Remedy for Unfitness

Illness, or age, or simple inertia may leave him unqualified for his job, but the judge who deals daily with the lives, liberty and property of people forced to come before him may have been appointed for life. If so, he can be fired only for gross misconduct. If he has been elected, it usually takes some sort of major scandal to unseat him. Is there no other way by which the honest but unfit judge can be removed from the bench when necessary?

The federal judiciary has no answer short of impeachment—a tactic successfully used only four times since 1789.

STEPHEN FRISCH



CALIFORNIA'S GIBSON
"Please comment."

Yet senile, lifetime judges have plagued even the Supreme Court. In the 1920s the failing Justice Joseph McKenna once wrote an opinion stating the exact opposite of what all nine Justices, including himself, had voted to say. As for state courts, there have been many efforts to let bar groups monitor unfit judges and recommend removal. But what lawyer wants to bring charges against the very judge who may hear his next case?

Quiet Persuasion. Now California is trying a widely admired device that may solve the problem. The idea began taking shape in the early 1950s when a murder trial was interrupted for four days because the judge vanished on an alcoholic binge. Indignantly, California's now retired Chief Justice Phil S. Gibson spurred a bar-bench study that turned up a surprising number of shocking statistics. Of five judges in one county, four had been absent for as long as a year because of ill health. Despite mounting case loads, other judges thought nothing of taking three-month vacations and playing golf during court hours. Others needed psychiatric care; many were just plain aged.

Chief Justice Gibson pressed for a state constitutional amendment that would give the California Supreme Court full power to remove unfit judges at every level, including its own. The state legislature and California voters overwhelmingly approved such an amendment in 1960. The bench-dominated body that has been set up to do the high court's investigating work is a nine-member Commission on Judicial Qualifications—five judges, two lawyers and two laymen. The commission operates out of San Francisco under Executive Secretary Jack E. Frankel, an able, tactful lawyer of 40.

Gripes about judges may come to Frankel from any private citizen, though meaningful complaints generally come from other judges, lawyers and grand juries. To safeguard the traditional independence of the judiciary, Frankel focuses only on alleged disability and misconduct—for example, senility, public alcoholism or persistent discourtesy. The commission has the power to subpoena medical records, order medical examinations. Once the commission is convinced that a complaint has merit, Secretary Frankel simply sends the judge a registered letter outlining the charges and adds a polite request: "Please comment."

Quiet Resignation. Some judges immediately blast back that personal enemies are out to "persecute" them. But most recognize that resignation is preferable to the alternative: a commission hearing and public review by the State Supreme Court. So far, the commission has received 344 formal complaints, found 118 worth investigating, and produced 26 actual resignations. All of the departed judges quit with no publicity whatever. Only one judge under investigation (for berating prosecutors) has ever availed himself of Supreme Court review. He won his case and stayed on the bench.

California is also fostering judicial fitness by new benefits that encourage judges to retire at 70. If he quits after 20 years on the job, a California judge goes on receiving 75% of his pay for life. If he fails to retire at 70, the pension drops to 50%. In 1959 California had about 80 judges aged 70 or over. Now it has only six.

So successful is California's system that similar legislation is pending in Colorado, Florida, Kansas, New Mexico, Ohio, Oklahoma and Texas. The American Bar Association is pondering endorsement of the idea that California-style discipline should extend to federal courts as well. Congress might very well balk and there might be constitutional problems,* but aid in the maintenance of U.S. judicial fitness deserves serious consideration.

* Such as the fact that Article 3 says flatly that federal judges "shall hold their offices during good behavior."

Chapter I

QUALITY AND COMPENSATION OF THE JUDICIARY

Judicial Personnel. The basic consideration in every judicial establishment is the caliber of its personnel. The law as administered cannot be better than the judge who expounds it, the jurors who find the facts under the instructions of the judge as to the law, and the lawyers who try the case. Each must fulfill his function properly or a miscarriage of justice may ensue.

We need judges learned in the law, not merely the law in books but, something far more difficult to acquire, the law as applied in action in the courtroom; judges deeply versed in the mysteries of human nature and adept in the discovery of the truth in the discordant testimony of fallible human beings; judges beholden to no man, independent and honest and -- equally important -- believed by all men to be independent and honest; judges, above all, fired with consuming zeal to mete out justice according to law to every man, woman, and child that may come before them and to preserve individual freedom against any aggression of government; judges with the humility born of wisdom, patient and untiring in the search for truth and keenly conscious of the evils arising in a workaday world from any unnecessary delay. Judges with all of these attributes are not easy to find, but which of these traits dare we eliminate if we are to hope for evenhanded justice? Such ideal judges can after a fashion make even an inadequate system of substantive law achieve justice; on the other hand, judges who lack these qualifications will defeat the best system of substantive and procedural law imaginable.

- Arthur T. Vanderbilt
The Challenge of Law Reform - (1955)

A Topical Outline for Guided Reading and Discussion

JUDICIAL PERSONNEL

I. Qualifications for Judicial Office

A. Does the judicial branch have the same obligations as the executive and legislative branches of government? If not, how are they different?

B. What are the functions of a judge?

a. What professional training does a judge need? By analogy, is a judge more like a general medical practitioner or a specialist?

b. What is meant by independence of the judiciary and how important is it?

1. What duty does a judge have to the parties in a particular case?

2. What duty does a judge have to uphold the law?

c. Are the personal and professional qualifications for judicial office the same as those required for other governmental offices? If not, how are they different? If not, what is the best method of securing qualified judges?

II. How can we assure the continuation of a bench of this quality?

A. Judicial Selection

1. Election

a. How many and which states elect judges?

1. How many states elect judges on partisan ballots?

(a) How do candidates in partisan states get on the ballot?

2. How many states elect judges on non-partisan ballots?

(a) How do candidates in non-partisan states get on the ballot?

(b) How are candidates elected in non-partisan states?

3. How many judges in elective states are actually elected the first time they go on the bench?

b. How well informed are voters about candidates and their respective qualifications for judicial office? In metropolitan areas? In rural areas?

c. How much does it cost to run a judicial campaign?

(a) Is this more or less than the annual salary for the judicial office?

(b) Who contributes to judicial campaign funds?

(c) How much do judges contribute to party campaign funds?

d. What roles are played in judicial election campaigns by political parties, bar associations, newspapers and other media, civic organizations and individuals?

e. What are the strengths and weaknesses of elective systems? In partisan election states? In non-partisan election states?

2. Appointment

a. In how many and which states are judges appointed?

1. What are the typical terms of judicial office in appointive states?

(a) How are judges reappointed to office?

(b) Who has the power of appointment?

(1) Are there any limitations on the appointing power?

(a) Most appointments be confirmed and by whom?

(c) What roles are played by political parties, bar associations,

newspapers and other media, civic organizations, and individual citizens in determining who shall be appointed to judicial office?

(d) What are the strengths and weaknesses of appointive systems?

3. Merit selection-appointment-election plans
   a. What is the history of the Missouri Plan?"
      1. How was the plan initiated and when?
      2. What organizations have approved the plan and when?
      3. What states have adopted the plan for some or all of their courts and when?
   b. What are the provisions of the plan?
      1. Nominating commission
         (a) What is the number and composition of commission membership?
         (b) Who selects commission members?
         (c) What qualifications and limitations are usually imposed on commission membership? How long do commission members serve?
      2. Nominees
         (a) How are names of possible nominees for judicial office obtained?
         (b) What kinds of investigation of possible nominees are undertaken by nominating commissions?
      3. Appointment
         (a) Who usually makes the appointment under the plan?
            1. Is there a time limit?
         (b) What happens if an appointment is not made within the time limit?
         (c) What are the strengths and weaknesses of this selection plan?

B. Judicial Tenure
   1. How long should a judge remain in office?
      a. What are the advantages and disadvantages of life tenure?
      b. If judges should be required to be re-evaluated periodically, should this occur in five or less years, ten or less years, or fifteen or less years?
         (1) Should there be different terms of office for different types of judicial office?
   2. What are the methods by which a judge could be evaluated as to his past performance and probable future performance? Who should do the evaluation? How should it be done?
      a. Reappointment. b. Competitive re-election. 3. Non-competitive re-election?
   3. What is non-competitive re-election?
      a. How does it work? Do any states use this method?
      b. What does it cost a judge to get re-elected under this plan?
      c. Has any judge ever failed to be re-elected under this plan?
      d. What are the strengths and weaknesses of this method as compared to competitive re-election?

Desirable and Practicable Methods for Securing Able and Efficient Judges Are under Wide Discussion

SELECTION AND TENURE OF JUDGES

By Glenn R. Winters

ONE day long ago an elderly man went out in the country to visit his son-in-law. The son-in-law was the leader of a large band of slaves that had recently made their escape from their Egyptian masters and were then encamped in the desert on the way to the more fertile regions of the north, where they hoped to establish a permanent abode. The young man, whose name was Moses, graciously greeted Jethro, his father-in-law, and told him about the venture and how it was progressing. The next morning, however, Jethro found himself left alone and Moses surrounded by a great throng of people with whom he was busily conferring. After that had continued all day, the guest made his way to Moses' side and asked him what was going on. Moses answered, according to the record:

> . . . the people come unto me to enquire of God:
>
> When they have a matter, they come unto me; and I judge between one and another, and I do make them know the statutes of God, and his laws.

The experience of the children of Israel and their leader Moses at that time is a parallel of the experience of every civilized social group and its rulers in all human history. Moses' first responsibility as their leader was to establish their freedom and dispose of the national enemy. In other instances this had been done by driving out an invader or oppressor, but the Israelites accomplished the equivalent by a fairly peaceful emigration from the homeland of their oppressors to a new one of their own. Once the waters of the Red Sea had closed over their pursuers and they found themselves at last on their own, Moses discovered himself burdened with two new and closely related responsibilities—the maintenance of law and order among his newly liberated followers and, as a vital essential thereto, the administration of private justice among them.

Governmental activities these latter days, and for some time back, have grown to encompass practically every phase of the life of the people, but if the nonessentials and less essentials are stripped away one by one, it will be found that these two, closely linked together, are the ones upon which all others are based—the keeping of the peace and, to forestall acts of violence on the part of aggrieved persons, the administration of private justice among individuals. These are inescapable responsibilities of rulership—attributes of sovereign power—and wherever sovereignty exists, there responsibility for the administration of justice likewise exists.

THE first repository of the sovereign power in the case of the Israelites was naturally their leader Moses, and that is why he accepted the responsibility of keep-

Excerpt from an article appearing in the Michigan Alumnus Quarterly Review.

ing order among the people and settling disputes that might otherwise have led to disorder. Kings throughout history have acknowledged this responsibility and discharged it according to their own standards —some well, some not so well. Five centuries after Jethro's visit to Moses, when Israel had become established in its new home and had reached a position of greatness among the nations of the world, King Solomon enhanced his reputation among his people as a great and wise ruler by his famous judgment awarding a baby to the woman who was willing to renounce her claim to it rather than have it killed, instead of to her contestant, who was willing to accede to the king's suggestion that the infant be cut in two and divided equally between them.

In the early history of our own legal system, we find the kings of England holding court to dispense justice among their subjects, and from that practice are derived such terms as *coram rege*, meaning to be tried before the king, and the Court of King's Bench. The English kings, however, and all other kings, have sooner or later reached the conclusion forced upon Moses that day in the desert by the pointed criticism of his father-in-law:

> The thing that thou doest is not good.
>
> Thou wilt surely wear away, both thou, and this people that is with thee: for this thing is too heavy for thee; thou art not able to perform it thyself alone.

Jethro's suggestion was that Moses select suitably qualified men and delegate his judicial power to them:

> And let them judge the people at all seasons: and it shall be, that every great matter they shall bring unto thee, but every small matter they shall judge: so shall it be easier for thyself, and they shall bear the burden with thee.

Moses promptly accepted and acted upon this excellent advice; the English royal courts developed to the point where the king finally took no part, even in the hard cases; and in every land and every clime where men have lived peacefully together in civilized society, they have brought their disputes to courts, where judges have heard them and declared the law to them.

In a democracy like America, where sovereignty resides in the whole body of the people, there was never a time when justice could be administered *coram rege*, and from the very beginning of our national existence our private disputes have been settled in courts presided over by judges wielding the judicial power of the sovereign people.

MOSES' first problem in carrying out Jethro's advice was to decide what men to put in these newly created judicial posts. Presumably, he had some kind of military organization to plan and carry out successfully the vast project of moving a nation of bondsmen from the custody of their hostile captors, but men who were apt at carrying out orders and seeing to the execution of such a job as that would not necessarily be suitable appointees for this new and different responsibility of sitting in judgment on their fellow men. Jethro had some ideas on that point also:

> Moreover thou shalt provide out of all the people able men, such as fear God, men of truth, hating covetousness. . . .

Not a bad formula for judicial personnel. A few centuries thereafter, Harmhab, an Egyptian king, confronted with the same problem, wrote:

> I have sailed and traveled through all the land. I have sought out two judges, perfect in speech, excellent in character, skilled in penetrating the innermost thoughts of men, and acquainted with the procedure of the palace and the laws of the court.

In Volume 62 of the *Annual Reports of the American Bar Association* is published that organization's "Canons of Judicial Ethics," setting an exalted but none-too-lofty standard for men who enter upon what Dean John H. Wigmore once called

the "priesthood of justice."

Moses' method of selecting men who measured up to his concept of judicial standards was simple and, without doubt, highly satisfactory. He personally appointed from among men of his own acquaintance those he thought best fitted for the position. King Harmhab of Egypt had a somewhat harder job. His reference to sailing and traveling throughout the land leads us to conclude that he knew of no one offhand who met the very high standard he set and that he searched his kingdom for judicial talent, investigated the character and qualifications of many, and no doubt had personal interviews with some of the more likely prospects before he finally decided upon the two that received the appointment.

Such a method, in the hands of an able and conscientious ruler, can never be improved upon. Often, however, circumstances interfere with its proper functioning, and then men who ought not to be judges get on the bench. In some of the less glorious chapters of English history, for example, we find that the king's courts were occupied by men chosen not for their integrity and judicial ability but for their willingness to co-operate with the sovereign in oppressing the people. In the early American colonies unworthy judges sometimes held office because the king was thousands of miles away on the other side of the ocean and utterly dependent upon the recommendations of the royal governors, who sometimes allowed their personal and political preferences to decide the issue. And in a democracy like ours, where there is no individual sovereign, judges can never be chosen as they were in Israel and Egypt. In short, only in primitive society will that method operate satisfactorily, and since the need for high judicial standards is greater, if anything, in a more complex social order, one of the greatest problems of mankind today, particularly in America, is how under modern conditions to obtain for our courts the kind of judges King Harmhab was able by his own personal efforts to provide for his people.

Some Notes on The
HISTORY OF JUDICIAL SELECTION AND TENURE IN AMERICA
by
Glenn R. Winters, Executive Director
American Judicature Society

Popular election of judges was never suggested nor thought of by the founding fathers who planned so well for the preservation of our liberty and security; it did not really make its appearance until three-quarters of a century after our nation was founded and twenty-nine of the states had already been admitted to the Union.

In colonial times most judges were appointed by the governors, a few by the legislatures. New states came into the Union rapidly during its first half-century, and all of them adopted one or the other of these methods. As early as 1812, to be sure, Georgia had tried election of inferior judges, and in 1832 Mississippi went over to a completely elected state judiciary, but these early precedents were largely ignored elsewhere, and right up until the middle of the century about half of the judges of America were appointed by governors and the other half by state legislatures.

The advent of Jacksonian Democracy focused attention on the elective method, which seemed to promise relief from a judiciary which owed its appointment, and therefore its allegiance, to a governor or legislature. The New York constitutional convention of 1846, which substituted popular election for appointment for all of New York's judges, really ushered in the era of elective judges in this country. A majority of the states scrambled to join the parade, and none of the states admitted thereafter had anything but elected judges. From the late 1840's through the 1860's twenty-four states swung over to election.

Not all of the older states were satisfied with the innovation. Seven of them -- Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island and South Carolina -- never got into it at all, and Maine only with respect to probate judges. Virginia went back to legislative appointment after fourteen years of the elective system. Vermont began electing judges of inferior courts in 1850, but gave it up for legislative appointment of all judges in 1870. Florida first tried electing circuit judges and appointing supreme court justices and finally reversed itself, electing supreme court justices and appointing circuit judges. Even Mississippi went back to appointment in 1868, and stayed with it until 1910.

Elsewhere, states that never had anything but elected judges tried to eliminate the evils of political partisanship in judicial selection by providing for election of judges on a non-partisan ballot. By 1913 between 15 and 20 states had adopted non-partisan election and it was the growing realization that this was no better that paved the way for serious consideration of the combination nominative-appointive-elective plan at that time.

SELECTION OF JUDGES -- THE FICTION OF MAJORITY ELECTION*

by
George E. Brand**

Consideration of the problems will be facilitated by asking these three questions:

What are the people entitled to from the judiciary; what is the judiciary entitled to from the people; and are either the people or the judiciary getting that to which they are entitled?

It appears to me that a composite answer to the first two questions is this:

> The people expect, and have the right to demand, from the courts, justice according to the law, ably and impartially administered by judges selected and retained on a merit and qualification basis, with the assurance to such judges of tenure in office free from extraneous pressure and obligation.

If that be so, what measure of achievement has the elective method of judicial selection produced?

My answer is that the measure of achievement has been very unsatisfactory.

CONVENTION METHOD OF NOMINATION

First, very briefly as to the convention method of nomination for election.

When the evils of the scramble for judgeships in direct primaries caused the troubled Judicial Council of Missouri, in 1936, to recommend a return to the convention method of judicial nomination, Professor Israel Treiman of the Law School of Washington University (who later had much to do with the writing of the present Missouri plan) in the public press graphically stated:

> "The wave of popular resentment against abuses and corruption of machine politics that arose at the beginning of the present century swept away in most states the entire system of nominating candidates for public office by convention and substituted for it the direct primary method of nomination. Included in this movement was the abolition of separate judicial conventions, with the result that at the present time vestiges of the system survive in only five states."

Some years ago when control of the county convention in my county of Wayne

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* Excerpts from a speech before the Nebraska State Bar Association printed in the Journal of the American Judicature Society, February, 1951. Footnotes have been eliminated.

** The late George E. Brand was a member of the Detroit bar, past president of the State Bar of Michigan, and past president of the American Judicature Society.

was notorious, I undertook a study of county political party conventions in Michigan to ascertain the extent that electors in the rural areas participated in the selection of county delegates who, in turn, selected the delegates to the state convention. In one county where the total vote for governor was 751, only a total of 63 votes were cast for all of the delegates. In a village casting 48 votes for governor on one ticket, 6 votes elected the delegate. On the other ticket 91 votes were cast for governor but 7 votes elected the delegate. This was not because many names were voted for -- but because very few voted for delegates. In one rural township casting 41 votes two persons received votes for delegate. One received 2 votes and the other 1. (His wife should also have voted, or did she?)

DIRECT PRIMARIES

Next, as to direct primaries:

Dissatisfaction with the direct primary as a means of judicial nomination has been pronounced in many of the states, including your own. I quote an appraisement made by the late President, William Howard Taft, that still holds true:

> "...I affirm without hesitation that in states where many of the elected judges in the past have had high rank, the introduction of nomination by direct primary has distinctly injured the character of the Bench for learning, courage and ability. The nomination and election of a judge are now to be the result of his own activity and of fortuitous circumstances."

The reasons for this are not hard to find, nor do they pertain to any one state.

Detroit, located in Wayne County, has 18 circuit judges -- elected at the same time. Following the landslide of 1932, the prospects for replacement of at least some of the 16 Republican incumbent circuit judges, by Democrats, seemed to be unusually bright. In the 1934 primary election there were 39 candidates on the Republican ticket for the 18 judgeships and 181 on the Democratic ticket, total 220.

Stuart H. Perry has vividly described the melee of electioneering and publicity resorted to. Most of the candidates were unknown to the voters. Almost every billboard in the city was purchased by the candidates. Many of these displays reflected unethical and unfair statements and devices. Two brothers, both candidates, pledged, on billboards and in distributed literature, to remit $43,200 of their salaries, if elected. Another promised each day to give free legal advise to the public. Another promised a liberal construction of the law in keeping with the ideals of the New Deal. One advertised "Succeed with Successful Steiner." Another billboard ad portrayed a man evicted from his home as a preface to the assurance that such eviction would not have occurred had a named candidate been in office. Another candidate was accompanied to political meetings by barelegged girls in stage dress who distributed his cards. When the primary was run off it was found that 8 or 9 of the 18 Democratic nominees were of one racial-bloc-group. Few, if any, of the candidates previously endorsed on that ticket by the bar associations and the press were nominated. Fortunately, through an organized resistance, the attempt to raid the court failed, but what of the ordeal to which the incumbents were subjected by the aspirants? Michigan then resorted to the separate, nonpartisan judicial ballot

at both primary and general elections as to county judges.

THE NON-PARTISAN BALLOT

Next, as to nonpartisan elections:

That the direct party primary method was unsatisfactory may also be assumed from the adoption, in the last 30 years, of the nonpartisan plan in so many states.

Montana's experience with the separate nonpartisan judicial ballot is interesting. It developed that many of the voters failed to vote on the separate judicial ballot. Consequently, in 1937, the law was changed so that a nonpartisan column was provided on the main ballot. Even this arrangement appears to have been unsatisfactory.

I think it is generally true throughout the country that the votes cast for governor at a general election greatly exceed those cast for judicial officers. I sampled the vote in Michigan in 1942 when the two persons were listed on a separate nonpartisan judicial ballot as contenders for the office of justice of the Supreme Court. A total of 1,193,555 votes were cast for the office of governor, as against a total of 660,302 for the judicial office. In other words only 55% of the voters who voted for governor voted for the high judicial office.

Dissatisfaction with the Ohio nonpartisan plan adopted in 1911 could not be more authoritatively established than by the following statement by the late Honorable Newton D. Baker. In 1934 during a symposium on judicial selection, Mr. Baker said:

> "Just before Senator Burton died, I happened to call on him in his apartment at Washington. He was very mellow. He knew he was approaching the end of a very long and very illustrious and useful public life. In the course of the conversation he said to me: 'Baker you and I together drew the nonpartisan primary law in Ohio. Do you think we did the people of Ohio a service?' And I said to him: 'No, Senator, I regret to say I think we did them a very great disservice.' He said to me: 'Baker, I regard that as the most vitally wrong public act to my long career.' And I was under no need of asking him why. I could see what was going on."

What Mr. Baker was referring to and what we know to be the picture was stated some years ago by Raymond Moley. He said:

> "More recent attempts to keep out party politics by a non-partisan ballot have roused the dogs of another kind of politics. Appeal to the people by a judge of anything except a very high court means appeal to race, religion, and other political irrelevancies. It means cheap stunts for gaining publicity and slavery to the news-gathering exigencies of the city desk. This may be called the politics of nonpartisanship. With every judge his own political leader, his ear must be to the ground constantly, instead of, as under the old system, at those fortunately infrequent moments when the oracular voice of the boss

rumbled a veiled request or an unspoken order."

I am convinced that those of the public who are informed realize that the present elective system is unsatisfactory and desire a change, provided a better plan can be offered, and that the public does not want the judiciary to be subject to the tribulations and obligations of political activity of any kind.

WHY VOTERS SHOULD GIVE IT UP

Basically, most people assume that under our theory of government a majority of the people have and should have the right to select judges and that by the elective process that right is exercised. All of this I seriously question and, in fact, dispute.

I think the underlying error is reflected by the statements so often heard, that ours is a democratic government and that by the election of judges the people exercise the right of those living in a democracy. On the contrary, we live in a republic and under a representative form of government which contemplates, to a very great extent, the indirect exercise of the rights of the people through chosen representatives. The maintenance of government through representatives of the people is implicit in a republican form of government and is in recognition of the impracticalities of a true democracy in a country of immense and scattered population and of large urban and congested centers.

We have the executive department of government, and the legislative department that makes the laws. Both are and should be directly responsible to the people, and in that relationship the will of the majority of the people is contemplated to be and is a dominant factor. The third department is the judicial, designed to test the validity of the people's law as well as to enforce valid law, not only among all of the people and their institutions and the departments of government, but also between the majority and the minority and government and the people. To me it is as inconsistent with our theory of government directly or indirectly to subject a judicial officer to the wishes or influence of a majority or a minority group affected or apt to be affected by litigation before him, as it is for the judge to become holden to an individual litigant.

The question whether the people, in fact, actually do select their judges by the elective process, lends itself much better to factual discussion. Probably not half of the registered voters of this land of ours, and certainly not over half of those who are qualified to register actually vote at elections generally. A varying percentage, probably averaging less than half of those who do vote, actually vote for judicial officers. I venture that the percentage of vote at primary elections is even lower. As a mere matter of mathematics, the one receiving a majority vote for a judicial office (and many times the margins between the candidates are narrow) is not elected by a majority of the people, but by a minority, and there is no reason why we can properly assume that a judge so elected is unaware of that fact or is apt to forget it. Even if we should be reconciled to the theory that a majority should control in judicial selection, the majority, in fact, does not control the election of judges. I think the people can be made to see this, especially in these days of strong minority pressure group organization with heavy voting records and unfortunate indifference of so many other voters.

EXCERPTS FROM

Judicial Selection and Tenure --the Model Article Provisions

By W. ST. JOHN GARWOOD

JUDGE GARWOOD is a retired associate justice of the Supreme Court of Texas.

MY PART in this discussion has to do with the selection and tenure provisions of the 1962 American Bar Association Model Judicial Article for State Constitutions.

My thesis is:

That the essential and most direct route to improvement of the administration of justice is an ever abler judiciary. As the late Chief Justice Vanderbilt used to say, an able judge will often produce justice out of even bad substantive law; but a poor judge will often produce injustice out of the best substantive and procedural law.

Secondly (and I say this as a former judge myself), the judiciary being hardly more perfect than the law itself, we should no more refrain from efforts to improve it than we refrain from efforts to improve the law.

In some 30-odd states of the Union, including Texas, probably the main obstacle to a generally higher level of judicial performance is the prevailing basically-elective system of judicial selection and tenure.

At least in these 30-odd states, and whether they be "one-party" or "two-party" states, the desirably higher level of judicial performance will best be obtained by modifying their basically-elective system along the lines of the so-called American Bar Association Plan of 1937 (also known as the American Judicature Society Plan or Missouri Plan) which is incorporated in the model article.

Naturally this matter of selection and tenure almost necessarily includes subjects such as retirement and removal for cause as well as compensation; and the model article deals with all these latter highly important topics. But since, for all their importance, they appear to be less controversial and perhaps less vital than the other aspects of selection and tenure, I shall deal largely with these other aspects.

6. My thesis also includes the doubtless self-evident proposition that the Model Article, which covers the whole field of appropriate judicial provisions for a state constitution, is by no means intended to be an "all or nothing" proposition. Being the product of long and expert study, it might indeed be profitably adopted "as is" by many states; but its authors would be the last people on earth to object to even substantial modifications of particular provisions or to a piece-meal adoption of them, in order to meet special conditions, including political facts of life of particular states.

A Viewpoint Based on Experience

May I add at this point that while my views on this subject arise in large part from my own 11 years experience on the Supreme Court of Texas, including a hairbreadth escape in a 1948 Democratic primary "race" shortly after my appointment, I do not labor under any inspiration of "sour grapes". I retired voluntarily from public life at the end of my last term on

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the court without the prospect of an opponent for re-election and have to say that I was treated by both the bar and the public doubtless better than I deserved.

But I probably ought to tell you about that 1948 race. Our Texas system is, as I say, basically elective, and, for all our occasional party backslides in national elections, a direct "open-to-everybody" Democratic party primary is still our determinative election, including an occasional "runoff" primary between the two leading candidates when the first fails to give a majority to any one.

Well, with me it looked like I would have no opposition—up until the last hour of the last day for getting on the ballot, when a rival dropped his name and filing fee in the mailbox. While over the years he had successively but unsuccessfully run for the offices of State Superintendent of Public Instruction and Railroad Commissioner, hardly one out of fifty lawyers of even his own home town knew he had a law license or knew or remembered who he was. He did not even have a law office number in the telephone book. To this day I have never heard of anyone who has even heard of him appearing professionally in any court. *But* his *name* was *Jefferson Smith,* while mine was *W. St. John Garwood,* the latter involving all sorts of unfavorable political implications including affiliation with the Vatican. Moreover, only a short time previously, Texas had been enjoying a very popular movie-show called "Mr. Smith Goes to Washington," in which the appealing young hero, well played by a popular actor, was named Jefferson Smith. Well, they were counting the votes for days, and but for the fact that I was then domiciled in the largest Texas city and pretty well acquainted in one or two other large ones, my judicial career would have ended almost as soon as it began. The race was so close that Jefferson Smith still thinks I stuffed some Houston ballot boxes. Chief Justice Finley tells me that this year one of his distinguished brothers with some 14 years service on the Washington State Supreme Court had a similar experience involving a lawyer opponent with the politically rather significant name of "Robert Kennedy."

"Any Opponent Is a Dangerous Opponent"

Actually, my ordeal wasn't much worse than what happened in the same primary in the race of my colleague Chief Justice Hickman, who had held high judicial office with distinction for many years, was widely known and came as near to being popular as a good judge can. His opponent was a septuagenarian, whose only claim to fame was that he had once been suspended for six months from the practice upon jury findings of dishonorable and unprofessional conduct, duly affirmed on appeal. That opponent carried his home county, which was the third or fourth most populous county of the state, came within some 400 votes of carrying a still more populous one adjoining it and got about 40 per cent of all the votes cast in the state. On the Texas Supreme Court we had a saying that "any opponent is a dangerous opponent." There is another Texas saying that in a state-wide race any name (including that of a dead man) is worth 400,000 votes!

Now my honored friend Chief Justice McFaddin of the Arkansas Supreme Court, who is really a Texas expatriate, argues against me that the evil which produced the model article or Missouri system of selection and tenure was the baneful influence on the judiciary of *party* politics; and that this evil does not exist in one-party states like Texas or Arkansas. No doubt this is correct so far as it goes. But, as I see it, the real evil we need to remove in connection with selection and tenure is that of electoral politics generally, whether it be the party politics of two-party states or the kind of politics that prevails in one-party states. If the evil in the one case be somewhat worse than in the other, of which I am far from certain, the lesser evil is still more than sufficient to justify the changes provided by the Model Article; and the latter will fit just as well in one-party states as it did and does in two-party states like Missouri, Nebraska, Illinois, Kansas, Iowa and Alaska which, in greater or lesser degree, have adopted it. The politics which induce a Texas governor to pay a political debt to one fellow-Democrat, who is much less qualified for a judgeship than another fellow-Democrat, whom he would have ap-

pointed but for the political debt, is no less inimical to a superior judiciary than is any other kind of politics. And whenever or wherever you have an election, whether within one political party or between two, you have politics. Anyway, so far as Texas goes, she is well on the way to being a regular two-party state.

What we need is a system which, consistently with our free institutions, will recruit the best judges, keep them on the bench for the maximum number of their useful years and permit judges who are on the bench to concentrate always on their judicial duties rather than on the next election. With all respect to myself and other Texas judges, past and present, I don't think our present system adequately accomplishes that purpose.

In England, from which most of our law and other free institutions came, the judges are, by and large, abler lawyers than the abler barristers who come before them. Can we honestly say that such is true of our American states, particularly on the trial level? And while I hold no brief for the strictly appointive-life tenure system of our federal government and some of our older states (as well as Hawaii), must we not in candor admit that when a federal court vacancy occurs, there is a lot more competition for the place among the abler lawyers than in the case of a state court vacancy on the same or even a higher level? In Texas, which is certainly no more pro-federal than most other states, I have several times been asked by state judges to assist them in transferring to the federal bench. To me the obvious reason for this is nothing more nor less than the greater security of tenure which the federal system affords—freedom from the political and economic hazards, and from the corresponding political and economic preoccupations and distractions incident to a predominantly elective system.

Political and Economic Hazards

To be sure, as I say, that elective system is also, and in limited degree, an appointive system. But even if the governors always appointed on a merit basis, which they do not, the abler lawyers still will not exchange a sure or promising career in private fields, with its greater financial rewards, for an appointment which is merely a head start for the next election and thus entails all the political preoccupations and risks of elective office, including the risk of defeat and having to start life all over again when some opponent with a catchier name or baby-kissing technique happens to want the office or is financed to run for it by some disgruntled lawyer or litigant. The matter of possible campaign expense will loom large in the political preoccupation picture. Campaign costs nowadays can easily run into the hundreds of thousands. And will any high-minded lawyers relish the prospect of political preoccupation coming to affect his judicial thinking or the possibility of sitting as a judge in a close case between attorney X who has just donated $5000 to his campaign fund and attorney Y who has refused to help him at all? In my own case, while I had less reason than most of my colleagues for preoccupations of this sort, they certainly did enter into my decision to quit the bench at the not extreme age of 62.

In this latter connection it is probably significant that during my eleven years of service there was a ninety per cent turnover of the nine members of our court, including at least three or four resignations in order to accept other employment. My experience further indicates that the political distractions of elective judicial office reduce the efficiency of the judges who are on the bench and hope to remain there. I can think of a well qualified one of high rank who has had an opponent for several different elections. Of course, the lawyers have had to carry much of this load of elective effort and expense, but obviously the judge had to carry a lot of it himself. In such cases, too, the judge's colleagues have to assume the judicial work his political campaign prevents him from doing, which obviously interferes with their own duties, already heavy enough. Should one speculate over why this particular judge has had so many opponents, the answer probably is that he is domiciled in a thinly populated part of the state and thus looks like an easy political victim.

To the extent that this plan involves both an appointive and elective process, it

resembles the present method of most elective system states, since the latter, as before noted, have many judges who first came onto the bench by gubernatorial interim appointment. But the vital changes made by the plan are, first, that nobody can ever get to be a judge or move from a lower to a higher place on the bench except as he may be approved by both the nominating commission and the governor; and secondly, that the elections, to which the appointee must periodically submit after his selection never involve an opposing candidate.[1]

Obviously these improvements largely remove judicial selection and tenure of office from politics, be the latter the party-politics of two-party states or the equally obnoxious intra-party, popularity or Madison Avenue kind of politics of one-party states.

One desirable result of this should be that any judge, being free of political preoccupations, will be a better judge, because his working hours and his mind will be devoted only to judicial work. He should also be much more inclined than otherwise to stick to the judicial career rather than leaving it, perhaps at the peak of his usefulness, for some private or other position that is free from political hazards.

But more importantly, to my way of thinking, these improvements will, within a reasonable term of years, recruit many more able judges than the existing elective system permits.

In the first place, it stands to reason that the governor and the lawyer-influenced nominating commission together will usually make a better selection than those the governor makes by himself or those made by a necessarily uninformed and indifferent electorate in an open election in which any possessor of a law license can nominate himself!

In the second place, the prospect of freedom from periodical election opponents and the corresponding freedom from political preoccupations should attract many more able lawyers to the judicial career than now seek it. At the same time, the periodical confirmation elections should keep the judges amply mindful of the virtues of humility and humanity, while affording the electorate an intervention of substantial but not unrealistic proportions.

The quarter-century of experience with the plan in Missouri, as studied by any conscientious student, confirms that it has definitely improved the judiciary of that state, and without sacrifice of any legitimate interest or any proper principle of government or justice. The subsequent action of states like Kansas, Alaska, Iowa, Nebraska and Illinois re-confirms this confirmation.

Naturally no new system should be installed in such manner as to prejudice the tenure of judges now on the bench. The only change as to them would thus be the quite agreeable one of not having the prospect of an opponent at the next election.

Naturally, too, the matter of retirement and removal for cause of all judges is intimately involved with the subject of selection and tenure; and the model article so recognizes by incorporating certain provisions in this behalf. A reasonably generous program of compensation in office and a no less generous, but sternly realistic, provision for retirement are almost as essential to an abler judiciary as is a proper system of selection and tenure.

One-Man Judicial Selection

by Glenn R. Winters

IN HOW many states are judges placed upon the bench by appointment rather than by popular election? The answer—believe it or not—is *fifty*. In every state of the Union, some or all of the judges are appointed by the governor.

There are eight states, as we know, in which practically all of the judges are appointed.[1] There are four in which the legislature makes all or most of the selections,[2] and there are five states with combination appointive-elective plans applicable to all or part of the judiciary.[3]

The rest of the states, a generous majority of the whole, are the so-called "elective" states in which the state constitutions provide for election of judges by popular vote.

How, then, can we say that judges are appointed in all states? The explanation lies in the provisions for the filling of vacancies. Let us take the state of Michigan as an example. Article 7, Section 2, 8, and 9, of the Michigan constitution provide for the nomination and election of Michigan judges. You may read them through without finding a word about judicial appointments. Over in the miscellaneous provisions near the end of the article, however, you will find Section 20, consisting of a brief paragraph to the effect that in case of a vacancy in any elective office (which includes judicial offices) the governor shall appoint someone to fill the vacancy until the next election.

This was never intended by the drafters of that constitution to be anything more than a sort of emergency device to make sure that there would be no lapse in any governmental services between elections. But how does it work out? Actually, more Michigan judges are appointed by the governor under Section 20 than are chosen by the people under Section 2, 8 and 9. Of the judges now sitting in the Supreme Court of Michigan, the circuit courts, and the Common Pleas and Recorder's Courts of Detroit, more than half were originally chosen for the job by a governor. In Wayne County (Detroit) the proportion is nearly two to one.[4]

Michigan is not unique in this respect. On the contrary, it is a representative example. The *Capital Journal* of Salem, Oregon, recently called attention to the fact that the "vast majority" of Oregon judges, including every one of the judges of the supreme court of that state, were originally appointed to office, and that once a man assumes a judgeship, the voters almost never throw him out.[5]

Every one of the states supposedly having an elected judiciary provides in one way or another for the filling of vacancies by appointment by the governor, and if a count were made it would certainly show that a very substantial percentage, if not an actual majority, of the judges of all courts of record in the United States actually were chosen for the job by an act of appointment and not by vote of the people.

To those who look with disfavor on the elective process as a method of choosing

1. Eight states have an ordinary appointive system. They are: Connecticut (Const. Art. 6, Sec. 6), Delaware (Const. Art. 4, Sec. 3), Hawaii (Const. Art. 5, Sec. 3), Maine (Const. Art. 5, Part 1, Sec. 8), Maryland (Const. Art. 4, Secs. 3 & 5), Massachusetts (Const. Ch. II, Sec. 1), New Hampshire (Const. Part 2, Art. 46), New Jersey (Const. Art. 6, Sec. 6, Paragraph 1). Puerto Rico also has a Federal type appointive system (Const. Art. 5, Sec. 8).
2. Rhode Island (Const. Art. 10, Sec. 4), South Carolina (Const. Art. 5, Sec. 2), Vermont (Const. Ch. II, Secs. 42 & 43), Virginia (Const. Art. 6, Sec. 91).
3. Alabama (Const. Amends. 83 and 110), Alaska (Const. Art. 4, Secs. 5 to 9), California (Const. Art. 6, Sec. 26), Kansas (Const. Art. 3, Sec. 2), Missouri (Const. Art. 5, Sec. 29).
4. Of the judges presently sitting in the named courts, 56 originally took office by appointment and 53 by election. In Wayne County 25 were appointed and 14 elected.
5. Editorial, December 16, 1961.

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judges and advocate an appointive system instead, the idea that most American judges are initially appointed right now might sound like good news, but it is not. All of the jurisdictions making regular provision for an appointive judiciary place some kind of check or control upon the executive's appointive power—nomination or confirmation by a council or commission or by senate or legislature. A very few of the appointments to fill vacancies in elective states have such a check.[6] The great majority of them are made with no check, no restraint, no control of any kind. The governor's appointive power is unlimited and absolute. Thus a substantial percentage of all the state judges are the product of *one-man judicial selection.*

Someone will undoubtedly protest that appointments to fill a vacancy are not without a check in that the judges appointed must go before the voters for their approval at the next election. As the *Capital Journal* observed, however, judges once appointed to office are almost invariably retained in office at the next election. In any election the incumbent has a heavy advantage, and especially an incumbent who has recently had the specific endorsement of the state's highest-ranking government official. Checks and balances, to be effective, must be applied at the time of and in connection with the appointment itself, and not a year or two later after the appointee has become entrenched in the job and the voters have gotten used to calling him "Judge."

What is wrong with one-man judicial selection? Don't the governors appoint good judges? Fortunately, they very often do. Sometimes they do not. But in any event, a completely unrestricted appointing power is too much power to give to any individual. (This is said, of course, without specific reference to any particular state or governor.) Some good judicial appointments will be made by any governor, but all governors are human. All of them, without exception, got to that position by playing the game of politics and winning. It is too much to expect them always to place judicial qualifications ahead of political expediency.

The governor may know very well who really ought to have the appointment, and he may even secretly wish he could appoint that person, but when the appointing power is unconditionally his and his alone, he has no answer or alibi to offer if he goes against the wishes of the party. He cannot say, "Gee, I'm sorry. I'd like to do this for you, but the way the system is I just don't see how I can." He can, and they know it, and the pressure is on him to do it.

It gives a false impression of the scope of the governor's discretion, however, to discuss it solely in terms of political pressures. The governor's appointive power in the average state is so absolute that it can be exercised entirely at his personal whim.

He may, indeed, use a judicial appointment to take care of a faithful party man who has been defeated for some elective office (and how many, many times has this been done!) but he may also use it to reward the man who successfully managed his own personal election campaign, or to give a break to a former professional associate, to his college roommate, or to his brother-in-law. He can do all of these things without ever having to disclose to anybody what the basis of the appointment was. It is nobody's business but his own.

Isn't it amazing that people have tolerated a system like this as long as they have? There are two reasons for it. First, they have scarcely realized that it existed, believing it when they were told that theirs was an elective judiciary and not realizing that in voting to return their incumbent judges to office they were mostly simply ratifying the governor's selections. Second, no governor has abused it as much as he might have, and most of them have tried not to abuse it at all. All governors have made some good appointments, along with some poor ones. Some governors have made more poor ones than others, and so it will be on in the future unless and until the system is changed. The average in any administration is undoubtedly lower than it would be if some device or agency were there to help the governor find the best man and to make sure that he appoints one who is at least reasonably well qualified.

6. Vacancy appointments by the governor in New York must be confirmed by the senate (Const. Art. 6, Sec. 5). The eight states listed in footnote one also have checks on vacancy appointments although there still exists the power to make recess appointments if the confirming body is not in session at the time of the vacancy. Delaware requires the governor to reconvene the senate if a vacancy occurs while the senate is not in session. Hawaii requires that the governor give 10 days public notice before making an interim appointment.

EXCERPTS FROM

A BETTER WAY TO SELECT JUDGES

By SAMUEL I. ROSENMAN

Judge Rosenman, president of the Association of the Bar of the City of New York, delivered this address before the 51st annual meeting of the American Judicature Society on August 12, 1964 in New York City.

There is a variant of the Missouri Plan which has been operating in this city for the last two and a half years with whose operations I am quite familiar—the Mayor's Committee on the Judiciary.

This committee and its functions were suggested to Mayor Wagner by some leading members of the bar in this city. He adopted them voluntarily. The committee has operated without compulsion of law; but the Mayor has cooperated with it completely. The committee consists of 25 members—lawyers and laymen—all appointed by the Mayor. Some of the lawyers are acknowledged leaders of the bar; they include two former judges of the Supreme Court of the state and one former chief judge of our Court of Appeals. The lawyers were appointed after consultation with the presiding justices of the Appellate Division in the two departments included in the city. The lay members are all prominent in various civic organizations, and were selected by the Mayor largely for that reason. Each of the five counties in the city is represented on the committee.

This is the way it operates. When a vacancy occurs in any of the courts which has to be filled by the Mayor, he so informs the committee. The committee within a reasonable time recommends five names for the vacancy. The Mayor has agreed to appoint only from among those names —and to date he has scrupulously carried out that voluntary agreement.

How are those five names selected to be presented to the Mayor? They come from a file of many names which the committee has collected and investigated. Names are recommended to the committee from time to time by anyone who wishes to do so—by individual lawyers or laymen, civic groups, political organizations of any party, by members of the committee or by the Mayor himself. In this way a growing file of proposed candidates has been built up and investigated. Each candidate fills out a long and searching questionnaire as to his academic and professional education, experience and activities. The committee has an executive director and one investigator, paid by the City of New York.

The investigation is as thorough as it can be with these limited facilities, which should of course be increased. The candidate furnishes the names of five lawyers who were recently his adversaries in any litigated or other professional matter, who are interviewed on the assumption that a lawyer's adversary ought to be familiar with his character and ability. Judges are also asked about the man, as are court clerks and anyone who might know him. The members of the committee themselves often recommend candidates, who are given the same kind of investigation. The committee, by notices in legal publications and by circularization of bar association members, has actively sought out qualified candidates.

The first selection of the five to be sent to the Mayor is made by a separate sub-

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committee for each of the courts in which the Mayor is involved. The five selected candidates will have been interviewed fully by the sub-committee; and before the names go to the Mayor the individuals also appear before the full committee for interviews. The full committee, at the time of interviewing and voting on the five names, has before it the questionnaire, the investigative report and the report of the sub-committee.

From these five names, the Mayor selects one. He has also followed the practice of sending that one name to the bar association for further investigation and report before he finally makes the appointment.

The five names recommended to the Mayor are kept confidential, so that the final selection of one cannot be considered a reflection on the other four. For that reason, no public hearings are held, and, in my view, none should be. Publicity of this type would make many qualified lawyers hesitant to have their names considered.

So far as I have been able to discover, this is the first voluntary project of its kind. The Mayor deserves the appreciation of the bar and all other citizens of New York for setting it up.

The Plan Has Worked Well

I was co-chairman of this committee from its beginning and until my election as President of the Association of the Bar of the City of New York. Even with its shortcomings, I firmly believe that it has affirmatively improved the caliber of the judges appointed in this city. And, negatively, it has helped by the discouragement which it has given to political district leaders who used to recommend obviously unqualified followers to the Mayor, but who are now deterred by the realization that before their candidates can even be considered by the Mayor they must pass the scrutiny of this nominating committee.

The Mayor's committee has tried also to pay attention to the one political motive which, in my view, has been an asset of the elective system—the recognition of ethnic and other groups of the community in the lists which it has submitted. I am not suggesting that a man should be appointed to judicial office merely because he belongs to some particular ethnic, religious or other group. But practical politics require that a man be not overlooked merely because he belongs to one of those groups—and this realism the committee has sought to preserve in its lists of recommendations. As a result, the Mayor has been able to make his appointments from all such groups—religious, racial and foreign born.

In line with what I have already said, the Mayor's committee has never considered political activity as a disadvantage to a candidate but rather an asset. It has publicly so stated; but, at the same time, it has rejected political service as the sole, or even the major, qualification for rec-

In the case of reappointments at expiration of terms, if the Mayor's committee finds the sitting judge qualified, it does not submit additional names but merely recommends his reappointment.

Even in federal appointments, the Mayor, as the titular head of his party, has taken recommendations from the committee of names which he might submit to the president as qualified candidates. Three recent appointments to the United States District Courts in this district have been on these lists of recommendations.

The plan has worked so well that our bar associations and others are now trying to make this voluntary project a statutory one for the City of New York—not that that is necessary for the present Mayor but to insure its continuance by future Mayors.

A MISSOURI JUDGE VIEWS JUDICIAL SELECTION AND TENURE

by
ELMO B. HUNTER
Judge of the Kansas City Court of Appeals, Kansas City, Missouri.

4 commissioners? not 5

In recent months, I have participated in citizens' conferences on the courts in ten different states. In the course of these conferences, I have met and discussed this problem of securing and retaining qualified judicial personnel with over a thousand non-lawyers representing all segments of state life. Their response to the merit selection and tenure plan advocated by the American Judicature Society since 1913, approved by the American Bar Association in 1937, and first adopted in Missouri in 1940, has been consistently enthusiastic after they had an understanding of the basic elements of the plan and how it has worked for almost 25 years in Missouri. It is this demonstrated interest, particularly in how the plan has worked, which has prompted this attempt to set forth our experience in Missouri. What follows is not theoretical—it is cold and hard fact. It is not hearsay—it is first-hand experience.

Missouri Plan in Action

While the process is essentially the same as to appellate and trial courts under the plan, it may be best to give a concrete and recent example of how a trial court vacancy is filled in Missouri. Just a few months ago two of our trial judges retired because of a combination of age and illness. This created two judicial vacancies. Our judicial nominating commission issued a public statement carried by our press and other news media that the nominating commission would soon meet to consider two panels of three names each to be sent to the governor for him to select one from each panel to fill the vacancy, and that the nominating commission was open to suggestions and recommendations of names of those members of our bar best qualified to be circuit judges.

It received the names of many outstanding and highly qualified lawyers who were willing to be considered by the commission because of the nonpolitical merit type of selection involved. The commission on its own surveyed all eligible lawyers in the circuit to see if it had before it the names of all those who ought to be considered. From all sources the commission ended up with fifty-seven names.

After several weeks of careful study by the commission, the list of eligibles was cut to twelve then to nine and finally to those six who the members of the commission sincerely believed to be the six best qualified of all. Those six names, three on each of the two panels, were sent to the governor who, after his own independent consideration of them, made his selection of one from each panel. His selections were widely acclaimed by the press and the public as excellent choices from two very outstanding panels. The commission was glad to see the governor get this accolade, but its members knew that no matter which one of the three on each panel he selected, the people of Missouri would have been assured an outstanding judge.

It might be noted in passing that each of the two panels of three names submitted to the governor happened to contain the names of two Democrats and one Republican. The governor was a Democrat. He appointed a Democrat from one panel and a Republican from the other. I do not think this was deliberate. I am convinced that our plan has so proven its merit that our governor, who is oath bound to follow the constitution, shares its spirit as well as its letter. He selected the two he thought best qualified, irrespective of political party.

This is not an isolated instance. Another rather dramatic example occurred just a

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few years ago when our legislature created three new judgeships for the Kansas City area to meet the increasing cases resulting principally from population growth. The judicial selection commission sent three panels of three names each to another Democratic governor. On each panel there were two Democrats and one Republican. The governor appointed two Republicans and one Democrat.

We, in Missouri, do not claim our plan results in an equal mathematical division of Democrats and Republicans, for that is not its purpose. The constitutional duty of the members of the judicial selection commission is to select the three best names available, regardless of political party or other such irrelevant considerations, and the constitutional duty of the governor is to make an independent study of those three nominees and appoint that one he believes to be the best qualified of all.

Let me hasten to add that certain things are necessary if a system such as we have in Missouri is to work properly. I cannot stress too strongly that it is the nominating commission which is the important factor. If it selects a highly qualified panel, it is immaterial which one of the nominees a governor might appoint. To assure such a selection, the membership of the nominating panel must be composed of persons who will sincerely and faithfully carry out both the letter and the spirit of the plan. They must be men and women who will approach their task objectively, striving only to find the highest and best qualified men as nominees for appointment. They must disregard political and personal attachments and look only for those qualities which produce an outstanding judge.

In Missouri, the lawyers of the circuit elect the two lawyer members of the five-man nominating commission for filling vacancies on the circuit (trial) bench. Our bar has fully recognized the need to elect to commission membership lawyers who will carry out both the letter and the spirit of our plan. The governor appoints two laymen from within the circuit and their terms are staggered so that no one governor gets to appoint both of them. Fortunately, our governors have recognized the need to appoint objective, high-class civic leaders to the nominating commissions.

Additionally, our bar, our newspapers, radio, television, and other news media help acquaint our public with the plan and work toward its success.

Value of Lay Commissioners

In our state from time to time the question has been raised, usually by lawyers, as to why laymen should be included as members of a judicial commission whose purpose is to select those from whom judges are to be appointed. The discussion usually runs along the line that laymen are not personally acquainted with the bar generally and are not in position to know the individual qualifications of the members of the bar. I confess to having shared that type of thinking until I became a member of a judicial nominating commission. Then the experience of seeing first hand how the commission actually worked quickly demonstrated to me the real need and great value of having laymen on the nominating

The laymen keep the entire selection process objective. They help remind the other commission members that the courts are not just to serve lawyers and their interests, but truly and ultimately belong to the people who are entitled to the best. They are concerned, not only about legal skills but also about character. I am convinced that laymen do have a very important function to serve in the work of a judicial selection commission and that their very participation promotes objectivity and care in selection and, finally, instills public confidence in the results reached.

Today, features of this merit plan of judicial selection and tenure are being used for some or all judges in ten states. It has been approved by citizen groups or bar associations in another ten states. After almost a quarter of a century of experience, the bench, the bar and the citizenry of Missouri commend it to our sister states. It is, in Judge Rosenman's words, "a better way to select judges."

THE NON-PARTISAN APPOINTIVE ELECTIVE PLAN WHERE IT IS IN OPERATION TODAY

Today twelve states use all or part of the non-partisan appointive-elective plan or a variation to select all or part of their state judges and two counties have officially adopted the plan for judges of their local courts. In addition, the mayor of New York and the governors of Colorads and Pennsylvania have already voluntarily set up nominating commissions to fill judicial vacancies. The states and counties are listed in the following chart which shows the date of adoption, citations to selection provisions, the offices encompassed by the plan and the three essential elements of the plan.

In many other states, bar associations, reform groups and other organizations have recommended or are studying the adoption of an appointive-elective system. These efforts, which are of a continuing nature, will quite likely produce an increase in the number of judges selected under the plan in future years.

State Year Adopted Citation	Offices Encompassed	Commission Nomination 1	Appointment 2	Merit Retention 3	Variation from Basic Plan
California 1934 Art. 6, Sec. 26	All appellate courts (Supreme and District Court of Appeal). By local option counties may (but as yet have not) extend(ed) plan to trial courts (Superior Courts).	no	yes	yes	In place of nominating commission, a committee on qualifications created; it must con-
Missouri 1940 Art. 5, Sec. 29	All appellate courts (Supreme and Courts of Appeal), trial courts of St. Louis City and Jackson County (Circuit Courts), Probate Court of St. Louis and Jackson, Criminal Correction Court of St. Louis. By local option, plan may (but as yet has not been) extend(ed) to courts of record of judicial circuits outside St. Louis and Jackson County.	yes	yes	yes	none
Oklahoma Stats. (1961) 20-791	Juvenile Court (Tulsa County)	yes	yes	yes	none
Alabama 1950 Amend. 83 and 110	Only trial court of general jurisdiction in Birmingham. (Circuit Court of Jefferson County).	yes	yes	no	For continued tenure after first term, judges must run in partisan election.
Utah Utah Code Am. 1965 Docket Supp. 55-10-63 to 55-10-123	State-wide juvenile court.	yes	yes	no	

Excerpt from A. J. S. Information Sheet No. 19 (revised February, 1966).

Alaska 1956 Art. 4, Sec. 5 to 9 Laws 1959, Ch. 50 and 151	All appellate courts (Supreme Court) and trial courts of general jurisdiction (Superior Courts).	yes	yes	yes	none
Kansas 1958 Art. 3, Sec. 2, Gen. Stats. 20-119 to 20-138 (1959 Supp.)	Supreme Court only	yes	yes	yes	none
Iowa 1962 Art. V, Sec. 15 through 18	Appellate Court (Supreme Court) and trial courts of general jurisdiction (District Courts)	yes	yes	yes	none
Nebraska 1962 Art. IV, Sec. 11, Art. V, Secs. 4, 5, 7, 10, 15, 20, 21	Appellate Court (Supreme Court) and trial courts of general jurisdiction (District Courts)	yes	yes	yes	none
Illinois 1962 Art. 5, Secs. 10 and 11	Appellate Courts (Supreme and Appellate Courts) and trial courts of general jurisdiction (Circuit Courts)	no	no	yes	Initial Selection is by partisan election. Subsequently, judges seek retention in merit elections. Article permits change in method of initial selection.
Dade County (Miami) 1963 Home Rule Charter, Sec. 6.01	Metropolitan Court	yes	yes	yes	Appointments made by Board of County Commissioners instead of Governor
City and County of Denver 1964 Home Rule Charter, Sec. A13.8 to A.13.8-3	County Court	yes	yes	no	Appointments made by Mayor instead of Governor. Judges may be reappointed by Mayor.

COMPARATIVE CHART—NUMBER AND TENURE OF MAJOR TRIAL AND APPELLATE JUDGE

General Note: This chart records the number of judges and their prescribed terms of office (tenure) for supreme courts, intermediate appellate courts and trial courts of general jurisdiction in all 50 states, the federal judicial system, the District of Columbia and Puerto Rico. Population and lawyer figures (based, respectively, on 1960 census results and compilations by the American Bar Foundation) have been included for comparison and analysis. Statistics as to the number of judges were obtained by questionnaire survey conducted by the Society in the fall of 1965. The figures should be considered as approximate below the supreme court level in light of recurring fluctuations and vacancies, and the fact that some survey responses were so qualified.

			Number of Judges			Judicial Tenure		
State	State Population	No. of Lawyers	Highest Court	Intermediate Appellate Court	Major Trial	Highest Court	Intermediate Appellate Court	Major Trial
Alabama	3,266,740	2,712	7	3	63	6	6	6
Alaska	226,167	198	3	—	8	10	—	6
Arizona	1,302,161	1,693	5	6	42	6	6	4
Arkansas	1,786,272	1,789	7	—	23 (N)	8	—	4
California	15,717,204	22,798	7	30	353	12	12	6
Colorado	1,753,947	3,635	7	—	69	10	—	6
Connecticut	2,535,234	4,002	6	—	30	8	—	8
Delaware	446,292	514	3	—	7 (N)	12	—	12
Florida	4,951,560	7,801	7	15	119	6	6	6
Georgia	3,943,116	4,824	7	9	55	6	6	4 (N)
Hawaii	632,772	482	5	—	12	7	—	6
Idaho	667,191	683	5	—	22	6	—	4
Illinois	10,081,158	19,045	7	24	349 (N)	10	10	6
Indiana	4,662,498	4,757	5	8	115 (N)	6	4	4-6 (N)
Iowa	2,757,537	3,596	9	—	75	8	—	6
Kansas	2,178,611	3,013	7 (N)	—	57	6	—	4
Kentucky	3,038,156	3,353	7	—	68	8	—	6
Louisiana	3,257,022	4,217	7	19	78	14	12	6 (N)
Maine	969,255	990	6	—	10 (N)	7	—	7
Maryland	3,100,689	5,301	7	—	62	15	—	15
Massachusetts	5,148,578	10,443	7	—	42 (N)	Good Behavior		
Michigan	7,823,194	9,464	7	9	89	8	6	6
Minnesota	3,413,864	4,787	7	—	65	6	—	6
Mississippi	2,178,141	2,201	9	—	20 (N)	8	—	4
Missouri	4,319,813	7,501	7	9	98 (N)	12	12	6
Montana	674,767	1,031	5	—	28	6	—	4
Nebraska	1,411,330	2,358	7	—	36	6	—	6
Nevada	285,278	441	3	—	16	6	—	4
New Hampshire	606,921	647	5	—	8	To age 70	—	To age 70
New Jersey	6,066,782	9,460	7	12	40 (N)	7 years. Then life		

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State	State Population	No. of Lawyers	Number of Judges: Highest Court	Number of Judges: Intermediate Appellate Court	Number of Judges: Major Trial	Judicial Tenure: Highest Court	Judicial Tenure: Intermediate Appellate Court	Judicial Tenure: Major Trial
New Mexico	951,023	980	5	—	21	8	—	6
New York	16,782,304	50,204	7	26	172 (N)	14	5	14
North Carolina	4,556,155	3,637	7	—	43 (N)	8	—	8 (N)
North Dakota	632,446	742	5	—	16	10	—	6
Ohio	9,706,397	15,535	7	34	180	6	6	6
Oklahoma	2,328,284	4,829	12 (N)	—	44	6	—	4
Oregon	1,768,687	2,657	7	—	53	6	—	6
Pennsylvania	11,319,366	12,319	7	7	166	21	10	10
Rhode Island	859,488	1,070	5	—	11	Good Behavior	—	Good Behavior
South Carolina	2,382,594	1,896	5	—	15	10	—	4
South Dakota	680,514	760	5	—	21	6	—	4
Tennessee	3,567,089	4,251	5	9	54 (N)	8	8	8
Texas	9,579,677	14,022	12 (N)	39	177	6	6	4
Utah	890,627	1,151	5	—	19	10	—	6
Vermont	389,881	496	5	—	6	2	—	2
Virginia	3,966,949	4,758	7	—	79 (N)	12	—	8
Washington	2,853,214	3,907	9	—	76	6	—	4
West Virginia	1,860,421	1,809	5	—	29	12	—	8
Wisconsin	3,951,777	6,231	7	—	45	10	—	6
Wyoming	330,066	497	4	—	11	8	—	6
Dist. of Columbia	763,956	12,693	9	—	15	Good Behavior	—	Good Behavior
United States	179,323,175	288,336	9	78	307 (N)	Good Behavior (N)		
Puerto Rico	2,349,544	156	9	—	52 (N)	To age 70	—	12
			346	337	3,671			

Notes—

ARKANSAS—Circuit court figure; chancery court has 20 judges with 6-year terms.

DELAWARE—Superior court figure; chancery court has 3 judges with 12-year terms.

GEORGIA—Except Atlanta superior court has an 8-year term.

ILLINOIS—Figure represents number of circuit and associate circuit judgeships, some of which are vacant and may never be filled. In addition, 209 court-appointed magistrates are members of the circuit court bench.

INDIANA—Includes judges of circuit (6-year terms) and superior (4-year terms) courts.

KANSAS—Two commissioners serve with 3-year terms.

LOUISIANA—Except New Orleans district court has a 12-year term.

MAINE—Includes 1 judgeship to be established as of July 1, 1966.

MASSACHUSETTS—In the district courts, which to some extent have concurrent general jurisdiction with the superior court there are 57 full-time judges, 22 part-time judges, and 81 special judges.

MISSISSIPPI—In addition, chancery court has 21 judges with 4-year terms.

MISSOURI—In addition, St. Louis Court of Criminal Corrections has 2 judges with 4-year terms.

NEW JERSEY—Superior court figure; county court has 71 judges with two initial terms of 5 years after which term is for life.

NEW YORK—In addition, court of claims has 14 judges with 9-year terms.

NORTH CAROLINA—With the exception of 8 superior court judges who have 4-year terms.

OKLAHOMA—Includes 9 supreme court and 3 court of criminal appeal judges.

TENNESSEE—Includes 34 circuit and 20 chancery judges.

TEXAS—Includes 9 justices of the Supreme Court (final appellate court for civil cases) and 3 justices of the Court of Criminal Appeals (final appellate court for criminal matters).

VIRGINIA—Includes all judges of trial courts of record.

PUERTO RICO—Figure for superior court; legislature has authorized 83 judges for the district court.

UNITED STATES—5 territorial court judges with 8-year terms are included in this figure.

Excerpted From

THE MODEL ARTICLE FOR STATE CONSTITUTIONS

§5. SELECTION OF JUSTICES, JUDGES AND MAGISTRATES

¶1. **Nomination and Appointment.** A vacancy in a judicial office in the State, other than that of magistrate, shall be filled by the governor from a list of three nominees presented to him by the Judicial Nominating Commission. If the governor should fail to make an appointment from the list within sixty days from the day it is presented to him, the appointment shall be made by the Chief Justice or the Acting Chief Justice from the same list. Magistrates shall be appointed by the Chief Justice for a term of three years.

Committee comment: The method of selecting judicial officers of all but the lowest courts here proposed follows essentially the American Bar Association plan recommended in 1937. The provision directing the Chief Justice to appoint where the governor fails to act is designed to prevent a stalemate between the governor and the nominating commission which has occurred in States using this system.

The importance of removing the process of judicial nomination from the political arena is probably the most essential element in any scheme for adequate judicial reform.

Because the exigencies of the calendar will vary so much, the Committee thought that great freedom was necessary in the appointment of magistrates. This meant a necessity for rapid appointment and comparatively short tenure. The power of appointment was, therefore, placed in the Chief Justice. It was also felt, however, that the tenure had to be long enough to attract competent lawyers to accept appointment.

¶2. **Eligibility.** To be eligible for nomination as a justice of the Supreme Court, judge of the Court of Appeals, judge of the District Court, or to be appointed as a Magistrate, a person must be domiciled within the State, a citizen of the United States, and licensed to practice law in the courts of the State.

Committee comment: The requirements of citizenship and membership in the bar are those which are usually demanded in the States. The Committee is of the view that no other qualifications should be specified. The selection procedure will provide all other necessary safeguards, at the same time allowing the nominating commission the broadest opportunity to secure nominees of the highest calibre.

§6. TENURE OF JUSTICES AND JUDGES.

¶1. **Term of Office.** At the next general election following the expiration of three years from the date of appointment, and every ten years thereafter, so long as he retains his office, every justice and judge shall be subject to approval or rejection by the electorate. In the case of a justice of the Supreme Court, the electorate of the entire State shall vote on the question of approval or rejection. In the case of judges of the Court of Appeals and the District Court, the electorate of the districts or district in which the division of the Court of Appeals or District Court to which he was appointed is located shall vote on the question of approval or rejection.

Committee comment: This provision also follows the American Bar Association plan. The periods between appointment and election and between election and re-election have no ideal duration. They must be long enough to permit the character of the judge's work to become known, long enough so that competent persons will not reject appointment for fear of hasty rejection by the electorate. But it must be short enough to remove reasonably promptly judges who are not performing their functions adequately.

§8. THE CHIEF JUSTICE.

¶1. **Selection and Tenure.** The Chief Justice of the State shall be selected by the Judicial Nominating Commission from the members of the Supreme Court and he shall retain that office for a period of five years, subject to reappointment in the same manner, except that a member of the court may resign the office of Chief Justice without resigning from the court. During a vacancy in the office of Chief Justice, all powers and duties of that office shall devolve upon the member of the Supreme Court who is senior in length of service on that court.

Committee comment: Many alternatives presented themselves on the question of the proper agency for appointing the Chief Justice. The Committee sought an agency outside the Court itself to avoid contributing to politics and factions within the Court. To avoid political intervention, the power was not vested in the governor. The nominating commission was thought to be the most knowledgeable and non-political alternative. Tenure of office was also thought necessary to the effective functioning of the judicial administration of the courts of the State. The evils of constant rotation of the office of Chief Justice have been only too cogently demonstrated by experience.

§10. JUDICIAL NOMINATING COMMISSIONS.

There shall be a Judicial Nominating Commission for the Supreme Court and one for each division of the Court of Appeals and the District Court. Each Judicial Nominating Commission shall consist of seven members, one of whom shall be the Chief Justice of the State, who shall act as chairman. The members of the bar of the State residing in the geographic area for which the court or division sits shall elect three of their number to serve as members of said commission, and the governor shall appoint three citizens, not admitted to practice law before the courts of the State, from the residents of the geographic area for which the court or division sits. The terms of office and compensation for members of a Judicial Nominating Commission shall be fixed by the legislature, provided that not more than one-third of a commission shall be elected in any three-year period. No member of a Judicial Nominating Commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a State judicial office so long as he is a member of a Judicial Nominating Commission and for a period of five years thereafter.

Committee comment: The proposed Judicial Nominating Commission also follows the American Bar Association plan, which recommended that the list of nominees be made by an independent agency. The make-up of the Commission could be a combination of a number of variables. The Committee feels, however, that no group should have fixed representation and that all appropriate interests in the State can be represented through appointments as provided in this section. Provision is made for the participation of non-lawyers in the selection process. The disqualifications are self-explanatory.

Chapter II

JUDICIAL DISCIPLINE AND REMOVAL, COMPENSATION AND RETIREMENT

Our judges must be drawn from the more competent members of the legal profession. Judicial salaries (and insurance and retirement benefits) must be made sufficient to enable a person to make a life career of judicial service without prejudicing his and his family's standard of living and economic security.

Trial judges should be subject to mandatory retirement by age 70, but should remain subject to call, upon appropriate findings of continued fitness, when needed for judicial work.

- Excerpts from the recommendations of the 27th American Assembly on The Courts, the Public and the Law Explosion

Adequate retirement plans help to attract qualified lawyers to the bench and also tend to provide an active and alert judiciary. Automatic retirement at age 70 is desirable. Retired judges should be available for judicial assignment with their consent as they are needed and as their health permits. Retirement compensation should at all times be approximately equal to the full salary of active judges, but in no event should it be less than 75 per cent of the retired judge's salary at the time of his retirement. Adequate pensions for widows of judges should be provided.

A lawyer should not be denied judicial office solely because he is at or near the age of 60. However, age is an important factor and retirement pension plans should be such as to encourage the bringing of younger lawyers to the bench.

In the federal system, except for the Supreme Court, and in any state system in which automatic retirement at some age is not provided, another judge should be added whenever any judge reaches age 70. When he dies or retires the vacancy should then be automatically filled by that additional judge.

A judge who is unable to continue to perform his judicial duties should be placed upon disability leave with full retirement pay during the period of his disability. If the disability is permanent an additional judge should be provided. Disability should be determined by a standing commission on which the judiciary is represented.

- Excerpts from conference consensus, National Conference on Judicial Selection and Court Administration, 1959

A Topical Outline for Guided Reading and Discussion

JUDICIAL DISCIPLINE AND REMOVAL, COMPENSATION AND RETIREMENT

I. Judicial Discipline and Removal

A. General
1. Are there standards for judicial conduct?
   a. What are proper standards?
   b. Who should determine the standards?
      1. Supreme Court
      2. Judicial Council
      3. Judicial Conference
      4. Legislature
   c. Should these standards be set forth as rules of court or enacted by the legislature?
2. What should be causes for judicial discipline or removal?
   a. Willful misconduct
   b. Failure to perform duties
   c. Intemperance
   d. Incompetency
   e. Permanent physical or mental disability
   f. Others
3. Who should have the right to bring a complaint against a judge?
   a. Judges
   b. Other state officials
   c. Bar Associations
   d. Lawyers
   e. Citizens
   f. Others
4. What kinds of investigations should be made?
   a. Should such investigations be private or public?
5. Who should make the investigation?
   a. Supreme Court
   b. Bar association
   c. Special commission

B. Discipline
1. Should there be methods, short of removal, to discipline a judge?
2. Should there be different causes for disciplinary action than there are for removal?
3. Should such causes include:
   a. Failure to observe strict working hours
   b. Unwillingness to follow standard rules of procedure
   c. Inefficient use of court time
   d. Failure to submit accurate reports
   e. Overbearing behavior
   f. Failure to hand down decisions after trial or completion of appellate proceedings
4. What disciplinary sanctions should be used?
   a. Assignment to difficult duties or inconvenient courts
   b. Private reprimand
   c. Public reprimand
   d. Temporary suspension with or without pay
5. Who should administer discipline?

C. Removal
1. What are the traditional methods of removing a judge from office, how

do they work and how effective are they?
a. Impeachment b. Address c. Recall

2. What are the other methods of removal from judicial office, how do they work and how effective are they?
   a. Actions brought in the trial courts
   b. Hearings by grievance committee of the organized bar
   c. Hearings before the final appellate court
   d. Action by specially constituted courts
   e. Action by specially constituted commissions
3. What provisions should there be for appeal and review?
4. If there is apparent good cause for removal proceedings, should a judge be given the opportunity to resign from his office and avoid any publicity as regards the impending proceedings?
   a. Why?

II. Judicial Retirement and Pension Plans

A. Retirement
   1. Should retirement be voluntary or mandatory?
      a. If mandatory, what should be retirement age?
   2. Should retired judges be allowed to continue to serve as judges?
      a. If so, who should decide which judges should serve?
      b. If so, what functions could a retired judge perform?
      c. Are there any states where retired judges do continue to serve as judges?

B. Pension Plans
   1. What retirement and disability benefits should a judge receive?
      a. Should all judges be eligible?
      b. What should be the minimum years of service to make a judge eligible?
      c. Should the benefits be based on the judge's salary at the time of his retirement?
         1. If so, what fraction of his salary should be paid
      d. If the judge dies, should his widow receive any further benefits?
         1. If so, should the amount be the same or less than the judge's retirement pay?
      e. Should the state assume the full payment or should judge's contribute?
         1. Should contribution be compulsory or voluntary?
            a. If compulsory, how much should the judge contribute?
      f. What is disability?
         1. What kinds of disability should be covered by benefits?
         2. Who should determine whether or not there is disability?
         3. What should be the amount of disability benefits?

C. Judicial Compensation
   1. Are judicial salaries adequate enough to attract qualified persons to the bench?
      a. How do judicial salaries compare with income derived from the private practice of law? With income of other business and professional positions of equivalent responsibility?
   2. What are the factors which cause variation of salaries within a court

system

a. Do appellate judges receive higher salaries than trial judges?
b. Do workloads differ among courts at the same jurisdictional level and should this be a factor to be considered in setting salaries levels?
c. If particular judges assume additional or different duties such as becoming a chief judge or administrative judge or assignment judge, should this be a factor to be considered in setting salary levels?
d. Should cost-of-living differences be taken into account?
e. Should salary increases apply to all judges irrespective of when their term of office began?
f. Should anyone have the power to reduce a judge's salary during his term?

EXCERPTS FROM

Removal of Judges: California Tackles an Old Problem

The problem of removal of corrupt or incompetent judges is delicate and difficult, involving a careful balancing of the principle of judicial independence against the public interest in removing offending judges. The traditional measure of impeachment is inadequate, Mr. Frankel points out, and experience shows that incompetent or dishonest judges are not retired voluntarily or by the electorate. In 1960, California adopted a constitutional amendment providing for a commission to consider complaints about judicial misconduct or inadequacy. The Commission makes recommendations to the Supreme Court after investigation and hearing, and the Court has the power to remove judges for cause after it has reviewed the record prepared by the Commission.

by Jack E. Frankel • ***Executive Secretary, California Commission on Judicial Qualifications***

WALTER F. MURPHY, Associate Professor of Politics at Princeton University, has written about the Taft Court.[1] Chief Justice William Howard Taft reached the conclusion that Justice Joseph McKenna no longer had proper command of his mental powers. In April, 1922, he wrote to Horace Taft:

> In case after case he will write an opinion, and bring it into the conference, and it will meet objection because he has missed the point in one case, or, as in one instance, he wrote an opinion deciding the case one way when there had been a unanimous vote the other way.... He does not get the record straight, and altogether it makes a difficult situation.

By the fall of 1924 the situation had become urgent. The Chief Justice, meeting with the other seven justices November 9, agreed not to hand down decisions in cases where McKenna's vote was pivotal.

An interview with McKenna followed. According to Taft's report, "I told him that we had reached the conclusion that through a lack of physical strength he was not able to command his mental energies in such a way that he could do the work of the court." McKenna "was then disposed to argue the question," and Taft was forced to be more specific and to point out his failings. McKenna thought his colleagues were wrong and though he knew they had no authority to request his resignation, he was willing to be bound by their opinion and he agreed to retire in January, 1925.

Phillips and McCoy have written:

> One of the very great criticisms of the bench has been the failure of some judges to retire when they have become incapable of rendering efficient judicial service because of extreme old age or when some disabling illness keeps them from the performance of their duties for a very long time.
>
> [*Conduct of Judges and Lawyers*, page 150]

Albert Kales wrote in 1914:

> It is, however, a grave mistake to suppose that judges exercise their judicial power in a distasteful and arbitrary manner merely because they hold for life or during good behavior. An arbitrary or disagreeable course of action by a judge arises principally from the fact that he is subject to no authority which can receive complaints against him and act upon those complaints by way of private or public criticism and correction of the judge. The best protection against arbitrary and disagreeable actions by judges is a duly constituted body of fellow judges who hold a position of superior power and authority and to whom complaints as to the conduct of judges may be brought and who may investigate those complaints and exercise a corrective influence. [*Methods of Selecting and Retiring Judges in a Metropolitan District* by Albert Kales (March, 1914), 52 *Annals of the American Academy of Political and Social Science.*]

Burke Shartel of the University of Michigan Law School made this observation in 1936:

> There has been copious discussion in recent years of problems of judicial organization; this discussion has concerned particularly the topics of selection and tenure for judges. Another

Reprinted from the American Bar Association Journal (February, 1963).

aspect of the general problem of organizing a sound judiciary, the matter of retirement and removal of unfit judges has not received the attention that it deserves [20 *Jour. Amer. Jud. Soc.* 133 (1936)].

As an introduction to Professor Shartel's article there is this editorial comment, presumably by Herbert Harley:

> There has been until now a great gap in the material we have possessed as a basis for improving judicial conduct. We have been almost universally deprived of a means for dealing with the judge whose powers are waning. The federal system is insufficient as to this and popular election with short terms has been notoriously unable to do justice, either to the office, or to the incumbent.
>
> It is naturally a judicial function to determine when the removal of a judge is essential to the good of the service. Experience proves the folly of leaving the decision either to the judge himself or to the electorate. . . . [20 *Jour. Amer. Jud. Soc.* 123 (1936)].

How should a judge who has demonstrated lack of fitness be replaced? What are the possibilities?

The Difficulties of Various Solutions

Leaving the decision to the judge himself or to the electorate is naive. The traditional measures of impeachment and address have failed.[2] Compulsory retirement at a fixed age is limited at best, besides introducing other objections. Permitting action to remove judges convicted of a crime is obviously of narrow applicability. Elimination by executive action has been avoided to insure freedom from executive control.[3]

Some states treat the problem as one of bar discipline.[4] By rule of the Ohio and Wisconsin Supreme Courts, grievance committees consider complaints for judicial misconduct.[5]

Should the bar organization be vested with authority over judges? Is it feasible for committees of lawyers to supply the forum for the proceedings? What happens in the area of judicial disability? It was reported for the survey of the legal profession that this was not a satisfactory arrangement "for the obvious reasons that the members of the grievance committees being practising lawyers are hesitant to present and try charges against their judges".[6]

Some states for many years have have had a method in effect employing judicial action, leading examples being Texas, Louisiana and Alabama.

The Texas Supreme Court may act against a district court judge when there is a written presentation upon the oaths of ten lawyers practicing in the courts held by the judge.[7]

The Louisiana Supreme Court may try judges for various kinds of misconduct, following suit by the Attorney General on request of the Governor, twenty-five citizens and taxpayers or one half of the attorneys residing in the judge's district.[8]

In Alabama, the Supreme Court may remove judges (except of the Supreme Court) for a variety of reasons, after the Attorney General (or five taxpayers in the judge's district) specifies charges.[9]

In 1959 the Michigan Supreme Court adopted rules on the superintendence of the judiciary, under which the Supreme Court may initiate an investigation and hear the proceeding, but only after recommendation to the Governor or the legislature is the removal effected.[10]

New York attempted something different through its court on the judiciary which the Chief Judge convenes. Notice of the charges and the date of the scheduled trial go to the Governor, President of the Senate, and Speaker of the Assembly. If a member of the legislature prefers the same charges in the legislature, the judge need not answer in the court on the judiciary, and proceedings there are stayed pending legislative determination.

Although formed in 1947, its first meeting was not until 1959, when a matter was presented involving two judges who had engaged in an outspoken exchange about the handling of a murder trial. The four departments of the appellate division designated members. (The Chief Judge who acts as the presiding officer and the senior associate judge are named as members by the Constitution.) Rules were adopted. Reprimands resulted.

The court on the judiciary was convened for the second time August 16, 1962. Four appellate division representatives were again selected, one of whom had served the other time. As this is written the matter, which charges the judge with having obstructed an investigation into ambulance chasing in Brooklyn, is pending.[11]

The Treatment in the Model Judiciary Article

The model judiciary article for state constitutions endorsed by the American Bar Association provides that, except for Supreme Court justices (subject to removal only by impeachment), all judges shall be subject to retirement for incapacity and to removal for cause by the Supreme Court after hearing.[12] This derives from the New Jersey and Puerto Rico Constitutions. The comparable New Jersey provision never received statutory implementation. No proceeding has been brought there.[13]

In Puerto Rico, which has a similar constitutional provision, there was statutory implementation in 1952. The Office of Court Administrator screens charges and reports to the Chief Justice. The Supreme Court may then cause further investigation and request a prosecution before the Court by the Secretary of Justice (Attorney General), who also may initiate a prosecution on his own motion. Grounds are "immoral, improper or reprehensible conduct or neglect of official duties".[14]

Alaska permits the Judicial Council to recommend "early retirement" of non-Supreme Court judges to the Supreme Court but the grounds are limited to incapacity.[15]

Before November 8, 1960, there was no suitable method in California of removing a judge for cause or disability. Some realized the unsatisfactory state of affairs.[16] It was suggested that the Judicial Council assume disciplinary supervision, and that the New York court on the judiciary be studied.

There was one individual who understood the true significance of the problem and brought it out into the open. Chief Justice Phil S. Gibson, in a speech November 16, 1955, celebrating the fiftieth anniversary of the

Law School of the University of Southern California, included the topic of judicial removal:

> Some better method must be devised to compel retirement in cases where the mental or physical infirmity of a judge seriously interferes with the performance of his judicial duties and to secure the removal of a judge for causes other than misdemeanor in office or conviction of crime involving moral turpitude.

Referring to several other proposals as well, the Chief Justice urged action:

> . . . after study and discussion we should be able to agree upon measures designed to effect the necessary substantive changes. We are fortunate in having two organizations that are authorized by law and that are well equipped to accept leadership in a program of this kind — the Judicial Council and the State Bar. Such a program should capture the interest and stimulate the imagination of every lawyer and judge in the state. [*The Need for Constitutional Revision*, page 16.][17]

This was to usher in an undertaking known as the Joint State Bar-Judicial Council project. A comprehensive program, advanced in 1957, quickly developed opposition, requiring withdrawal in favor of a legislative study. At the 1959 session a program was again offered, including a proposal for a Judicial Qualifications Commission to deal with lack of fitness, although modified from the 1957 version. After passing the legislature it was approved by the voters November 8, 1960, and has functioned since March 24, 1961.[18]

The Commission has authority to investigate, and conduct proceedings against, any California judge when there may be willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance, or disability of a permanent character seriously interfering with the performance of his duties. Following a preliminary investigation and a formal proceeding, the Commission may recommend removal or retirement to the Supreme Court, which acts after reviewing the record. All complaints, investigations and hearings are confidential unless and until a recommendation for removal or retirement is filed with the court, when the record becomes public.[19]

The Commission is composed of five judges appointed by the Supreme Court (two from the intermediate appellate court; two from the superior court, the general trial court in California; and one from the municipal court, the trial court of limited jurisdiction). There are two public members appointed by the Governor with the consent of the Senate, and two lawyers appointed by the State Bar's Board of Governors.

The members selected as chairman Justice A. F. Bray of the District Court of Appeal. His energy and sound judgment have been an important factor in the Commission's successful start.

Although, with five of the nine members from the bench, the judiciary is the dominant element in the composition, representation from the Bar and citizenry marks the stake of the lawyers and the public in the judicial department.

The Background of the Problem in California

What led to the adoption of the Commission? During the period between November, 1955, when Chief Justice Gibson urged consideration of the problem, to its approval by the legislature at the 1959 session, the necessity for an effective procedure was demonstrated.

In one county the grand jury reported on law enforcement difficulties due to the prolonged absence from the bench of one inferior court judge and the inability of a second judge to perform his duties due to age and poor physical condition. Although crippling illnesses had prevented the absent judge from attending to judicial duties for many months, nothing could be done and his regular salary continued.

At the other end of the state, in a county with five inferior court judges, two were continuously absent over six months, a third lost his position upon the creation of a new court district after being absent almost a year, and a fourth was away over a year. This was all due to physical disability. The taxpayers had to pay extra compensation and travel expense for outside judges assigned to do the work of those courts in addition to the salaries to the incapacitated judges. One of the four was in an institution for several months. When this information came out before the legislative committee the chairman's comment was "A charitable institution?"

That committee discovered that one judge in a metropolitan area held court sessions on nine mornings between December, 1955, and December, 1957. His inactivity was due to a heart ailment, although the legislative committee was told that he played golf regularly. Private citizens didn't seem to know about this. Attorneys did, but said nothing. Other judges on the court didn't complain although the calendar was eight months behind. When the judge realized he was being checked on, he retired on a pension. Meanwhile, he had drawn $33,000 for nine mornings' work.

The trial court judges in another county were faced with a situation in which one of the judges, although losing his mental faculties and unable to handle his work, was unwilling to retire.

There were examples of intoxication interfering with the performance of judicial duties, including cases where a judge had been intoxicated while on the bench.

Failure to perform duties turned up in varying situations.

1. Failure to attend scheduled court sessions, showing disregard for attorneys, litigants, witnesses.

2. Excessive and inexcusable delay in deciding cases, amounting sometimes to over a year.

3. Refusal to take certain kinds of cases—choosing the type he was willing to try.

4. Unusually short working hours and extended absences. One judge regularly vacationed three months a year despite a substantial backlog of cases in his court.

All of this shifted the burden to fellow judges or required assignments from other districts.

A few judges had developed a financially profitable sideline of performing

marriages during court hours on an extensive scale while the court calendar suffered.

There were disclosures of unnecessary appraiser fees authorized by judges. Court attachés were involved.[20]

The over-all standard of the judiciary was high and the proportion of exceptionally capable jurists was high. Nevertheless, the examples of lack of fitness were not only harmful in themselves, but tended to discredit the whole judicial branch.

The Arguments Against the Plan

Many judges were sharply critical of the proposed change. These were arguments used against it:

It was said that since there would be a secret investigation before any trial by the same tribunal which would conduct the trial, this was equivalent to a trial *in absentia*. The tribunal would have its opinion formed on the basis of the investigation.

It was charged that nothing was required of the person filing a complaint, by way of fee, bond, liability for costs, or official status, and the accused judge was not reimbursed for loss of reputation, expense and mental suffering should the effort to remove him fail. Judges would be at the mercy of cranks.

It was charged that it was misleading to support the plan under the concept of "disciplinary action" because to remove is to eliminate, not to discipline, and there being no provision for teaching or training there was no provision for disciplinary action.

It was observed that by showing concern for a convenient and expeditious way to remove unworthy judges, proponents were overlooking unworthy legislators, governors and other state officials where the need was as great as any like need respecting judges. It was unjustified to single out one of the three branches of government for special treatment.

It was claimed that the existing remedies for misconduct and infirmity were adequate and that they had not been used more often because there had not been good reason to invoke them and if there had been reason they would have been used. Since admittedly only a small minority did not measure up to proper standards, there was no need for adding another procedure to a field already adequately covered.

It was claimed that the judicial office having come directly from the people through the electoral process, the suggested procedure would be an unwarranted infringement on the basic right of the people to select their own judges, and that aside from the narrow exception of impeachment and legislative address, it was improper to interfere with the will of the people. The people were adequately informed about judicial misconduct through press, radio and television, and at election time there was available the influence and opinions of bar associations.

Individual judges continued their intense opposition to the Commission proposal, but eventually members of the Conference of California Judges endorsed the change by a vote of 364 to 34. With the backing of the legislative committee which had conducted the interim study, the Chairman, Senator Edwin Regan, sponsored the proposed constitutional amendment in the 1959 session of the legislature. The Judges' Conference joined with the State Bar and the Judicial Council in advocating approval and it passed both houses of the legislature. A broad educational effort, led by the State Bar, acquainted the electorate with the desirability of the constitutional change. At the November, 1960, election the people voted for it by a majority of three to one. Chief Justice Gibson, having given his wholehearted endorsement to developing a suitable remedy and securing the measure's adoption, saw the obstacles overcome and his 1955 appeal answered five years later.[21]

The Results After Two Years

What have been the results?

All of the judges in the state (about 900) from justice courts (justice of the peace) through the State Supreme Court are within the Commission's jurisdiction. The Commission employs an executive secretary and a legal stenographer, meets regularly, and has jurisdiction to receive complaints, initiate inquiries, contact judges about complaints and inquiries, conduct preliminary investigations and formal hearings, adopt findings and recommend removal and retirement to the Supreme Court.

In the first two years of operation, 163 matters against judges were considered by the Commission. The great majority of these were from dissatisfied litigants and others who were using the Commission as a sounding board for their own particular grievances. Unwarranted complaints and groundless charges are closed at the initial stage and their confidentiality is protected by the Constitution.

Even here there is a certain advantage to having available to a member of the public an opportunity to have his say. The Commission is readily able to tell when a complaint is not a proper one for further consideration and to act accordingly. However, a few of the more serious cases were started by a simple letter from a private citizen, reporting facts which proved worth investigation. Before the Commission's formation there was no body authorized to entertain, dispose of, or give any consideration whatsoever to any complaint directed against a judge. As a result, the various offices and agencies throughout the state, such as the Governor's office, the Judicial Council, State Bar of California, local bar associations, the Attorney General's office and others having no jurisdiction, were in a position where no action could be taken even if there were credible allegations of misconduct.

There have been ten retirements or resignations of judges after inquiry or investigation in the first two years of operation. The allegations in these ten cases were along these lines: three, physical disability of the judge; three, habitual intemperance; three, impaired mental condition including such signs

as emotional instability, failing memory, inability to concentrate and comprehend, and patterns of erratic and perverse behavior; and one, particular acts of misconduct in office. In none of these was there any formal proceeding conducted. In each case the judge chose to resign or retire after the Commission became interested in the matter.

Out of the 163 matters coming before the Commission in this first period of operation, forty-six of them were given some further consideration by way of inquiry. As already indicated, ten of those eventually led to the removal or resignation of the judge. A few of the remaining thirty-six were found to be totally without merit. In others a questionable activity or condition not felt to warrant any further consideration was called to the judge's attention.

With some, there was a more complete investigation, but the Commission felt the results did not provide a basis for a formal proceeding. Examples: Public intemperance by the judge, but where it could not be said that the judge was habitually intemperate. Delay by the judge in his work, but not constituting wilful and persistent failure to perform judicial duties. Unexplained absences from judicial duties by the judge, but insufficient to come within the failure to perform judicial duties test. Courtroom language, bearing and demeanor not what one would expect of the holder of judicial office, but still not wilful misconduct. Outside activities outside of harmony with judicial duties but situation corrected.

In these cases improvements were noted. The inquiry by the Commission usually resulted in a change. The good faith of the judge was a factor in the Commission's closing the matter.

These figures would include any accumulation. As the first occasion in which a body has had such jurisdiction, the element of "backlog" should be kept in mind. There is no reason to assume a recurring rate of serious cases approaching that of the first two years.

A word of caution should be said about the limited scope of the jurisdiction. The Commission has nothing to do with the selection process. The legal ability of a judge is outside Commission purview. There is no possible interference with the proper independence of the judiciary.

The California experience has shown these characteristics as important in the system.

1. A tribunal, a majority of the members being judges, should have the continuity, responsibility and authority to initiate investigations and conduct hearings with respect to all state judges, and to close groundless charges.

2. Removal or retirement, should be by recommendation to the state supreme court, not to the legislature or governor, and for "cause", besides disability or incapacity.

3. Confidentiality should be preserved on all complaints, inquiries, investigations and hearings until the case reaches the stage of Supreme Court review.

No other state has a comparable system.

Why should the public be imposed upon? Why should erring qualities in a few instances be permitted to cast a shadow over the achievement and dedication of others?

Knowing the constitution of the human animal, it can be assumed there have been, there are, and there will be instances among judicial officers of lack of fitness. Such cases are rare compared to the great preponderance of conscientious and able judges. Nevertheless, a suitable legal remedy is essential.

Not only is the independence of the judiciary protected, but we are convinced that the strength and capability of the judicial branch of the government is greatly enlarged. The existence of such a body, functioning and able to be used if and when necessary, is an effective element in the strengthening of the judicial system and is leading to a higher standard of judicial conduct.

EXCERPT FROM

1965 REPORT OF CALIFORNIA COMMISSION ON JUDICIAL QUALIFICATIONS

During 1965 85 complaints were filed with the commission against judges including those in the category of "Commission Investigation." Of the cases before the commission in the course of the year 38 warranted looking into to some extent by way of inquiry. Of these 38 inquiries, in 29 instances the judge was contacted about the complaint and an explanation requested. With respect to some of these, simple letter replies satisfactorily clarified, explained, or rectified the matter.

Several cases involved substantial investigation by the commission and written communications and discussions with the judge involved. Of the 29 times in which judges were contacted about the complaint eight included personal interviews with the judge and in six cases there was a full preliminary investigation as provided by Rule 901(b), California Rules of Court. In four of the 29 cases in which it was necessary to contact the judge he chose to resign or retire without a formal hearing. It should be clear that this constitutes a minuscule fraction of the judges in the state. The California judiciary richly merits its reputation of preeminence.

In other instances charges while apparently valid did not warrant holding formal hearings or further action by the commission. In some of these the commission has been satisfied that the problem was corrected after it was called to the attention of the judge. Wherever possible the commission has tried to exercise its influence towards effecting an improvement. This remedial scope was a more significant aspect in 1965 than heretofore as the number of serious problems present in earlier years has receded, and as it has become more generally realized that an avenue exists for the correction of lesser judicial transgressions not justifying removal from office.

Two critical points should be stressed in this connection. First, the success that the commission has had in this area would not have been possible without the constitutional requirement of confidentiality. The commission's rigorous adherence to this fundamental continues to receive the understanding of the media representatives and has been a substantial factor in carrying forward a constructive program of discipline.

Second, the remedial scope is a very narrow one and properly so. The limited purview is defined by the constitutional language.

Selected Sections
from
THE CANONS OF JUDICIAL ETHICS
of the
American Bar Association

4. Avoidance of Impropriety. A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

12. Appointees of the Judiciary and Their Compensation. Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances whether or not excepted to or complained of. He cannot rid himself of this responsibility by the consent of counsel.

13. Kinship or Influence. A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

14. Independence. A judge should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

24. Inconsistent Obligations. A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

25. Business Promotions and Solicitations for Charity. A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events

reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

26. Personal Investments and Relations. A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments, previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

27. Executorships and Trusteeships. While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

28. Partisan Politics.* While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments, or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities.

Where, however, it is necessary for judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the judge from attending or speaking at political gatherings, or from making contributions to the campaign funds of the party that has nominated him and seeks his election or re-election.

20. Self-Interest. A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

30. Candidacy for Office.** A candidate for judicial position should not make or

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* As amended August 31, 1933 and September 20, 1950

** As amended August 31, 1933

suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.

While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.

If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.

31. Private Law Practice. In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states it is permitted, because the county or minicipality is not able to pay adequate living compensation for a competent judge. In such cases one who practises law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

He should not practise in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practise law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefor, if such course does not interfere with the due performance of his judicial duties, and is not forbidden by some positive provision of law.

32. Gifts and Favors. A judge should not accept any presents or favors from litigants, or from lawyers practising before him or from others whose interests are likely to be submitted to him for judgment.

SUMMARY OF EXISTING METHODS FOR REMOVAL OF JUDGES IN THE UNITED STATES*

In General

Four major methods are employed to remove judicial officers whose conduct has been unsatisfactory -- impeachment, address or proceedings in the nature of address, recall, and judicial action instituted by the prosecuting attorney or taxpayers. Impeachment is the most frequently appearing procedure; at least 41 states (43 states since admission of Hawaii and Alaska) have provisions for it, either as the exclusive method, or in combination with other methods.

Address or a proceeding in the nature of address is the next most popular mode of removal; it is used in 28 states (29 states since admission of Hawaii). Like impeachment, address is not a popular method of deposing judges; it is provided for in only 8 states, and many others with recall statutes for other officials specifically exempt judges. Seven states (8 since adoption of new constitutional procedure in California) have provisions for court action to remove judges.

There are also statutes which command automatic removal of judges upon conviction of any crime, or particular crimes. It is not within the scope of this survey to cover these statutes, since it appears self-evident that a judge convicted and sentenced of a crime cannot hold court.

Many attempts have been made by the states to enlarge either the methods or the grounds of removal, since the classic methods and grounds have become unsatisfactory in certain situations. Such attempts have been almost universally held to be unconstitutional; methods and grounds of removal are prescribed in practically all the state constitutions, and the great weight of authority is that these constitutional prescriptions are exclusive. Thus, a state wishing to alter the mode of removal, or expand the grounds for removal of judges, would probably find it necessary to amend the constitution.

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Generally, the grounds for removal are unrelated to the judge's lack of technical fitness to do the job. The major target of removal statutes has been moral, rather than mental deficiency. Common terms used to define conduct sufficient for removal action are "high crimes and misdemeanors," "misdemeanors in office," "willful neglect of duty," "malfeasance or misfeasance in office," "infamous crimes" and "misconduct." Drunkenness is a common cause for removal, especially in the Southern states.

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*Excerpts from Institute of Judicial Administration's study entitled Selection, Tenure and Removal of Judges in the 48 States, Alaska, Hawaii and Puerto Rico (August 10, 1956 -- 103 pp.) (footnotes deleted).

Impeachment

Generally, impeachment is brought by the lower house of the legislature, and tried by the upper house. The states diverge on the amount of votes required to impeach; some demand a majority, others a two-thirds vote. Universally, however, conviction must be by two-thirds of either those present in the Senate, or those elected.

Impeachment is purely a legislative action; save in Nebraska, Missouri and New York, the judiciary takes no major part in it, and no state allows more than nominal executive participation. Generally, the chief justice of the Supreme Court will conduct the trial, but he has no other voice in the proceedings.

Impeachment has been attacked as cumbersome and essentially a political and not a judicial process. The Senate's findings are final and not subject to judicial review, since the Senate is the court of last resort in impeachment cases. The causes are generally restricted to serious offenses; less grave offenses are more likely to be attacked through other means of removal.

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Address

Technically, this is defined as "a formal request addressed to the executive by one or both branches of the legislature, requesting him to perform some act." Removal in this manner is thus a combined legislative and executive action. There are, however, two other methods of removal in the nature of address, one where the legislature's vote alone is sufficient for automatic removal, and the other, where it is mandatory that the executive remove the officer upon vote of the legislature. In both cases, the vote of the legislature would seem to be conclusive; in the case where removal by the executive must follow such a vote, the Governor's act would be ministerial. What the result would be if the Governor refused to act is problematic.

Almost universally, a two-thirds vote is required. Generally, the provisions concerning address or proceedings in the nature of address do not specify the causes necessary, but require that the cause be set down in the legislative journal. Some courts have held that the legislature must recite a sufficient cause, a cause touching the personal or official conduct of the defendant; others have stated that the legislature may act arbitrarily. In any event, once the legislature has proceeded as the constitution requires, its findings are conclusive and cannot be judicially attacked because evidence was lacking or because of erroneous legislative conception of the law.

The type of misconduct which will justify address is usually broader than that which justifies impeachment. Often, these two remedies overlap; the grounds for removal are not mutually exclusive.

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Recall

Basically, the recall method provides that a petition signed by a certain percentage of voters requires the incumbent to submit his record to the electorate before the expiration of his term. Some states provide that the officeholder who is required to face a recall election must run alone and receive a majority vote favoring his retention in office; others allow opposition candidates to run in the recall election. In the latter situation, it has been held that the recalled official need not receive a majority vote; if he polls more votes than any of the candidates against him, he may retain his office.

Recall is essentially a political proceeding. Although the recall petition is required to set out the reasons that the petitioners demand the recall, recall may be based on electorate dissatisfaction for any reason, whether or not connected with official misconduct, or for no reason at all. It has been held that the action of a judge in a pending case may be used as grounds for recall and recited in the petition, and that a petition may set up the facts on which it is based, even though it thus obstructs the administration of justice.

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Removal by Judicial Action

This method has been instituted to provide a more summary means of removal than either impeachment or address, both of which require the time and attention of the legislature. Another reason for its use is to provide for a more judicial and less political proceeding than impeachment, address or recall.

IMPEACHMENT SYSTEM GOES ON TRIAL*

by
Hampton Dunn

Florida's system of impeaching judges appears due for a drastic overhaul soon. Experts have cast a critical eye at the "outmoded concept" and found impeachment proceedings to be quaint, creaky, unwieldy, expensive, and in some respects, crazy.

Many lawyers, lawmakers and laymen are demanding reform after two recent experiences of the State Senate sitting as a Court of Impeachment in lengthy, costly and confusing trials of accused circuit judges.

Impeachment originated as a criminal proceeding about the time of William the Conqueror (1027-1087 A.D.) and in Florida has been included in our concepts of government since the Constitutional Convention. The only trials which have been held under the ancient system are the two recent cases of Circuit Judge George E. Holt of Miami in 1957 and of Circuit Judge Richard Kelly of Zephyrhills last year. Both trials resulted in acquittal.

One of the most articulate spokesmen crying for reform is the distinguished judge who presided over the Kelly impeachment trial -- Chief Justice E. Harris Drew of the Florida Supreme Court. A colleague on the high bench, Justice Stephen C. O'Connell, also sees the need for a new plan not only of removing judges, but in selecting them as well.

Perry Nichols, the Miami lawyer who headed Judge Kelly's defense, thinks the impeachment system should be changed. "It's 50 years behind times," he says.

House Speaker Mallory Horne, a lawyer, declares "There has got to be a better way."

Scholarly Chief Justice Drew, whose fair and efficient handling of the Kelly trial brought praise from many sources, has dug deeply into the problem of what's wrong with the impeachment system and how best to cope with jurists accused of being errant. His observations are astute and interesting.

Justice Drew believes "The problems and intricacies of investigation and trial of impeachment have no place in the modern legislative process. My recent experience in the Kelly impeachment trial convinces me that it would simply be impossible to find time to conduct impeachments during sessions of the legislature."

He pointed out that the business of law-making bodies has rapidly become almost a full-time occupation, especially in the case of Congress and becoming more

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*Excerpts from an article in the Tampa (Florida) Tribune, January 19, 1964.

and more so in the legislature. Speaker Horne likewise bemoans that impeachment proceedings are "cumbersome and time-consuming during a regular session already far too short."

It therefore becomes necessary for the legislative bodies to convene especially for the impeachments. In the case of Judge Kelly, the House conducted the probe hastily during the regular session, but his trial was held in a special session of the Senate, lasting 12 days and taking 2,600 pages of testimony.

The Chief Justice learned from the State Controller's office that expenditures attributed to the Holt impeachment trial were $121,869.77, plus many other charges which for various reasons of accounting did not appear in these figures.

The expenditures in the Kelly trial as of early December amounted to $79,742.39, but this does not include the cost of printing the proceedings, expected to amount to more than $35,000, and some other expenses.

Justice Drew observes then that costs of the Holt and Kelly trials total approximately a quarter of a million dollars, which is more than half the cost of operating the Supreme Court itself for one year!

"Such tremendous costs," declares Justice Drew, "are not justified under any circumstances, particularly where the same results could be accomplished much more expeditiously and much better at a fraction of the cost by a simple amendment to the constitution."

(Justice Drew's comments and recommendations apply only to impeachment of judges and not to the other officers subject to impeachment by the constitution, which includes the governor. He has no opinion regarding impeachment of officers other than judges. In the five impeachments in history, three involved circuit judges, one was a governor, Harrison Reed, and the other was state treasurer. Only Holt and Kelly actually came to trial).

Continuing his look at what's wrong with the system, Justice Drew went on:

> "It is said that impeachments are governed by the laws governing judicial proceedings generally. My research indicates, however, some doubt as to this concept. In the trial of these cases the senate is judge and jury. It is a judge composed of men who are not judges and a jury composed of men who are judges. Moreover, it passes upon the correctness of its own conclusions because there is no appeal from its judgments except where plain constitutional provisions are violated."

Although Justice Drew could make rulings during the trial, these could be overridden by a vote of the Senate. The Florida Senate has 15 lawyer-members, comprising one-third of the membership, but other occupations represented include that of housewife, cattlemen, insurance brokers, bankers, oil distributors and others. In the Senate are four ex-judges, a prosecutor and an ex-sheriff.

In a speech in Pensacola, Justice Drew likened his role in the trial to that of a

platoon sergeant who issues an order only to have his order counteracted by some private in the rear.

In an interview with this writer, he cited other shortcomings in the system and came to "the inescapable conclusion that, while impeachment proceedings have been designated as judicial, they embrace few, if any, of the aspects of the traditional American concept of a judicial proceeding."

Justice Drew finds it almost an impossibility to conduct an impeachment trial as a judicial proceeding, because there are too many people involved.

"In the Kelly trial 44 senators participated," he noted. "Many had to be excused from time to time and, therefore, all did not hear nor would vitiate any verdict. A wholly unwieldy situation would become a chaotic one if the Senate were composed of, say, a hundred or more members instead of 44, a possibility not too remote."

All those who have given thought to this important subject are alarmed about the severe penalty attached to impeachment.

Said Justice Drew: "Perhaps the most serious fault with the present system is that the charges must be either sustained and the accused found guilty and thereby stripped of his office and disqualified to hold any office of honor, trust or profit under the state or he must be acquitted. There is no middle ground. Impeachment does not embrace the concept of intermediate punishment such as suspension, fine or reprimand. I am convinced that most trials of impeachment could have been prevented had there been an authority with the power to reprimand, fine or suspend a judge for misconduct in office. I am confident that if there were a commission vested with such power, most cases could be finished before they ever reach a point of requiring severe action."

Justice O'Connell has much the same criticism. In a recent St. Petersburg speech, he noted that Judges Holt and Kelly were acquitted "although observers, and many senators participating, have stated that in both cases the judges were guilty of conduct that merited censure or discipline, but not the harsh remedy of removal from office accompanied by disqualification to hold any other office." He urged a method for dealing with misconduct of a judge that does not warrant or require removal.

Attorney Nichols also thinks the section of the constitution forever barring impeached judges from holding offices of trust is "too severe" and should be erased. "We treat our felons better than that," he told this reporter. "We restore their civil rights and they can run for office."

The Miami lawyer stressed that while procedural changes should be made, "Impeachment of judges by political bodies should be difficult." He felt the end result came out correctly in the Kelly case.

"I was extremely proud of the Senate of Florida," said the deep-voiced Nichols, "because as the case unfolded the senators rose above the political issue

and decided it on its merits."

The Bar Association has struggled for years to come up with some sort of alternative method for spanking naughty judges, but have not developed it.

But Justice Drew has a specific recommendation.

He proposes for the disciplining of judges that a commission be created by constitutional amendment, consisting of the governor, the president of the Senate, the speaker of the House, the chief justice of the Supreme Court, a judge of the district court of appeal, a circuit judge and a county judge, with power to remove, suspend, fine or reprimand any judicial officer of Florida for designated misconduct in office.

The Chief Justice also suggested that there be a sub-committee of the main commission, consisting of the chief justice, the district judge and the circuit judge who would have power to investigate the conduct of any judge and administer punishment by reprimand, fine or suspension for not more than 30 days. Any greater punishment, Justice Drew suggested, would require the affirmative action of a majority of the full commission.

"I believe such a commission would be a greater step forward in the effective administration of justice in our state," said the Chief Justice. "It would serve to restrain non-judicial conduct and, at the same time, provide protection for honest and fearless judges against political persecution. I am confident the time is right for such action and I believe that such a proposal will receive favorable consideration by the next legislature.

"My experience in conducting the second impeachment trial ever conducted in this state, as well as my experience as a justice of the Supreme Court for the past 12 years and a member of the Bar of this state for more than 40 years convinces me that such reforms are essential and in the interest of the general welfare of the state."

Justice O'Connell sees the need for a method for dealing with that misconduct of a judge that does not warrant or require removal, as well as a less cumbersome and more efficient method of removing judges than at present.

He suggests both could be done by the same type constitutional commission in Florida that now tries the question of disability of a judge. Since 1957, any judge may be removed from office for permanent disability, mental or physical, which prevents performance of his duties. The Constitutional Commission is composed of judges operating under rules promulgated by the Supreme Court.

EXCERPT FROM

Judicial Discipline and Removal

The California Story

by LOUIS H. BURKE

justice of the Supreme Court of California and vice president of the American Judicature Society, served as an original member of the California Commission on Judicial Qualifications.

"GRANTED that the selection and appointment of judges on merit would be a big improvement over electing them on a partisan political basis, mistakes could still be made! How would you get rid of such a judge once you had cemented him in office for a long term or for life?

"Many judges now choose to remain in office beyond a reasonable retirement age, and even after their physical and mental capacities have deteriorated. Others, with too great security in office, have become arbitrary, impatient and even incompetent. If such judges are removed from the crucible of facing the electorate periodically, what other means is there to keep them humble, attentive and in touch with the people? Through the use of the ballot box the people retain in hand the means of removal of such judges."

These queries and statements are often heard in the wake of the nationwide movement to improve the methods of selection and tenure of judges on a nonpartisan, nonpolitical basis of merit, a movement of grand proportions and accomplishment headed by Mr. Justice Tom C. Clark of the United States Supreme Court as Chairman of the Joint Committee for the Effective Administration of Justice. This committee, hand in hand with the American Judicature Society, a fifty-year leader in the national efforts to promote the efficient administration of justice, was immeasurably aided by a generous public service grant of the Kellogg Foundation. The educational program of the Joint Committee followed in the footsteps of a National Conference on Judicial Selection and Court Administration, held in Chicago in 1959, which recommended that "a system providing appointment of a judge for a definite term followed by election for a succeeding term in which he runs only against his record, and without competing candidates, is much to be preferred over an elective system in which a judge must run against opposing candidates." This national conference was followed by the work of the Joint Committee which harnessed in one operation all the resources of 17 national organizations concerned with judicial administration.

Conferences, both state and regional, of civic leaders, lawyers and judges have been held in all parts of the Union for the purpose of study of their respective state judicial systems and constitutional provisions with a view of modernizing methods for the selection of judges, at the conclusion of which conferences a consensus of conferees has been published, and by way of example may I quote briefly from one of the more

Reprinted from the Journal of the American Judicature Society (February, 1965)

recent of these conferences the consensus of the "Citizens' Conference on Florida's Judicial System":

"Judges must be taken out of politics. Political election and one-man judicial selection must be abolished. A tested method of securing the best judges to serve the courts of Florida must be found.

"Whenever a judicial vacancy occurs, a slate of highly qualified nominees for that office should be selected by an independent nominating commission. The Governor should appoint one of these nominated candidates to fill the vacant office. The nonpartisan commission should be composed of lay citizens and lawyers.

"There should be a review of the appointed judge by the voters after a short probationary term of judicial service and, thereafter, at the end of each term of that judicial office. The judge should be required only to run against his record in office on a noncompetitive ballot where the only question before the voter is whether the judge's record justifies his continued retention. . . . In addition, judicial compensation should be realistically established, after thorough study, in order to attract the most capable men to the bench with reasonable assurance of a continuing judicial career based on performance."

California Modifies Plan

California was one of the first states of the Union to apply the essentials of such a system in 1934; but, unfortunately, it is applicable only to the appointment and tenure of Supreme and Appellate Court judges. Such judges are appointed by the governor after confirmation by a Commission on Judicial Appointments. At the next general election the appointee's name goes on the ballot and the voters vote on the proposition whether he shall be retained in office. If he receives a favorable vote, he then serves a term of twelve years before his name again must go on the ballot. The voters vote either "yes" or "no" on his retention. If a majority vote "no" the governor makes another appointment subject, again, to confirmation by the Commission on Judicial Appointments. This periodic facing of the electorate on the basis of the judge's own record tends to prevent a judge from becoming arbitrary, as sometimes occurs where a judge is given life tenure with no review of his record following his appointment.

The California plan was a forerunner to a similar program endorsed by the American Bar Association in 1937, but which program is applicable to trial court judges as well as to appellate judges. Missouri adopted the plan in 1940 and it became popularly known throughout the nation as the "Missouri Plan." Recently Kansas, Iowa, Nebraska and Illinois adopted similar plans in whole or in part. The constitution of Alaska, adopted in December, 1955, included a resolution which provided that judges run for election, unopposed, on their records.

Removing judges from politics and assuring them of tenure in office based upon performance requires some reasonable system for the retirement or removal of such judges when circumstances warrant such action. These matters are interrelated and should be a part of a unified program. In the Florida conference, to which I have alluded, the consensus states:

Florida Consensus

"Florida has no reliable method of removing or retiring judges who are unfit because of misconduct or infirmity, whether physical or mental. A fair and economical plan to discipline or remove such judges is needed in Florida today.

"There should be an independent commission, composed of lay citizens, judges and lawyers, charged with investigating complaints against judges of any state court. Every citizen should have the right to complain about any judicial behavior to the commission.

"All complaints and commission proceed-

ings should be confidential in order to protect all parties concerned. The commission should make any necessary recommendations to the Supreme Court of Florida for appropriate action.

"This commission plan, which has also been approved in principle by The Florida Bar, is approved in principle by this Conference. It should be in addition to, and not in lieu of, the present impeachment procedures.

"The Conference approves the present method of mandatory retirement of judges at a specified age and temporary assignment of retired judges who are physically and mentally able to properly perform judicial duties. This Conference urges the adoption of a uniform system of retirement benefits for judges. These benefits should be sufficient to allow the retired judge to live with dignity."

California, like most states of the Union, did not have an adequate method for the removal of judicial officers. It did have the three major methods contained in many state constitutions, those of impeachment, recall and judicial action. Generally speaking, however, students of government have concluded that these methods have proved effective only in the few instances where a judge has been involved in a major scandal which has aroused widespread adverse public reaction.[1]

None of these methods provide an effective means for a private citizen to seek relief against the wrongful act of a judge. There is no board or agency to which he can complain with some expectation that his complaint will be investigated and heard. To expect such a person to seek relief through the urging of impeachment proceedings by his state legislature, or to resort to petitions for recall is not realistic. These are methods which are beyond the reach of the ordinary citizen and particularly in populous states.

In 1960 California amended its constitution at the behest of the Chief Justice, Phil S. Gibson, the State Judicial Council, the Legislature, the State Bar and State Conference of Judges, and the amendment provided for a system quite similar to the one recently recommended by the consensus of the Florida conference. The system creates a special commission charged with the responsibility of receiving, investigating and considering complaints concerning judges of courts of all levels in the state's judicial system and recommending to the Supreme Court the retirement of any judge for disability or his removal from office for wilful misconduct. When it was initially proposed, there were a few judges who conscientiously felt the establishment of such a commission constituted a threat to the independence of the judiciary, and they raised their voices in opposition to its passage. Most judges were strongly in favor of the proposal, as was the Conference of Judges which supported it. Now that the plan has been in operation for approximately four years, pratically all opposition to it has disappeared and it has met with uniform and widespread support. As Chief Justice Gibson of the State Supreme Court stated: "No honest and industrious judge who has the mental and physical capacity to perform his duties has anything to fear from" the commission method of removal. "Surely the people have the right to expect that every judge will be honest and industrious and that no judge will be permitted to remain on the bench if he suffers from physical or mental infirmity which seriously and permanently interferes with the performance of his judicial duties."

The commission established by the constitutional amendment is called "The Commission on Judicial Qualifications," a misnomer since the commission does not participate in the qualifying of judges but only in their disqualification—their removal. The commission consists of nine members: five judges, two lawyers and two laymen. The judges are appointed by the Supreme Court, two from the intermediate appellate courts, two from the trial court of unlimited jurisdiction and one from the trial

court of limited jurisdiction. No members of the Supreme Court are eligible for appointment to the commission, since the Supreme Court itself acts in a sense as an appellate body to review the actions of the commission and since it has the final power to remove or retire a judge upon recommendation of the commission. The two lawyers are appointed by the Board of Governors of the State Bar, which is an integrated bar, and the two laymen are appointed by the governor. These persons all serve for staggered terms which provide for a measure of continuity.

The Duties of the Commission

The duty of the commission is to recommend to the Supreme Court for removal from his judicial office any judge in any court of the state, including the Supreme Court, who is found by the commission to be guilty of wilful misconduct in office, of wilful and persistent failure to perform his duties, or of habitual intemperance. Likewise, the commission may recommend for retirement any judge having any disability which seriously interferes with the performance of his duties, and which is, or is likely to become, of a permanent character. The commission has the power to subpoena witnesses, make investigations, take evidence and to make findings.

As of the end of 1964 the commission has been in existence for approximately four years during which it has received 344 complaints against judges; the commission has directly caused the resignation or retirement of 26 judges. Indirectly, as a result of complaints being filed and of commission action investigating such complaints, it has induced the resignation or retirement of a small number of judges who saw the handwriting on the wall. As over this period there were more than a thousand judges in California, one can readily perceive that the percentage of judges who are unfit for one reason or another is exceedingly small.

Justice A. Frank Bray, presiding Justice of the District Court of Appeal, First Appellate District, Division One, who acted as chairman of the commission during the first four years of its existence, in speaking on the work of the commission stated that in his judgment the California procedure meets four important needs:

"(1) The Commission recommends the removal or forced retirement of judges who, for any reason, are no longer able to properly perform their official duties or have been guilty of misconduct.

"(2) The very existence of the Commission with the powers given it acts as a deterrent to the occasional recalcitrant judge and minimizes absence from judicial duties for extended periods.

"(3) The Commission provides a medium through which the disgruntled litigant, and even the crank, may air his grievances against the courts or judges without publicity affecting the particular judge singled out. In most instances the complaints are so groundless that we do not even notify the judge charged that a complaint against him has been made. In a sense, the Commission offers an apparently sympathetic shoulder upon which these complainants may cry. While they are never satisfied with our actions, nevertheless, you would be surprised to find how much more content they are than they would have been had there not been a public agency to give them consideration. In many of these complaints the complainant is seeking a retrial of the action which he contends was improperly determined against him. We, of course, have no appellate jurisdiction.

"(4) In quite a number of instances, these complaints disclose situations, which, while not serious enough to warrant the removal of the judge designated, nevertheless disclose practices indicating that the particular judge has a poor idea or none at all, of public relations, or the proper relationship between judge and counsel, or judge and witness, or party; or they may indicate a lack of knowledge of the Code of Judicial Ethics of the American Bar As-

sociation and of the Conference of California Judges, of such matters, for example, as continued failure to start court on time, taking unlimited recesses, constant wisecracking in court, short court hours, etc. In these instances, we notify the judge of the charge and tactfully suggest that if the practice complained of exists, it be discontinued. Thus, the Commission, in cases of improper judicial conduct not serious enough to warrant removal, does have a sort of disciplinary power. This is important in preventing the judicial image from losing the respect of the people.

"It should be pointed out that there is no red tape or formal restrictions on the making of a complaint against a judge. Any person may make such complaint by letter or other writing. Of the 344 complaints in four years, only 118 required any kind of investigation. The rest were groundless on their faces. If there appears to be the slightest indication of conduct by, or incapacity of, the judge which would justify the action of the Commission, an investigation is made, and the matter of probable cause for proceeding further is determined.

The Value of a Commission

"Our experience of four years of the Commission's existence has proved, we think, the value of this system of removal. In every instance, save one, where the Commission, after investigation, has felt that a judge's actions or condition might require a recommendation for removal or retirement, the judge, upon being confronted by the fact that he would have to appear at a hearing before the Commission, has either retired, if eligible, or has resigned. In only one instance has a formal hearing been had. In that instance, the Commission held a seven day hearing at which a Deputy Attorney General presented the charges, and the defendant and his attorney resisted them. Forty-seven exhibits were introduced, and 48 witnesses heard. The Commission recommended to the Supreme Court the removal of the judge.

"The Commission's work is entirely confidential. We may not inform anyone of the charges except the judge himself, until the Commission has recommended removal to the Supreme Court. Then, for the first time, the records are open to public inspection."

As I have indicated, when the record of proceedings before the commission is filed with the Supreme Court with a recommendation for removal or retirement of a judge, the Supreme Court conducts its own review of the proceedings and may, if it deems necessary, permit the introduction of additional evidence. At the conclusion of its review the Supreme Court may order the removal or retirement of the judge if it finds just cause, or it may wholly reject the recommendation of the commission. It is interesting to note that in the single instance referred to by Justice Bray, where the commission at the conclusion of its formal hearing recommended to the Supreme Court that a judge be removed, the court as a result of its own review of the proceedings rejected the recommendation, evidently disagreeing with the commission that there were sufficient grounds to warrant the removal of the particular judge from office. This result certainly gave evidence that the appellate process whereby the recommendations of the commission are subject to the review of the Supreme Court on both the law and the facts is wholly independent, as it should be, and is similar to the final review accorded litigants in ordinary court proceedings by the highest court of the state.

JUDICIAL RETIREMENT, DISCIPLINE AND

		CALIFORNIA (Adopted 1960)	COLORADO (A 1965 Proposal) *
Commission Membership	Number	9	9
	Composition and number	2 intermediate appellate judges 2 general trial judges 1 municipal court judge 2 lawyers 2 non-lawyers	none 3 general trial judges 2 county court judges 2 lawyers 2 non-lawyers
Chairman		elected by commission	not specified
Method of Initial Selection	Appellate judges	supreme court appoints	none
	Trial judges	supreme court appoints	supreme court appoints
	Other judges	supreme court appoints	supreme court appoints
	Lawyers	board of governors of state bar appoints	appointed by majority vote of chief justice, attorney general and governor
	Non-lawyers	appointed by governor with consent of senate	appointed by governor
Terms		4 year	4 year
Compensation		travel expenses	travel and other expenses
Complaints	Who can complain	not specified, but practice is to allow any person to complain	not specified, but presumably is to be same as California
	Form of complaint	not specified, but practice is to accept any written complaint without regard to form	not specified, but presumably is to be same as California
	Status of complaint	privileged	privileged
	Method of investigation	confidential	confidential
Causes	Involuntary retirement	"disability seriously interfering with the performance of his duties, which is or is likely to become, of a permanent character"	"disability seriously interfering with the performance of his duties, which is or is likely to become, of a permanent character"
	Removal	"willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance"	"willful misconduct in office or willful or persistent failure to perform his duties or intemperance"
	Discipline	not specified, but practice is to communicate with judge about results of investigation and suggest corrections	not specified, but presumably is to be same as California
Procedures	Commission	receives complaints, makes confidential investigation, may order hearing by 3 special masters appointed by supreme court, may recommend retirement or removal to the supreme court	receives complaints, makes confidential investigation, may order hearing or request hearing by 3 special masters appointed by supreme court, may recommend retirement or removal to the supreme court
	Supreme Court	reviews law and fact of hearing, may permit additional evidence, makes final disposition of matter	reviews law and fact of hearing, may permit additional evidence, makes final disposition of matter
What judges covered		"a justice or judge of any court of this state"	"a justice or judge of any court of record of this state"

*These four 1965 "proposals" are all tentative. At least one is only a discussion draft and none have been reported as having received legislative approval. Since all four proposals are in the form of constitutional amendments, ultimate adoption will require voter approval. In spite of these limitations, they have been included to provide a basis of comparison with the California commission.

Reprinted from the Journal of the American Judicature Society (February, 1965)

REMOVAL PROVISIONS—FIVE VARIATIONS

FLORIDA (A 1965 Proposal) *	NEW MEXICO (A 1965 Proposal) *	TEXAS (A 1965 Proposal) *
9	9	9
2 intermediate appellate judges 2 general trial judges 1 county judge 2 lawyers 2 non-lawyers	1 appellate judge 1 general trial judge none 2 lawyers 5 non-lawyers	2 intermediate appellate judges 2 general trial judges none 2 lawyers 3 non-lawyers
elected by commission	elected by commission	elected by commission
judges of those courts appoint	supreme court appoints	supreme court appoints
judges of those courts appoint	judicial council appoints	supreme court appoints
judges of those courts appoint	none	none
board of governors of state bar appoints	state board of bar commissioners appoints	board of directors of state bar appoints
appointed by governor	appointed by governor	appointed by governor with consent of senate
fixed by law	5 year staggered	6 year
fixed by law	not specified	legislature may provide for expenses
not specified, but presumably is to be same as California	not specified, but presumably is to be same as California	"from any source"
not specified, but presumably is to be same as California	not specified, but presumably is to be same as California	"complaints or reports, formal or informal"
supreme court to make rules	privileged	privileged
supreme court to make rules	confidential	confidential
"disability seriously interfering with performance of his duties, which is, or is likely to become, permanent in nature"	"disability seriously interfering with performance of his duties, which is, or is likely to become, of a permanent nature"	"disability seriously interfering with performance of his duties, which is, or is likely to become, permanent in nature"
"willful or persistent failure to perform his duties or habitual intemperance or conduct unbecoming of the judiciary"	"willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance"	"willful or persistent conduct, whether in the actual discharge of his judicial duties or otherwise, which is clearly inconsistent with the performance of his said duties or is likely to cast public discredit upon the judiciary or administration of justice"**
private reprimand for causes as for removal	same causes as for removal but types of disciplinary action not specified	not specified, but presumably is to be same as California
receives complaints, makes investigation, may order hearing by 3 special referees appointed by supreme court, may recommend retirement or removal to the supreme court	receives complaints, makes confidential investigation, may order hearing or request 3 special masters appointed by supreme court, may recommend retirement or removal to the supreme court	"keep itself informed as fully as may be of 'circumstances,'" "receive complaints or reports," "make such preliminary investigations as it may determine," may order hearing or request hearing by a master, may recommend retirement or removal to the supreme court
"review the record of the proceedings on the law and the facts," makes final disposition of matter	reviews law and fact of hearing, may permit additional evidence, makes final disposition of matter	reviews law and fact of hearing, may permit additional evidence, makes final disposition of matter
"every justice or judge of every court of this state except municipal court and courts established under Article VII, Section 11"	a justice or judge of any court of this state	"justices and judges of appellate courts and district and criminal district courts"

**". . .; it being hereby meant to include among such grounds for removal, willful or persistent oppressiveness, partiality, professional incompetence or procrastination in the performance of judicial duties, acts of moral turpitude, habitual intemperance, immoral or grossly undignified behavior and such other conduct as may now or hereafter constitute ground for removal under any provision of this constitution or of law."

ARTICLE VI

CONSTITUTION OF THE STATE OF CALIFORNIA

SECTION 1b. There shall be a Commission on Judicial Qualifications. It shall consist of: (i) Two justices of district courts of appeal, two judges of superior courts, and one judge of a municipal court, each selected by the Supreme Court for a four-year term; (ii) Two members of the State Bar, who shall have practiced law in this State for at least 10 years and who shall be appointed by the Board of Governors of the State Bar for a four-year term; and (iii) Two citizens, neither of whom shall be a justice or judge of any court, active or retired, nor a member of the State Bar, and who shall be appointed by the Governor for a four-year term. Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of members elected to the Senate, except that if a vacancy occurs when the Legislature is not in session, the Governor may issue an interim commission which shall expire on the last day of the next regular or special session of the Legislature. Whenever a member selected under subdivision (i) ceases to be a member of the commission or a justice or judge of the court from which he was selected, his membership shall forthwith terminate and the Supreme Court shall select a successfor for a four-year term; and whenever a member appointed under subdivision (ii) ceases to be a member of the commission or of the State Bar, his membership shall forthwith terminate and the Board of Governors of the State Bar shall appoint a successor for a four-year term; and whenever a member appointed under subdivision (iii) ceases to be a member of the commission or becomes a justice or a judge of any court or a member of the State Bar, his membership shall forthwith terminate and the Governor shall appoint a successor for a four-year term. No member of the commission shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such.

No act of the commission shall be valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman.

SECTION 10b. A justice or judge of any court of this State, in accordance with the procedure prescribed in this section, may be removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. The Commission on Judicial Qualifications may, after such investigation as the commission deems necessary, order a hearing to be held before it concerning the removal or retirement of a justice or a judge, or the commission may in its discretion request the Supreme Court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter, and to report thereon to the commission. If, after hearing, or after considering the record and report of the masters, the commission finds good cause therefor, it shall recommend to the Supreme Court the removal or retirement, as the case may be, of the justice or judge.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order.

All papers filed with and proceedings before the Commission on Judicial Quali-

fications or masters appointed by the Supreme Court, pursuant to this section, shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the commission in the Supreme Court continues privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing. The Judicial Council shall by rule provide for procedure under this section before the Commission on Judicial Qualifications, the masters, and the Supreme Court. A justice or judge who is a member of the commission or Supreme Court shall not participate in any proceedings involving his own removal or retirement.

This section is alternative to, and cumulative with, the methods of removal of justices and judges provided in Sections 10 and 10a of this article, Sections 17 and 18 of Article IV, and Article XXIII, of this Constitution.

Excerpts from--

Judicial Retirement and Pension Plans--

By ALICE ANN WINTERS

SEVENTEEN years ago only 23 states provided pensions for retired judges. Today no jurisdiction within the United States does not have some provision for judicial retirement. Many of the plans are minimal or rudimentary, but comparison between the judicial retirement pictures in 1943 and 1960 points up the quiet but definite movement toward general judicial retirement legislation.

The Current Trend

The current trend of retirement legislation is away from the public employees' system toward a specific judges' plan.

Most of the retirement plans are applicable to judges of courts down to the trial court of general jurisdiction. But of the 22 states which break off at that level, many are western states, such as Wyoming and Arizona, with small judiciaries and few minor courts. Also included in that number are states with two or three concurrent plans, such as Florida, where simple statutory provisions or public employees' plans cover judges of inferior courts. A few plans, notably the public employees systems of Alaska, Mississippi, Montana, New York, Ohio, Pennsylvania, and Vermont, apply to all judges whose salaries are paid by the state. Most others cover major courts of record and in many cases, as above, permit separate provision for judges of inferior and minor courts. One state, Kentucky, has just enacted an elaborate and complex plan with generous pension and disability provisions to apply only to the few judges of the state's highest court.

The Age Qualification

Minimum age restrictions are difficult to analyze constructively without taking into account corresponding minimum service requirements. In that regard one of the provisions of the Alaska plan seems a model of simplicity—retirement is permitted whenever age and years of service, added together, total 75.

Nevertheless, the absolute minimum age in any state, assuming all service requirements are fulfilled, is not below 55. Pension plans in six states permit benefits at that age; another 14, at age 60. The most usual minimum age is 65 (in 32 plans); but in 11 states judges are not permitted to receive pensions before age 70. The highest extreme is Delaware which requires a minimum age of 72. In a number of plans there is an additional provision that retirement may be at any age after a certain number of years of service—from 15 in Idaho to 36 in Ohio, and in Mississippi it is specified that if a judge retires before age 65 (minimum age), his pension is reduced three per cent for each year of age he lacks.

Compulsory Retirement

The question of compulsory retirement has always provoked controversy. A recently adopted constitutional amendment in California has established compulsory retirement at age 70, but the plan has long been under discussion and was revised often after it was originally proposed in 1957. The basic issue seems to lie between the problem of somehow getting off the bench that aged and inefficient judge who has outlived his usefulness to the court and the danger of losing the services of a Holmes or Brandeis, whose productive years may continue long after he has attained the age of 70. It was recently pointed out that of all United States District Court judges, 97 had served beyond age 64 and 41 had served beyond age 70, and the Holbrook survey of the Los Angeles area showed that nearly 18 per cent of the judges sitting on the Superior and Muni-

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cipal trial benches were above age 65 (and that approximately 10 per cent were age 70 or over).

Provisions in 21 States

At present 21 states have provisions for compulsory retirement, generally at the age of 70. In Idaho, Nebraska, Michigan, Kansas, and Vermont that limit is extended to the end of the judicial term in which age 70 is attained, and in Maine retirement may be at any time during the year before the 71st birthday; in effect, at age 71. South Carolina places the retirement deadline at 72, and Missouri, Oregon, Vermont and Washington at 75. In New York retirement is compulsory at 70, but may be extended in individual cases as high as 80, thus providing the public with assurance of the continued service of the occasional judge who is not ready to be retired at 70.

In seven states there is no minimum length of service required to qualify for retirement benefits. But few other plans permit benefits to a judge who has been on the bench less than 10 years. Of the seven that do, New York's two public employees' plans are the most generous, permitting retirement regardless of length of service. (However, pensions under that plan, and in most of the following, are computed on the basis of the number of years the retiring judge has served, and an individual retiring early is at a decided disadvantage.)

In nearly 40 per cent of the plans a judge must have served at least 10 years to receive a pension, and 12 years (2 terms in most cases) is called for in 12 plans. Higher minimum service requirements range from 15 years in eight plans to a 30-year requirement for certain minor court judges in Arkansas.

It has already been noted that discussion of minimum service requirements has relatively little meaning except in its relation to minimum ages. In North Dakota, for example, to receive benefits the service requirement is 10 years, provided the judge retires at 70. If he decides to retire at 69 he must have been in office 12 years; at 68, 14 years; and so on until at age 65, the minimum age, he must have completed 20 years of judicial service. A similar scale is found in California, and in most of the plans minimum service requirements increase as the minimum age limit is decreased.

Judicial Service After Retirement

An 82-year old judge was recently quoted in a newspaper interview as saying, "I have always enjoyed my work, and I don't see any reason to quit what you like. I certainly don't want to sit around and twiddle my thumbs." His was a candid appraisal of the reactions of many judges to the abrupt halt of what has often been a lifetime of service. The solution of this problem which has been incorporated into 36 of the state retirement programs is significant not only insofar as it provides an alternative to judges' "twiddling their thumbs" after retirement, but as a potent and not yet fully tapped means of relieving court congestion in many jurisdictions.

One of the most conspicuous examples of the value of a program of judicial service after retirement in this connection occurred in the one-judge United States District Court in Anchorage, Alaska, in the two or three years preceding statehood. The docket was swamped and litigation could move only at a snail's pace, simply because the court lacked judges; yet in anticipation of coming statehood nothing was done about adding more men to the bench. It was only through the services of a number of retired judges from other parts of the country that the court was kept from being completely inundated.

The duties of retirement service, compulsory in 18 states, vary from responsibilities and authority equal to that of regular active judges of the court while under assignment (14 states) to service in an advisory capacity only, as in Georgia. Retired judges have limited powers in Arizona and Wyoming, where they may carry out duties preliminary to the final disposition of cases, and in Idaho, where they have authority only in civil actions and proceedings.

Other common responsibilities are those of court commissioner and official state referee. Retired judges in Georgia (Superior Court) and North Dakota are on the judicial council, and in West Virginia a retired judge may run for "special judge," an elected office. In most cases, assignment of retired judges is by the supreme court, although Alabama supernumerary judges and Maine retired active judges are appointed by the governor. Service in civil litigation in Idaho may be

assigned by any District judge with consent of the parties.

In 11 states the judges receive no additional compensation for judicial service after retirement. Another eleven, however, reimburse the judge for his actual expenses during service. And in California, Florida, Louisiana, and Texas the judge's retirement allowance is increased to be equal to the salaries of regular active judges on the court to which the retired judge is assigned. New York state referees receive an allowance equal to two-thirds the salaries of regular active judges.

46 States Have Disability Retirement

A few years ago in California it was revealed that an inactive judge suffering a heart ailment had drawn $32,000 in two years, holding court sessions on only nine mornings during that time. Such a situation points up Professor Shartel's observation that failure to retire a judge for disability amounts to paying him an indirect pension, "but unfortunately the state does not obtain full benefits of a pension system in this case. The disabled judge continues to occupy the place which should be occupied by an effective man. The state has the burden but not the benefit of a real disability pension."

At present, plans in only four states still have no provisions for disability retirement, but in seven more states disability provisions are lacking for judges of one or more courts. For the rest, three plans have set a minimum age requirement for a disability pension: 60 for Alabama Superior Court judges, 62 for Georgia Superior Court judges, and 65 for any Virginia judge. A much more common qualification requirement is a minimum service limit in 23 plans. Again, as in the requirements for the regular service retirement pension, 10 years is the most widely used limit. Only seven of the 15 plans with this limit in disability provisions, however, have the same restriction for the regular pension. Other plans ask as many as 15 years of service to qualify for disability benefits (Alabama Superior Court) or as few as five (Wisconsin and Pennsylvania).

Provision for Widows

When the widow of the late United States Chief Justice Fred M. Vinson was left without income at his death in 1953, nationwide concern began for a previously neglected area of retirement legislation. Today only 28 out of the total of 69 separate retirement plans in state jurisdictions have no provision for death benefits or provide only a return of the judge's contributions to the pension fund. Twenty-six plans have pensions or grants to widows equal to a fraction of the judge's salary or of the pension to which he was or would have been entitled at his death, and the rest offer the judge a choice of optional modifications of his retirement allowance designed to provide reduced or actuarially reduced benefits for his widow and heirs.

Ten states distinguish between the widow of a judge who died in office and of a judge who died after retirement, seven of them providing benefits only to the widow of an active judge.

Six plans set a minimum age for a widow to receive benefits: 65 in Colorado (Supreme Court plan), 63 in Maine, and 55 in Illinois and Michigan (both plans). However, in either Michigan plan the age requirement may be waived if the widow has custody of a minor child. In Connecticut and New Mexico the husband must have continued in service until age 70, and several plans require a minimum service on the part of the widow's husband—10, 12, or, in Michigan, 20 years.

Perhaps in an effort to avoid the expense of widow's annuities to pension-minded brides of May-and-December marriages, several plans refuse pensions to widows who have not been married a minimum number of years. To receive benefits, a widow of a Colorado Supreme Court justice must have been married at least 20 years. Washington and Michigan (both plans) require that she have been married at least 10 years; Illinois, seven years; and Maryland, only three. A New Jersey variation of this requirement provides pensions only to widows who were married before their husbands attained the age of 50.

The husband of an Oregon widow must have served at least six years for her to receive a pension, and the annuity she receives is based on a scale increasing in accordance with the number of years he served. An unusual restriction on granting widow's benefits was found in the Canadian retirement plan, prior to enactment of the 1960 amendments, under which the widow received nothing unless the Governor in Council deemed that she was in "necessitous circumstances."

SAMPLE JUDICIAL RETIREMENT PLANS*

(Reprinted from the Journal of the American Judicature Society, February, 1966)

ALABAMA

HIGHEST COURT
Supreme Court
Chief Justice $16,500
Associates 16,500
INTERMEDIATE APPELLATE COURT
Court of Appeals 15,500
GENERAL TRIAL COURT
Circuit Court
State Pay 12,000
Local Supplements ..... up to 4,000
LIMITED AND SPECIAL COURTS
Recorder's Court ..... 500 to 7,200
Inferior Courts ..... 6,000 to 10,000
Probate Court ..... Fees
Justice of the Peace ..... Fees

RETIREMENT PROVISIONS

JUDGES COVERED: Supernumerary judgeship's plan applies to: A. Supreme Court. B. Court of Appeals. C. Circuit Courts.

AGE AND SERVICE REQUIREMENTS: A., B. and C. 70 with 10 years of continuous service, 65 with 15 years of continuous service, any age with 25 and the last 10 continuous, or 70 with 15 in any court of record.

CONTRIBUTION: None.

RETIREMENT BENEFITS: A. $6,000 annually. B. $4,000 annually. C. $5,200 annually.

DEATH BENEFITS: No specific provision.

DISABILITY BENEFITS: A. and B. No specific provision. C. 60 with 15 years of continuous service, same benefits as retirement.

SERVICE AFTER RETIREMENT: A., B. and C. May serve on court from which they retired at request of governor or chief justice; $300 for expenses.

WEST VIRGINIA

HIGHEST COURT
Supreme Court of Appeals $22,500
INTERMEDIATE APPELLATE COURT
None
GENERAL TRIAL COURT
Circuit Court
Circuits of less than 100,000 12,500
Circuits of more than 100,000 14,500
Optional County
Supplements ..... up to 2,500 or 6,000
(Total salary may not exceed 20,000)
LIMITED AND SPECIAL COURTS
Criminal, Domestic Relations,
Intermediate and Common Pleas
Courts ..... Varies from 8,000 to 13,000
Justices of the Peace ..... Fees
County Court (primarily probate and
non judicial functions) ..... 180 to 7,440

RETIREMENT PROVISIONS

JUDGES COVERED: All courts of record.

AGE AND SERVICE REQUIREMENTS: 65 with 16 years service or 8 years service after 65, any age with 16 years service with benefits deferred until 65.

CONTRIBUTION: 6 per cent of salary.

RETIREMENT BENEFITS: 4 per cent of salary times years of service to maximum of 75 per cent of salary; 75 per cent of salary if 8 years service occur after 65.

DEATH BENEFITS: 40 per cent of salary to widow.

DISABILITY BENEFITS: Any age with 12 years service, full pay to end of term, same as retirement thereafter.

SERVICE AFTER RETIREMENT: May serve in any court of record except supreme court of appeals, by selection of the local bar to serve as special judge with reimbursement for expenses.

CONNECTICUT

HIGHEST COURT
Supreme Court of Errors
Chief Justice $30,000
Associates 29,000
INTERMEDIATE APPELLATE COURT
None
GENERAL TRIAL COURT
Superior Court 27,500
LIMITED AND SPECIAL COURTS
Circuit Court 17,500
Common Pleas Court 22,500
Probate Court ..... Fees
Juvenile Court 20,000
COURT ADMINISTRATOR
An associate justice of the Supreme Court of Errors, nominated by the Governor and appointed by the General Assembly, is chief court administrator.

RETIREMENT PROVISIONS

JUDGES COVERED: Supreme Court of Errors, Superior, Common Pleas, Juvenile and Circuit Courts.

AGE AND SERVICE REQUIREMENTS: 70 at minimum with no service requirement. Mandatory at 70.

CONTRIBUTION: None.

RETIREMENT BENEFITS: Two-thirds of current salary of office. For judges appointed after July 1, 1965 and serving less than 10 years prior to retirement, benefits will be one-tenth of benefits of judge who has served 10 years or more times years of service.

DEATH BENEFITS: 25 per cent of current salary of office to widow, or to children under 18 if no widow.

DISABILITY BENEFITS: Any age with no minimum service, same as retirement.

SERVICE AFTER RETIREMENT: May be appointed trial referee by chief justice to hear and report on facts of any case referred to him by the superior or common pleas courts; $35 a day plus expenses.

WYOMING

HIGHEST COURT
Supreme Court $16,500*
INTERMEDIATE APPELLATE COURT
None
GENERAL TRIAL COURT
District Court 15,000*
LIMITED COURT
Justices of the Peace ..... 1,600 to 4,800

**Under the Wyoming Constitution, art. 5, § 17, increases during a term of office are prohibited, however when any judge of a court begins a new term and is eligible for the raise all others on the court also get it.*

RETIREMENT PROVISIONS

JUDGES COVERED: Supreme and District Courts.

AGE AND SERVICE REQUIREMENTS: 65 with 18 years service or 65 with minimum of 6. Required number of years service reduced for each year of service over 70.

CONTRIBUTION: None.

RETIREMENT BENEFITS: Maximum of 40 per cent of current salary of office, proportionate reduction for less than required service.

DEATH BENEFITS: No specific provision.

DISABILITY BENEFITS: No specific provision.

SERVICE AFTER RETIREMENT: Any retired justice may assist supreme court; any retired judge may sit on district court; retired justices and judges may be called upon to advise in matters before the legislature.

HAWAII

HIGHEST COURT
Supreme Court
Chief Justice $28,000
Associates 27,000
INTERMEDIATE APPELLATE COURT
None
GENERAL TRIAL COURT
Circuit Court 25,000
LIMITED COURT
District Magistrates 15,000*
COURT ADMINISTRATOR
Administrative Director 15,800
**Amount indicated is for full-time magistrates; part-time magistrates are paid $4,400 to $7,150.*

RETIREMENT PROVISIONS

JUDGES COVERED: Supreme, Circuit and District Courts under public employees' system.

AGE AND SERVICE REQUIREMENTS: 55 with no minimum years service, or any age with 10 years service. Mandatory at 70.

CONTRIBUTION: 6 per cent of current salary.

RETIREMENT BENEFITS: At age 55 with no minimum years of service, an annuity based on contributions plus a retirement allowance of 2 per cent of final average salary times years of service with proportionate reduction for less than minimum age. If judge was 60 prior to July 1, 1963 he has option to receive annuity based on contributions plus an allowance of 7.1 per cent of his final average salary times years of service. At any age with 10 years service, an annuity based on contributions plus a service allowance of 3.5 per cent of final average salary times years of service as a judge or elected officer with allowance for any additional prior service calculated according to the provisions above. Maximum is 75 per cent of average final compensation including any federal government allowance. Option available to withdraw contributions in a lump sum payment upon retirement with an actuarial reduction in retirement allowance.

DEATH BENEFITS: 5 options to spread benefits to beneficiaries or estate available; if occupational, widow, minor children or dependent parents receive contribution plus pension of 50 per cent of average final compensation.

DISABILITY BENEFITS: In occupational disability any age with no minimum service, actuarial equivalent of annuity at 65 plus pension of not less than 50 per cent of average final compensation not in excess of $4,200 annually. In ordinary disability at age 55 with no minimum years of service, same as retirement. If less than 55, 25 per cent of final average salary plus 1 per cent times each year of service over 15 except that for years of service as a judge or elected officer the allowance is 3.5 per cent times years of service.

SERVICE AFTER RETIREMENT: No specific provision.

IDAHO

HIGHEST COURT
Supreme Court $17,500
INTERMEDIATE APPELLATE COURT
None
GENERAL TRIAL COURT
District Court 14,500
LIMITED AND SPECIAL COURTS
Probate Court ..... 1,500 to 12,000
(Set by County Commissioners)
Justices of the Peace
(Set by County Commissioners)

RETIREMENT PROVISIONS

JUDGES COVERED: Supreme and District Courts.

AGE AND SERVICE REQUIREMENTS: 70 with 10 years service, 65 with 15, 66 with 14, 67 with 13, 68 with 12, and 69 with 11. Ineligible for appointment or election if 70 when he would take office.

CONTRIBUTION: 4 per cent of salary.

RETIREMENT BENEFITS: 50 per cent of current salary, proportionate reduction for less than required service.

DEATH BENEFITS: Widow receives 20 per cent of judge's retirement benefits or of the benefits he would have received.

DISABILITY BENEFITS: 50 per cent of salary at any age with 10 years service, proportionate reduction for less than required service.

SERVICE AFTER RETIREMENT: Any retired justice or judge shall act as a supreme court commissioner at request of the chief justice; any retired district judge may sit on a district court to determine civil matters at the request of district judge, and the consent of parties; reimbursement for expenses.

[Note: Legislature approved a proposed constitutional amendment to be voted upon at the 1966 general election to authorize full use of retired supreme and district court judges. Senate Joint Resolution No. 7 1965 S.L., p. 953.]

LOUISIANA

HIGHEST COURT
Supreme Court
Chief Justice $25,000
Associates 22,500
INTERMEDIATE APPELLATE COURT
Court of Appeals 21,500
GENERAL TRIAL COURTS
District Court
State Salary 13,200
Supplements outside
New Orleans ..... up to 5,000*
New Orleans Supplement ..... up to 8,500*
LIMITED AND SPECIAL COURTS
Municipal Court
(New Orleans) ..... 7,000 to 12,000
Juvenile Court ..... 13,500 to 17,000
City Court ..... 3,600 to 14,000
Justices of the Peace
Civil Cases ..... Fees
Criminal Cases ..... Salary set locally
COURT ADMINISTRATOR
Judicial Administrator 15,000
**Many supplements are mandatory; others optional. The minimum compensation for criminal district court judges in New Orleans is $17,000. For civil district court judges it is $19,000. It appears that all district judges receive some supplement to state pay. The statutory maximum including supplements is $20,500.*

RETIREMENT PROVISIONS

JUDGES COVERED: Supreme Court, Courts of Appeal, District, City, Juvenile and Family Courts, and Municipal and Traffic Courts which are courts of record.

AGE AND SERVICE REQUIREMENTS: 70 with 20 years service, 65 with 25, or 65 with 20 or any age with 23 with reduced benefits. Mandatory at 75 with 20 years service, or at 80 or completion of 20 years service whichever comes first. Credit for service on any court of record.

CONTRIBUTION: None.

RETIREMENT BENEFITS: Full salary if 65 with 20 years service or any age with 23 two-thirds of salary; proportionate reduction if 65 with less than 20 years service.

DEATH BENEFITS: One-third of salary or one-half of retirement benefits to widow.

DISABILITY BENEFITS: Any age with no minimum years service, retirement benefits he would receive at 70, minimum two-thirds of salary.

SERVICE AFTER RETIREMENT: May sit on any court of record by assignment of supreme court; additional compensation to equate benefits with judicial salary in that court plus expenses.

MICHIGAN

HIGHEST COURT
Supreme Court $25,500
INTERMEDIATE APPELLATE COURT
Court of Appeals 23,000
GENERAL TRIAL COURT
Circuit Court
State Pay 15,000
Local Supplements ..... to 14,000
LIMITED AND SPECIAL COURTS
Recorder's Court (Detroit) 29,000
Common Pleas Court (Detroit) 20,000
Probate Court ..... Varies with Population
Justices of the Peace ..... Fees*
COURT ADMINISTRATOR
Court Administrator 20,000
Deputy Court Administrator 17,500
Wayne Circuit Court
Administrator ..... Set by county
Oakland Circuit Court
Administrator ..... Set by county

**Under revised constitution, the fee system of compensation was to have been abolished on January 1, 1964, however this has been delayed pending legislative action to establish a salary scale. Justices of the peace are to be abolished within five years from January 1, 1964 and replaced by courts created by law.*

RETIREMENT PROVISIONS

JUDGES COVERED: A. Supreme, Court of Appeals and Circuit Courts, Superior Court of Grand Rapids, and Recorder's and Common Pleas Courts of Detroit. B. Probate Courts.

AGE AND SERVICE REQUIREMENTS: A. 70 with 12 years service, 65 with 16, 60 with 20, or any age with 12 with reduced benefits; service credit for prior judicial service if retirement contributions are made. Mandatory at the end of the term in which age 70 is reached. B. 70 with 12 consecutive years service, 65 with 16 of which the last 6 are consecutive, or 60 with 20 consecutive years service. Mandatory at the end of term in which age 70 is reached.

CONTRIBUTION: A. 7 per cent of salary. B. 6 per cent of salary not to exceed $720 annually.

RETIREMENT BENEFITS: A. 50 per cent of current salary of office to supreme court justices; 50 per cent of current salary of office of circuit judge salary to others; or at any age with 12 years service, 2.5 per cent of salary times years of service commencing at age 65. B. 2.6 per cent of salary times years of service up to 24 to a maximum of $7,200 annually.

DEATH BENEFITS: A. 50 per cent of retirement benefits to widow when 55, or before with custody of minor child, and married 10 years. Options available to give joint and last survivorship benefits with reduced retirement benefits. Contributions refunded to heirs if judge dies in office. B. 50 per cent to widow if she is 55, receives no other benefits of act, and was married 10 years, and if judge served minimum of 20 years. Options available to provide joint and last survivorship benefits with reduced retirement benefits.

DISABILITY BENEFITS: A. 65 with 10 years service, same as retirement; any age with 10, same as retirement computed according to the option for a cash refund annuity until 65 when he has full choice of options. B. Any age with 10 years service, same as retirement with full choice of options.

SERVICE AFTER RETIREMENT: No specific provision.

MINNESOTA

HIGHEST COURT
Supreme Court
Chief Justice $23,500
Associates 22,500
INTERMEDIATE APPELLATE COURT
None
GENERAL TRIAL COURT
District Court
State Pay 18,500
Local Supplements ..... up to 1,500
LIMITED AND SPECIAL COURTS
Municipal Court ..... up to 17,000
Probate Court ..... 6,000 to 20,000
Justices of the Peace ..... Fees
COURT ADMINISTRATOR
Administrative Assistant to the
Chief Justice 16,500

RETIREMENT PROVISIONS

JUDGES COVERED: A. Supreme Court. B. District Court. C. Probate Court.

AGE AND SERVICE REQUIREMENTS: A. 70 with 2 full terms of service, 65 with 15 years service on the supreme or on supreme and district courts. Mandatory forfeiture of portion of retirement benefits if not retired at 73. B. 65 with 25 years service or 70 with 15 as judge of a court of record. Mandatory forfeiture of benefits if not retired at 70 with 15 years service, or within 6 months of completion of 15 years service. C. 70 with 25 years service as probate judge, judge of any court of record, referee in probate or armed forces during war.

CONTRIBUTION: A. and B. 4 per cent of salary for special survivor retirement. C. none.

RETIREMENT BENEFITS: A. 50 per cent of current salary of office plus 2.5 per cent of salary times years of service up to 10 more than minimum years service. B. 50 per cent of salary of office. C. 50 per cent of current salary.

DEATH BENEFITS: A. and B. 50 per cent of retirement benefits he was or would have received to widow if married 5 years and unless she remarries. If judge dies in office widows benefits deferred until she is 40. C. No specific provision.

DISABILITY BENEFITS: A. Any age plus two terms of service, full pay to end of term, same as retirement thereafter; any age plus one term receives full pay to end of term. B. 50 per cent of salary of office at any age with 15 years service with proportional reduction for less service to a minimum of 6 years service. C. Any age, same as retirement.

SERVICE AFTER RETIREMENT: Any retired justice may be appointed by the Supreme Court as a commissioner to serve as the court directs.

MISSISSIPPI

HIGHEST COURT
Supreme Court
Chief Justice $16,000
Presiding Justice 15,500
Associates 15,000
INTERMEDIATE APPELLATE COURT
None
GENERAL TRIAL COURT
Circuit Court 13,500
LIMITED AND SPECIAL COURTS
Chancery Courts 13,500
County Courts ..... 5,400 to 9,600
(Based on population)
Justices' Courts ..... Fees

RETIREMENT PROVISIONS

JUDGES COVERED: All courts are under the public employees' retirement system.

AGE AND SERVICE REQUIREMENTS: 65 with 10 years service, 55 with 35, or any age with 16 with benefits deferred to 60 except benefits commence at 55 with 30 years of service; service credit for state and military

service. Retirement is voluntary for judges elected to constitutional office. For others it is mandatory at 65 unless continued service is authorized by retirement board for 1-year periods to 70.

CONTRIBUTION: 4 per cent of salary, minimum of $1 a month.

RETIREMENT BENEFITS: 1.25 per cent of highest average salary for 5 years of service times years of membership, plus 1.25 per cent of average salary for each year of service prior to membership. 3 per cent reduction for each year less than age 65. 50 per cent of average salary of last 5 years with 30 years service may be paid at the discretion of the court system from funds other than the retirement fund.

DEATH BENEFITS: Options to provide benefits to widows or designated heirs available with reduced retirement allowance; widow of judge who dies in office after 20 years service is presumed to have chosen option to provide benefits for widow from age 45 until she becomes eligible for social security at 62.

DISABILITY BENEFITS: 60 with 10 years of service, same as retirement; any age with 10, 75 per cent of retirement benefits he would receive at 60.

SERVICE AFTER RETIREMENT: May serve at request of court.

MONTANA

HIGHEST COURT
- Supreme court
  - Chief Justice $17,000
  - Associates 16,000

INTERMEDIATE APPELLATE COURT
- None

GENERAL TRIAL COURT
- District Court 14,000

LIMITED AND SPECIAL COURTS
- Municipal Court 3,000
- Police Court ..... up to 5,400
- Justices of the Peace ..... Salaries plus fees up to 3,600

RETIREMENT PROVISIONS

JUDGES COVERED: All courts which are under the public employees' retirement system.

AGE AND SERVICE REQUIREMENTS: 65 with 10 years service, or 60 with 10 or any age with less than 10 with reduced benefits.

CONTRIBUTION: Actuarially determined.

RETIREMENT BENEFITS: Actuarially determined and based on years of service; minimum of 50 per cent of salary if 70 or more and state contributions do not exceed $480.

DEATH BENEFITS: Contribution plus one-twelfth of salary times years of service to maximum of 50 per cent of salary to widow and children of judge who dies in office or within 4 months of retirement.

DISABILITY BENEFITS: After 60 with no minimum service, same as retirement, or before 60, 50 per cent of salary if disabled in course of employment; otherwise, with 10 years service, 90 per cent of one-seventieth of salary times years of service with minimum of 25 per cent of salary, or with less than 10 years service, computed on years service at 65 to maximum of 25 per cent of salary.

SERVICE AFTER RETIREMENT: No specific provision.

NORTH CAROLINA

HIGHEST COURT
- Supreme Court
  - Chief Justice $24,000
  - Associates 23,000

INTERMEDIATE APPELLATE COURT
- None

GENERAL TRIAL COURT
- Superior Court 18,500
  - Plus Expenses of 3,500

LIMITED AND SPECIAL COURTS
- District Courts* 15,000
- County Court ..... 7,500 to 10,000
- Recorder's Court ..... 6,500 to 10,000
- Municipal Court ..... Varies
- Justice Court ..... Varies

COURT ADMINISTRATOR
- Director, Administrative
  - Office of the Courts 19,500

**By 1971 the uniform system of district courts will have replaced all the other courts in this category.*

RETIREMENT PROVISIONS

JUDGES COVERED: Supreme and Superior Courts. (Court Administrator receives same coverage as Superior Court judges.)

AGE AND SERVICE REQUIREMENTS: 75 with 8 service years on the supreme court, 65 with 15 on either or both courts, or after 12 consecutive years service on Supreme Court, or any age with 24 including service of certain state offices.

CONTRIBUTION: None.

RETIREMENT BENEFITS: Two-thirds of current salary of office.

DEATH BENEFITS: No specific provision.

DISABILITY BENEFITS: Any age with 8 years service, same benefits as retirement.

SERVICE AFTER RETIREMENT: May be assigned to sit as emergency judge on Superior Court; $100 per week plus reimbursement for expenses.

A Model Plan
for
JUDICIAL DISABILITY AND RETIREMENT COMPENSATION
by the
Junior Bar Conference
of the American Bar Association
1962

RETIREMENT

I. ELIGIBILITY REQUIREMENTS

(A) Age Qualification. A judge should qualify for retirement whenever his age and total number of his years of service added together total 75. There should be no further minimum service requirement than this. Service by a judge in all courts of record in any state, together with his service in the military during time of war or national emergency should be given credit in determining his eligibility for retirement.

(B) Compulsory Retirement. A judge should be required to retire at the age of 70, subject to provisions for judicial service after retirement hereinafter contained.

(C) Re-employment After Retirement. A retirement plan should provide that the pension or retirement benefits would continue even though the retired judge was re-employed except if he was re-employed in some form of public employment, for compensation.

II. BENEFITS

(A) Amount of Retirement Allowance or Death Benefits. Upon retirement or death after meeting the qualifications, a judge or his survivors, as hereinafter specified, should be paid at the rate of the full amount of his monthly salary in the month preceding his retirement or death, as the case may be, subject to adjustment on the cost of living index prevailing thereafter.

Upon retirement or death before meeting the qualifications for retirement, a judge or his survivors, as hereinafter specified, should be paid at the rate of a percentage of the retirement or death benefit, computed as set forth in the preceding paragraph, said percentage to equal the percentage of the eligibility requirement completed by the judge prior to his retirement or his death.

(B) To Whom Payable. The retirement benefits set forth in the preceding paragraph should be paid to the judge himself after retirement to the date of his death. Those same benefits, after the judge's death, should be paid to his surviving widow for the remainder of her lifetime. There should be no minimum age requirement for a widow to receive benefits, but it should be required that the deceased judge and his widow were married for a period of at least (10) years prior to his death. If at the time of the death of the judge leaving no surviving widow, or at the date of the death of a surviving widow thereafter, there are surviving children, those children should receive the same retirement benefits as hereinbefore specified, in aggregate, to be prorated between them and to be paid as to each child until he or she attained his or her majority or was emancipated, whichever occurred first.

DISABILITY

I. AMOUNT OF PENSION

If a judge becomes disabled prior to his retirement, but after he has met the minimum requirements of age and service therefor, he should receive his full retirement benefit. If a judge becomes disabled before he meets the minimum requirements of age and service for retirement, then he should be paid a percentage of his retirement benefit which is equal to the percentage of the minimum age and service requirement he has met before his disability.

II. DETERMINATION OF DISABILITY

A disability pension should not be granted until a responsible authority is reasonably assured of a permanent physical or mental incapacity on the part of a judge to perform the duties of his judicial office. This matter should be determined by the governing board of the Retirement and Disability System. This board should act only after proper certification of incapacity by two or more physicians. If a disabled judge fails to resign and a suggestion of incapacity is presented to the governing board of the system, that board should be empowered to determine incapacity and force the resignation of the judge in question.

ADMINISTRATION

A separate retirement and disability board should be established for the administration of a separate system for the judges in each state.

JUDICIAL SERVICE AFTER RETIREMENT

Any judicial disability and retirement plan should make provision for the use of a judge after his retirement, to permit the utilization of the services of a capable judge when necessary and desirable to avoid court congestion.

EXCERPT FROM

JUDICIAL SELECTION AND TENURE
IN THE UNITED STATES

by
Glenn R. Winters
and
Robert E. Allard

Judicial Compensation. For substantially the same reason that it is important to provide means of judicial selection and retention which do not place unnecessarily high demands on the financial resources of a would-be or incumbent judge, it is also important that judicial office carry with it financial rewards equal to those of comparable positions in the practice of law. One of the common measures of success of the practitioner is his income during his active years, and the financial provisions for his retirement.

The state, as an employer of judges, is only one of several buyers in the legal job market. To attract to the bench the high quality of personnel required, it must be able to compete on a financial basis with corporate employers and private-law practice. Unfortunately, since World War II, judicial salaries have lagged behind compensation for comparable positions in the practice of law.

Judicial Salaries. Figures on the comparative incomes of experienced lawyers and trial judges in three representative states reflect the present situation. According to a State Bar of Michigan survey of lawyer income in 1962, private practitioners with five or more years of experience received an average income substantially higher than the lowest paid ($12,500) trial judge. A 1964 survey showed that lawyers in the city of Boston with ten or more years' experience earned $1,000 to $10,000 more than trial-court judges. Boston suburban lawyers' incomes exceeded the income of trial judges by even greater amounts. A survey by the Oklahoma Bar Association indicated that the 1959 average gross income of self-employed lawyers with ten or more years of experience exceeded the salary of the highest paid trial judge by amounts ranging from $1,000 to $13,000.

It would be a mistake to try to pay judges as much as the highest-paid lawyers earn. The state could not afford it, the salaries would be out of line with the compensation of other public officials, and there would be unseemly political scrambling for judicial posts. But salaries no higher than the earnings of lower-level practitioners cannot be expected to bring high-level talent to the bench. The judicial salary range should be somewhere well above the average or median of lawyer earnings.

The Courts, the Public and the Law Explosion, edited by Harry W. Jones, New Jersey: Prentice-Hall, Inc. (1961), pp. 165-166

COMPARATIVE CHART—JUDICIAL SALARIES IN MAJOR TRIAL AND APPELLATE COURTS

General Note: This chart sets forth prevailing judicial salary rates for judges of supreme courts, intermediate appellate courts and trial courts of general jurisdiction in all 50 states, the federal judicial system and Puerto Rico. In utilization, the following should be noted: (i) Salaries are stated in annual amounts and do not reflect additional compensation frequently authorized for chief or presiding judges of particular courts nor payments for expenses or in lieu of expenses. Chief judge increments range from $500 to $2,500. (ii) In jurisdictions which have constitutional restrictions against increasing compensation during a judge's term of office all judges of a particular court may not as yet be entitled to the salary indicated, which is the current rate authorized for newly appointed or elected judges. (iii) Where a salary range rather than a single rate is shown on the chart, this reflects variations in compensation resulting from payment of local supplements or authorized variations based on population, property formulas or length of service. (iv) Reference should be made to individual state summaries on pages 168 to 189 for detailed information.

State	Highest Court	Intermediate Appellate Court	General Trial Court
Alabama	$16,500	$15,500	$12,000 to 16,000
Alaska	24,500	none	21,000
Arizona	19,500	18,500	17,500
Arkansas	20,000	none	15,000
California	32,000 (N)	30,000 (N)	25,000 (N)
Colorado	18,000	none	14,000
Connecticut	29,000	none	27,500
Delaware	22,000	none	20,000
Florida	24,000	23,000	19,000 to 22,000
Georgia	22,500	22,500	16,000 to 26,000
Hawaii	27,000	none	25,000
Idaho	17,500	none	14,500
Illinois	37,500	25,000 to 34,500	20,000 to 29,000
Indiana	22,500	22,500	12,000 to 22,000
Iowa	20,000	none	18,000
Kansas	18,000 (N)	none	14,000 (N)
Kentucky	20,000	none	14,900
Louisiana	22,500	21,500	13,200 to 20,500
Maine	18,000	none	17,500
Maryland	25,000	none	23,000 to 25,000
Massachusetts	27,000	none	24,000
Michigan	25,500	23,000	15,000 to 29,000
Minnesota	22,500	none	18,500 to 20,000
Mississippi	15,000	none	13,500
Missouri	22,500	21,000	16,000 to 19,000
Montana	16,000	none	14,000
Nebraska	17,000	none	15,000
Nevada	22,000 (N)	none	19,500 (N)
New Hampshire	22,000	none	20,000
New Jersey	31,000	27,000	27,000

Reprinted from the Journal of the American Judicature Society (February, 1966).

State	Highest Court	Intermediate Appellate Court	General Trial Court
New Mexico	20,000	none	17,500
New York	39,500	33,500 to 41,500	31,500 to 37,000
North Carolina	23,000	none	18,500
North Dakota	14,000	none	12,000
Ohio	24,000 (N)	21,000 (N)	9,500 to 20,500 (N)
Oklahoma	16,500	none	14,500 to 15,500
Oregon	21,500	none	19,000
Pennsylvania	37,500 (N)	35,500 (N)	26,500 to 32,500 (N)
Rhode Island	20,000	none	18,000
South Carolina	19,500	none	19,500
South Dakota	17,500	none	16,000
Tennessee	24,000 (N)	20,000 (N)	17,500 (N)
Texas	24,000	20,000	16,000 to 24,000
Utah	16,000	none	14,000
Vermont	18,000	none	16,500
Virginia	20,000	none	17,400 to 23,000
Washington	27,500 (N)	none	20,000 (N)
West Virginia	22,500	none	12,500 to 20,000
Wisconsin	24,000	none	20,000 to 25,000
Wyoming	16,500 (N)	none	15,000 (N)
District of Columbia	33,000	none	30,000
United States	39,500	33,000	30,000
Puerto Rico	22,000	none	13,800 to 16,800 (N)
1966 National Average[1]	22,634	24,078	19,192
1963 National Average[2]	20,312	22,157	17,049
1962 National Average[2]	19,100	21,000	15,885
1966 National Median[1]	22,500	22,500	18,000
1963 National Median[2]	18,500	21,500	16,000
1962 National Median[2]	18,000	21,000	15,000

Notes—

CALIFORNIA—In addition on September 1, 1968 and every four years thereafter judicial salaries will be increased by the percentage of increase in California's per capita income during the previous four years.

KANSAS—Salaries shown become effective in January, 1967. For current rates see state summary.

NEVADA—Salaries shown become effective on January 2, 1967. For current rates see state summary.

OHIO—Salaries apply to judges taking office after December 18, 1964.

PENNSYLVANIA—Salaries take effect January 1, 1967. For current rates see state summary.

TENNESSEE—Salaries shown become effective in 1970. For current rates see state summary.

WASHINGTON—Salaries become effective as judges are reelected (1967, 1969, 1971 in the case of the supreme court; 1969 in the case of the superior court).

WYOMING—Increases during a term of office are prohibited; however, when a judge of a court begins a new term and is eligible for a raise all others on the court also get it.

PUERTO RICO—Salary for superior court. See state summary for district court.

1. In computing the National Average and National Median figures, (i) federal salaries are excluded (except those for the District of Columbia), (ii) all states have been weighed equally without adjustment for variations in the size of the judiciary, and (iii) for courts where a salary range rather than a single rate is shown, the figures used have been the average of the upper and lower limits of this range. (iv) Puerto Rico is included. Average and median salaries for supreme courts in those states which have intermediate appellate courts are $25,625 and $24,000 respectively.

2. 45 J. Amer. Jud. Soc. 253 (March, 1962) and 47 J. Amer. Jud. Soc. 149 (December, 1963).

Excerpted from

THE MODEL JUDICIAL ARTICLE FOR STATE CONSTITUTIONS

¶4. **Removal.** Justices of the Supreme Court shall be subject to removal by the impeachment process. All other judges and magistrates shall be subject to retirement for incapacity and to removal for cause by the Supreme Court after appropriate hearing. No justice, judge, or magistrate shall, during his term of office, engage in the practice of law. No justice, judge, or magistrate shall, during his term of office, run for elective office other than the judicial office which he holds, or directly or indirectly make any contribution to, or hold any office in, a political party or organization, or take part in any political campaign.

Committee comment: The first two sentences of this section derive from the New Jersey and Puerto Rico Constitutions. The impeachment process is not utilized with reference to lower court judges because it is the Committee's view that the Supreme Court, in its supervisory capacity over the judicial system, is better qualified and the more logical body to determine the issues than is the legislature.

The last two sentences are for the purpose of requiring that the judge devote his full time to his job as judge and to remove all judges from politics to the extent possible. Several jurisdictions have had the sorry spectacle of a judge running for the governorship, accepting contributions from lawyers, etc., while retaining his judicial office. Certainly this is conduct unbecoming a judicial officer and hardly compatible with the idea of safeguarding the judicial system from political ravages. The last clause of the last sentence is taken from the Missouri Judicial Article §29 #f.

¶2. **Retirement.** Every justice and judge shall retire at the age specified by statute at the time of his appointment, but that age shall not be fixed at less than sixty-five years. The Chief Justice is empowered to authorize retired judges to perform temporary judicial duties in any court of the State.

Committee comment: Most States have a fixed retirement age. The Committee is of the opinion that the legislature should be free to fix a retirement age, so long as it does not reduce it below sixty-five. The Committee has reluctantly chosen a fixed retirement age rather than indefinite tenure because it is of the view that the interests of sound administration of justice will be better served by the possibility of retiring competent judges than by risking the continuance in office of judges with truly limited capacities.

¶3. **Retirement for Incapacity.** A justice of the Supreme Court may be retired after appropriate hearing, upon certification to the governor, by the Judicial Nominating Commission for the Supreme Court that such justice is so incapacitated as to be unable to carry on his duties.

Committee comment: This provision follows the Alaska plan to have an independent body make the determination whether a high court judge has become incapacitated while in office. The nominating commission seems to be a logical agency to charge with this responsibility. The difficulties which seem to arise when this power is put in the hands of fellow judges are avoided by this process.

§7. COMPENSATION OF JUSTICES AND JUDGES.

¶1. **Salary.** The salaries of justices, judges, and magistrates shall be fixed by statute, but the salaries of the justices and judges shall not be less than the highest salary paid to an officer of the executive branch of the State government other than the governor.

Committee comment: Certainly one of the greatest drawbacks to securing an adequate judiciary has been the niggardly salaries which most of the States pay to their judicial officers. While the Committee was cognizant of the fact that the Constitution of the State is not the appropriate place to fix salaries in terms of dollars and cents, it was the hope of the Committee that the lower limit set forth in this section would afford some base for more adequate compensation for judges.

¶2. **Pensions.** Provision shall be made by the legislature for the payment of pensions to justices and judges and their widows. In the case of justices and judges who have served ten years or more, and their widows, the pension shall not be less than fifty per cent of the salary received at the time of the retirement or death of the justice or judge.

Committee comment: Again, the Committee understood that the pension program could not be spelled out in the Constitution. It has endeavored nevertheless to fix a floor on such pensions so that the requirement of a pension does not become meaningless.

¶3. **No Reduction of Compensation.** The compensation of a justice, judge, or magistrate shall not be reduced during the term for which he was elected or appointed.

Committee comment: This is the usual provision for the protection of judicial independence by removing the legislative power to reduce the salaries of judges while in office. Without such a provision all attempts to secure tenure of office would be futile.

Chapter III

COURT ORGANIZATION AND ADMINISTRATION

What are the general principles that should govern in the reorganization which will in reality be an organization of our courts? The controlling ideas should be unification, flexibility, conservation of judicial power, and responsibility. Unification is called for in order to concentrate the machinery of justice upon its tasks, flexibility in order to enable it to meet speedily and efficiently the continually varying demands made upon it, responsibility in order that some one may always be held, and clearly stand out as the official to be held, if the judicial organization is not functioning the most efficiently that the law and the nature of its tasks permit. Conservation of judicial power is a sine qua non of efficiency under the circumstances of the time. There are so many demands pressing upon the government for expenditure of public money that so costly a mechanism as the system of courts cannot justify needless and expensive duplications and archaic business methods. Moreover, waste of judicial power impairs the ability of courts to give to individual cases the thoroughgoing consideration that every case ought to have at their hands. Administrative organization of the entire system with responsible heads of each branch, department and division, and responsible superintending control of the whole, is quite as important as the reform of procedure upon which the profession and the public have concentrated their attention for a generation.

Excerpts from Principles and Outlines
of a Modern Unified Court Organization
- Roscoe Pound

A Topical Outline for Guided Reading and Discussion

COURT ORGANIZATION AND ADMINISTRATION

I. Organization
  A. Unification
    1. What is a unified court system?
    2. Why is it necessary?
      a. Does judicial "business" need the same kind of organization and management needed by corporations today?
      b. Is efficiency and economy in handling judicial "business" as important as in a business-for-profit?
      c. How big a "big business" is judicial "business" today?
        1. Is it going to increase or decrease and why?
  B. The System of Courts
    1. The Supreme Court
      a. Personnel
        1. How many justices are needed?
        2. Should there be a chief administrative judge?
          a. Should he have special qualifications?
            1. If so, what are they?
          b. How should he be selected and for what term?
        3. Should all justices sit on every case or can panels be used?
        4. What kind of staff is needed?
      b. Jurisdiction
        1. Should the Supreme Court have any original jurisdiction?
        2. What form of appellate jurisdiction should such a court have?
          a. Why should there be any appellate review and what does this term mean?
          b. Should some cases have appellate review as a matter of right?
            1. If so, which ones?
          c. Should the court have discretion as to what cases it will review?
    2. Intermediate Appellate Courts
      a. Should there be any intermediate appellate court?
        1. If so, why is it needed?
        2. How many states have intermediate appellate courts?
      b. Personnel
        1. How many judges are needed?
        2. Should there be a chief administrative judge?
          a. Should he have special qualifications?
          b. How should he be selected and for what term?
        3. Should all judges sit on every case or can panels be used?
        4. What kind of staff is needed?
      c. Jurisdiction
        1. Should this court have any original jurisdiction?
        2. Should it have any final appellate jurisdiction?
          a. If not, why should this court exist?
    3. Trial courts of general or special jurisdiction
      a. Should there be just one general trial court?
        1. If so, should there be specialized divisions with specialized judges?
      b. Is it more efficient and economical to have a series of specialized trial courts?
        1. If so, how many different courts are needed?
        2. Is there a uniform need or are they especially needed in urban areas?

c. How should judicial districts for trial courts be established?
d. Where should these courts be located?
e. How should the number and location be determined by:
    1. Political boundaries
    2. Population density
    3. Typical workload
f. Personnel
    1. How many judges are needed?
    2. Should there be a chief administrative judge?
        a. Should he have special qualifications?
            1. If so, what are they?
            2. How should he be selected and for what term?
g. Jurisdiction
    1. Should this court have any appellate jurisdiction?
        a. If so, from what courts?
    2. Should there be exclusive or concurrent jurisdiction?
        a. If concurrent, with what courts over what matters?

C. Non-Judicial Personnel
1. What personnel requirements are there and what are their job definitions?
    a. Clerk b. Bailiff c. Stenographic
    d. Law clerks
        1. Are they needed for trial judges?
        2. Should they have experience as well as legal training?
2. How should these persons be selected?
    a. By the judges? b. By merit examination?
    c. By a personnel director? d. By popular election?

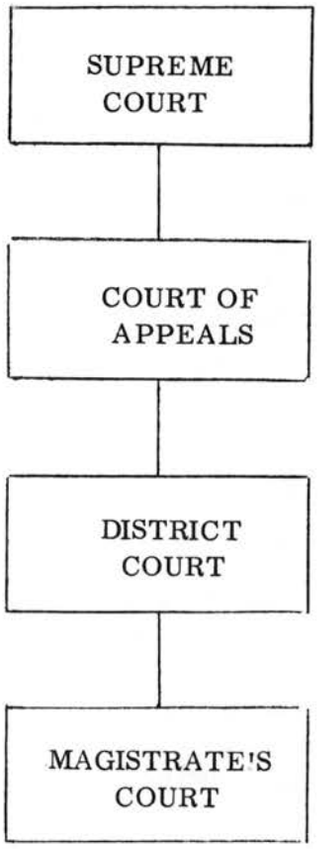
D. Administration
1. Should the chief administrative officer be a judge?
    a. If so, which judge?
2. What kind of an administrative staff is needed?
3. Selection, tenure and compensation of court administrators
    a. Should a court administrator be a lawyer?
    b. How should he be selected and by whom?
    c. What term of office should he have and what kind of compensation?
        1. Should his compensation be comparable to that of a person with the same responsibilities in private business?
    d. Should there be only one or should there be an administrator for each of the several courts?
4. What administrative and supervisory functions should be assumed by administrative judges and their staffs?
    a. Uniform rules of procedure
    b. Temporary assignment of judges
    c. Assignment of cases
    d. Uniform reporting from judges
        1. Dockets 2. Calendars
        3. Disposition of cases 4. Time records
    e. Supervision of employees
    f. Investigation of complaints
    g. Fiscal operations
        1. Preparation and administration of budgets
    h. Public relations
        1. Legislature 2. Executive
        3. Media 4. Legal profession 5. Others
    i. Others

COURT STRUCTURE

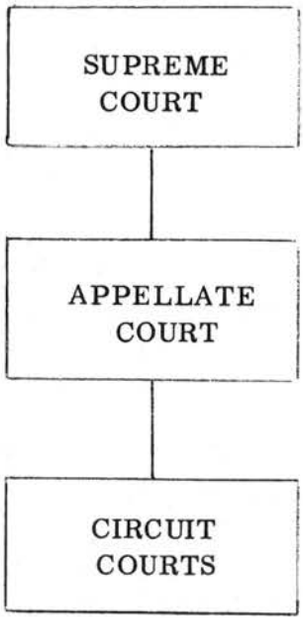
SAMPLE ORGANIZATIONAL CHARTS

Simplified court organization and efficient administrative oversight have been regarded as essential ingredients of any system of effective justice by experts in judicial administration for more than 50 years. Today, there is a growing movement to substitute a unified system of courts with clear lines of administrative responsibility for the conglomerate of functional autonomous courts with overlapping jurisdiction, expensive duplication and imbalance of workloads. The charts below illustrate some variations of the principles of simplification and unification of court organization.

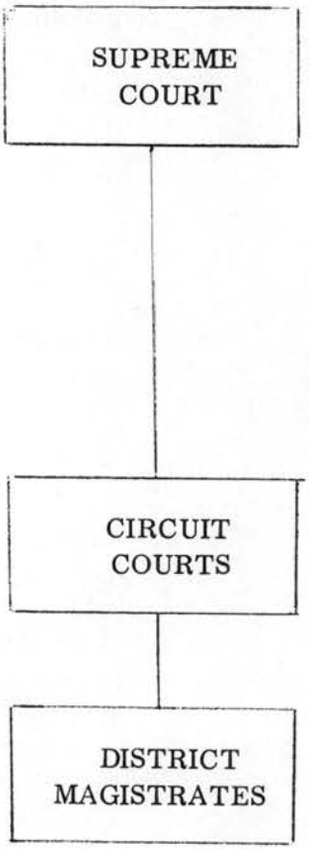
MODEL JUDICIAL ARTICLE



ILLINOIS



HAWAII



Court organization in the model article permits a four-tier court system. The intermediate appellate court is an optional feature depending upon the amount of the appellate workload. The district courts (trial courts of general jurisdiction) may have specialized divisions. The magistrate's courts have jurisdictional limits as set by rule of the supreme court.

Effective January 1, 1964, Illinois' new court system follows the model article with one major variation. At the trial level there is only one court; however, there are full-time magistrates who hear such matters as are assigned by law to them. Thus, there is a two-tiered division of labor within the circuit court.

Hawaii's constitution provides for one supreme court, circuit courts and such other courts as shall be provided by law. The legislature has created the district magistrates as a court of limited jurisdiction.

Excerpts From
COURT ORGANIZATION AND ADMINISTRATION
by
Edward E. Pringle
Chief Justice, Colorado Supreme Court

As a prologue to what I am about to say to you, I should like to quote from some verses by Sam Foss which appears in the 62nd Colorado Reporter at Page 44, and which was quoted by the senior Judge of our Supreme Court, Mr. Justice Moore, when he key-noted our conference on judicial re-organization.

"One day through the primeval wood a calf walked home, as good calves should;
But left a trail all bent askew, a crooked trail, as all calves do.
Since then, three hundred years have fled, and, I infer, the calf is dead.
But still he left behind this trail, and thereby hangs my moral tale.
The trail was taken up next day by a lone dog that passed that way;
And then a wise bell-wether sheep pursued the trail o'er vale and steep,
And drew the flock behind him, too, as good bell-wethers always do.
So from that day, o'er hill and glade,through those old woods a path was made,
And many men wound in and out, and bent and turned and dodged about,
And uttered words of righteous wrath, because 'twas such a crooked path;
But still they followed--do not laugh--the first migrations of that calf,
And through this winding woodway stalked because he wabbled when he walked.
This forest path became a lane, that bent and turned and turned again;
This crooked lane became a road, where many a poor horse, with his load,
Toiled on, beneath the burning sun, and traveled some three miles in one.
And thus a century and a half they trod the footsteps of that calf.
The years passed on with swiftness fleet, the road became a village street,
And this, before men were aware, a city's crowded thoroughfare.
And soon the central street was this of a renowned metropolis.
And men two centuries and half trod the footsteps of that calf.
Each day a hundred thousand rout followed the zigzag calf about;
And o'er his crooked journey went the traffic of a continent.
A hundred thousand men were led by one calf near three centuries dead.
They followed still his crooked way, and lost one hundred years a day;
For thus such reverence is lent to well-established precedent.
A moral lesson this might teach were I ordained and called to preach.
For men are prone to go it blind along the calf-paths of the mind,
And toil away from sun to sun to do what other men have done.
They follow in the beaten track, and out and in, and forth and back,
And still their devious course pursue to keep the path that others do.
But how the wise old wood-god laugh, who saw that first primeval calf.
Ah! many things this tale might teach; -- but I am not ordained to preach."

This address was delivered before a Citizens' Advisory Conference on the Arkansas Judicial System held in Hot Springs, September 23-24, 1965.

I quote from this because it is rather apparent that whenever we deal with modernizing a judicial system, we find it most difficult to erase the calf-paths of the mind in dealing with the judicial process.

I do not purpose here to propose solutions to the problems of Arkansas, if any, (and that's a good judicial escape hatch if I ever heard one) for I have no such solution even if I should be so presumptuous as to attempt to usurp the functions of the citizenry of Arkansas. But because we have recently experienced the pangs of complete court reorganization in my own state, I shall tell you about some of the deficiencies we discovered in our judicial system. I know that many of the problems we encountered in Colorado do not exist in Arkansas, but some of the problems may be the same and to that extent perhaps our experience may be of some help to you.

Our sweeping amendment of the Judicial Article of our Constitution stemmed in the beginning from general dissatisfaction with our Justice of the Peace Courts. We had a J.P. system which had been the subject of much rather pungent comment by lawyers and laymen alike over the years. As a matter of fact, no one in our state could even tell you how many J.P. courts there were, where they all sat, or who the Judges were. But, it was a court created by the Constitution of our state, and the Legislature had no power to abolish it. Finally, and in response to popular demand, as the saying goes, the Legislative Council, which is the research arm of our Legislature, undertook to study the problem and to propose a solution. It was not long before the Council became convinced that the deficiencies of the J.P. system of the state was ailing in many respects. We had already had some indications that this was so beginning as far back as 1957 when a judicial conference under the leadership of our then Chief Justice O. Otto Moore, made a study concerning problems in the administration of justice. The council asked for and got authorization for an advisory committee consisting of lawyers, judges, newspaper people, representatives of League of Women Voters, business, labor and other citizenry representing all walks of life in the state. Working together they found that there were long and often unnecessary delays in bringing lawsuits to trial, and in some instances, in rendering decisions. There was on the one hand overlapping of jurisdiction in several courts and on the other hand, situations in which several different courts had to be resorted to in order to gain complete relief. For instance, the children of parents involved in a divorce matter would be under the jurisdiction of the District Court with respect to custody, and the Juvenile Court for purposes of dependency and conflicting orders might issue out of both courts. Or, in a Probate matter , one contested the validity of a will in the Probate Court and the agreement to make a will in his favor in the District Court. Or in an accident case when perhaps a trial judge at a pre-trial conference was able to grease the wheels of justice a little bit so that the parties arrived at a settlement with respect to a minor, approval was required of the probate judge who might refuse to agree with the trial judge and order the matter tried on behalf of the minor. We found also, that in many cases, appeals from a lower court to a higher court involved an entirely new trial. Obviously such situations created additional expense and long delay and certainly did not lead to public confidence in the courts. The more we studied the problem the more we became convinced that our judicial system had been fashioned in the same haphazard manner as had the judicial system of most other states, and that, just as in other state courts, changes had been made picemeal in our judicial system to meet a pressing local need, real, imaginary or political, without regard to the effect on the entire judicial structure.

It became increasingly clear that what we needed was an extremely simple structure

consisting of an Appellate Court (with provision for an Intermediate Court of Appeals if the Appellate workload should demand) a statewide Trial Court of General Jurisdiction, and a Minor Court organized on a county level and readily accessible to the people but an integral part of one unified court system. Such minor courts were made court of record so that an appeal from them could be restricted to review of the record instead of an entire new trial. The ultimate goal was "one trial, one appeal." How well this has worked to aid in the administration of justice is illustrated by some recent figures which the judicial administrator has given me concerning the operation in Denver. Prior to the amendment, every appeal from the Justice Court was a trial de novo. We had some 3,000 trials de novo in the Denver Superior Court on appeal from the Justice Courts. Projecting the number of cases on which there had been an appeal, which must now be based upon the record from the judgment of the County Court which, as I have told you, is equivalent to the old J.P. Court, we will have some 72 such cases, a dramatic difference of 2430 cases. We determined to keep the constitutional provisions setting up our system as concise and as direct as we could make them. We left for implementing legislation and rule of court the details. And that decision proved to be wisdom itself. For a mountain of statutes were necessarily passed repealing old laws and substituting new ones, and an entirely new set of rules of procedure, both civil and criminal, for operation of the County Court, formerly the J.P. Courts, was formulated, and already we have determined, after six months' experience that some of them are unworkable. But we will not have to go through the tortuous process of constitutional amendment to change them. And, now, rather than goodness knows how many different types of procedures, I guess as many as there were Justice Courts, we have a simple, settled procedure in the so-called minor courts which is as far as is practicable uniform and those courts, too, became part of an integrated system subject to supervisory controls.

Equal in importance to a streamlined, unified court system, we were convinced, was proper administrative control of that system. And, indeed, we had begun work upon that phase of the problem even before the constitutional amendment was proposed in its final form, where our Supreme Court was charged with the general supervisory power over all inferior courts and was required to make and promulgate rules governing the administration of all courts and rules of practice and procedure. I might point out that the new section 21 of our constitution was deliberately designed and contains words of art "shall make and promulgate rules for the administration of all courts and rules governing practice and procedure." This specifically gave the power and required the Supreme Court to administratively control and operate the entire judicial system of Colorado. Our studies convinced us that the business of courts had become, as it were, big business. Although the business of courts deals with human values and human dignity, rather than profit and loss as does private business, we felt that there was no reason why we could not apply responsible methods of private business in an effort to operate the courts as efficiently and economically as possible. We knew no business could operate efficiently without a responsible head, and we became convinced neither could a court system. The office of Judicial Administrator was created by statute to assist the justices in their supervisory duties. Statistical controls were set up by the administrator, and through such controls the superjustice could quickly tell the docket situation in any court in his district, and was able to determine what Judges were available for assignment on a short-time basis to another district where an unusual congestion might temporarily be present.

We pointed out, and have now administratively set the rules that within a Judicial

District all the judges must be ready and willing to help with the case load of the entire district, and in those districts where more than one judge sits in the same city, and when an individual judge has finished his work for the day he must determine from the presiding Judge of the district whether there is any further business in the court house to be handled before he can leave that court house. And we have appointed a presiding judge in each district and made them administratively responsible to his supervisory justice.

A yearly Judicial Conference, at which all Judges in this state were required to be present, was also instituted. Here court administration, as well as developments in substantive law were discussed. It was to the exercise of supervisory adminstrative controls that we got most of our opposition from lawyers and judges. The welkin rang with cries that this was an interference with the independence of the judiciary and the individual judge's right to run his own court. This protest has in the main now receded as trial judges and lawyers work with our judicial administrator to formulate rules which lead to the better administration of justice and more economical operation of their courts. Let me say to you, that in my opinion, those who object to leaving the calf-path of irresponsibility in judicial administration and who deem the placing of administrative responsibility for the operation of the courts in the highest judicial tribunal in the state as an invasion of the independence of the judiciary, are gravely mistaken, for the court which they would pursue must inevitably lead to the destruction of the independent judiciary. Administrative controls, the authority to devise internal operating procedures for the more efficient operation of the system, statistical controls, moving of judges to meet temporary docket strains, etc., -- these in no way interfere with the inherent authority and the traditional independence of the judge in his decision making functions, and they must never be permitted to do so. But, I say to you, in all sincerity, that unless there is established within the judiciary itself a central administrative control which accepts the responsibility for dignified, efficient and economical management of the Judicial System and which does not concern itself with outworn concepts of personal and official prerogative, the Legislative Branch of the government will, in response to the demands of the people, take over that function and then the independence of the Judiciary which we so highly prize in this country of ours will indeed be lost.

Efficient Organization and Effective Administration for Today's Courts . . .

THE CITIZENS' RESPONSIBILITY*

By WILLIAM J. BRENNAN, Jr.

ASSOCIATE JUSTICE WILLIAM J. BRENNAN, JR., of the United States Supreme Court is vice-president of the American Judicature Society and delivered the major address on court organization and administration at The Citizens Conference on The Courts in New York during December.

ONE OFTEN hears businessmen complain that the courts take years to determine disputes which businessmen settle in days, that technicalities and tricks too often prevail, and that costs outweigh results, so that business, impatient with the cumbersome judicial process, pays good money to stay out of court, attempts arbitration or supports boards and commissions as preferable ways to handle many justiciable controversies. If any citizen has that view he has a large role indeed in the correction of the situation. If there are defects which justifiably provoke dissatisfaction with the administration of justice, citizens generally must help those of the legal profession promoting reforms to bring them about. For it is an inexorable fact that the creation of a modern judicial structure and a modern judicial administration usually requires extensive constitutional and legislative changes. This is because the root causes of inefficient administration are often perpetuated in constitutional provisions and outmoded statutes.

The Fundamental Problem

The basic defect in many state systems is that they provide numerous trial courts, with concurrent powers and overlapping jurisdictions, each court independent and separated by hard and fast lines which neither judge, litigant, nor case can cross. Thus taxpayers are burdened with several institutions processing the same raw material, that is, litigation. Overlapping jurisdictions mean that the public must support two or more sets of judges, clerks, bailiffs, constables, jurors, janitors, buildings, files and what not for work on one subject or the creation of one product. Only constitutional or legislative changes can achieve the abandonment of an archaic system of autonomous courts.

Only such changes can substitute a unitary court system, a system administered by judges under procedures formulated by judges—usually by the judges of the court at the apex of the system—and enforced by the chief judge of that court as executive head, assisted by a presiding judge in each county functioning much like the branch head of any far-flung business. To the simplified structure must be added an administrative director of the courts to gather and interpret statistics as to pending cases, and an assignment power must be vested in the head of the top court to transfer judges anywhere in the state as court work requires.

Calendar control in the several counties or judicial districts must be made the responsibility of the presiding judge of the county or district who should operate under uniform calendar control rules with the

*Reprinted from the Journal of the American Judicature Society (December, 1964).

help of the administative director and under the direction of the head of the top court. Judges should be empowered to grant all relief, legal or equitable, as justice requires. These are drastic reforms in the traditional ways of doing things and, however dedicated judges and lawyers may be to the cause bringing them about, it is common experience throughout the country that they can't achieve such changes by their efforts alone.

Sometimes, unfortunately, the number of judges and lawyers behind such efforts is small because their colleagues of the profession too often resist change as unsettling the tempo of their lives, and their opposition to administrative reforms can be a formidable obstacle. Proponents of judicial reform everywhere have found that they must have the support of the leaders in all sectors of lay activity, that they must have understanding by citizens both of the problem and what it takes to solve it, for only then is there a basis for general public support of the specific constitutional and legislative changes required.

Generally, community leadership has not given the same attention to the state's judicial branch as to other departments of state government. I won't conjecture as to the reason for this, although doubtless the legal profession must accept a large share of the responsibility for failing to provide and effectively to disseminate information about the operation of an effective court system and its importance to ordered freedom in America.

Principles for an Effective Court System

As a partial remedy of this oversight, the following is an attempt to set forth briefly the principles pertinent to modern state court organization and administration.

The first principle concerns the court structure itself. It is that there should be substituted for the system of autonomous courts a unitary structure of as few courts as possible. It used to be argued that we needed separate and autonomous courts for law issues, for equitable issues, for criminal causes, for matrimonial causes, for domestic relations causes, indeed, for almost every kind of specialty of the law. We now know that was wholly fallacious. A single court of general jurisdiction in which the judges are empowered to deal with all of these fields is now the accepted view.

If specialized judges are desirable on particular subjects this can be accomplished by appropriate assignments within the court of general jurisdiction without the need for a separate court. The premise is that a judge worthy of the name should be fully qualified to dispense any relief that justice requires. Where this precept has been followed in some states it has meant combining as many as fourteen separate courts into a single state-wide court whose judges have all the powers of the judges of the separate courts. Thus flexibility is achieved, judicial resources best employed, and the overlap of jurisdiction which so often defeats, not furthers, justice is avoided.

Above that court must of course be a court to hear appeals from its judgments. The American tradition is that every losing litigant is entitled of right to at least one appeal to some appellate court. Many states have found that a single appeals court at the apex of a unitary structure, usually called the supreme court, suffices. Other states have found it expedient to provide intermediate appellate courts because the appeal volume is large enough to justify such courts. Generally the only other court believed necessary to complete the structure is a court to hear petty criminal causes and civil matters where small amounts are involved, although some states add courts dealing exclusively with juvenile offenders, family matters and the like.

The ideal is essentially a three-tier system. That is essentially the structure of the federal system which covers all fifty states—a court of general jurisdiction, the district court, the intermediate courts of appeal and the Supreme Court of the United

States, although there are also some specialty courts such as the court of claims and the court of military appeals. But if the great bulk of federal judicial business may be processed through a three-tier system, the justification for a state's departure from that basic framework should require the clearest demonstration.

This unification of all courts into a simplified and unified structure of a few courts is the condition precedent to more efficient and effective judicial administration. Of course, judicial business is not commercial or industrial business. Courts don't exist to make a profit. They exist to dispense fair and impartial justice. But the grist in courts is individual cases and cases must be processed. Cases are not fungible goods yet they lend themselves to processing and calendar control procedures not at all unlike the procedures of business management in which this nation leads the world. This brings me to the second of the principles of modern court organization and administration.

Administering the Courts

Necessarily policies and procedures for processing cases from intake into the court system until final disposition must be formulated and enforced by someone and must be designed for uniform application throughout the system. In whom should the responsibility for their formulation be lodged? The principle which is urged is that this should be made the responsibility of the judicial branch, and more particularly of the court at the apex of the structure. Can anyone in business imagine what it could mean if the processes and procedures for running his business were formulated not by his board of directors but by some outside agency? Yet that is true of most courts in this country.

This is a field where flexibility is of paramount importance and yet most courts of this country are administered under procedures prepared by the legislatures. The inflexibility of legislative rule making is a particular obstacle to effective administration.

Who should have the responsibility for the enforcement of the court devised policies and procedures? The principle that is espoused is that he should be the chief executive of the judiciary, that is the chief judge of the top court of the system. No business or other governmental department can operate efficiently without an administrative head. Neither can a court system, and many court systems are far larger operations than some of our larger businesses and larger governmental departments.

The trend in many states has been to place that responsibility in the chief judge of the top court of the system. He has the aid of presiding judges in each county or judicial district who function locally in the county or district much like the branch head of any widespread business, but are responsible for their operations to the chief judge. If this principle is followed, one result must be recognition that in the choosing of a chief judge or a presiding judge for a county or district a prospective nominee's talent for executive responsibility becomes an important consideration. The administrative judge—the judge with executive capacity to run a business as large as or larger than many of our industrial or commercial giants—is increasingly respected as much for his accomplishments in bettering justice through administration as for his contributions to the substantive law.

The next principle is really a corollary of the last. It is that the chief judge as chief executive of the system must have a staff assistant who can be his eyes and ears in his supervision of the operations of the system. That staff assistant is usually known as the administrative director of the courts. Many states think he should be an official selected by the chief judge to serve at his pleasure. The administrative director performs the tasks without which efficient administration of any enterprise would be impossible. His office keeps a perpetual inventory of the caseload in all the courts and collects and interprets other pertinent statistical data to

be able to detect threatened trouble spots and enable the chief judge to deal with them before they grow into the size of a problem. That office also takes on other duties, not the least of which is that of continually studying the operations to develop procedures the better and more efficiently to process cases.

The Assignment Power

The principles mentioned thus far relate primarily to the structure and authority necessary to assure efficient management of the system as a unified whole. The next principle is of a different order. It concerns the availability of judges whose own courtroom business is slack for work at places where there are cases to be disposed of. There are judges who believe that their entire responsibility should be for the business that comes through the doors of their own courtroom. Efficient administration, however, connotes a power to require judges to work in courtrooms where there is work to be done when there is none in their own. This principle therefore is that the chief judge of the system should be empowered to require judges to sit in busy places experiencing or threatened with congestion and delay when the caseload in their own permits.

Delay is not a mere local problem. Undue delay at any point of the system weakens the whole system. The principle urged is for complete elasticity in the trial court system so that any judge may be assigned by the chief judge to serve at any place in the state, on any kind of work, and in any position in the organization, although always consistenty with a fair exercise of the assignment power.

The Interchange of Ideas

The final principle fosters adoption of mandating the attendance of the judges of the system at periodic get togethers to interchange ideas both as to improving administration and developments in the substantive law. Here again the formulation of rules governing such meetings should be a responsibility of the top court. Judicial conferences and judicial councils have been powerful forces in the administration of court systems. These conferences are not always limited to judges. They often include lawyers, legislators and community leaders who should be kept abreast of the problems of court administration and efforts made by the judiciary to solve them.

A concern is sometimes voiced that the whole idea of centralized administration and supervision of the daily work of the judges may pose a threat to the independence of decision which is the absolute essential of the judicial function. This is a wholly groundless notion. Most judges in the courts of the several states which have adopted unified judicial structures and centralized administration will testify that rather than impair their independence of decision, such administraton and procedure enhance their independence to do right and justice in every case. Centralized administration indeed tends to develop a system of strong judges under which judges freed of administrative responsibilities are better able to direct the judicial process to the end of right and justice upon the merits of each case. Today, we do seem to be coming closer to the ideal that the trial judge should not be a mere umpire of the dispute between contending lawyers and litigants but the active agent of justice guiding the trial and the protagonists so that right and justice may truly prevail.

Finally, it should not be forgotten that the integrity and efficiency of the judicial process is the first essential in a democratic society. The confidence of the people in the administration of justice is a prime requisite for free representative government. The public entrusts the legal profession with the sacred mission of dealing with the vital affairs that affect the whole pattern of human relations and certainly has a stake entitling it to demand not only that judges dispense

justice impartially and fairly but also that judicial business shall be handled and disposed of by a modernized process which assures a minimum of friction and waste, for such a process also plays a large role in the achievement of impartial and fair justice for all litigants.

There is actually no difference between the business of judicial administration and the business of running an industrial or commercial enterprise in the sense that the efficient and businesslike conduct of both means better service for the public. And inefficient and wasteful judicial administration actually can and often does result in a denial of justice, however earnestly an honest and upright judge may strive to prevent that lamentable result. Judges cannot correct this situation, even with the help of an informed and dedicated bar. Ultimately, it is the duty of every citizen to see that efficient and effective structures and procedures exist in all courts of America. Only then can there be the possibility of prompt, economical and equal justice for all.

Excerpts From
MODERN COURT ORGANIZATION
AND ADMINISTRATION
by
Thomas F. McCoy, State Administrator
Judicial Conference of New York

What kind of court structure is desirable? A short answer can be given: the simpler the better. History indicates that our court systems generally have grown haphazardly; they have been brought into their present being by a process of accretion. Courts have been piled upon courts without regard to the result but to satisfy some particular legal need. The result is a multiplicity of courts, unrelated one to the other, each with its own sphere of operation, its own singular procedure--all to the vexation and confusion of lawyers and litigants.

There are many modern theories of court structure; therefore, what I suggest to you is not new or startling.

First, at the apex of the structure, there should be the ultimate court of appeal, which might be called the supreme court. Second, there should be a court of general jurisdiction for the trial and disposition of all cases, civil and criminal, above the grade of small cases and petty offenses. This should be a statewide court in all that that term conveys. To give it a name, it could be called the superior court. It may or may not be organized in divisions--for matters at law which require a jury, for equity matters and perhaps for probate matters. This, to my mind, is a matter which is best left to tradition and experience.

Provisions should also be made in the court structure for courts which will deal with cases of lesser magnitude. These may be organized on a county level or on a departmental or district level. It may also be that larger metropolitan cities which have their own particular needs may require their own courts either as separate entities or as branches of the county tier of courts. This is a matter for study and depends upon particular circumstances. A system of review of decisions and judgments of this court should also be provided. Two caveats may be noted in this regard: this tier of courts must (1) be readily accessible to the people and (2) be an integral part of the unified court system and subject to its disciplines since they, being local, will, more than the other courts, resist assimilation.

Such a court system is simplicity itself. I commend to you this concept: The emphasis must be upon specialized judges, not specialized courts.

I must also mention -- and this is important -- that the machinery, the means to achieve this streamlined court system should also be simple. In other words, this: it is the better course, to my mind, not to include too much detail in a constitutional amendment authorizing court reoganization. A constitutional amendment affecting the courts

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This address was delivered before A Citizens' Conference on the Modernization of the Pennsylvania Judicial System held in Philadelphia January 9-11, 1964.

should be simple, direct and concise -- it should prescribe the unified court system, delegate responsibility for its operation and leave to supplementing legislation or rule or order the details of the court operation and administration. It is much easier to amend a statute or rescind a rule or regulation should it prove not feasible in operation than it is to amend a constitutional defect.

Equal in importance to a streamlined, unified court system is the administration of the system. For it is in the administration of the court system, that the principle of unification and effective operation finds its substance.

It is elementary that responsibility for the operation of the court system must be reposed in some one person. Ideally, this person should be the chief judge of the highest court of the state. Again, however, variations may be desirable--in my own state, ultimate responsibility for the administration of the courts is vested in an administrative board, consisting of the chief judge and the presiding justices of the four judicial departments of the state. In the discharge of its responsibilities, it meets and consults with a judicial conference, composed of judges of the different courts of the state. This management suits our needs and may be adaptable in states of large population such as your own. In the nature of things, judges must decide cases and it is perhaps too much to require that they also devote every working hour to the minute details of administration. The solution we have achieved is the establishment of an administrative office and a system of administrative judges. After discussion and consultation with the judicial conference, the administrative board determines policy and adopts standards and regulations for the operation of the court system which are then put into action and effect by my office and the administrative judges, both of which have a considerable degree of autonomy. Other states may vary in kind in their administrative operation. Once again, I commend them all to your attention and consideration.

What should be the impact and focus of administration? There are those who say, and properly so, that we, of the courts, can learn a great deal from private industry. I agree -- but I also say that we should not entirely equate the operation of a court system with private industry. We deal not with a profit and loss statement, but with human values. To the extent, however, that we can make our courts efficient and economical in operation we should strive to do so.

Court administration, I submit to you, should embrace every facet of court operation but, most particularly, the following matters:

1. Personnel

A program should be authorized for the government of the personnel of the court system. This program, operated either in association with a civil service system or independently should establish statewide standards for the recruitment, promotion, compensation, retirement of court personnel. The standards established should be uniform for the court system.

2. Budgets

Procedures should be authorized and promulgated for the preparation and analysis of the budgets of the courts and for their submission to the appropriating authority through the administrative office. Whether the cost of operation of the court system should be

borne by the State alone or shared by the State and local government is a matter of policy.

3. Purchasing

Closely allied to budgetary procedures is the matter of the purchase of supplies for the operation of the courts. Ideally, this should also be done through the administrative office and not upon an independent basis. The economies effected will more than justify the arrangement.

4. Statistics

This is a colorless and often-maligned topic. Yet, no system, unified or not; no enterprise, public or private, can do the job it was designed to do unless it knows its position from day to day, or year to year.

A sound statistical system is essential to the courts--not merely as an historical device, not merely to record court cases, but as a tool to forecast court calendars or problems in the future.

Modern data processing systems are readily adaptable to court processes. They are more accurate, more timely and less wasteful than the pencil and pad operations of the past.

5. Assignment of Judges

It goes without saying that, in a truly unified court system, machinery must be devised for the transfer and assignment of judges from less busy areas to areas experiencing or threatened with congestion and delay. It is no answer to say that delay is a local problem and should be cured locally. Any undue delay anywhere weakens the whole system.

Parenthetically, however, I might mention that no court system can operate unless it is adequately staffed with both the necessary judicial and non-judicial personnel. To secure these is a task of the administrative office, assisted by the bar and the public.

6. Practice and Procedure

Ideally, perhaps, control of practice and procedure should be vested in the highest court of the state. If this could be achieved, it may be possible to work out some compromise whereby the legislature and the courts share the responsibility, each consulting with the other in this important area.

7. Training or Refresher Programs

A program which has a great deal to commend it is a periodic training or refresher program for judges, designed (A) to afford an interchange of ideas among judges from various parts of the state and (B) to keep them abreast of recent developments in the law.

Such programs have been held in many areas of this country, including my own state. Their worth is incalculable. They are welcomed and sought after by the judges. Such programs should be a prime subject for the administrative office to institute.

8. Judicial Conference -- Judicial Council

Judicial conferences and judicial councils have been powerful forces in the administration of justice generally. They can also be a powerful force in the administration of a court system, advising and consulting with those previously charged with administration. The composition of such a group is a matter of choice but certainly it should embrace judges and lawyers and perhaps legislators and community leaders who will be in a position to assist court administration to achieve its goals.

These few facets do not, by any means, exhaust the list of administrative responsi-

bility. The designation of court terms, court hours, adoption of practice forms, reporting of judicial opinions, the maintenance and operation of court houses and law libraries, evaluation and re-evaluation of the internal procedures of courts and clerks' offices--these, too, are administrative concerns and each day brings and will bring new administrative problems and new areas of administration for which a solution must be found. This I can tell you from experience.

But -- let me repeat -- administration is the unifying force in any court system. It is indispensable -- it must also be alert, vigorous and far-seeing, unsatisfied with today and building for tomorrow.

Two thoughts I leave with you.

Many people who appear in this symposium are from out of state. This should not be a cause for chagrin or resentment for they all have come to help. The fifty states which make up our union must be equally strong in matters judicial or else the whole structure is weakened if one does not measure up. That is the principle reason for the widespread interest in your problem.

Finally, do not expect that the task you have undertaken will be an easy one to accomplish. There may be setbacks, there may be disappointments. You should not lose heart or concede defeat -- the stakes are too high, the obligations too great -- not only for us who are here today but for those who follow us. They will either applaud our success or curse our failure.

Thank you.

EXCERPTS FROM

Constitutional Responsibility and Authority for Court Administration

By ROBERT C. FINLEY

JUDGE FINLEY of the Supreme Court of Washington is a member of the Section of Judicial Administration of the American Bar Association and, as chief justice contributed substantially to the development of effective court administration in Washington.

OVER the years since Roscoe Pound's epochal 1906 criticism of archaic court structure, and lackadaisical organization and methods of court administration,[1] there has been much talking about the need for improvement. The thrust of such talking has been tempered or counter-balanced by institutionalized attitudes and thinking. Perhaps, it is not amiss to emphasize that too much worship at the shrine of the law can have a hypnotic, unrealistic effect—concealing flaws and even serious defects in the edifice. Actually, much of the talking about legal reform is remindful of Mark Twain's remark that everybody talks about the weather, but nobody does anything about it. This quip, of course, is not completely apropos. In recent years, a contagium induced by others has been accelerated through the dedicated and valiant efforts of the late Arthur T. Vanderbilt. It has engendered a slowly but effectively expanding spirit of inquiry and some hardheaded, realistic thinking about the need for attempting to do things better in terms of structure, organization and management of the operations of the courts. Constructive gains—some quite dramatic—have been accomplished in some jurisdictions in the field of judicial administration. Still, on a nationwide, broad-scale basis, it is quite apparent that much of the talking, thinking, and action in this field has been piecemeal and tinkering.

In 1961, Henry R. Luce, in an address at the annual A.B.A. meeting, presented a serious indictment of the courts, the bench and the bar.[2] He said:

> . . . the administration of justice in the United States is worse than I suspected and . . . only your most strenuous efforts can keep it from getting even worse than it is. . . .
>
> . . . the prospects for substantial reform can no longer be thought of as a sort of departmental detail in our national life.
>
> . . . The time has come when a sense of urgency must be conveyed to all the American people and to their leaders in politics,

1. 46 J. Amer. Jud. Soc. 55-66 (August, 1962).

2. 45 J. Amer. Jud. Soc. 86-92 (October, 1961).

*Reprinted from the Journal of the American Judicature Society (June, 1963).

in the universities, in the churches, and in all places of authority and influence.

Coming from a layman of Mr. Luce's standing, the charges should not be pigeonholed and forgotten. In all candor, they cannot be dropped in good conscience by responsible members of the legal profession, because the charges do have much substance. Wishful thinking, professional aplomb, or pre-occupation with other matters will not dissipate the charges of Mr. Luce or dismiss the facts of life. It is becoming increasingly apparent that piecemeal, tinkering efforts at legal reform will not suffice.

The need is substantial, and the time is ripe for a resurgence of professional pride and responsibility—initiating and maintaining a program of remedial action in the field of judicial administration, significant in breadth and depth, and nationwide in scope.

The work of the Section of Judicial Administration and the action of the A.B.A. is most timely in promulgating the model judiciary article for state constitutions, and in recommending its consideration and adaptation to the needs of the respective states.

The model judicial article for state constitutions, is not a tinkering, piecemeal approach. It is an attack in breadth and depth respecting basic problems of court administration. Actually, the model article envisages a complete overhaul relative to court structure, judicial selection and tenure, and the management of the business of state courts.

I shall discuss particularly the third facet of the model article; namely, constitutional responsibility and authority for court administration.

The model article equates responsibility with authority, and vests both in one individual. Obviously, in either public or private administration or management, responsibility and authority must go hand in hand, and should be vested in one executive position or office.

The model judicial article centers considerable responsibility and authority in the chief justice of the state court of last resort. This means a centralization of authority in contrast to local autonomy in matters of management and court administration. But this most certainly does not mean interference with the inate authority and the traditional independence of either trial or appellate judges in their decision-making functions relative to the actual decisional disposition of particular cases. The centralization of authority and responsibility does involve some danger, even if it is solely for administrative or management purposes. Conferring too much plenary power upon government officials, and this includes judges, can be like a heady wine; and with some individuals, which again includes judges, this can be dangerous and inimical to democratic concepts of government. However, the model article, provides reasonably cautious and effective controls against such danger.

Sound Administration Is Insured

The significance of writing into a state judicial article provisions for the exercise of responsibility and authority in relation to court administration is essentially the same as writing other matters into a state constitution. It should mean that basic concepts of sound administration and management and a program implementing and applying good management methods and techniques could not easily be upset or negated completely by political or other considerations of a personal selfish-interest variety emanating from adherents of the status quo.

A chief justice with administrative responsibility and authority must have a reasonably adequate, competent, and dedicated administrative staff. Given authority, responsibility and staff, the chief justice naturally would be expected to confer with and take advice from his associates on the court, trial judges, practicing lawyers, and members of the law-teaching profession. The

advisability, even the necessity of close liaison with all segments of the bench and bar of the particular state in matters of court administration cannot be overemphasized. But, even with such an interested, intelligent, able and experienced board of directors, the chief justice unequivocally should be held responsible personally and officially for court administration, and on occasion must be expected to act with authority and in an executive capacity.

The importance of writing into a state constitution provisions relating to responsibility and authority for court administration becomes more apparent and more significant if we think for a few moments about some of the details and ramifications of court administration. One prime requisite for the implementation of efficient court administration is that someone have facts, figures, and statistics as to caseloads in the various courts of the state in relation to available judicial manpower. This requires some specialized record keeping and reporting as to caseloads, and some specialized, reasonable reporting as to expenditure of judicial time and manpower. Here we see immediately the possibility of misunderstandings, engendered and/or buttressed by concepts of local autonomy and claims of personal or official prerogative. The possibility of complaints and resistance against the centralization of power and authority in a chief justice is not a remote one. Such complaints and resistance might come from associates on the supreme court, or from other quarters. Court attachés and even judges are, to say the least, somewhat allergic to supervision. If given a choice, most of us would prefer to be independent and to spend our time not only off the job but also on the job in accordance with our individual desires and standards. Good court administration means inquiry, reporting and investigation. It means careful analysis and evaluation of statistics and facts as to court operations and, necessarily on occasion, administrative activity and direction to expedite the processing of litigation in both the *trial and the appellate courts*. This may well and probably will interfere with the manner in which lawyers conduct their law practice, particularly the scheduling of cases for trial. So, lawyers may, and probably will object to any change in their way of doing things. Again, a chief justice must have reasonable security and tenure if he has ideas as to court administration which require more than going along with things as they are.

A chief justice who finds that rotation of the presiding judge every three months simply on the basis of numerical sequence in a large, metropolitan, multi-trial judge district does not make for good administration, and that the selection and continuance in office of a good administrative judge is preferable, will, if he attempts to change the system, certainly encounter some raised eyebrows and possibly some outspoken criticism and even threats of political reprisal. Yes, there is a need for some constitutional security and continuity in office for a chief justice who seeks to improve court administration. I will go one step further: What is needed is substantially more than minimal security and tenure. What is needed is the kind of security and tenure as to term of office as a judge, provided for under the Missouri-plan aspects of the model A.B.A. judicial article.

There is little reason to elaborate with further details. The essential point is simply this: improvement in court administration and management very probably means doing things differently from the way they have been done in the past. Most people are somewhat allergic to change. Most judges and lawyers are people. *Ergo:* Most judges and lawyers are somewhat allergic to change. I am not inferring that all court administrative procedures and techniques as they now exist should and must be changed substantially, radically or otherwise. I am saying that, where experience, intelligence and reasonable judgment indicate that things can be done better, they should be; and, in this connection, that

constitutional authority and responsibility should be provided to support the efforts of a chief justice and other members of the bench and bar in striving to make reasonable improvement in court administration and the administration of justice.

There can be no question that reasonably intelligent, fair and just disposition of lawsuits involving disputes between citizens or between them and branches of their government is a basic ideal of the Anglo-American judicial system and a prime objective of our dynamic democracy. Reasonable promptness in implementing this ideal in terms of court administration comes very close to, if it is not a part of, the ideal itself. The significance of the A.B.A.'s model state judicial article is that it suggests ways and means for basic structural and other improvements having to do with the administration of the business of the state courts. A great rush by all states to embrace and adopt in toto or even in part the model judicial article is not expected, although this would be helpful, since only a very few states can boast of constitutional provisions so forward looking, useful, and constructive. In any event, it is hoped, and perhaps a little constitutional praying would not be amiss, that the development and availability of the model judicial article will further emphasize the need for better administration and management of the courts, and will provide some basic help and inspiration in those states where court administration is lagging, or delay and inefficient methods may have reached such extreme proportions as to have become a matter of grave public concern.

Court Integration and Unification in the Model Judicial Article *

By J. WESLEY McWILLIAMS

J. WESLEY McWILLIAMS of the Philadelphia bar is chairman this year of the Committee on the Model Judicial Article of the American Bar Association.

THE efficient administration of justice today requires that the courts in any jurisdiction should be integrated and unified into a unitary functioning organization. In most of our states, such an organization of courts will require constitutional revision. These state constitutions establish judicial systems in which there is no integration of the courts; no unification of administration and no efficient utilization of judicial manpower. A modern court system requires centralized but flexible administrative control over all judicial operations within the jurisdiction. The Model Judicial Article approved by the American Bar Association contains the provisions which, if adopted, will give our states, modern, streamlined and efficient judicial systems.

In a discussion of the provisions of the model article relating to the organization and administration of the courts, a brief history is in order. Many of our states today are operating under constitutions which in the organization of their judiciary are completely outworn and archaic. In the state of Pennsylvania, for example, the courts are attempting to function under a constitution written 90 years ago. Under its judiciary article, there is established for each judicial district one or more trial courts of original jurisdiction, each of which is autonomous, separate from and wholly independent of the other courts of the same and other districts, and substantially free of any outside control or interference. Judges of one district cannot be compelled to serve outside their district. Each court possesses unfettered administrative power and insists, to use Chief Justice William Howard Taft's phrase, "on paddling its own canoe".

This constitution was written in 1873, and since that time we have gone from dirt roads, horse conveyances and lighting by kerosene to hard roads, automobiles, telephones, jet propulsion and nuclear energy, with all the adjustments and maladjustments which these fundamental advances have brought about. Nevertheless, the provisions of the fundamental law governing the organization of the judiciary and the administration of the courts have remained largely unchanged, and the situation in Pennsylvania is no different from that of most of our states.

There have been many and exhaustive

*Reprinted from the Journal of the American Judicature Society (June, 1963).

studies made of the American judicial system during the last 50 odd years, beginning in 1906 when Roscoe Pound delivered his masterful address on "The Causes for Popular Dissatisfaction with the Administration of Justice". From then on the American Judicature Society, Elihu Root, William Howard Taft, Charles Evans Hughes John J. Parker, Arthur T. Vanderbilt and other leaders followed in the effort to arouse the bench and bar to the necessity for modernizing our court organization if we are to have an effective administration of justice.

The 1938 Report

In 1938, the monumental report of the Judicial Administration Section to the American Bar Association was approved. This report constituted a comprehensive and thoughtful study of all phases of judicial organization and administration, and of the measures necessary for improving the functioning of our courts. Although written 25 years ago, this report still stands as the landmark in our efforts to secure an effective administration of justice. In this report, the sub-committee on the Efficient Use of Judicial Machinery stated (63 A.B.A. Reports, 532):

> To have effective judicial machinery within the state, it is not sufficient that each judge shall discharge his functions efficiently in the trial of a case. Some judge or judges within the judicial system in the state must be charged with the responsibility of the efficiency of the system in the state as a whole. In some districts within the state, there is not sufficient work to keep the judge reasonably occupied, while in other districts the calendars are months or perhaps years behind. The tenure of a judge in a less crowded district must be held subject to be sent in his spare time to the overcrowded district.

The report then significantly concludes:

> The power to enforce other administrative measures for the benefit of the efficiency of the Judicial Department in a state as a whole, but not infringing upon the independence required for the necessary exercise of the judicial function, must be centered in some judge in a unified state system. This judge must have power to appoint a director and staff, subject to his continual supervision, or this administrative power must be centered in various judges in the state, each responsible for administration in a homogeneous locality, and all responsible to one judge. Wherever such a system has been in operation, with the same judicial machinery, efficiency has been increased by at least one third.

This report was written a quarter of a century ago, but its conclusions are as insistent today as they were then, and we have done little to implement them. We must not be discouraged, however, particularly when we bear in mind that the English fought "The Hundred Years War for Law Reform", culminating in the Judiciary Acts of 1873-1875, which established one Supreme Court of Judicature, consisting of the Court of Appeals and the High Court with its three trial divisions. When we look at American experience, we find that it took New Jersey 17 years to secure a constitution with a modern judicial establishment. As Vanderbilt so often emphasized: this job is not for the "short-winded". If the bench and bar will take the initiative, we will be assured of success, as the people will support our effort.

The provisions of the model article involve changes, indeed, fundamental changes in the systems of the great majority of our states. But after all, change is the law of life, both social and biological. No one lawyer will agree with each and every detail of the suggested article. Each will have his own opinions as to the wisdom of one or more of the sections. If, however, the article as a whole, and its fundamental philosophy, be compared with the existing provisions in most of our state constitutions, it is submitted that such comparison will demonstrate the improvement and advancement which will result from its adoption. It is

recognized also that each state has its own peculiar judicial traditions and history, so that it may desire to modify one or more unessential details in accordance with its local requirements and experience.

It must be emphasized that there is substantial agreement among the various groups in the profession which have studied the constitutional requirements for a modern and efficient court organization. The model article is in accord with the recommendations of the American Judicature Society, the Institute of Judicial Administration, the Commission on the Courts of New York and the National Conference on Judicial Selection and Court Administration. Its essential provisions have been incorporated in the latest of our state constitutions, in part in the amendments consolidating the courts of New York, in Connecticut, in Maine, in the Iowa and Nebraska revisions, and in the revisions which were approved in Illinois, North Carolina and Colorado this past November.

The provisions covering the organization of the courts as set forth in the model article are briefly examined.

Obtaining Effective Court Organization

In order to obtain the unification and integration of the judiciary of a state, there should be but three courts:

(a) A supreme court to review questions of law from the trial court and administrative agencies, with an intermediate appellate court (the court of appeals) to relieve the supreme court of the burden of such review in the larger states.

(b) A general trial court (the district court) with statewide original jurisdiction over all cases except minor causes involving relatively small amounts of money and summary criminal offenses.

(c) A minor court (the magistrates' court) for petty civil and criminal matters and the holding of defendants for action by the grand jury.

The model article accordingly provides:

> The judicial power of the State shall be vested exclusively in one Court of Justice which shall be divided into one Supreme Court, one Court of Appeals, one Trial Court of General Jurisdiction . . . and one Trial Court of Limited Jurisdiction.
>
> The Supreme Court shall consist of the Chief Justice of the State and six associate Judges of the Supreme Court.

The number of justices is not one which will be applicable to all states and may vary from state to state. It is believed that the number of justices should be fixed by the constitution so as to make it impossible for any administration to pack the court in order to effect a change in its decisions.

The supreme court is given no original jurisdiction. It is to exercise appellate jurisdiction over such appeals from judgments of the district court, both criminal and civil, as it shall prescribe in rules, but it is expressly provided that appeals from sentences of death, life imprisonment or imprisonment for a term of 25 years or more shall be taken directly to the supreme court, and that in all criminal cases the defendant shall have an absolute right to one appeal, and it may, by rule, review and revise the sentence imposed.

The jurisdiction of the intermediate court of appeals is flexible and will be determined by rules of the supreme court. It, likewise, will have no original jurisdiction. It shall consist of as many divisions as the supreme court shall determine to be necessary, and each division of the court shall consist of three judges.

The Trial Court

The district court, the court of general jurisdiction, will exercise original jurisdic-

tion in all cases except such as may be assigned to the minor courts by supreme court rules. It is further provided that the district courts may be authorized by rule of the supreme court "to review directly decisions of state administrative agencies and decisions of magistrates courts".

The district court will consist of such divisions as the supreme court shall determine. The authorization to provide for divisions of the court is desirable because of the need for specialized courts such as criminal courts, probate courts, divorce courts and the like. This court is to be composed of such number of judges "as the supreme court shall determine to be necessary" and the state shall be divided by the supreme court into districts with the proviso that each district shall be a geographic unit and shall have at least one judge.

It is believed that the supreme court with an effective administrative office at its disposal would be the best informed and most expert body to decide the number of judges required in each district, in light of the provision that each judge should be eligible to sit in every district.

The magistrates court will be a court of limited jurisdiction and shall exercise jurisdiction in such cases as the supreme court shall designate by rule. The magistrates are to be appointed by the chief justice for a term of three years and they, likewise, shall consist of such number as the supreme court shall deem necessary. To hold any judicial office in the state, the person must be licensed to practice law in the courts of the state, thus putting an end to the conventional but often scandalous system of lay justices of the peace.

By extending effective state-wide organization and administration to this lowest level of the court hierarchy and requiring a professonal judiciary with tenure, the model article insures that cases involving even limited amounts of money will be adjudicated efficiently and justly. This complete unification avoids the full re-trials which often characterize appeals from inferior courts where records are incomplete, judges untrained and procedures inadequate. As Roscoe Pound said:

> The amount of money involved has a direct relation to the amount of expense to which the law may reasonably subject litigants and thus may well determine to which branch of the court a case should be assigned. But it does not necessarily determine the difficulty of the case or the amount of learning and skill and experience which should be applied to determine it. . . . A judge dignified with the position and title of judge . . . is none too good for cases which are of enough importance to the parties to bring to the court and hence ought to be important to a state seeking to do justice to all.[1]

The Rule-Making Power

Since the supreme court has the responsibility for the effective administration of the system as a whole, it must possess the means of performing its high duty. It is, therefore, given the power to prescribe rules of practice and procedure for all courts, trial and appellate, including rules of evidence. This rule making power is now possessed to a greater or lesser degree in 28 of our American states. Of course, the supreme court can set up an advisory rules committee and can call upon a judicial council or any other body of experts to advise it in the formulation of rules.

In making the supreme court's rule-making power complete (i.e. not subject to legislative action), the model provision returns to Dean John Wigmore's first principle "that the legislature exceeds its constitutional power when it attempts to impose upon the judiciary any rules for the dispatch of the judiciary's duties. . . . "[2] It acknowledges that the legal expertise essential to the development of effective procedural practices can best be provided by

1. "Principles and Outlines of a Modern Unified Court System," 23 *J. Amer. Jud. Soc.* 226 (1940).

2. Wigmore, "Legislature Has No Power in Procedural Field," 2 *J. Amer. Jud. Soc.* 159 (1936).

judicial leadership and that constant judicial surveillance rather than intermittent legislative action is most suited to keeping these rules current.

A Flexible System

The advantages of judicial rule-making are not limited to pleading, practice, and evidence. Supreme court rulings in organizational matters make a substantial contribution to the flexibility of the court system under the model judicial article.

Through the supreme court's power to establish district court divisions, for example, the efficiency of functional specialization may be utilized, and duplication of judicial effort kept at a minimum. A judge could be assigned by the chief justice to the division dealing with the subject in which he possesses specialized experience, but he would be nonetheless available for other work when the court calendar required it. The power to transfer judges from one district to another and from one division to another permits and assures the efficient functioning of the courts without creating a hodgepodge of separate tribunals, which historically have caused many cases to be decided on technicalities of jurisdiction and venue instead of merit. In addition, organizational flexibility is provided by the court's rule-making power over appellate jurisdiction. For instance, the case load can be more evenly distributed between the supreme court and the intermediate court of appeals by apportioning the several classes of appeals between the two courts.

Quick response to changing judicial needs is again facilitated by the supreme court's authority to determine the geographic unit assigned to a particular district court. Judicial districts need not necessarily follow county lines or some other political boundary which may have little or no relevance to caseloads. Through judicial re-districting by the supreme court, the system can be adopted to keep pace with population shifts, changing concentrations of industrial and commercial activity and other factors which affect judicial workloads.

The court's power to establish rules for review of administrative agency decisions acknowledges the growing significance of the administrative process. By opening the way for recourse from the politically appointed boards and commissions, the model article guarantees that ultimate judicial decisions shall be in the hands of the judicial branch of government. At the same time the model provisions, which permit initial court review at the trial or intermediate court level, leave flexible, for example, the extent to which judicial review should go with respect to questions of law and fact and would permit the court to vary the review procedures for the numerous types of administrative proceedings.

The model article wisely provides for an efficient administration of the courts by making the chief justice executive head of the judicial system and giving him authority to appoint an administrator and "such assistants as he deems necessary." This insures a uniform operation of the system and eliminates court autonomy which has characterized a judiciary where responsibility is divided. It will also avert abuses which have grown up in some states simply because responsibility for overseeing the entire system was unassigned. The model article also prevents another danger in this connection which Roscoe Pound described:

> Unless responsible headship for the whole judicial system is provided and given power to meet the exigencies of the responsibility, there is real danger than an administrative superintending control of the courts will be set up from without. This would not merely infringe the constitutional separation of powers. It would be a dangerous subjection of the courts to the executive. . . .[3]

Further, the article provides that the

3. "Principles and Outlines of a Modern Unified Court System," 23 *J. Amer. Jud. Soc.* 23 (1940).

budget for the entire judicial system be prepared by the administrator under the direction of the chief justice and that fiscal control of that budget be the responsibility of the chief justice. Hence, the two essentials of any efficient organization, administrative and fiscal control, are assured. A necessary check on this centralization of power is provided in that the entire court can exercise policy control through its rule-making power.

Simplicity Is a Significant Feature

Finally, the flexibility provided by the centralization of managerial functions and broad rule-making power of the court is insured by the fact that the model article does not specify every detail of the unified court system. Its functional simplicity then is perhaps one of its most significant features. The model article has none of the detailed provisions which characterize judiciary articles in many states and require constitutional amendments to solve every new problem. It avoids not only the complex and confused organization likely to result from such amendments, but also the long delays inherent in the amending process.

Thus all of the major principles of effective court organization — unification, flexibility, responsibility, and conservation of judicial man-power—are incorporated in the model judicial article.

An Urgent Reason for Action

In an article written by a layman appearing in *Fortune* magazine it is stated:

> Today the United States has urgent reason to be concerned about the condition of justice. In recent years, a small band of worried judges and lawyers have been warning with increased urgency that the composite picture of the American Courts is a sorry one. . . . A layman's hard look at the condition of the courts today results in the conclusion that the reformers are not alarmists. The American Courts must move fast if they would purge themselves of their present low esteem. If they do, they can be the principal institution that gives point to American national development. If they do not, there will not be much point to the development.

It is suggested that in the study of these problems the sage words of Benjamin Franklin be recalled. At the conclusion of the Federal Constitutional Convention in Philadelphia he said:

> I confess that there are several parts of the Constitution which I do not at present approve, but I am not sure that I shall never approve them. For having lived long, I have experienced many instances of being obligated by better information to change opinions . . . which I once thought right . . . I agree to this Constitution with all its faults, if they are such. . . . I doubt too whether any other convention may be able to make a better Constitution.

EXCERPTS FROM

PROBLEMS OF COURT ADMINISTRATION

*IN A METROPOLITAN COURT**

By LOUIS H. BURKE

As A background for this presentation, may I give you a brief picture of our court. The Superior Court of Los Angeles County is the only trial court of unlimited jurisdiction and serves a population of approximately 6,000,000 people. The Superior Court bench is composed of 102 judges. Fourteen of these judges comprise the Criminal Division; two are assigned to the Probate Division; three to our Appellate Department of the court, which acts as a court of appeal to handle appeals from the Municipal Court; three are assigned to the Juvenile Court; one to the Psychiatric Court; and fifty-four to our Civil Division, which includes, in addition to the trial courts, special departments for Law and Motion, Discovery, Pre-trial, Writs and Receivers, Adoptions, and Domestic Relations.

Under the court rules and regulations, annually the judges elect their own presiding judge, who acts as the head of the court. The practice of selecting its presiding judge on a seniority basis was abolished a number of years ago and under the new system the presiding judges have generally served terms of two-year duration.

The administrative responsibilities of the presiding judge are divided into two main divisions: (a) judicial functions; and (b) general administrative duties.

The presiding judge assigns the judges to the various departments, divisions and branches of the court. Generally speaking, those assignments are made effective on the first of the year. He is responsible for the operation of the master calendars for both civil and criminal divisions in the central district. The civil calendar is under his direct supervision but he delegates the operation of the criminal division calendar to a master calendar judge for that division.

General Administrative Duties

In 1957 the legislature authorized, and in 1958 the court appointed an executive officer to hold office at the pleasure of the judges of the court. With the sole exception of commissioners, whose appointment is by the court, the appointment, management and discharge of all other personnel of the court is under the control of the executive officer subject to the approval of the presiding judge.

Unreasonable Delay Avoided

With the close cooperation of active committees of the bar and joint committees of the court and the bar, we have been able

LOUIS H. BURKE, who delivered this address before the National Conference on Judicial Selection and Court Administration, is serving a third term as presiding judge of the Superior Court of Los Angeles County.

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to cope with the problems and to avoid unreasonable delays. The time interval between "at issue" and trial as to jury cases is now 14 months and as to nonjury matters has been reduced to eight months. With the thought that perhaps some of these administrative procedures may be helpful in other areas of the country, I would like to mention a few. May I say, however, that we do not consider our system rigid or fixed by any manner or means. The purpose of our attendance at this conference is to learn from others as well as to share our own experiences, in the hope that collectively we can meet this challenge of improving the administration of justice.

Judicial Performance

With the exception of several departments with earlier calendar calls, our judges take the bench at 9 o'clock. Many of them arrive at their chambers considerably earlier than that, of course, but each trial judge has regularly assigned to him either a pretrial hearing at 9:00 a.m. or from one to three default divorce case hearings. At 9:30 his regular trial work commences and with the exception of one short recess continues until noon. Court reconvenes at 1:30 or 1:45 and adjourns at 4 o'clock or 4:15. In addition, the judges spend a considerable amount of time in chambers. Our recent increase of one-half hour a day trial time, included in the above figures, had the effect of adding five or six full-time judges to our court.

A study of our records for the past three years revealed that our judges average 21 court days of vacation a year. A few judges take a two-week vacation one year and six weeks the next to permit the taking of an extended trip, etc., but the average is 21 working days or a calendar month. During the same period they averaged six days off for illness a year. Ours is a hard working and cooperative bench fully dedicated to the task of avoiding the evils of unnecessary delay.

Judicial Statistics

Our executive officer has recently appointed a full-time statistician as a member of his staff to assist the court in the maintenance and development of proper judicial statistics which will better enable us to weigh and consider court reforms. Our county clerk who serves as clerk of the court maintains modern business machine equipment which has already proved itself very valuable to the court in statistical surveys of various kinds and the addition of a statistician to assist in the compiling and analysis of such statistics will provide a valuable aid.

A SELECTED CHRONOLOGY ON COURT ORGANIZATION REFORM

Excerpted from
American Judicature Society
Information Sheet No. 26

MISSOURI
1945
Missouri Constitution, Article 5
Missouri Laws 1945, p. 765, V. A. M. S. § 482.010 et seq.

Under constitutional and statutory reforms, the Supreme Court was given the responsibility for the operation of the court system. It was empowered to transfer trial judges temporarily to other trial courts or to the appellate courts, to create temporary divisions of appellate courts manned by additional judges and to make rules of procedure for the courts.

The justice of the peace system was replaced by magistrate courts, staffed by judges who are admitted to the practive of law and who are paid a salary. The fee system of judicial compensation was abolished. The magistrate courts have county-wide jurisdiction in civil cases (up to specified monetary limits which vary according to the size of the county), in juvenile cases, in traffic cases (except in the largest cities) and in probate (only where the probate and magistrate courts are combined in rural counties).

See: Righter, The Judicial Article of the Proposed Missouri Constitution, 28 J. Amer. Jud. Soc. 52 (1944); Hyde, Historical Review of the Judicial System of Missouri, 27 Vernon's Annotated Missouri Statutes (1952)

NEW JERSEY
1947
New Jersey Constitution, Article VI
N. J. Stat. 1948, chapters 264-270, 319-329, 331-339, 354-369, 371-385, 388-390, 394

The reforms in New Jersey were the first significant ones to be made on a state-wide basis for an entire state judiciary.

In place of the multiple courts with overlapping jurisdiction, the New Jersey reforms created a five level court system. Under the constitution the Supreme Court was empowered to make rules governing the administration, practice and procedure in the state courts. The chief justice was also empowered to make assignments of judges as needed.

The old separate courts of law and equity were combined into a single superior court with state-wide trial jurisdiction of civil and criminal matters. Chancery and appellate divisions of the superior courts were established.

The county courts, with county-wide jurisdiction in civil and criminal matters, were retained.

Other minor courts authorized to be created by law included county-district courts with minor jurisdiction primarily of civil cases, and municipal courts with jurisdiction over minor criminal offenses and some special civil matters. Justices of the peace were eliminated and

police courts and other magistrates and recorders courts were made municipal courts.

See: Convention Committee Describes New Judicial System Adopted in New Jersey, 31 J. Amer. Jud. Soc. 138, text of judicial article 142, chart of court system 143 (1948); Vanderbilt, The First Five Years of the New Jersey Courts Under the Constitution of 1947, 8 Rutgers L. Rev. 289, bibliography 311 (1954); Karcher, New Jersey Streamlines Her Courts: A Revival of "Jersey Justice", 40 A. B. A. J. 759 (1954); Brennan, After Eight Years: New Jersey Judicial Reform, 43 A. B. A. J. 499 (1957).

HAWAII
1950
Constitution of Hawaii, Article V
Hawaii Laws 1959, Act 259

The judicial article of the Hawaiian constitution, adopted by convention in 1950, provides for a unified court system including a five-judge Supreme Court, circuit courts and other inferior courts as may be established by law. The legislature has provided for district magistrates. The circuit courts exercise general trial jurisdiction. The district magistrates exercise exclusive civil jurisdiction up to $50 and concurrent civil jurisdiction with the circuit courts in cases up to $1,000 in some districts and $2,000 in other districts and have jurisdiction of misdemeanors.

The judicial article makes the chief justice of the Supreme Court the administrative head of the courts with power to assign judges from one court to another for temporary service and to appoint an administrative director of the courts. The Supreme Court has power to make rules and regulations in all civil and criminal cases in all courts.

All justices and judges must be admitted to practice law in the state for at least 10 years.

See: Anthony, The Judiciary Under the Constitution of the State of Hawaii, 43 J. Amer. Jud. Soc. 13, text of judicial article 16 (1959)

PUERTO RICO
1952
Constitution of Commonwealth of Puerto Rico, Article V, Judiciary; Judiciary Act of 1952 compiled in Title 4, Laws of Puerto Rico Annotated (1954).

The constitutional article provided for a unified judicial system including a five justice Supreme Court and such other courts as may be created by law. The Supreme Court is empowered to adopt rules of evidence and civil and criminal procedure to be effective unless disapproved by the legislature which may amend, repeal or supplement such rules by law. The Supreme Court is authorized to adopt rules for the administration of the courts and the chief justice is to direct court administration with the aid of an administrative director appointed by him. Justices of the Supreme Court must be United States and Puerto Rican citizens, admitted to the practice of law in Puerto Rico at least ten years and resident in Puerto Rico for at least five years.

The implementing act created the court of first instance (general trial court) with district and superior court divisions. The district court division has criminal jurisdiction over most misdemeanors and civil jurisdiction up to $2,500; the superior court has criminal jurisdiction of felonies and civil cases over $2,500. However, no case can be dismissed on ground that it was submitted to a division without jurisdiction or to a part of the court with improper venue.

Such cases are transferred to an appropriate division or part. Appeal on points of law only is allowed from the district to the superior courts.

See: Snyder, New Puerto Rico Judicial System is Modern and Efficient, 36 J. Amer. Jud. Soc. 134, text of the Puerto Rican judicial article 139 (1953); Clark and Rogers, The New Judicial Article of Puerto Rico: A Definitive Court Reorganization, 61 Yale L. J. 1147 (1952); Elliott, Our Faith in Justice: Puerto Rico Shows the Way to Better Courts, 42 A.B.A.J. 24 (1956)

ALASKA
1956
Alaska Const. Art. IV; Alaska Sess. Laws 1959, ch. 50, 184

The Alaskan constitution provides for a three judge Supreme Court (number may be increased by law) with final appellate jurisdiction and power to make rules governing the administration of all courts and governing the practice and procedure in civil and criminal cases. The chief justice of the Supreme Court is administrative head of all the courts; he may assign judges for temporary service and appoint an administrative director to supervise the administrative operations of the state court system. The constitution also created a superior court (trial court of general jurisdiction) of five judges (number may be increased by law). Implementing legislation created district magistrate courts (trial court of limited monetary and misdemeanor jurisdiction) whose judges are appointed by the presiding judge of the superior court in each district.

The constitution also provides for a seven member judicial council composed of three attorneys appointed by the governing board of the state bar, three non-attorneys appointed by the governor with confirmation by a majority of the members of the state legislature and the chief justice of the Supreme Court, who acts as chairman. The council is authorized to conduct studies and make reports and recommendations on improvement of the administration of justice and perform any other duties assigned to it by law. Judges of the Supreme and superior courts are required to be United States and Alaskan citizens, licensed to practice law in the state and have a given number of years experience as a judge, lawyer or law teacher.

See: Stewart, A Model Judiciary for the 49th State, 42 J. Amer. Jud. Soc. 52; text of Alaska's Judicial Article 54-55 (1958); Egan, The Constitution of the New State of Alaska, 31 State Gov't. 209 (1958); Hellenthal, Alaska's Heralded Constitution: the Forty-Ninth State Sets an Example, 44 A.B.A.J. 1147 (1958); Alaska Passes Enabling Act for Judiciary, 42 J. Amer. Jud. Soc. 202 (1959); Hermann, Building a State Judiciary, 39 Neb. L. Rev. 265 (1960).

FLORIDA
1956
Committee Substitute for House Joint Resolution No. 810, revising Article V of the Constitution of Florida

A court of appeals (intermediate appellate court) was created to lighten the supreme court caseload. Each of three districts has one five-judge court with final appellate jurisdiction in all matters except cases involving the death penalty, construction of state or federal statutes or treaties, constitutional questions, bond validations, matters certified to be of great public interest and cases in which district courts are in conflict on a point of law. The amendment empowered the supreme court to adopt rules governing practice and procedure in all courts.

See: Barns, Courts, Lawyers and Taxpayers, 30 Fla. B. J. 162 (1956); Status of Judicial Reform in State of Florida, 12 U. Miami L. Rev. 104 (1957)

WISCONSIN
1959
Wisc. Sess. Laws 1959, ch. 315

County court jurisdiction which had formerly been limited to probate, paternity and juvenile cases, was expanded to include general civil jurisdiction up to $25,000 and concurrent criminal jurisdiction with the circuit courts (trial courts of general jurisdiction). Except in Milwaukee County, where they became divisions of the county court, the municipal, civil and district courts were eliminated. Justice of the peace courts were retained but with civil jurisdiction limited to cases up to $200 and authority to perform marriages. The system of part time judges compensated by fees was eliminated.

An administrative committee for the entire court system was created and authorized to meet with the state judicial council to review the work of the courts and plan for the efficient handling of judicial business.

See: Wisconsin Enacts State-Wide Court Reorganization Plan, 43 J. Amer. Jud. Soc. 58 (1959); Equal Justice Throughout the State, Wisconsin Bar Bulletin, Dec. 1958, p. 11; Court Reorganization Plan Adopted by the Legislature, 32 Wisconsin Bar Bulletin 20 (1959)

ARIZONA
1960
Constitution of Arizona, Article VI

A constitutional amendment created a unified judicial system under the administrative direction of the chief justice of the Supreme Court, aided by an administrative director of the courts. The chief justice was empowered to assign judges and the Supreme Court was allowed to sit in panels of three judges and to appoint a presiding judge in counties having more than two superior judges to exercise administrative superivison of the superior court. The amendment enabled the legislature to raise justice court jurisdiction and to create municipal courts as well as an intermediate appellate court.

See: Modern Courts Amendment Will Go to Arizona Voters, 44 J. Amer. Jud. Soc. 37 (1960); Voters Approve Judicial Amendments, 44 J. Amer. Jud. Soc. 117 (1960); Udall, Modern Courts--Where Do We Go From Here? 2 Ariz. L. Rev. 167 (1960)

NEW YORK
1961
N. Y. Sess. Laws 1960 at LXV (McKinney) amending the New York Constitution, Article VI

The constitutional amendment and implementing legislation vested authority and responsibility for the supervision of the state court system in the administrative board of the judicial conference, composed of the chief justice of the Court of Appeals (final appellate court) and the presiding judges of the appellate division of the supreme court (intermediate appellate court).

Outside New York City, a system of district courts was authorized to be established by local option to replace existing city, village and town courts. In addition, a family court was established in each county and given jurisdiction in most family matters.

Major court unification was accomplished in New York City where a city-wide civil court replaced the municipal and city courts and a city-wide criminal court replaced the magistrates and special sessions courts. The court of general sessions in Manhattan and the county courts in Kings, Queens, Bronx and Richmond Counties were abolished and their functions were transferred to the state supreme court.

Justices of the peace who are not lawyers were required to participate in a training pro-

gram prescribed by the administrative board.

See: New York Court Reform Signed into Law, 45 J. Amer. Jud. Soc. 326 (1962); Court Reorganization Reform -- 1962, 46 J. Amer. Jud. Soc. 110 (1962); Greenbaum, Modern Courts Come to New York, 17 Record of Bar Association of City of N. Y. 244 (1962)

COLORADO
1962
Colo. S. C. Res. 12 (1960) amending the Constitution of Colorado, Article VI

A new constitutional judicial article provides for a supreme court with general superintending power over the court system and authority to promulgate rules governing the administration, practice and procedure in all civil and criminal cases in the courts of the state.

The article eliminated justice of the peace courts. The district courts were retained and their existing jurisdiction in all causes in law and equity was expanded to include cases of probate, mental health and juvenile proceedings over which the county court formerly had jurisdiction. Jurisdiction of the county court is to be set by law.

The City of Denver retains its independently constituted probate and juvenile courts and the amendment guaranteed the power of home rule cities and towns to create municipal and police courts.

Judges must be licensed to practice law in the state for a period of at least five years.

See: Colorado Becomes Sixth State to Send Judicial Amendment to Voters, 45 J. Amer. Jud. Soc. 77 (1961); Court Reorganization Reform--1962, 46 J. Amer. Jud. Soc. 110 (1962); Colorado Legislative Council Report to General Assembly, Research Pub. 49 (Dec. 1960), especially Appendix D: Comparison of Judicial Article and Proposed Article

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ILLINOIS
1962
Ill. H. J. Res. 39 (1961) amending the Illinois Constitution, Article VI

A constitutional amendment provided for a unified state-wide court system. The Supreme Court was granted general administrative authority over all state courts including powers of assignment of judges among circuits, power to provide for inexpensive and expeditious appeals, power to convene an annual judicial conference and power to appoint an administrative director of the courts.

The intermediate appellate court, formerly staffed by circuit and superior judges, was provided with judges specifically selected to sit in that court.

A state-wide system of circuit courts staffed by circuit judges and magistrates appointed by circuit judges was created to replace the complex of courts which included circuit, superior, criminal, justice of the peace, police magistrate, municipal, city, village and incorporated town courts. The circuit court within each circuit is under the general supervision of the chief judge of the circuit, who is in turn subject to the supervisory powers of the supreme court. Jurisdiction of the circuit courts includes all justiciable matters. The legislature is to specify which matters may be assigned to magistrates.

All judges are required to be licensed attorneys of the state.

See: Allard and Breen, A New Judicial Article for Illinois, 45 J. Amer. Jud. Soc. 281 (1962); Fins, Analysis of the Illinois Judicial Article, 11 DePaul U. L. Rev. 185 (1962); The Blue Ballot Judicial Amendment, 50 Ill. Bar Journal 651, Supplement, (1962)

NORTH CAROLINA
1962
N. C. Sess. Laws 1961, ch. 313 amending Article IV of the North Carolina Constitution

The constitutional amendment provided for a general court of justice which constitutes a unified judicial system for the purposes of jurisdiction, operation and administration. The Supreme Court, superior court and district court are divisions of the general court of justice. The Supreme Court was granted exclusive authority to make rules of civil and criminal procedure and practice subject to legislative veto and to exercise general administrative authority over the court system with the aid of an administrative office of the courts. The jurisdiction of the superior and district courts is to be established by law.

A uniform system of district courts and magistrates is to replace the justice of the peace and statutory minor court system.

The compensation of judges by fees was abolished.

See: North Carolina's Court Reform Campaign is Renewed, 44 J. Amer. Jud. Soc. 222 (1961); Court Reorganization Reform--1962, 46 J. Amer. Jud. Soc. 110 (1962); Ball, The Proposed Revision of the Courts of North Carolina, 28 Pop. Govt. 19 (1961)

MICHIGAN
1963
Michigan Constitution, Article VI

The new judicial article written by a constitutional convention provided for a unified court system including a supreme court, an intermediate appellate court, circuit courts (trial court of general jurisdiction) and courts of limited jurisdiction to be created by law.

The seven member supreme court, which is granted supervisory control over the state court system, was empowered to hire a court administrator and establish rules of practice and procedure in all state courts.

The intermediate appellate court of at least 9 judges has appellate jurisdiction as provided by law and the circuit courts have original jurisdiction in all matters not prohibited by law. The probate courts were retained, except that they may be combined with any judicial office of limited jurisdiction within the counties by act of the legislature.

Offices of justice of the peace and circuit court commissioner were abolished and a substitute minor court system was authorized to be created by law.

All judges of courts of record were required to be licensed to practice law in the state.

See: New Constitution for Michigan Approved by Convention, 46 J. Amer. Jud. Soc. 1 (1962); Court Re-organization Reform--1962, 45 J. Amer. Jud. Soc. 110 (1962); Donnelly, Analysis of Proposed Article VI and the State Bar Poll, 41 Mich. S. B. J. 41 (1962)

Excerpt from the Consensus of the National Conference on Judicial Selection and Court Administration

Effective Use of Judicial Manpower

The effective use of judicial manpower requires businesslike administrative organization and control. The variety and efficiency of the methods in use in many of the states demonstrate this. Differences in the systems are occasioned by factors of historical development, traditional attitudes, the size and population of the state or a particular community, constitutional limitations, etc.

1. There is need for an annual judicial conference of all judges at all levels within a court system to supply a forum for development and sponsorship of needed revisions of court procedures and administration; and to afford opportunity for the sharing of experiences and ideas and the development of a colleagueship among the judges. The judicial conference should have an official status. The trial of cases should be suspended during the period of the conference. The expenses of attendance should be paid out of the public treasury.

2. A state judicial council of 15 to 20 members can be a major influence in devising and promoting improvement of court procedure and judicial administration. The composition of the judicial council may vary with local conditions but in general it should include representatives of the bench, the bar, the legislature and the public.

3. Chief justices should be empowered to assign judges from court to court throughout the state to meet varying needs and to equalize the case loads. The exercise of this power should not be dependent upon the consent of the judge who is assigned, or of his presiding judge, or of the judge or judges of the court to which he is assigned. It is important that the power to assign be recognized, although in practice it should not generally be exercised without consent. Any apprehension that the power might be abused is negated by the experience in states in which the chief justices have exercised it.

4. Chief justices of state supreme courts and presiding judges of other multi-judge courts must perform important administrative functions. This fact must be considered in devising methods for their selection. These positions should not be filled on the basis of seniority, political influence or automatic rotation.

Whether the presiding judges of intermediate courts should be designated by the chief justice, or by some other authority, or elected by their fellow judges, may well vary with local conditions and traditions.

5. In state and metropolitan courts the members of the judiciary should be relieved of personnel, budget and other administrative matters. These should be delegated to a qualified administrator who is not a judge of the court. This will enable all the judges of the court to devote their full time to judicial work and ensure the application of efficient and economical management techniques.

6. The keeping of judicial statistics is necessary to the efficient operation of a court or a court system. The nature and complexity of the statistics vary with the needs of the particular system. Whatever statistics are kept must be current, have continuity, clarity, be under a definition of terms that is uniform throughout the jurisdiction, and be compiled only in the fulfillment of a definite purpose. These statistics will be useful only if kept under the constant surveillance of those officials who have a continuing need of them. A proper system of statistics can make an impressive and useful contribution to judicial administration and to the understanding and the interest of the public.

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Excerpted From

THE MODEL JUDICIAL ARTICLE FOR STATE CONSTITUTIONS

§1. THE JUDICIAL POWER.

The judicial power of the State shall be vested exclusively in one Court of Justice which shall be divided into one Supreme Court, one Court of Appeals, one Trial Court of General Jurisdiction known as the District Court, and one Trial Court of Limited Jurisdiction known as the Magistrate's Court.

Committee comment: It is contemplated to set up by this section a single unified judicial system with a single court of original jurisdiction. This follows the recommendation of advocates of judicial reform from Pound to Vanderbilt. And this is one of the recommendations made by the American Bar Association in 1938. It is a reflection of the unfortunate experiences too many states have had with multiple courts of original jurisdiction.

Thirteen states with large populations and consequently with an extremely busy judicial system now provide for an intermediate appellate court. It is expected that more and more states will find this kind of a court to be a real aid in dealing with problems of congestion in the appellate system. The Model Judicial Article, therefore, provides for such a court.

The titles of the trial courts may, of course, vary from jurisdiction to jurisdiction. The ones chosen here are merely for purposes of example.

§2. THE SUPREME COURT.

¶1 Composition. The Supreme Court shall consist of the Chief Justice of the State and (four) (six) Associate Justices of the Supreme Court.

Committee comment: The question of the number of justices is not one which has an ideal solution and the number may vary from state to state. The experience of the United States Supreme Court would indicate that any number above nine has passed the point of diminishing returns. On the other hand, the number must be large enough to divide the tasks sufficiently to give the justices ample time for reflection and deliberation in the preparation of opinions.

The Committee is of the view that the number of justices should be fixed by the Constitution to avoid such suggestions as that of McReynolds when he was Attorney-General, adopted by President Franklin D. Roosevelt in his court-packing plan, to increase the number of justices in order to effect a change in the substance of the Court's opinions.

The Committee is of the opinion that the Supreme Court should not sit in divisions, but has not made provisions to prohibit it. Such a practice has been utilized by several state jurisdictions. Its main purpose is, of course, to allow the high court to increase the number of cases which it can hear in order to overcome or prevent delay and congestion. It must be recognized, however, that decisions by divisions, even if provided for by the Constitution, will not have the same force and effect as a decision of the whole Court. Moreover, sitting in divisions creates the possibility of minority views on the Court becoming controlling doctrine because of the accident of the make-up of a division. It is the Committee's belief, therefore, that while divisions could be utilized for clearing temporary congestion or delay, an intermediate appellate court and/or a limitation on the Supreme Court's appellate jurisdiction are more appropriate long-term remedies.

¶2. Jurisdiction.

A. Original jurisdiction. The Supreme Court shall have no original jurisdiction, but it shall have the power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

Committee comment: It is the view of the Committee that no original jurisdiction be imposed on the high court. That court lacks facilities for the fact finding process inherent in every question of original jurisdiction. References to masters and referees, in the pattern of the United States Supreme Court, do not seem so adequate or desirable as requiring the case to enter the judicial system by way of the trial court.

Silence on the question of the issuance of writs has generally been interpreted as authorizing the Supreme Court to issue original writs. It is proposed to eliminate this power for the same reasons that call for the elimination of original jurisdiction. By way of its appellate jurisdiction, the high court can review all grants or denials of writs below and can properly, in the extraordinary cases, remove a case from the lower court to the high court even before judgment on the petition for the writ has been made by the lower court.

B. Appellate jurisdiction. Appeals from a judgment of the District Court imposing a sentence of death or life imprisonment, or imprisonment for a term of 25 years or more, shall be taken directly to the Supreme Court. In all other cases, criminal and civil, the Supreme Court shall exercise appellate jurisdiction under such terms and conditions as it shall specify in rules, except that such rules shall provide that a defendant shall have an absolute right to one appeal in all criminal cases. On all appeals authorized to be taken to the Supreme Court in criminal cases, that Court shall have the power to review all questions of law and, to the extent provided by rule, to review and revise the sentence imposed.

Committee comment: The only categories of cases in which the Committee felt that it was necessary to impose compulsory jurisdiction were those involving the life of the defendant and those involving liberty of the defendant for an extensive period of time. Most high courts now exercise this power in capital cases. For this purpose the Committee was unable to rationalize a distinction between capital cases and long-term sentences of imprisonment.

As to all other matters it was believed that the appellate power should be exercised in accordance with the demands of the times. On the question whether this allocation of power should be in the Court or in the legislature, the Committee chose the Court for several reasons. Among others, these reasons included: 1) the fact that such power in the Court would enhance the independence of the judiciary; 2) the fact that it would place the power to meet current problems in the hands of those most likely to be expert in the subject; 3) the fact that the rule making power was more flexible than the legislative power in its capacity to meet the demands of judicial administration.

The proposal that the appellate power in criminal cases include the power to review sentences is based on the efficacious use to which that power has been put by the Court of Criminal Appeals in England. Recognizing the possibility of undesirable imposition on the appellate processes, the Committee thought it desirable to leave the Court with the power to limit the categories of cases in which sentences would be reviewed.

§3. THE COURT OF APPEALS.

The Court of Appeals shall consist of as many divisions as the Supreme Court shall determine to be necessary. Each division of the Court of Appeals shall consist of three judges. The Court of Appeals shall have no original jurisdiction, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies of the State and it may

be authorized by rules of the Supreme Court to issue all writs necessary or appropriate in aid of its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rules which shall, however, provide that a defendant shall have an absolute right to one appeal in all criminal cases and which may include the authority to review and revise sentences in criminal cases.

Committee comment: The necessity for intermediate courts of appeal, already existent in thirteen states and likely to become necessary in others, was the reason the Committee felt that provision should be made in the Constitution for their creation. The primary function of such a court would be to hear appeals in cases which the Supreme Court should not be expected to handle because of the importance of its business. The jurisdiction of the court of appeals has, therefore, been framed in the same terms, except for the Supreme Court's compulsory jurisdicition, as is the jurisdicition of the Supreme Court itself. The same reasons exist for allotting the power to the Supreme Court rather than the legislature to specify the jurisdicition.

§4. THE DISTRICT AND MAGISTRATE'S COURTS.

¶1. Composition. The District Court shall be composed of such number of divisions and the District and Magistrate's Courts shall be composed of such number of judges as the Supreme Court shall determine to be necessary, except that each district shall be a geographic unit fixed by the Supreme Court and shall have at least one judge. Every judge of the District and Magistrate's Courts shall be eligible to sit in every district.

Committee comment: The number of District Court judges and magistrates and District Court divisions must be flexible in order to allow for adjustment to new conditions. The authorization to provide for "divisions" was thought desirable in terms of the need for specialized courts, such as probate and divorce courts. But it was also thought to be desirable that these specialized courts be manned by judges whose functions need not be confined to such courts. Thus, all branches will be administered as one court with no conflicts of jurisdiction and no waste of judicial manpower.

The Committee believed that the Supreme Court would be the most expert body to decide how many judges and magistrates are required in each district.

The authority of a district judge and magistrate to sit in any district is complementary to the authority of the Chief Justice to assign judges anywhere in the State in order to make the most efficient use of judicial manpower.

¶2. District Court Jurisdiction. The District Court shall exercise original general jurisdiction in all cases, except in so far as original jurisdiction may be assigned exclusively to the Magistrate's Court by the Supreme Court rules. The District Court may be authorized, by rule of the Supreme Court, to review directly decisions of State administrative agencies and decisions of Magistrate's Courts.

¶3. Magistrate's Court Jurisdiction. The Magistrate's Court shall be a court of limited jurisdiction and shall exercise original jurisdiction in such cases as the Supreme Court shall designate by rule.

Committee comment: It was the Committee's view that cases involving minor matters such as traffic offenses and small claims should be delegated to magistrate's courts, and that this would be necessary to avoid an unreasonably large number of district judges with general original jurisdiction. It was also thought that where the districts covered a large geographic area or temporary congestion occurred in any district, magistrates might appropriately be used to relieve the district court of undue burdens. Because of the need for flexibility in the use of such courts it was deemed best to leave the terms and conditions of the magistrate's court jurisdiction in the control of the Supreme Court by rule.

§8. THE CHIEF JUSTICE.

¶2. Head of Administration office of the Courts. The Chief Justice of the State shall be the executive head of the judicial system and shall appoint an administrator of the courts and such assistants as he deems necessary to aid the administration of the courts of the State. The Chief Justice shall have the power to assign any judge or magistrate of the State to sit in any court in the State when he deems such assignment necessary to aid the prompt disposition of judicial business, but in no event shall the number of judges and justices exceed the number of justices provided in section 2. The administrator shall, under the direction of the Chief Justice, prepare and submit to the legislature the budget for the court of justice and perform all other necessary administrative functions relating to the courts.

Committee comment: The vesting of administrative authority in the Chief Justice follows the recommendation of the American Bar Association. The desirability of the concept has been proved by the experience in the New Jersey system which adopted such a method of administering its courts.

§9. RULE MAKING POWER.

The Supreme Court shall have the power to prescribe rules governing appellate jurisdiction, rules of practice and procedure, and rules of evidence, for the judicial system. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

Committee comment: The vesting of the rule making power in the Supreme Court has long been an objective of those interested in judicial reform. This is another of the recommendations of the American Bar Association. Rule making power over all the courts of the States is already exercised to a large degree in 28 States. Several states provide that the judicial council should fulfill this function, but the Committee thinks that the Supreme Court, because of its responsibility for the operation of the judicial system, is the proper body to exercise this power. Of course, the Supreme Court can call upon a judicial council or any other body of experts to advise it in the formulation of rules.

The provision giving to the Supreme Court the power to promulgate rules of evidence is a more controversial issue than the other rule making powers. In only eight states does the Supreme Court have control over rules of evidence, and in most of these states the power is conferred by statute rather than by the Constitution. The Committee follows the recommendation of the American Bar Association as most consistent with the proper concept of rules of evidence as procedural and most conducive to the effective administration of justice in the court system.

The last sentence of Section 9 contains language broad enough to authorize the Supreme Court to deal with either an integrated or an unintegrated bar of the State in connection with supervision of its members, discipline of its members, and other regulation or supervision of the bar. The language is broad enough to permit the Supreme Court to order an integrated state bar to be organized as was done in Wisconsin. If it is preferred that an integrated bar be a constitutionally created corporation, the following sentences may be added to Section 9:

"The State Bar of _____ is a public corporation, having, as an agency of the Supreme Court, perpetual existence and succession. Membership in it shall be a condition precedent to practicing law in this State. The Supreme Court by appropriate orders may provide for its organization and its regulation and supervision."

Chapter IV

COURTS OF LIMITED AND SPECIAL JURISDICTION

I never speak "of this work" of our higher courts without the reflection that after all it is the courts of minor jurisdiction which count the most so far as respect for the institution of justice is concerned.....If our bar associations could create a sentiment which would demand that in all our cities the police and minor civil courts should fairly represent the Republic as the embodiment of the spirit of justice, our problem of Americanization would be more than half solved. A petty tyrant in a police court, refusals of a fair hearing in minor civil courts, the impatient disregard of an immigrant's ignorance of our ways and language, will daily breed Bolshevists who are beyond the reach of your appeals. Here is work for lawyers. The Supreme Court of the United States and the court of appeals will take care of themselves. Look after the courts of the poor, who stand most in need of justice. The security of the Republic will be found in the treatment of the poor and the ignorant; in indifference to their misery and helplessness lies disaster.

- Charles Evans Hughes

A Topical Outline for Guided Reading and Discussion

COURTS OF LIMITED AND SPECIAL JURISDICTION

I. Organization
   - A. Should there be one or more than one kind of such a court?
     1. Does a single court provide more efficient and economical justice?
     2. Could a single court be divided into specialized divisions with specialized judges?
        - a. Would this be needed in all areas?
     3. How should such a court be distributed throughout a state?
        - a. Political boundaries
        - b. Population density
        - c. Typical workload
     4. How often should such a court be open for "business"?

II. Judges
   - A. How many judges are needed?
     1. What should be their qualifications?
     2. How should they be selected?
     3. Should they work full-time?
     4. How should they be compensated?
        - a. Salaries
        - b. Fees
        - c. Combination of salary and fees
     5. Should these judges have any non-judicial duties?

III. Jurisdiction
   - A. What proceedings should come before such courts?
     1. Small claims
        - a. What limit?
     2. Minor criminal charges
     3. Traffic violations
     4. Others
   - B. Should these courts be courts of record?
   - C. Should there be exclusive or concurrent jurisdiction over cases?
     1. If concurrent, with what courts?
   - D. Should these courts have an appellate jurisdiction?
     1. If so, over what?
   - E. Should appeals be allowed from these courts?
     1. If so, what kinds of proceedings?
     2. If so, to what court?

IV. Administration
   - A. Should these courts be supervised on a state-wide basis?
     1. What should be the fiscal controls?
        - a. Over fees
        - b. Over fines
     2. Should there be uniform reporting required?
        - a. If so, of what?
     3. Should there be uniform rules and procedures?
     4. Who should exercize supervisory power over these courts?
     5. What sanctions would be necessary to insure conformity to policy and rules?

Some Plain Talk About Courts of Special and Limited Jurisdiction *

by Harvey Uhlenhopp

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FINEST justice, reasonable expense, and ready accessibility are the three grand objectives of courts of special and limited jurisdiction. Generally called the inferior courts, they currently handle juvenile and family proceedings, probate matters, and small civil and criminal actions.

The evolution of American courts begins with English progenitors[1] and continues to the present day. Early England had little juvenile delinquency as such and crimes by youths were prosecuted the same as crimes by adults. Probate matters in medieval England were handled by the ecclesiastical courts. Justices of the peace handled small actions such as assaults, intoxication, and poaching—but, of course, none of the traffic charges with which we now associate such courts. These officials were quite different from our present judicial officers of that name. Conferred as an honor by the crown on a leading subject of the area, the office carried considerable prestige but no compensation.

Here in the colonies also there was little incidence of juvenile delinquency as such. For probate matters the colonies and later the states generally established probate courts, sometimes called county or surrogates courts. For small litigation—small debts, disturbing the peace, drunkenness—the justice of the peace system was generally adopted. But the justice was usually elected rather than appointed, and the office was not honorary—the justice was allowed to keep all or part of the court costs.[2]

Rumblings of discontent with the inferior courts began to be heard by the end of the 19th century. In England, which is usually about 50 years ahead in jurisprudence, a Royal Judicature Commission was appointed to examine the entire British legal establishment. In 1869 the Commission proposed a single trial court, sitting at various places throughout the realm and composed of divisions for cases of all sizes and kinds.[3] Since rapid transportation had not yet come about, it did not seem that a single trial court, though ideal in theory, would be sufficiently accessible to small litigants. Consequently in 1873 and 1875 Parliament established a single trial court for litigation other than small actions, and retained the separate county court system for those cases.[4] Such is the basic judicial establishment in England today.

1. The various English courts are described in I Holdsworth, *History of English Law* (1931).
2. American courts in pre- and post-colonial periods are described in Pound, *Organization of Courts*, chs. III, IV (1940).
3. *Report of Royal Judicature Commission* (1869).
4. Judicature Acts, 36 & 37 Vict. ch. 66 (1873), 39 & 40 Vict. ch. 77 (1875).

*Reprinted from the Journal of the American Judicature Society (April, 1966).

In the United States, from about 1890 to 1920 the tide of juvenile delinquency began to rise. Probate courts still existed for probate matters. In the justice of the peace courts a new action began to appear with increasing frequency—the automobile traffic case. The result was a manifold increase of cases before the justices, and a manifold increase in their fees.

During this period no American state adopted the English upper trial court-county court combination. The states retained their autonomous general trial courts for major litigation. But in cities the pressures of population and automobiles brought about abolition of the justices of the peace in favor of a new inferior court, usually called the municipal court. This new court, it was thought, would provide the answer to the small litigation problem. So this was the picture generally in the United States: juvenile cases were usually placed in the municipal courts in the cities and in probate courts in rural areas; probate matters were left in the probate courts in city and country; and small litigation went to the municipal courts in cities and to justices of the peace elsewhere. The volume of small cases rose tremendously, consisting mainly of uncontested traffic charges. Those charges came to constitute the bulk of the cases before municipal court judges and justices of the peace. Thus the office of justice of the peace, once held as an honor, became a very lucrative position from cases which did not even exist when it was originated. Such has been the typical state judicial establishment since about 1920.

Evaluation of American Inferior Courts

How well are the three classes of cases in question being handled in these inferior courts? Generalizations have exceptions, and in particular instances a poorly structured court may be operated well by an exceptional judge, while a well structured court may leave something to be desired because of a poor judge. But have the inferior courts generally achieved the objectives of finest justice, reasonable expense, and ready accessibility for the three kinds of cases?

First are the juvenile cases. Placing these cases in municipal, probate, or other inferior courts cannot be defended. Juvenile proceedings at once deal with our most precious asset and present the most complex and baffling of human problems. Authorities in the juvenile field believe that these cases belong in the state's highest trial court, so that the attention of the state's most competent trial judges may be brought to bear on them.[5]

Next are the probate cases. The extra expense to the public of separate probate courts is also completely indefensible. States such as Iowa have demonstrated beyond question that probate work can be handled in a division of the general trial court.[6] Contested probate matters may thus have the attention of the state's highest trial judges, while comparatively little enlargement of that court is required since most probate proceedings are uncontested and the clerk can be authorized to sign probate orders in uncontested matters.

Then as to small litigation—largely uncontested traffic charges—there are in the main the justice of the peace and municipal courts. Justices of the peace should have left the American scene with player pianos and button shoes. Usually the justice is not legally trained, and in this day of complex law his decisions are often curious, to put the matter in the most complimentary terms.[7] Moreover, in many places justices are still allowed to keep the court costs, and this gives them a financial stake in litiga-

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5. *Standards for Specialized Courts Dealing with Children*, Children's Bureau, U.S. Dept. of H. E. & W., 22-3 (1954).

6. Sec. 631.1, Iowa Code Annotated.

7. E. g., search and seizure problems under *Mapp v. Ohio*, 367 U. S. 643 (1961).

tion. On the criminal side they often develop most cordial relations with individuals who can bring them business, such as enforcement officials, and on the civil side the justice is often collection agent for the very claim in suit.[8] But the fundamental difficulty is that the justice court no longer possesses the prestige of old. It is getting more and more a problem to get able lawyers to accept state judgeships generally, and the lower the court the more acute the problem. Yet no court is better than its judges.

It was originally thought that the municipal court would answer these shortcomings, with its full-time judges recruited from the bar.[9] The municipal court was and is a great improvement over the justice of the peace. But the municipal court has not risen to the high hopes of its founders. Its primary infirmity is that it is still an inferior court, and the problem remains of interesting the abler lawyers in the judgeships. There seems no answer to this infirmity if the municipal court is retained as a separate court. Salaries may be raised and secure tenure may be granted, but when leading lawyers are approached about municipal or other inferior court judgeships they take on an uninterested look and seem to feel they would lose status. They cannot see themselves spending their lives on small litigation and primarily on traffic tickets. The result in general is that the municipal court has not lived up to the bright expectations of 1900 and that lawyers endeavor to get their more significant cases before the general trial court if they can—and this is the acid test of a court.[10]

Another infirmity in the municipal court revealed by passage of time is its exorbitant expense per contested case. A recent study revealed that an ordinary one-judge municipal court in a typical state costs over $40,000 per year, plus expense for jury, building, and equipment. Yet about 95% of the cases in such a court are uncontested—primarily run-of-the-mill traffic violations. Highly paid judges are not normally necessary for uncontested cases; those cases can be adequately handled in less expensive ways.[11] The separate buildings, judges, juries, reporters, clerks, and constables of municipal courts duplicate their counterparts of the general trial courts, and the two sets of courts are divided solely by an arbitrary jurisdictional line. Indeed the buildings housing the two autonomous courts may be side by side. As the jurisdictional limits of the municipal courts are increased, the duplication of expense to the public becomes more blatant.

Still another infirmity of the municipal court is its limited base, which is simply too small for a high standing court. The city constitutes a reasonable base for many governmental services, but not for the judicial function of government. The smaller the base of a court, the more parochial the outlook of its judges. The state itself has become a community, and ideally, trial judges should be judges of the whole state.[12] Such judges, like state supreme court justices, are "state" judges in the true sense. Judges of the whole state have the broadest outlook, and judges of a particular political subdivision the narrowest, no matter how populous that subdivision may be. But at the very least, with modern roads and cars certainly court districts are practical substantially larger than a single city or county.

It is easier however to criticize the inferior courts than it is to devise a better

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8. Iowa even allows him a commission on collections as part of the court costs. Sec. 601.129(22), Iowa Code Annotated.

9. Harley, "Administration of Justice," 16 Proc. La. Bar Assn. (1915).

10. A random check disclosed that of 90 cases filed in the general trial court in places having municipal courts, 41 or 45 per cent could have been filed in municipal court. Uhlenhopp, "Judicial Reorganization in Iowa," 44 Iowa L. Rev. 6, 9-10, fn. 15 (1958).

11. Mainly the traffic violations bureau. See Recommendation 14, Report of Twenty-seventh American Assembly, Columbia University, 8-9 (1965).

12. Such as New Jersey superior court judges under N. J. Const. Art. VI, sec. III(2).

system. Juvenile proceedings and probate matters can be shifted to the general trial court without great difficulty, but what about small litigation? The past few years have seen four main experiments in various states.[13]

Devising a Better System

The first and most modest experiment has been to retain but upgrade the justice of the peace. Thus in some states salaries have been substituted for fees, or short courses in law have been required, or the jurisdictional limit has been raised, or the court has been given a new name. But the results have been disappointing. A rose by any other name smells about the same, and it is difficult to make a silk purse out of a sow's ear. The court remains an inferior court and does not attract superior judges. Lawyers still endeavor to avoid the court with their cases if they can get into a higher court.

A second experiment has been to absorb the justice of the peace and municipal courts into a county court. Again the results have been discouraging. To the extent of its jurisdiction, the county court constitutes a virtual duplication of the general trial court, and as the jurisdiction of the county court is raised the double expense becomes harder to justify. The county court is still an inferior court, and leading legal lights ordinarily cannot see themselves as county judges. Too, the county court, like the municipal court, is a court of limited base, submerged in local issues, pressures, and personalities.

A third group of states, in New England, have taken the county court a step farther by making it a multi-county or multi-city court; the judges ride circuit like the general trial court judges. These multi- county or city courts tend to reduce provincialism, but they magnify the problem of double expense for the taxpayers. If judges are to ride circuit, why should two sets of them do so? Thus two such judges may meet on circuit, each coming from the same home town and proceeding to the same place, one to try a case for $1,900, just under the jurisdictional limit, and the other to try a case for $2,100, just over the limit. This double system constitutes wheels within wheels, and the public is put to the support of two autonomous institutions. What insurance company would maintain two sets of traveling adjusters, one for claims under $2,000 and the other for claims over that amount? Moreover, the multi-county or city court, being of limited jurisdiction, still suffers the stigma of an inferior court. The problem persists of attracting bigger lawyers to its bench.

The fourth and farthest advance has been in Illinois, embodying the original principle of the Royal Judicature Commission. Early in this century Roscoe Pound visualized "one great court" for all litigation, founded on the Royal Commission principle.[14] At about mid-century, brave and far-sighted bar leaders in Illinois seized upon the one great court idea, and after a long struggle and several discouraging compromises secured a constitutional amendment in 1962 abolishing all trial courts in Illinois except one, called the circuit court, containing parts for cases of various sizes and kinds and sitting at various places where needed.[15]

How does a single trial court as proposed by the Royal Commission actually function? There is only one court, and one clerk and one sheriff with their necessary deputies, in any given area. The court has unlimited jurisdiction, and is manned by sufficient judges to take care of all work promptly. To provide accessibility, the judges sit where there are cases to be

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13. Citations to specific states are gathered in Uhlenhopp, "The Integrated Trial Court," 50 A.B.A.J. 1061, 1062, 1064, fns. 8, 9, 10, 21 (1964).

14. Special Committee of American Bar Association to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in the Administration of Justice, 34 A.B.A. Rep. 578 (1909).

15. Ill. Const. Art. VI (Amend. 1962).

heard in the area. Two auxiliary services are needed. One is a traffic violations bureau in the clerk's office for uncontested, nonhazardous violations, so that the judges can concentrate on more serious offenses.[16] The other is an expeditious, simple, and inexpensive procedure for small civil claims, with authority in the clerk to grant default judgments.[17]

Of the four main experiments thus far, the one great court undoubtedly best subserves the objective of finest justice, since higher calibre judges are attracted to such a court; the objective of reasonable expense, since duplication of courts is eliminated; and the objective of accessibility, since the judges sit where actually needed. Whereas the single trial court was not feasible in 1875, modern transportation has made it practical.

Obstacles To Change

The uninitiated may say, "well then, why don't we get on with the change?" This question requires a look at the facts of life about court reorganization. Changes in governmental institutions are hard to accomplish, and changes in the courts are hardest of all to achieve. Some of the obstacles are obvious, but some are more subtle and are seldom publicly discussed.

One obstacle is tradition. If for 50 years a state has had general trial courts, probate courts, and justice of the peace and municipal courts, its citizens seem to find change of this court structure hard to visualize. Then there is public apathy about small litigation. "The amounts involved are small, so why worry about these cases?" Yet small cases are so numerous that the total amount of money involved actually rivals the total amount involved in the so-called big cases. Too, the little cases are important to the people involved in them. There are no unimportant cases to the litigants. Thus the state should not merely provide a means for handling small cases; it should provide a good means.

Another obstacle is the age-old difficulty in reducing the number of officeholders. Inferior court officialdom—judges, clerks, constables, and other functionaries—natually resist abolition of their offices. It is difficult to abolish any public office and these particular offices are especially hard to eliminate, for the incumbents are often close to their legislators. In rural areas justices of the peace are often personal friends of their legislative representatives; they may even be pinochle partners. Inferior court officials not infrequently attend political gatherings and sit at the head table with their legislators. Moreover, justices of the peace and the judges of the municipal and other inferior courts usually have state associations which exert influence in legislative halls.[18] Charts and figures are displayed to prove that the city or county could not get along without the particular court and to demonstrate how busy the officials of that court are. It seems that the public is about the only group left without an organized lobby.

In addition, the typical municipal or other inferior court in the city will have several judges; its clerk will have a score or more of deputies and helpers; and its constable will have his deputies. Sometimes each of these chief officials—the judges, the clerk, and the constable—will be popularly elected and will therefore have a political organization of his own.These officials have their own votes, the votes of their families, and the votes of their employees and their families, plus the friends of these people. Thus altogether such a court presents a

16. Warren, *Traffic Courts*, ch. V (1952).

17. Cayton, "Small Claims and Conciliation Courts," 205 Annals 57 (1939).

18. Cf. statement of Harrison Tweed on defeat of New York court reorganization bill: "Aligned in opposition, and in the forefront of it, were most of the Supreme Court Justices and the Surrogates, and many of the County Judges, particularly those taking lucrative advantage of the right to practice law on the side. The opposition of these judges was irrespective of party affiliation or geographical location. In my opinion, their opposition was based entirely on self-interest." 13 Record 278, 282 (April 1958).

pretty formidable block of votes. The pressure on legislators from such communities can be considerable, and it takes a strong legislator to stand up to "the courthouse vote."

Perhaps the answer is to blanket some of the inferior court officials into the new court and gradually phase them out on retirement, such as municipal court judges who have left their practice for the bench. In fact, reduction by attrition is humane, and similar to changes in industry resulting from automation. Thus evolution to a better trial court system may come about by way of merger and amortization. Fortunately, some outstanding municipal court judges see the big picture and favor change, but they are understandably concerned about their own personal fortunes in the process.

But among judges, opposition to change is not limited to the inferior courts. Some general trial court judges lack enthusiasm about it. A number of them do not relish taking all this extra business into one institution. A few of them apparently want to occupy a high court aloof from the myriad problems of youthful offenders, probate matters, and small causes. But here too progressive judges are found who see the overall picture of litigation in the state.

Then there is the problem of leadership. Who will spearhead the movement for a better system? Someone must be willing to call a spade and spade and reveal the inferior quality justice and the duplication of expense. Who is willing to speak out?

Bar associations and lawyers individually have the public interest at heart, but they are caught in a crossfire. Many inferior court judges and their lawyer friends are members of bar associations, and of course such associations do not want to alienate members and above all do not want to have internal dissension which might endanger the association itself. Individual lawyers can hardly be expected to relish the prospect of speaking out publicly against an inferior court one day, and then appearing before that very court the next day for a client or for allowance of a probate fee. Yet leadership from the legal profession is needed, and it can safely be said that states with the most courageous and far-sighted bench and bar have made the greatest advances. It is a matter with the legal profession of placing the public interest first.

But the courts belong to everyone, and the public cannot abdicate all responsibility to the legal profession. Men and women of good will must make a decision on this basic issue: are juvenile proceedings, probate matters, and small cases sufficiently important that something should be done to improve the handling of them? If so, then public spirited laymen are going to have to join lawyers and judges in laying hold of the problem and solving it.

In solving the problem an important caveat should be observed. Experience across the country demonstrates that the necessary changes cannot be accomplished piecemeal. Overall reorganization cannot be achieved by presently improving this particular court and leaving another one till later, or improving the city courts now and leaving the country courts till later. Somehow "later" never comes. When the first improvement is accomplished, the steam goes out of the movement and the opposition digs in. States which have attemped reorganizaion by halves have ended up only halfway.[19] Yet justice in small litigation is not just a problem of the city or of the country or of this court or that court. Every litigant is entitled to justice, and small litigation is statewide. If high quality justice is to be readily accessible to all litigants at reasonable expense, the attack will have to be mounted statewide.

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19. E. g., New Jersey's remaining plethora of courts. See Annual Report of Administrative Director of New Jersey Courts, 1 (1958-59) (superior court, 21 county courts, 501 municipal courts, 21 county district courts, 21 juvenile and domestic relations courts, 21 surrogates courts).

JUSTICE OF THE PEACE COURTS IN NEW MEXICO

The following are selections from the report of the State Judicial System Study Committee to the Twenty-fifth Legislature of New Mexico, January, 1961. Committee chairmen were Senator Fabian Chavez, Jr. and Representative Oscar H. Beasley.

The report is largely composed of selections from testimony given before the Committee in various communities of the state. Subsequent legislation has created administrative controls which have corrected some of the major problems. (Ed.)

THE COURTS IN NEW MEXICO

Chapter 1

The Justice of the Peace Story as Told by the JP's Themselves

In order to be absolutely fair to the justices of the peace, this account will open with statements by the JPs concerning the justice of the peace system.

The following materials, taken from official transcripts of hearings before the State Judicial System Study Committee of the 24th Legislature, present the ways in which the JPs view themselves and each other.

* * * *

In response to a question as to how the justice of the peace system can be improved, one JP stated: "I know a lot of justices of the peace that aren't qualified as justices of the peace. They can't even sign their name and can't read or write."

Another JP, the operator of a filling station, maintained that "I can read and the only thing is that I can't explain very well."

An elderly JP said of himself, "I am healthy all right but my memory is kind of going off, you know, and so is my tongue, I can hardly speak as well as I used to."

A man, with ten years' service as a JP, stated his philosophy. He believed that a university "degree deprives a man of the human facilities required to deal with the kind of people you meet in a justice of the peace court." He further stated that a man with "a fancy education cannot sit down and parley with these people." He insisted that "a justice of the peace should maintain a great deal of levity and dignity in a justice of the peace court." He went on, however, to explain that "a high degree of levity and dignity in a court, such as wearing robes and formalities, deprives these people of the naturalness and the instinctive honesty they have and

the right to speak out." Upon questioning as to whether he thought respect in a court is bad, he continued by demanding "levity" in the courts and restated his disrespect for persons who "come out of fancy universities with high academic degrees." He did state his belief, however, that a JP "shouldn't be a habituary of bars, that he shouldn't hold court in undignified surroundings, such as in a saloon or in a gas station."

In New Mexico, the JPs perform the functions that are customarily performed by coroners in other states. A JP headed an inquest in which a man was shot "three times in the heart and once in the head" and the verdict of "suicide" was rendered. This same JP stated "it worries me such as a man hanging on the tree with his feet flat on the ground. Now according to medical people of which I have asked doctors on my investigation they say a man stretches but sometimes I wonder how far he will stretch." He stated, " I think that 99 percent of them (the JPs) are not capable of holding an investigation and of medical determination whether a man is dead or not. It is just that the coroners in the state of New Mexico are the justices of the peace and are not qualified."

A statement was discussed concerning the functioning of the JP system. A JP felt that what is wrong with the justice of the peace system "is ignorance, and ignorance of the law, and through that ignorance."

A JP, the head of a county association of JPs, stated that what is wrong with JPs is that "a lot of them either don't know or just don't want to follow the statutes."

A JP, who claimed that he had had two years of college, had an income from JP work in excess of $12,000 annually. He was asked a question and was then asked, "Would you state that unequivocally?" The JP then asked, "I want to ask one question: What do you mean by 'unequivocally'?" The JP was requested to answer the question, which he refused to do, saying, "I would like to know what the word means before I answer it." Upon being supplied with a definition of the word "unequivocally," the JP proceeded to answer the question.

One justice of the peace, with approximately 20 years of experience, stated, "one thing that raises public opinion against the justices of the peace, that we have had magistrates that should never have been justices of the peace."

A JP , who operates his courtroom in the rear of his curio shop, stated, "I don't think I am well qualified to be a good judge."

A man, with five years experience as a JP, testified concerning the justice of the peace system that "it reminds me of an automobile that is in need of a lot of repairs."

A JP, who handles about 1,200 cases a year, stated that "I am not very -- possibly not thoroughly -- capable of reading the law." He also stated that "I was very fortunate when I first went in as a JP, of course, my experience in the sheriff's office as an accountant and radio operator helped me a little bit, because I at least knew where the jail was."

After three years' experience in JP work, a JP testified, "You know, I was ignorant when I went in (JP work) and I'm still that way."

A JP, who grossed between $18,000 and $23,000 a year in JP work, believed that a JP should "have at least a high school education."

As for qualifications of JPs, one JP stated that "I know there is a bunch of us that is ignorant, and we are going to have that from now on. It would be hard to determine qualifications. You can have people qualified, but will they do the work?" He apparently indicated that less-than-qualified JPs would "do the job" whereas qualified people might not be available because of the hard working conditions in the JP system.

A JP testified as follows:

> "Q. That means you are unaware of any laws that have been passed concerning the justices of the peace since 1953?
> A. That's right . . .
> Q. And you sit there, judge, and judge on people without ever knowing exactly what the law is in a case?
> A. Well, I mean, we just -- those things, I mean -- . ."

Questions were not asked concerning the JP's personal attitudes. In connection with a particular practice in detaining traffic violators, which practice was legal but may have been harsh, one JP volunteered, "you see, I am a very hard person."

One JP, with eight years experience, said of the JP system, "I believe it is antiquated to a certain extent. It is just as good as the men behind the desks. Some are not too wise, some are excellent." This seems to be the kindest statement about JPs, made by a JP, before the Judicial System Study Committee. There are perhaps as many as two or three other instances where statements of JPs about JPs were not wholly disapproving.

Chapter 2

The Justice of the Peace in Action As Seen by the Public

. . .

Probably the majority of JP courtrooms in New Mexico are the living rooms of JPs' homes. When JPs were asked where they held court, such replies as the following were common:

> "in our living room"
> "in my house, but I got my office separate"
> "I have an office in my home"
> "in my living room"

. . .

Another JP testified that, in less than a year's time, "I received over 100 cases that I tried in a cafe booth." He also testified that his court was held "in the cafe." He further testified -- the exact answer is important -- that "the patrolman would bring them in the cafe and fine them before all the people during the noon hour." The JP acknowledged that he had received so much criticism of his cafe-operated JP court that he moved his court to a separate building, across the street from the cafe, which building he had remodeled at considerable expense into an adequate courtroom. He complained, rather bitterly, that his business dropped off sharply when he moved into the adequate courtroom.

A JP, by himself or with the help of an assistant or two, operated a coal mine. He conducted his JP court at times as follows:

"Q. . . . You hold court right there at the coal mine?
A. No, I don't hold court. They just come in there and they ask me how much the fine will be and I get their citation or whatever they have . . .
Q. And they give you the money right there?
A. Yes . . .
Q. You're assessing a fine and costs. Did you ever say in the coal mine, 'The Court will come to order?'
A. No, sir. Nothing official."

There is conclusive evidence that some JPs do lack even an elementary sense of fair play. A few examples, from the many available in the testimony before the Committee, will clarify this point.

A JP, who handled about 570 cases, testified as follows:

"Q. Do you dismiss any of the cases brought by an officer?
A. I don't believe I have dismissed a single case."

The chief of the state police testified that a former officer told him of a JP who "along toward the end of the year said, 'Don't bring me any more business. All I make now goes to income tax. Quit enforcing the law. ' " The testimony continued:

"Q. When was that ?
A. The latter part of the year. In September or October.
Q. And after the first of the year?
A. He said, 'Get out and get busy because I am open for business now.'"

Perhaps needless to say, the police did not comply with this JP's request

that the police cease law enforcement for the convenience of this JP; rather, the police cases were shifted to another JP.

A state police officer testified that he had been ordered by superior officers to take traffic violators to a particular JP. He protested to his superiors that this particular JP was not fit to handle cases. We was still ordered to take cases to this JP. The testimony of this police officer in regard to this JP appears in part as follows:

"Q. How was the judge (JP) dressed?
A. I believe at that particular time all he had on was trousers.
Q. So far as you know, did he hold court in his trousers?
A. To my knowledge.
Q. No shirt?
A. To my knowledge."

In connection with game and fish cases a JP testified:

"Q. You have had cases and in every instance you have found them guilty?
A. Well, it depended according to the evidence. I go by the charge and the evidence. I can't recollect one that I found not guilty."

The questioning continued:

"Q. I want you to answer the question. You have had cases where they have pled not guilty?
A. Yes.
Q. What do you do?
A. I find them guilty."

A particular man has been a JP for about eight years. According to his testimony, he handles almost 50 traffic cases a month from state and local police. The following is typical of his testimony:

"Q. What if the defendant pleads not guilty to excessive speeds.
A. Well, we give him a chance to get a lawyer and defend himself.
Q. Defend himself?
A. Yes.
Q. Are any of that kind ever found not guilty?
A. No.

Q. In other words, you take the testimony of the arresting officer as against the testimony of the defendant?
A. Yes.
Q. And in every case that you have handled, you sustained the officer's report, is that it?
A. Yes.
Q. And you found the person guilty.
A. Yes."

The JP was questioned about citations issued by the city police:

"Q. Do you ever find any of those people not guilty?
A. No."

The JP was also questioned about tickets issued by the sheriff:

"Q. Do you find any of them not guilty?
A. No."

Chapter 3

The Justice of the Peace and the Police

The following is from testimony before the Judicial System Study Committee as to the kind of gifts state policemen said they were receiving from justices of the peace.

First State Policeman: A total of $60,000 in cash, from JPs, for two Christmases.

A 4th of July gift from a JP, $5.00.

A $5.00 from a JP to buy a steak.

"Sir, to my knowledge, I believe that every officer (in a particular district) received . . . (such) gifts."

Second State Policeman: "I'm not sure if it was $20.00 or $25.00" in reference to a Christmas gift from a JP.

Third State Policeman: "I received $25.00 from (a) judge . . . in 1958," as a Christmas gift.

"I received two cartons of cigaretts from (the) judge . . . and I believe one other time he gave me $5.00 to buy a steak or eat a meal."

A captain of the state police is being questioned:

"Q. Do you ever have complaints of a kick-back routine from your men to the various justices of the peace?
A. Constantly. That is one of our supervisory activities. It is difficult to show that a justice of the peace is paying back to an officer, but we have means.

A businessman testified:

"Q. Were you ever present at any conversation concerning pay-offs?
A. Well, I was, yes, sir.
Q. When was that?
A. I would say about four years ago. I was talking to the chief of police . . . (in a certain town). He admitted to me that time that he was taking a pay-off.
Q. Is that the town chief of police?
A. Yes, sir."

Chapter 4

The Justice of the Peace System As Viewed by Law Enforcement Experts

The chief of the state police appraised the importance of the JP system as follows: "I think . . . that ninety percent of the people in this country and in New Mexico (have) their only experience in a court of law . . . in a justice of the peace court. And when that court fails to provide an environment of justice and dignity and decorum and due process of law, I think we are failing them and something should be done about it."

An attorney general of the state points out that attracting business and tourists to New Mexico certainly should not be the, or even a main, basis for constructing a good system of justice. Nevertheless, he notes "the black eyes that we were getting in some spots without tourist trade (because of the JP system). And our tourist trade is very important to the state of New Mexico, and we hope to work something out that will continue to keep the traffic flowing in an orderly manner, but at the same time encourage the tourists to stay in New Mexico."

Chapter 5

The Justice of the Peace System and the Law

A JP may only try cases arising in his county. He has no jurisdiction over cases arising outside of his county.

One JP testified: "I have taken care of speeding tickets, things like that, for nearly every county in the state. That was the practice, you know." There is much other testimony and evidence that many JPs were taking cases outside of their own counties.

Any justice of the peace case may be appealed to the state district court. Appeals should be taken to the district court within 10 days after the JP has rendered his judgment, except that an appeal may be taken within 30 days under certain special circumstances.

A considerable amount of testimony by the JPs before the Judicial System Study Committee shows that many JPs do not understand appeal procedures (and therefore could be of no help in telling a convicted person of his rights to appeal and the way in which to file an appeal).

A JP is being questioned:

"Q. Do you know what the procedure is for filing an appeal?
A. No, I don't know. I didn't then, and I called the clerk of the district court and I still don't know."

According to law, fines may not be paid on an installment basis. Yet it is fairly common to find JP courts arranging installment payments of fines.

In one instance, a JP testified that "I told him that because he is a local boy . . . that he could pay as he goes."

In another instance, a JP said that "I have allowed them to pay the fine in payments, and I have kept the fine until the full amount is paid and then I turn it over." Asked where he kept the money in the meantime, the JP answered, "in the bank."

And then there was the JP who, at least in one instance, went out physically, in his own automobile, and arrested a traffic violator; and assessed a fine and court costs. That such ignorance of the American concept of justice could exist is almost unbelievable; nevertheless, this combining of administrative and judicial functions did occur.

There is a considerable amount of testimony by JPs which shows that many JPs know nothing of the law and that, furthermore, they have no intention of abiding by the law in the handling of matters brought before them.

Chapter 6

The Justice of the Peace System and its Administration

The JPs, in every conceivable way, have shown incompetence and illegality in the administration of their courts. The following listing of JP practices is not intended to be exhaustive; it is intended merely to be illustrative of what happens in the JP system:

First JP

"Q. Do you file any reports?
A. No reports."

Second JP

"I had to wait for the docket book for about six months before I got it."

Third JP

"Q. Judge, do you not have in the phone book an advertisement on page one-eight-eight stating that you handle disqualifications?
A. The ad is there, yes.

Q. Did you put that ad in?
A. My boy put that in.
Q. Did you also put in that ad that you handle marriages, civil suits, notary public, and disqualifications (of JPs) handled, is that the essence of that ad?
A. That's what it says.
Q. And, it says also you are located downtown and have 24-hour service?
A. Yes.
Q. Judge, are you aware of the fact that there is a law stating you are not allowed to solicit business?
A. No."

Fourth JP

"A. . . . she peeled the five off . . . and threw it down on the desk and she said, 'You're the nicest judge I've ever seen before, and I don't mind telling you I've seen several before.'
Q. Got a tip, did you?
A. Yes.

A district judge stated, "the very fact, of course, that the fee system prevails is in itself a cause of the weakening of the process of the justice of the peace courts. It's hard for anyone, whose income depends upon whether he does or does not convict, to look upon any case with the same impartiality and detachment that he could and would if he had no interest in the fees."

The state traffic safety administrator stated, "The fee system is an enemy to this traffic safety program . . . (Members of the public) are under the impression they are brought into court because they are just unfortunate or to make the justice of the peace rich."

* * * *

A state police captain stated that the public seems to view the JP courts as a "kangaroo set-up." This attitude may be unfortunate, from the standpoint of respect for the law. Yet even more significant is the fact that most JP courts in New Mexico are, indeed, a sort of kangaroo set-up.

There is little right about the administration of justice of the peace courts in New Mexico. There is much wrong with their administration.

Most JP courts in New Mexico are operated ineptly, incompetently, and inefficiently. On more than a few occasion they are operated contrary to law.

SPECIALIZED COURTS V. SPECIALIZED JUDGES

A Point of View

Principles and Outlines of a Modern Unified Court Organization
by Roscoe Pound

What are the general principles that should govern in the reorganization which will in reality be an organization of our courts? The controlling ideas should be unification, flexibility, conservation of judicial power, and responsibility.

* * * *

As has been said in other connections, instead of setting up a new court for every new task we should provide an organization flexible enough to take care of new tasks as they arise and turn its resources to new tasks when those to which they were assigned cease to require them. The principle must be not specialized courts but specialized judges, dealing with their special subjects when the work of the courts is such as to permit, but available for other work when the exigencies of the work of the courts require it. For two generations, at least, we have not fully utilized the judges of our courts, although we have often made them work very hard. Before adding more judges or more courts, we should be sure we are making the best and fullest use of those whom we have.

* * * *

Moreover, enough obvious advantages remain to make full measure. For one thing, unification would result in a real judicial department as a department of government. . . In the states there are courts but there is no true judicial department. Again, unification of the judicial system would do away with the waste of judicial power involved in the organization of separate courts with constitutionally or legislatively defined jurisdictions and fixed personnel. Moreover, it would make it the business of a responsible official to see to it that such waste did not recur and that judges were at hand whenever and wherever work was at hand to be done. It would greatly simplify appeals to the great saving not only of the time and energy of appellate courts, but to the saving of time and money of litigants as well. An appeal could be merely a motion for a new trial, or for modification or vacation of the judgment, before another branch of the one court, and would call for no greater formality of procedure than any other motion. It would obviate conflicts between judges and courts of coordinate jurisdiction such as unhappily have too often taken place in many localities under a completely decentralized system which depends upon the good taste and sense of propriety of individual judges, or appeal after some final order, when as like as not the mischief has been done, to prevent such occurrences. It would allow judges to become specialists in the disposition of particular cases of litigation without requiring the setting up for them of special courts.

In a unified court judges can be assigned permanently to the work for which

they prove most fit without being drawn permanently from the judicial force so that they cannot be used elsewhere when needed. This is likely to be increasingly important. Specialization will probably become increasingly desirable in the future. But concurrent jurisdictions, jurisdictional lines between courts, with consequent litigation over the forms and venue at the expense of the merits, and judges who can do but one thing, no matter how little of that is to be done nor how much of something else, are not the way to promote efficient specialization. As cases of some class become numerous and require that a specialist pass upon them, judges or a judge would be designated for that purpose from the staff of the whole court, and the cases would be assigned to them in the one court in which all causes would be pending, even if in different branches or divisions, by some responsible functionary whose duty it would be to see to it that the whole judicial power of the state was fully utilized to the best advantage. When judges make assignments among themselves the tendency to perfunctory routine and to follow the line of least resistance will keep up the practice of rapid periodical rotation which has been a bad feature of many courts.

Specialist Judges

Again, from time to time exceptional causes come before the courts in which it is desirable to assign the best talent for that sort of case that the staff of the court affords instead of leaving the case to the chance of what judge happens to be at hand at the time and place. This is especially true in certain homicide cases of special difficulty which do not always arise in places to which the best specialists for the trial of such cases must habitually be assigned. Power to assign and duty of assigning the most experienced and skillful judge for such cases to the trial of the particular case may save much delay and expense and prevent miscarriage of justice. If it be said that there is danger of abuse of this power of assignment of a particular case, the answer must be that jockeying to get such cases before a particular judge in a rapidly rotating bench of judges is not unknown today, and that the power of assignment will be exercised by a functionary definitely pointed out as responsible and subject to responsible control by a superior of conspicuous position. Divided responsibility is no responsibility. Concentration of responsibility in a chief justice with corresponding power will correct, indeed will compel correction of, many abuses which have grown up because no one had the responsibility for preventing or removing them. Unless responsible headship for the whole judicial system is provided and given power to meet the exigencies of the responsibility, there is real danger that an administrative superintending control of the courts will be set up from without. This would not merely infringe the constitutional separation of powers. It would be a dangerous subjection of the courts to the executive at a time when executive hegemony has become a conspicuous feature of our policy.

Survey of Metropolitan Courts: Final Report
by Maxine Boord Virtue

With the possible exception of delay, multiplicity of separate trial courts is the court problem identified as typical of metropolitan court systems by virtually all

writers. From Archeion through Pound to the Tweed Commission, all have been concerned with the vast confusion of multifarious tribunals serving large population centers.

Typical is a recent comment of The Honorable David W. Peck, former Presiding Judge of the Supreme Court of the State of New York, Appellate Division:

"The historic practice, particularly in the large cities, has been to splinter and parcel out fields of jurisdiction among many courts of limited jurisdiction. The trend for a century has been to create rather than consolidate courts, to narrow rather than broaden jurisdiction, to divide rather than concentrate administrative authority. The result, in many places, is a conglomeration of courts, each autonomous in administration, confined but overlapping in jurisdiction.

"In many cities administration of the criminal law has been separated from administration of the civil law. Separate courts have been created for probate and estate proceedings and for domestic relations. There has even been an elaborate stratification of courts in the same legal line. New York City, for example, has three layers of courts in both the civil and criminal lines. The civil courts are divided by monetary limits. The criminal courts are divided by degrees of crime.

"Such a fragmented court organization, without flexibility in moving judges and cases about to achieve balance in distribution, and without centralization of administrative authority, lacks the elementary essentials of a court system. It is not a court system."[1]

* * * *

"Reasons for the costly and inefficient piling up of courts include (1) retention of the outmoded justice of the peace system, (2) population shifts resulting in demand for new courts, and (3) ephemeral local pressures to create a new court for each specialized set of issues. . . . 'Sibling rivalry' among . . . governmental units, and heavy case loads in congested population centers, also contribute to the pressure for more courts."[3]

* * * *

The problem of multiplicity within the mother city seems to consist partly of duplicating general trial courts set up to ease congestion, and partly of a piling up of separate highly specialized courts.

We have already noted that the problem of the specialized court wears two faces: to some extent, specialization is an informed recognition of the need for specialized attention to certain types of cases. But its other aspect presents the disadvantages of freezing specialized parts or departments of the general court into aggressively independent autonomies, narrowly specialized and so confirmed in their procedures and provincial in their specialties as to have defeated the original purpose of improving the quality of disposition of cases by segregating certain cases for specialized handling. Instead, at this extreme phase, we have all the disadvantages of multiplicity: waste, inefficiency, bureaucratism, lack of communication with other parts of government, and loss of public confidence.

* * * *

The large number of total courts existing in the entire metropolitan area is in good part comprised of one-man justice courts which continue to exist in their original state -- one-man, fee'd, lay justice courts -- in the nonurban and even some of the urban territory satellite to Metropolis.

No doubt most readers have encountered this phenomenon directly, as in traffic cases. Its relation to the special metropolitan court problem is the existence, within a single metropolitan area, of large numbers of these anachronistic tribunals. Their presence preserves waste and confusion, assures inadequate handling of large numbers of cases, and provides the self-seeking, ambitious, or unscrupulous with a ready means of avoiding or negating the control of an efficient and modern court designed to serve the metropolitan community.

* * * *

Summing up, then, it is suggested that the special jurisdictional problem of the metropolitan trial court system, yet largely unsolved, is that of providing a tribunal or series of tribunals (a) with adequate geographic jurisdiction to reach the real as opposed to the original legal community, and yet be readily accessible to all; (b) with a means of integrating jurisdictional control so as to avoid conflicting, confused, or competing jurisdiction, and yet provide for informed attention to special types of cases; (c) with sufficient inherent power in the judiciary to permit control by the court of all aspects of judicial business, and yet protect the prerogatives of counsel and the right to due process of every litigant; (d) with sufficient centralized control to achieve responsible knowledge of and control over each unit in the caseload, and yet preserve full relationship to the over-all hierarchy of judicial control in the state trial court system of which the metropolitan trial court system is a part.

* * * *

As has been pointed out in earlier portions of this study, the predominance of certain types of cases occuring in metropolitan areas has resulted in the need to isolate certain cases by subject matter, in an attempt to achieve more knowledgeable and expeditious disposition. This need has variously expressed itself in (1) the establishment of entirely separate courts of specialized subject-matter jurisdiction; (2) the development of specialized divisions or parts of general courts, sometimes manned by specialized judges; or (3) the segregation of certain cases by subject matter into specialized dockets or calendars. These categories are not always easy to differentiate. A tribunal established by statute as a division of another court may, upon close analysis, turn out to be in every sense a fully separate court, while what looks, on paper, like a separate court may turn out, as administered, to be fully integrated with some or all of the rest of the court system.

[Discussion of separate courts of specialized subject-matter jurisdiction is omitted. Ed.]

* * * *

Separately Functioning Divisions, or Parts

Small Claims

Most metropolitan court systems make provisions for special handling of small claims. The typical arrangement is a small claims, or conciliation, division in a municipal court. The Small Claims Division of the Municipal Court of Chicago, established by court rule, is well known, as is the Cleveland conciliation branch.[26] A tabular presentation of specialized divisions or branches dealing with small claims has been made available.[27] How many of these tribunals have specialized judges, we have no way of knowing, but we have formed the impression that the attendance of a long-term specialized judge is usually the boundary dividing the specialized docket, or part, from the specialized division. This is the point where the latter begins to emerge as a separate operating unit.

The Municipal Court of New York City, itself restricted to claims for less than $3,000, has a small claims part for actions not in excess of $100. In Detroit, the Court of Common Pleas,a nine-judge court consolidating the jurisdiction of the former city civil justices of the peace, has jurisdiction up to $3,000. It used to have an active conciliation division, which fell into disuse after the depression and now exists in name only.[28] This illustrates one advantage of the specialized division over the separate specialized court -- when the special need ceases to exist or to justify full-scale operation of the specialized division, the facilities can be absorbed elsewhere in the court, to be reinvoked by court rule whenever and to whatever extent the future caseload makes advisable.

The Los Angeles study shows twenty-one municipal court judicial districts in Los Angeles County. The largest, the Los Angeles Municipal Court, is a forty-two judge court with various divisions; the others are autonomous. Within the Los Angeles court, the small claims court consists of two full-time divisions of the municipal court, located in a separate building apart from the other municipal courtrooms. The operation is described in the Holbrook study.[29] More than one-third of all civil filings in municipal courts in Los Angeles County are small claims actions (demand not over $100). In 1953-1954 in the Los Angeles Municipal Court alone there were 49,235 such cases filed. No attorneys are permitted, and the question has been raised whether sufficient time is given to each litigant to convince him that he has had his day in court.[30] This operation is so specialized that a special calendar has been set up within the specialized division, known as "store day," and reserved for stores and other business.

Traffic

It is the conclusion of this writer, based on observation, library research, and questionnaire reports received for this study, that in most metropolitan areas traffic cases are physically and administratively separated from the rest of the caseload of the municipal, police, or magistrates' court which handles traffic cases. Although the specialized facility for handling such traffic cases is often called a "traffic court" (as in Miami), the entity so designated is most often not structurally a separate court but rather a specialized appendage of a court with more general jurisdiction.

The specializing process is described in part as follows in the recent Harvard Law Review survey of metropolitan criminal courts:

"Criminal courts of first instance have tended in large cities to become specialized in their handling of cases, and these specialized courts have been vested with city-wide rather than police-district jurisdiction. Traffic is generally the first area of specialization and is the only area which has been established as a separate city-wide division in Philadelphia, New Orleans, and Atlanta . . ."[31]

The Warren study reported that of fifty-six populous cities in the various states surveyed, ten had municipal courts with several branches, one or more of which was devoted exclusively to traffic, and eleven either set separate days for traffic cases or heard them during special hours.[32]

Direct observation for this series of studies showed that in Detroit traffic cases are handled by a fully separate court, linked in name only to the Recorder's Court.[33] In Los Angeles, four courtrooms in the Los Angeles court are designated as traffic divisions and are housed in the Traffic Courts Building, handling traffic offenses committed within the City of Los Angeles. The four branch courts in the judicial district handle offenses committed in each respective district. All jury trials arising out of traffic violations committed within the judicial district (barring San Pedro, Van Nuys, and San Fernando) are sent through the misdemeanor master calendar division at the Civic Center. "Of the four traffic divisions at the Civic Center, one is designated as the traffic arraignment division, another as the traffic master calendar division." Most traffic cases are disposed of without court appearances.[34]

In New York City, the City Magistrates' Court (forty-nine magistrates) is divided into court districts in each borough other than the Bronx. In addition, the court sits in twelve divisions, one of which is known as the "traffic court."

Juvenile and Family Cases

The best known special divisions handling family cases are probably the Ohio "family courts." Each is established as a separate division of the Court of Common Pleas, each has its own separately elected specialist judge, and each contains within itself separate departments for juvenile and for domestic relations cases. Such courts have been established in Cincinnati, Dayton, Columbus, Toledo, Akron, Canton, Youngstown, and Warren. The operation of the Toledo and Cincinnati courts has been described as observed by this writer in another study.[35] Their jurisdiction includes divorce, juvenile, and bastardy cases.

Responding to questionnaire for this study, the following metropolitan areas report specialized divisions handling family cases within more generalized courts:

Cleveland reports a separate domestic relations branch of the Court of Common Pleas (but in 1961, a new statutory family court will be established there). Las Vegas reports a separate juvenile division (called "juvenile court") in the district court. St. Paul reports a juvenile branch of the district court, while Philadelphia reports several divisions within the municipal court, i.e., juvenile division, domestic relations division, adoption division, and division for delinquent women.

Minneapolis has recently set up a specialized juvenile division and a family division in the district court; Boise has a juvenile division in the probate court.[36]

Special divisions created by statute within specialized courts occur in several large metropolitan areas, for example, New York City and Charleston, South Carolina.[37]

Recorder's Court in Detroit has recently established a Youth Division by court rule; Juvenile Division of Probate Court of Wayne County (Detroit) has separate divisions for neglect, girls' delinquency, and boys' delinquency cases; Municipal Court in Chicago has a Boys' Court, a Women's Court, and a Family Court as separate divisions.

In Los Angeles, the judges have invoked their constitutional and statutory authority to create a separate conciliation division (meaning, in this context, reconciliation of divorcing spouses) in the Superior Court.[38] The operation of this division has been described by this writer as it existed prior to 1953,[39] and by Judge Louis H. Burke, now presiding judge of the Superior Court of Los Angeles, as it developed under his guidance from 1953 on.[40]

Other

It is not unusual to find that where jurisdiction of criminal cases is placed in a court of more general jurisdiction, the actual handling of such cases in metropolitan cities is arranged within a specialized division of that court, either by court rule or statute, with its own physical facilities and full-time staff. Thus, for example, in Los Angeles' Civic Center, the Superior Court of Los Angeles County has established a criminal division with its own master calendar, with eight[41] departments devoting full time to criminal cases, and with its own presiding judge. Holbrook reports that all informations, indictments, and accusations are assigned automatically to the master calendar department of the criminal division, and all proceedings prior to trial are heard and determined in this division.[42]

The specialized division for chancery and probate cases is also common. An example is the separate probate division of the Superior Court of Los Angeles. In some places (for example, Chattanooga) we are told that probate matters are handled as part of the business of one division of the chancery court.[43]

Owing to the dominance of negligence cases in most law-jury caseloads and the relatively longer trial length of such cases, investigators of court delay have emphasized the importance of giving special attention to such cases. So far as we have been able to learn, there are no specialized divisions exclusively designed to handle negligence cases alone. The negligence case emerges as a special problem because of its special trial time requirements, and hence is an administrative problem related to case progress in metropolitan areas, rather than a problem of structure.

In several large metropolitan areas, it has been observed or reported that city transit cases loom large enough in the caseload of the general trial court to be separately docketed and often assigned to specialist judges and prosecutors or assistant city attorneys.

Specialized Dockets or Calendars

The term "specialized dockets or calendars" is used here to differentiate between an operation administered as a self-contained unit focused on a specialized caseload (though structurally part of a court of wider jurisdiction), on the one hand,

and a more informal segregation of certain types of cases for expeditious handling within an operation geared to a miscellaneous caseload, on the other.

The former, discussed in the preceding section, shows an adaptation of the entire judicial mechanism to the needs of a particular type of case. The latter may be no more than a clerical or docketing device by which certain types of cases are segregated for more convenient processing. The latter, then, displays a simpler and less differentiated response to the metropolitan need for specialized attention to certain types of cases.

The meaningful use of the distinction depends on practice, not on nomenclature. Such words as "court," "part," "division," "calendar," "dockets," and so on, are used in widely varying senses and are subject to interchangeable usage. The reader is cautioned that except where based on actual observation, the designation of any operation as belonging in this section rather than the preceding is based on nomenclature used in library research or reports received and should be read as subject to further analysis in light of the actual nature of the operation.

Examples of Specialized Dockets or Calendars

In the small claims area, it is probable that some of the examples already given of conciliation and/or small claims "divisions" within larger courts might prove, upon observation, to be mere calendaring devices without real specialized administration. It is interesting to contrast the machinery for handling small claims within the City of Los Angeles with that employed in outlying branches of the municipal court, where the judges hear all types of cases, and where small claims are heard on Thursday afternoons, traffic cases for half an hour every morning, and civil trials every Monday and Thursday.

Responding to questionnaire, St. Paul reports that its municipal court has separate calendars for conciliation, traffic, and criminal cases.

In the State of Washington, it is reported that family, juvenile, and probate work in the metropolitan areas is segregated into specialized dockets, each of which is assigned to one judge for a limited time, then rotated. In Cleveland and Minneapolis, rapid transit cases are assembled into separate dockets. Milwaukee separates contested divorces and uncontested divorces, and rotates these two special dockets among the judges.[44] In Milwaukee, ordinance violation cases coming into district court are by statute heard in branch "2" of that court, and misdemeanors in branch "1," unless transferred for prejudice.

Several cities report separate calendars for criminal and divorce cases. In Des Moines, Iowa, the district court handles juvenile cases in one specialized docket, domestic relations cases in another. In Phoenix, juvenile work in the superior court is assigned to one judge full time, for a minimum time of one to three years, but other domestic relations cases are handled by judges on general assignment.

The separate domestic relations dockets in San Francisco and Los Angeles have been described for this series of studies.[45]

In New York, there are many specialized calendars and dockets within the bewildering complication of courts serving the city. Typical are the Girls' Term of the

Magistrates' Court and the "Social Court for Men" "intended for the arraignment of defendants arrested for disorderly conduct due to intoxication, whose condition indicates that social treatment is necessary for their rehabilitation."[46]

The psychopathic department of the superior court of Los Angeles, established by court rule, is located in the county hospital, and the judge assigned to that department handles all proceedings, other than guardianship, relating to the care, supervision, treatment, and restraint of alleged mentally ill persons, feeble-minded persons, drug or narcotic users, inebriates, users of stimulants, and mentally abnormal sex offenders.[47] A similar specialized assignment, with the hearings actually taking place in the hospital, was observed in San Francisco. It seems to this writer that this is the most successful method of handling mental cases (no matter how they have reached the litigation process) to obtain adequate medical evaluation, to protect the dignity and morale of the patient, and at the same time to observe the requirements of due process. In neither Los Angeles nor San Francisco is the judge assigned to the psychopathic department a permanent or specialized judge, but merely receives this assignment in rotation in his turn. Recent developments in the Los Angeles court include a prelitigation screening device consisting of a professional evaluation of the mental condition of persons alleged to be in need of commitment prior to court hearing.[48]

Other examples of specialized calendaring may be found in profusion in the literature of court administration.

Specialized Judges

There is a good deal of controversy about the proper relationship of the judge to the specialized court, or division, or docket. On the one hand, it is asserted that prolonged assignment to a single subject matter, such as criminal cases, is unwise.[49] On the other, it is argued that it is useless to provide specialized dockets, administrative personnel, and expert professional consultants, unless the judge is permitted to become thoroughly familiar with and knowledgeable about the specialty.[50]

Dean Pound has been a persuasive advocate for the specialized judge, rather than the specialized court, as a remedy for waste of judicial manpower, for multiplicity of courts, and for perfunctory or otherwise inefficient disposition of special problem cases.

". . . where separate courts are set up, jurisdictional lines become necessary which are not easy to draw in advance of experience. Such courts do not need to be separate in order to secure the services of specialist judges. As has been said before and cannot be said too often, specialized courts should be replaced by specialist judges sitting in branches or departments of unified courts."[51]

Observation has finally convinced this writer that successful specialization in such fields as juvenile and domestic relations cases is best accomplished where a specialized judge is made part of the unit handling the specialized cases.[52] The best known example, perhaps, is Judge Paul Alexander, of the Toledo Family Court, who is elected to that particular judgeship.

The more usually encountered method of selecting a specialist judge is that employed by the superior and municipal courts in Los Angeles, where the presiding judge of the particular court assigns judges to certain specialized assignments. In Los

Angeles, the fixed policy is reported to favor periodic rotation of all assignments in order to avoid over-specialization and to avoid overtaxing certain judges with the "mankiller" assignments.[53] The unwillingness of many judges to accept a steady diet of divorce or juvenile cases is well known. This sometimes results, however, in prolonged assignment of a temperamentally well-qualified judge to a specialized family problem caseload, as observed in Los Angeles and Detroit. Holbrook notes that the dislike of municipal judges for the "Sunrise Court" (mostly arraignments for intoxication) is a motivating factor in determining the strict rotation policy of all assignments, including the "bete noire" assignments.

Another reason often given for avoiding overspecialization is the disadvantage of leaving the specialized court without knowledgeable judicial manpower when the long-term specialist finally retires. Several such situations have been encountered during observation.

Our information suggests the trend is towards specialized judgeships in the large metropolitan areas for traffic and juvenile cases, with other specialties occuring sporadically as the needs and personalities inspire them.

The Institute of Judicial Administration[54] notes judges specially elected or appointed for specialized juvenile, domestic relations, or family courts in approximately a dozen states. Those responding to our questionnaires report specialist judges selected for specialized family courts in Cleveland,[55] in Minneapolis, and in Charleston, South Carolina. The same persons report specialist judges assigned by presiding judges for fixed terms to full-time work in specialized divisions or dockets in Des Moines (juvenile, domestic relations), Baton Rouge (family), Phoenix (juvenile), Minneapolis (traffic, small claims, family court), St. Paul (juvenile), Las Vegas (juvenile, small claims), and Newark (juvenile, domestic relations).

During observation, a few elected specialists were encountered, but in the main the impression formed was that specialists develop after assignment on a routine rotation basis, and eventually become virtuosos in their specialties by leave of their colleagues. This occurs most often in the "personal problem" case area, where judges temperamentally suited to such a caseload are rare and, where found, have little competition from their brothers on the bench. Honesty compels the statement, however, that one or two juvenile court judges were encountered who gave the impression of having sought and kept that office because of the political advantages of appearing to be affectionately concerned with the needs of children.

There is controversy about the best method for selecting a specialist judge. This writer has formed the opinion that appointment by a presiding judge is, on the whole, the method offering more advantages and fewer disadvantages than other methods employed. This method places responsibility for selecting the specialist, and for determining the length of his assignment, upon the judge responsible for administration of the entire court. The advantages are integration of the specialty with the entire court administration problem, flexibility, and avoidance of the dangers of empire building, multiplicity of overspecialized courts, unavailability of or waste of judicial manpower, and retention of ultimate control of the specialty, along with other aspects of court administration, by the judicial officer responsible for the administration of the total court.

Material gathered for this series of studies and all other material available

to the writer show a strong trend, in virtually all metropolitan areas, towards the development of some type of specialized facilities for dealing with certain types of cases, notably traffic, criminal, small claims, and family cases. The need for such special facilities has increased the tendency towards the occurrence of a multiplicity of separate courts, the principal structural disadvantage of metropolitan court systems.

The special division within a larger court system, where such division is operated as a unit with specialized personnel but is integrated with the general court system under a presiding judge, appears to offer the most promising method of meeting the needs of special types of cases without incurring waste, multiplicity, and confusion.

Special devices for docketing or calendaring certain types of cases are often encountered. These are too ephemeral to offer grounds for generalization. The special docket does seem to be a typical first step towards real specialization when operated by a judge temperamentally well suited to a specialized caseload under a presiding judge sympathetic to development of the specialty.

It is the writer's impression that the establishment of specialized courts or divisions by constitutional provision or statute has fallen out of professional favor, and that the contemporary preference is for the use of court rule for this purpose.

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1. Peck, Court Organization and Procedures to Meet the Needs of Modern Society, 33 Ind. L. J. 182, 183 (1958).
3. Virtue, Improving the Structure of Courts, 287 Annals 141 (1953).
26. Pound, Organization of Courts, (1940), 266 et seq.
27. Institute of Judicial Administration, Small Claims Courts in the U. S. ,No. 3-U6 (1955), app. B, beginning p. 41.
28. Virtue, Survey of Metropolitan Courts: Detroit Area (1950), 88-90.
29. Holbrook, A Survey of Metropolitan Trial Courts, Los Angeles Area (1956), 272, 274, 282.
30. Id. at 304, and see tables following.
31. Metropolitan Criminal Courts, 70 Harv. L. Rev. 320, 322 (Note) (1956).
32. Vanderbilt, Minimum Standards 647, app. C.
33. [Note omitted].
34. Los Angeles Study, supra note 29, at page 277.
35. Virtue, Family Cases in Court, (1956), 175 et seq.
36. For other "juvenile courts" which are appellations applied to probate or other courts while engaged in handling juvenile cases, see Institute of Judicial Administration, Juvenile Courts -- Jurisdiction, No. 2-U21 (March 18, 1954); Simes, Model Probate Code 462 and statutes cited (1946).
37. For descriptions of the labyrinth of courts and divisions handling family cases in New York, see Kahn, A Court For Children (1953); Gellhorn, Children and Families in the Courts of New York City (1954); Bad Housekeeping 32 et seq.
38. Cal. Const. art. VI, § 7; Cal. Civ. Code §§ 1730-1772.
39. Family Cases, supra note 35, 7-10; 254-58.

40. Burke, Problems of Court Administration in a Metropolitan Court XII at 10 et seq. (Nov. 23, 1959) (typescript of address delivered before the National Conference on Judicial Selection and Court Administration, Chicago) also in 43 J. Am. Jud. Soc'y. 190 (1960). See also Burke, With This Ring (1958).
41. This was the number reported by Holbrook. Judge Burke, in the address cited in note 40 supra, reports fourteen criminal departments in 1960.
42. Los Angeles Study, supra note 29, 141 et seq.
43. Information received by questionnaire.
44. And see Family Cases supra note 35, 178 et seq., 204 et seq.
45. Los Angeles Study supra note 29, 232-233; Family Cases supra note 35, 10 et seq., 23 et seq.
46. Metropolitan Criminal Courts, 70 Harv. L. Rev. 332 n. 74 (1956). For a discussion of the problems of dealing with the alcoholic in court see id. at 330 et seq.; and Foote, Vagrancy-Type Law and Its Administration, 104 U. Pa. L. Rev. 603, 631 (1956); Lacey, Vagrancy and Other Crimes of Personal Condition, 66 Harv. L. Rev. 1203, 1218-19 (1953); Tappan, A Study of the Wayward Minor Court of New York (1947); Worthington & Topping, Specialized Courts Dealing With Sex Delinquency (1925).
47. Los Angeles Study, supra note 29, 242
48. Burke, Problems of Court Administration, cited supra note 40, at 14-15.
49. See, e.g., Criminal Justice in Cleveland 629 (Pound & Frankfurter eds. 1922). And see Los Angeles Study supra note 29, 56.
50. Pound, Organization of Courts 258 (1940).
51. Id. at 271-72.
52. For the reason given by Dean Pound, Organization of Courts 272.
53. Los Angeles Study, supra note 29, 59-60.
54. Institute of Judicial Administration, Juvenile, Family and Domestic Relations Courts, No. 3-U28 (1955).
55. A newly created court, scheduled to commence operations in 1961.

AMERICAN JUDICATURE SOCIETY
TO PROMOTE THE EFFICIENT ADMINISTRATION OF JUSTICE

1155 EAST SIXTIETH STREET
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A.J.S. Information Sheet, No. 35
December, 1965

IMPROVEMENTS IN MINOR COURT ORGANIZATION

Reforms in the minor court area have consistently followed a three-part pattern; (1) abolition of the judicial functions of the justice of the peace, (2) consolidation of courts with overlapping jurisdictions, and (3) inclusion of the consolidated courts in a state-wide unified court system.

In 1963 Virginia replaced most of its justices of the peace with salaried trial justices. In 1956 all of these trial justices were designated as municipal or county court judges. All trial justices are selected by appointment by the circuit court and are required to be licensed to practice law.

In 1945 Missouri abolished the office of justice of the peace and replaced it with magistrates courts having county-wide jurisdiction in certain cases. A citizens' commission is now considering a new judicial article which would further consolidate the minor courts of the state and make them a part of a unified court structure.

In 1950 a uniform system of municipal and justice courts was created in California to replace the old system of minor courts. New districts were established, each with a single court. These courts were given increased jurisdiction and the judges were required to be admitted to the practice of law or in some cases to pass qualifying examinations prescribed by the state judicial council.

In 1956 Louisiana abolished justices of the peace in wards within cities of over 5,000 population. They were replaced by city judges required to be attorneys.

In 1956 Minnesota removed all reference to justices of the peace in its constitution and in 1963 created a unified Municipal Court for Minneapolis with appeals directly to the Supreme Court rather than to the district court.

New Hampshire abolished all jurisdiction of justices of the peace leaving them only ministerial duties. In 1963 municipal courts were abolished and replaced by district courts.

Justice of the peace courts of Ohio were replaced by a system of county courts and municipal courts in 1957. County court judges are required to be members of the bar.

In 1959 the state legislature of Tennessee provided for a uniform system of general sessions courts in all but 6 counties to take over all judicial functions of the justice of the peace. General sessions court judges are full time, salaried and legally trained.

County court jurisdiction in Wisconsin was expanded in 1959 and except in Milwaukee County, the municipal, civil and district courts were eliminated. Justice of the peace courts were retained but with curtailed jurisdiction.

A state-wide system of circuit courts, with full time salaried judges was established in Connecticut in 1959 to replace justices of the peace, trial justices and all other minor courts. Under the supervision of the Chief Judge of the Supreme Court of Errors these courts have state-wide territorial jurisdiction. Provisions were also made for a uniform method of handling less expensive minor matters.

In 1959 North Dakota replaced justices of the peace with salaried county justices who must be qualified to practice law.

In 1961 New York passed a judiciary article providing for a unified court system giving the legislature the power to provide a single city-wide court for the City of New York and further providing that all minor courts outside of the City of New York were to be included in the unified court system.

Legislation replaced justice of the peace and other minor courts in the three largest counties in Washington with a justice court in 1961. The plan may be extended to all other counties by local option. The fee system was abolished.

In 1961 a unified state-wide system of district courts replaced the justice of the peace and the municipal courts in Maine. Fourteen full time district judges replaced fifty part-time municipal judges and twenty-four trial justices. The district court system is administered by the chief judge.

The 1962 Michigan judicial article abolishes the offices of circuit court commissioner and justice of the peace within a period of five years from its effective date and provides that within the period the legislature shall establish a new court of limited jurisdiction.

North Carolina in 1962 abolished justices of the peace and provided that the senior judge of each superior court shall appoint one or more magistrates who shall be officers of the district court and whose jurisdiction would be prescribed by the General Assembly.

A constitutional judicial article in 1962 in Colorado eliminated justice of the peace courts. The district courts were retained and their existing jurisdiction was expanded to include cases over which county courts formerly had jurisdiction. The City of Denver retained its independently constituted probate and juvenile courts and cities and towns were guaranteed the power to create municipal courts but the Supreme Court was given general superintending power over the entire court system. Jurisdiction of the county courts was provided under the new Colorado Judicial Article approved in November 1962.

All reference to justices of the peace and probate courts was removed from the Idaho constitution in 1962 thereby permitting reform by act of the legislature.

In 1963, Illinois' new judicial article eliminated all minor courts and provided for appointment of magistrates by the circuit judges. Police magistrates and justices of the peace became magistrates of the circuit court for the remainder of their terms.

Proposals are now under consideration in South Dakota where a Court Study Commission has recommended that all municipal court functions be transferred to the circuit court and that a magistrate's court be created to fit the state's needs as the Supreme Court may designate by rule.

The Report of the Special Committee to implement the Recommendations of the Citizens' Conference on Modernization of Kansas Courts recommends that a magistrates court of limited jurisdiction be established to replace all existing minor courts, its jurisdiction to be as the Supreme Court designates by rule.

Constitutional Amendment #10 to be voted on in November, 1966, in New Mexico provided that a magistrates court to exercise limited jurisdiction to established and deletes all reference to justices of the peace. All justices of the peace are to be abolished. The general assembly is to provide for establishment of new municipal courts in county seat towns as required.

Excerpts from the STANDARD FAMILY COURT ACT Promulgated by the National Council on Crime and Delinquency 1959

The family court shall be a division of [the highest court of general trial jurisdiction]. The state shall be divided into..... family court districts, for each of which a judge or judges shall be chosen as provided in Section [ ].[1] In each county a family court shall be held at the courthouse or other duly designated place by the the judge or judges of the family court district. The family court judge shall hold sessions in each county at times directed by the presiding judge of the family court, except that he may, at his discretion, hold court in any county within the district at any time required by the urgency of a case. The presiding judge may temporarily assign a family court judge to preside in another district when the urgency of one or more cases requires him to do so.

In any case in which it has jurisdiction, the court shall exercise general equity powers as authorized by law.

Comment on Section 3

The family court should be a statewide division of the highest court of general trial jurisdiction, thus commanding community prestige and having the necessary stature to obtain the services necessary for its full operation. Its judicial work is necessarily of a high order, and it should not be either a so-called "inferior" court or a specialized court, either of which would suffer the inherent limitations of inferior or special courts. The family court requires the full jurisdiction of the general trial court.

Although the family court should be placed within the existing court organization, it should be a separate division within the court structure at the level of and a part of the highest court of general trial jurisdiction.

Excerpts from the JUVENILE COURT ACT Promulgated by the National Council on Crime and Delinquency 1959

There is hereby established for the state of ..... a court to be called the juvenile court. It shall be a court of record; it shall have a seal; and the judges, clerks, and referees of the court shall have power to administer oaths and affirmations. The judges shall have the same powers and salary as the judges of the [highest court of general trial jurisdiction].

The juvenile court districts of the state shall be constituted as follows:

District 1 shall be composed of the following counties:....

District 2 shall be composed of the following counties:....

[Etc.]

In each county a juvenile court shall be held at the courthouse or other duly designated place by the judge or judges of the juvenile court district. The juvenile court judge shall hold

sessions in each county at times directed by the presiding judge of the juvenile court, except that he may, at his discretion, hold court in any county within the district at any time required by the urgency of a case. The presiding judge may temporarily assign a juvenile court judge to preside in another district when the urgency of one or more cases requires him to do so.

COMMENT ON SECTION 3

The 1949 edition of the Standard Act contained a provision for the establishment of juvenile courts on a local basis without suggesting a particular level of court aside from providing that it should be a court of record. However, one of the weaknesses of the county system is that most counties—whether they provide personnel through court staff or, as in many rural counties, through public welfare departments and other chil- juvenile court shall be a division of the highest court of general trial jurisdiction. The text of the section refers to counties as the territorial basis of jurisdiction, but where the court of general trial jurisdiction is so districted that a district covers two or more counties, the same districting can apply to the juvenile court. In such a state the bracketed alternative designated by the words "or other jurisdictional district" may be adopted.

The bracketed terms "local court" and "state court" do not, of course, appear in the law; they are inserted to identify the alternative plans of recommended court organization. The term "local" is not fully descriptive, since in many states the highest court of general trial jurisdiction is at the circuit or district level, and the court is often supported in whole or in part by state funds.

The state juvenile court plan is somewhat different from that in the 1949 edition of the Standard Act. Three states (Connecticut, Rhode Island, and Utah) have set up state-administered and -financed juvenile court systems. The Connecticut and Utah courts are on the basis of a small number of districts, with full-time judges and other specially selected personnel. In Rhode Island the two judges cover the entire state as one district. At its annual meeting in 1948, the National Probation and Parole Association adopted a resolution endorsing the state form of juvenile court organization.

dren's agencies—do not hire adequately trained persons or do not hire enough of them. One of the main reasons for this state of affairs is that the courts are frequently "inferior" courts, at a level lower than that of the court of general trial jurisdiction. Thus they do not command the prestige, status, and financial support accorded courts of highest general jurisdiction.

The present provision for local courts therefore states that the local

The district plan has been effective and advantageous for many purposes, and it has presented no difficulties. (See William N. MacKay, "The Juvenile Court as a State Responsibility," NPPA *Yearbook,* 1951.) The problem of travel when judges are on a circuit has not proved to be a difficulty. Many matters may be handled nonjudicially; in those cases in which a decision before the judge is necessary, the child can be brought to the place in the district where the judge is holding court.

The plan of a juvenile court as a division of the highest court of general trial jurisdiction is in accord with modern concepts of judicial administration. Most leading authorities in the field believe that a state should have, instead of many specialized courts, a uniform court system with branches or divisions to which the judges are assigned according to their special abilities for particular kinds of judicial work and according to the needs of the service. (See Roscoe Pound, "The Juvenile Court and the Law," NPPA *Yearbook,* 1944; "The Place of the Family Court in the Judicial System," NPPA JOURNAL, April, 1959.)

The Children's Bureau prefers the structure provided for in the alternative section.

Excerpted from

THE MODEL JUDICIAL ARTICLE FOR STATE CONSTITUTIONS

§4. THE DISTRICT AND MAGISTRATE'S COURTS.

¶1. Composition. The District Court shall be composed of such number of divisions and the District and Magistrate's Courts shall be composed of such number of judges as the Supreme Court shall determine to be necessary, except that each district shall be a geographic unit fixed by the Supreme Court and shall have at least one judge. Every judge of the District and Magistrate's Courts shall be eligible to sit in every district.

Committee comment: The number of District Court judges and magistrates and District Court divisions must be flexible in order to allow for adjustment to new conditions. The authorization to provide for "divisions" was thought desirable in terms of the need for specialized courts, such as probate and divorce courts. But it was also thought to be desirable that these specialized courts be manned by judges whose functions need not be confined to such courts. Thus, all branches will be administered as one court with no conflicts of jurisdiction and no waste of judicial manpower.

The Committee believed that the Supreme Court would be the most expert body to decide how many judges and magistrates are required in each district.

The authority of a district judge and magistrate to sit in any district is complementary to the authority of the Chief Justice to assign judges anywhere in the State in order to make the most efficient use of judicial manpower.

¶2. District Court Jurisdiction. The District Court shall exercise original general jurisdiction in all cases, except in so far as original jurisdiction may be assigned exclusively to the Magistrate's Court by the Supreme Court rules. The District Court may be authorized, by rule of the Supreme Court, to review directly decisions of State administrative agencies and decisions of Magistrate's Courts.

¶3. Magistrate's Court Jurisdiction. The Magistrate's Court shall be a court of limited jurisdiction and shall exercise original jurisdiction in such cases as the Supreme Court shall designate by rule.

Committee comment: It was the Committee's view that cases involving minor matters such as traffic offenses and small claims should be delegated to magistrate's courts, and that this would be necessary to avoid an unreasonably large number of district judges with general original jurisdiction. It was also thought that where the districts covered a large geographic area or temporary congestion occurred in any district, magistrates might appropriately be used to relieve the district court of undue burdens. Because of the need for flexibility in the use of such courts it was deemed best to leave the terms and conditions of the magistrate's court jurisdiction in the control of the Supreme Court by rule.

BILL OFFERS 'MISSOURI PLAN'

Judge-selection Change Asked

Star Statehouse Bureau

A bill providing for the "Missouri Plan" of selecting Supreme Court justices and district court judges in Minnesota was introduced Thursday in the Minnesota Senate by Sen. Robert G. Johnson, Willmar Conservative.

The bill provides for a comprehensive overhaul in the present system of appointing and electing judges.

Under the plan, devised in Missouri, neither district judges nor Supreme Court justices would have to run for election or re-election against opponents. Vacancies in judgeships would be filled by the governor with the approval of the senate. The governor would make his selection from a slate of three nominees provided by a commission.

Go to Chief Justice

If the governor failed to appoint a judge from the slate within 60 days, the chief justice of the Supreme Court would make the appointment.

Two commissions would be created to select the slates of nominees.

One commission, known as the Appellate Judicial Commission, would nominate justices to the Supreme Court. The other, District Judicial Commission, would select nominees for district judgeships.

The commission to nominate Supreme Court justices would have nine members, four non-lawyers selected by the governor, four lawyers selected by members of the bar and a ninth member who would be the chief justice of the Supreme Court. The chief justice would serve as chairman.

Five Members

The district judge selection commission would have five members — two lawyers and two non-lawyers selected by the governor, and a chairman who would be a district judge in the district where the vacancy existed.

The appointment of a judge or justice would have to be submitted for voter approval at the first general election occurring more than one year after the appointment. If voters rejected the appointee, a new appointment would be made and submitted to voters.

Incumbent judges would continue to serve six-year terms but at the end of the term voters would vote only on whether the judge should be retained in office. If voters rejected the judge, appointment of a successor would have to be made.

The bill also creates a commission which would have the power to remove judges for willful misconduct, failure to perform their duties or "habitual intemperance."

The bill calls for an amendment to the State Constitution incorporating these provisions. It would be submitted to the voters at the next general election.

Chapter V

ACTION PROGRAMS FOR IMPROVEMENT

Judicial reform is not a sport for the shortwinded.

- Arthur T. Vanderbilt

Is it worth it? For you, maybe not. Maybe you are one of the considerable number of people who can live a lifetime and never go to court for anything more serious than a traffic violation.

But when a uniformed officer rings your doorbell and hands you a paper which says that the home you live in is not going to be yours any more, or when the telephone rings at night and it is your son calling to say that he is in jail charged with a crime that he knows nothing about, or when the other automobile runs through the stop sign, smashes your car and puts you and your family in the hospital, then suddenly the circuit court in your county, and the judge who presides over it, become more important to you than anything else.

- Glenn R. Winters

A Topical Outline for Guided Reading and Discussion

ACTION PROGRAMS FOR IMPROVEMENT

I. Education

A. Are members of the legal profession aware of the problems and possible solutions of improving the methods of selection and tenure for your state's judges?
   1. If not, how can they be made aware?

B. Are other governmental officials aware of these problems and solutions?
   1. If not, how can they be made aware?

C. Are leading citizens of the state aware of these problems and solutions?
   1. If not, how can they be made aware?

D. Is the general public aware of these problems and solutions?
   1. If not, how can they be made aware?

E. How can the degree of awareness of the above groups be determined?
   1. What has been done in other states?

F. Who is responsible to bring about informed awareness in each of the above groups?
   1. Judges' organizations
   2. State and local bar associations
   3. Law Schools
   4. Judges
   5. Lawyers
   6. Others

G. What techniques can be employed to bring about informed awareness in each of the above groups?
   1. Research and dissemination of results
   2. Circulation of proposals
   3. Conferences and resulting recommendations
   4. Discussion and study programs from organizations and schools
   5. Systematic use of the various media

H. Can the method of selecting judges in your state be changed by legislation or would it require a constitutional amendment?

I. What are the methods of amending your state's constitution and what are the respective requirements?
   1. Referendum
   2. Initiative

II. Action

A. Referendum
   1. Who should draft proposed legislation?

2. Who should introduce such proposed legislation?
3. How can supporters make their views known to legislators?
    a. Personal contact
    b. Committee appearances
    c. Others

B. Voter campaigns
1. What kind of basic steering or planning committee should be formed?
    a. What sub-committees should be formed?
        1. Finance
        2. Publicity
        3. Liaison
            a. Legal profession
            b. Media
            c. Political parties
            d. Organizations
            e. Business and professional
            f. Education
            g. Religion
            h. Ethnic groups
            i. Others
        4. Meetings
            a. Organizing
            b. Speakers' bureau
        5. Endorsements
        6. Voter services
2. What kind of financing is required and how can it be obtained?
3. What kinds of publicity and public relations are necessary for a successful campaign?
    a. Is there a need to retain professional public relations counsel?
    b. What kinds of media (newspapers, periodicals, radio and television) support can be obtained?
    c. What types of campaign literature are necessary and where should they be distributed?
4. What kind of large committee should be formed?
    a. Should it be composed primarily or solely of non-lawyers?
5. What kinds of support from judges' organizations and bar associations should be sought?
6. Who will be opposition and how can such opposition be met?
7. What kinds of pre-election day activities should be utilized?
8. What kinds of election day activities should be utilized?

C. Implementing legislation
1. Who should be responsible for anticipating and drafting such legislation?
2. What are the deadlines for initiating the necessary research and drafting of such legislation?
3. When should such legislation be introduced and by whom?

EXCERPTS FROM CONFERENCE CONSENSUS

NATIONAL CONFERENCE ON JUDICIAL SELECTION AND COURT ADMINISTRATION
1959

Action Programs to Achieve Judicial Improvements

Action programs to achieve judicial improvements of a basic nature require years of careful planning, education and execution and substantial sums of money. Strong, active state and local bar associations are essential.

The necessity for thorough education of the bench and bar with respect to a program is often overlooked. This education should be carried on in the law schools and should be continued after graduation. Law teachers should be active participants in these programs as well as in other activities of the organized bar. The need for able and impartial judges and efficient administration of justice should be emphasized in the colleges, high schools and even the grade schools.

Public participation should be enlisted as early as the drafting stages of the program.

The support of newspapers and other media of communication is essential to the success of any program. Obtaining that support requires individual conferences with and requests for assistance from publishers, editors, editorial writers and the executives of other media.

Careful research is the foundation of success. Professional advice is highly desirable in both research and public relations.

There is a growing awareness on the part of the public throughout the United States of the desirability of judicial improvement that will welcome the encouragement and guidance of the bar.

There is a continuing need on the part of state and local bar associations for a central agency on the national level to accumulate, assemble and act as a clearing house of information on current and past activities in the practical aspects of the planning, research and execution of projects for improvement in judicial selection and tenure, court administration and court reorganization and integration. The central agency should investigate and report upon sources and means of financial and other assistance available on a national scale in these areas of activity.

Experience has taught that compromise and expediency early in any program have failed to gain commensurate support.

It is vital to supply information to state and local civic organizations and to obtain their support and active participation.

C
O
P
Y

M. B. MARSHALL
Public Relations Counselor
424 Madison Avenue
New York, N. Y.

April 15, 1941.

Hon. John Perry Wood
458 South Spring Street
Los Angeles, California

My Dear Judge Wood:

At the request of Mr. Ronald J. Foulis I am pleased to give you a resume of the campaign conducted in Missouri in behalf of Amendment No. 3, the "Non-Partisan Court Plan", which amendment was adopted by the voters of the State at the general election, November 5, 1940, by a majority of approximately 90,000 votes.

SPONSOR OF CAMPAIGN

Although the movement was initiated by the St. Louis Bar Association, with the backing of the Missouri Bar Association, it was recognized, I believe, by virtually everyone concerned that it would be best for the campaign to be sponsored by an organization composed of both layman and lawyers. The campaign was conducted, therefore, in the name of the Missouri Institute for the Administration of Justice.

This organization, while small, was composed of well-known laymen and lawyers in various sections of the State, and this group served as the nucleus for the formation of a large, state-wide campaign organization.

State Campaign Headquarters were opened in St. Louis on December 5, 1939, or eleven months prior to the election.

PLANS FOR CAMPAIGN

As the first step, a plan of procedure for the campaign was formulated, following closely the procedure I had found practicable in some fifty other movements with which I had previously been connected. There was no material deviation from this plan of procedure throughout the entire campaign, although we did not raise sufficient funds to carry out in full our publicity and advertising program.

This plan of procedure took into consideration the fact that there were the following three distinct steps in the campaign:

1. The formation of a strong, state-wide campaign organization, and the raising of sufficient funds to finance the campaign.

2. Securing the signatures (on initiative petitions) of a minimum of 5% of the voters in two-thirds of the congressional districts of the State, necessary to place the proposed Constitutional Amendment on the ballot.

3. The intensive state-wide publicity, educational and organization effort for the adoption of the Amendment after it was placed on the ballot.

A campaign Steering Committee, consisting of seven members, was appointed immediately. This committee served as the executive committee throughout the campaign --all plans, activities, expenditures, etc., being subject to the approval of this committee.

The Board of Directors of the Missouri Institute for the Administration of Justice was enlarged, so as to give equal representation to all sections of the state, to have both major political parties about equally represented, and to maintain a balance between laymen and lawyers.

A prominent banker was appointed Treasurer.

A Drafting Committee was charged with the responsibility of preparing the final text of the proposed Constitutional Amendment.

The campaign organization was divided into four divisions--the Finance Division, the Organization Division, the Speakers Division, and the Women's Division.

Under the law, the final date for the filing of the initiative petitions with the Secretary of State was July 5, 1940, or four months prior to the election. It was necessary, therefore, to coordinate and carry on at the same time the state-wide organization effort, the raising of funds, and the circulation of the initiative petitions.

It was recognized in the beginning that we would meet opposition from many members of the Bar. We also had to consider that strong political opposition might develop. However, we felt that if our ground-work was laid properly, opposition could be minimized.

FINANCE DIVISION

One of the principal problems, of course, was the raising of funds to keep all activities moving. Our goal was to raise the budget before the summer vacation period, so that funds would be available for intelligent planning and preparation for the intensive phase of the campaign, in September and October, for the adoption of the Amendment.

It was realized that most of the funds would have to be raised in St. Louis and

Kansas City.

A committee was formed to solicit lawyers, and another committee was formed to solicit laymen.

As the first step in obtaining the support of laymen, a dinner was given by a prominent business man to which many of St. Louis' business leaders were invited, and our plans were fully explained to them.

A list of prospective contributors was prepared, and following the dinner a letter and literature were mailed to this list. All other literature, as issued, was also mailed to this list.

A plan for direct solicitation of all prospects was worked out, and the direct solicitation proved to be the only effective way of obtaining substantial contributions.

Little effort was made to solicit funds outside of St. Louis and Kansas City until after the circulation of the initiative petitions was completed.

ORGANIZATION DIVISION

The Organization Division was charged with the responsibility of circulating the initiative petitions and it also served as the working organization for the adoption of the amendment.

Our campaign plan called for the formation of a campaign committee in each of the 114 counties in the State--each county committee to have a Finance Division, an Organization Division, a Speakers' Division, and a Women's Division.

We wanted to localize the activity as much as possible in order that it would not be merely a St. Louis and Kansas City movement. We tried to fix responsibility on each county unit, yet at the same time all activities were guided from the State Headquarters, so that each unit would work along the same lines and there would be a coordination of effort throughout the State.

Realizing that our success in organizing a campaign committee in any county would depend greatly on the attitude of the lawyers in the county, a letter was mailed to every lawyer in the State over the signature of the President of the Missouri Bar Association. A return "pledge card" was enclosed--to be signed by those favoring the Amendment and willing to aid in the campaign. This was followed up by subsequent mailing to the entire list.

It was realized further that the State could not be properly organized by a mail campaign alone, and that laymen as well as lawyers had to be interested and enrolled as workers.

Field men were employed, and we had as many as six in the field at one time. These field men were sent out when the initiative petitions were ready for circulation. Each field man was assigned a definite territory and was given specific instructions as to what he should try to accomplish on each trip through his territory. Daily reports from the field men made it possible for the State Headquarters to have accurate information at all times as to the situation in all sections of the State.

On his first visit to a county it was the task of the field man to contact as many of the influential lawyers as possible. He also endeavored to secure a Campaign Chairman (who was selected on the basis of prominence and influence in the county), and an Organization Chairman, who was expected to do most of the work, and to take charge of organizing the county and circulating the initiative petitions.

We endeavored to arrange a schedule for each field man so that he would return to the county every ten days or two weeks--to check up on the progress being made, to stimulate interest and to guide the activity.

In addition to the State Headquarters in St. Louis, we opened an office in Kansas City, and employed a paid Secretary for the Kansas City Campaign Committee.

One of our principal organization problems was obtaining the cooperation of labor. We anticipated some opposition from this source, and special committees were formed early in the campaign, in both St. Louis and Kansas City, to handle the labor situation. Although the Missouri State Federation of Labor adopted a resolution opposing the amendment, the various A. F. of L. groups did not campaign as a unit against us. The C. I. O. endorsed the Amendment.

WOMEN'S DIVISION

The work of the Women's Division was coordinated with the work of the Organization Division.

The cooperation of the Missouri League of Women Voters, the Missouri Federation of Women's Clubs, the Society of University Women, and several other important groups, was obtained.

This division did most effective work. The women were very helpful in circulating initiative petitions, and were enthusiastic workers in the campaign for the adoption of the Amendment.

SPEAKERS' DIVISION

The Speakers' Division in a county was charged with the responsibility of covering meetings within the county. In only a few instances were speakers sent from the State Headquarters. This plan saved traveling expenses, and also helped in localizing the campaign.

CIRCULATING INITIATIVE PETITIONS

The petitions were circulated principally by volunteers. In a number of districts paid circulators were employed, a few weeks prior to the filing date, to assure that there would not be a shortage.

The petitions were circulated in all congressional districts, although we were required to reach the quotas in only two-thirds of the districts. This was done for its publicity value and to help in arousing support for the Amendment.

The number of signatures finally obtained was approximately twice the legal requirement.

CAMPAIGN FOR ADOPTION OF AMENDMENT

All activities up to the time of the filing of the initiative petitions were conducted with consideration to the campaign which would follow for the adoption of the proposition.

Even the Drafting Committee, in working on the text of the amendment, considered the wording from a publicity standpoint.

Originally the proposal had generally been referred to as "an amendment relating to judicial selection and tenure." We sought a simple title, and one that would be short enough for newspaper headlines. We also knew that there would be a number of other propositions on the ballot for the November election, and that our proposition had to be clearly identified in the minds of the voters.

We decided to call it the "Non-Partisan Court Plan" and all of our literature, and our speakers and workers, as well as the newspapers, referred to the Amendment by that name.

When we began the organization work, and when our field men were sent out, we initiated a mail campaign to keep up the enthusiasm of everyone cooperating in the campaign, and to suggest definite activities. Almost every week some piece of mail was forwarded to the entire list from the State Headquarters. We also published a monthly newspaper of tabloid size to inform our workers of the progress of the campaign and to give them additional talking points.

By the time the initiative petitions were filed we had built up a state-wide organization of approximately 10,000 workers (i.e. persons who had signed pledge cards or who had indicated in other ways a willingness to aid in the campaign).

The summer months were devoted to expanding our organization, to perfecting our county campaign committees, and to enlisting the support of farm organizations, teachers' associations, chambers of commerce, civic, professional and other organized groups throughout the State.

Not having raised as much money as we had hoped for by July 1, 1940, we anticipated that we would not have sufficient funds to carry out in full the publicity and advertising program originally planned for September and October.

We felt, therefore, that the success of our campaign might depend largely upon the effectiveness of the work of our county organizations, particularly in those counties where the population is centered in one or two large cities.

Approximately two-thirds of the voters of Missouri reside in 37 of the 114 counties.

We concentrated our organization effort in these 37 counties, and retained two field men during July and August to aid in this work.

As the campaign progressed it became apparent that too much detail about the Amendment and its operation was confusing to the average layman, and that a brief statement of what the Amendment would accomplish had the greatest appeal.

We prepared a sample speech as a guide for speakers. We also prepared a small circular setting forth briefly "Ten Good Reasons for Supporting the Non-Partisan Court Plan." This little circular was probably the best piece of literature issued during the campaign.

Approximately 3,000,000 of the circulars were distributed throughout the State. They were of a size for insertion in small envelopes, and many business concerns inserted them in mail to customers, in packages and in monthly statements.

We were fortunate in obtaining the active support of all of the principal daily newspapers.

The editors of virtually all of the newspapers in the State, both daily and weekly, were contacted personally, either by our field men or by members of our county organizations. We sent out from the State Headquarters a large volume of news and editorial materials, and each of our county committees was urged to supplement this by giving local news regarding activities to the newspapers in the county.

The radio stations were very cooperative, and donated a considerable amount of time. The radio news commentators were prevailed upon to mention the Amendment on many occasions.

We also secured the cooperation of a large number of motion picture theatres, and "trailers" were shown in these theatres during the last two weeks of the campaign, without cost except for making the "trailers".

The funds available for advertising were rather limited and were insufficient. Some money was spent for newspaper advertising, and a small amount for radio time.

Little was done with regard to the political situation until September, because

we felt that if we first perfected a strong state-wide organization and secured much favorable publicity, the political leaders could be forced at least into a position of neutrality. The Republican and Democratic state platform conventions were held in September, and we endeavored to have a plank written into both platform endorsing the Amendment. This effort failed; however, nothing was said in either platform in opposition to our proposal, and later both the Democratic and Republican nominees for Governor issued statements personally endorsing the Amendment.

We also contacted most of the county political leaders. Some were friendly, and a few gave us active opposition. However, the net result of this work was that most of the county political committees kept hands off.

We gave considerable attention and time to organizing for election day. Since there were a total of seven propositions on the ballot to be voted upon, were were of the opinion that a last minute reminder would make many votes. We endeavored to place workers in every precinct. This plan was carried out fairly successfully, particularly in the larger cities and towns. Two million "reminder slips" were printed for our workers to hand out on election day.

I believe that this covers most of the highlights of the campaign. In my judgment, the most important phase of any campaign of this nature is in organizing along the right lines in the very beginning, getting the proper set-up, and deciding upon a definite plan of action with due consideration of all problems that may develop during the campaign. In other words, build the proper foundation.

Time is another important factor. Many campaigns fail because sufficient time is not allowed for organizing and systematizing each phase of the effort. It is virtually impossible to get up momentum in a campaign overnight. When an attempt is made to crowd too many activities into a short period of time, the result is a scattering of effort, and in most cases not one of the tasks can be done well.

When there is careful planning, when the various activities are well timed, when there is sufficient and proper backing in the beginning, and when there are adequate funds, it has been my experience that most campaigns can succeed, provided, of course, that the proposition is sound and meritorious.

Excerpts from

Iowa Shows The Nation It Can Be Done

THE IOWA STATE BAR ASSOCIATION

WINNER OF THE

AMERICAN BAR ASSOCIATION

1962 AWARD OF MERIT

Completion of a Program. On June 4, 1962, the voters of Iowa approved an amendment to the Iowa Constitution which replaced the partisan election of judges with the American Bar Association plan for non-political selection and tenure. This event marked the successful completion of a program which has been the main project of this Association since 1958.

Steps Taken. The steps taken in carrying out the program were:

A. Research and drafting of the Amendment.
B. Securing approval of the Amendment by the Iowa Legislature in 1959 and 1961.
C. Conducting a campaign to inform and persuade the public of the advantages of the Amendment, culminating in the favorable vote of the people on June 4, 1962.

Problems and How They Were Met.

A. The Key - a strong and dedicated bar. It has been said that Judicial reform can be accomplished only over the dead bodies of lawyers and judges. Iowa has shown that this is not true. We firmly believe that that individual members of the bench and bar, when properly informed, will support improvements in judicial administration, and that a strong and active organized bar is the key to success in such programs. This is the message we wish to bring to other associations engaged in similar efforts -- do not sell yourselves short; lawyers and judges, through the organized bar, will support and can accomplish fundamental judicial reforms.
B. Fundamentals - Compromises. Judicial reorganization programs commonly include improvements in court structure, (such as minor court revision) and tightening up of court administration, as well as selection and tenure of judges. The program originally prepared by our committee was quite broad in scope, but was later cut down simply to the American Bar Association plan for selection and tenure. This is the fundamental reform.
C. Drafting -- Gaining Bar Support. Many years ago the American Bar Association, The American Judicature Society, and many state bar associations, including The Iowa State Bar Association, embarked upon studies in the field of judicial selection and tenure. From these studies

a formula developed which has served as a basis for practically every judicial reorganization program sponsored by bar associations throughout the country. In Iowa, we developed our own plan based upon the lessons of these studies. This plan was submitted to the Board of Governors of the Association early in 1958, which directed that it be submitted on a state wide basis to the lawyers and judges of Iowa. Discussion was had in nearly every country of the state from June to November, 1958, and every opportunity was given to the bar generally to express itself. Opponents to the plan also circularized lawyers throughout the state. In November, 1958, the Board convened to evaluate all suggestions, criticisms and recommendations. The Board, after considering all points of view, including those expressed by the Iowa District Judges Associations, the Iowa Conference of Bar Association Presidents, and the Junior Bar Section, ordered the appointment of a special committee to endeavor to hammer out a proposal based on the debate and discussion. A most remarkable thing happened at this point. The President of the Association appointed to the committee three of the most vigorous and informed opponents of the plan, together with three past Presidents of the Association, plus one man from the most populous county in the state. These seven men, coming from the four corners of Iowa and having broadly divergent ideas, met for many days, argued basic principles, objections and details, and literally locked themselves in a room until they were able to obtain unanimous agreement upon a plan of judicial selection and tenure in the form of a proposed constitutional amendment which each could conscientiously recommend. The plan that these dedicated men developed was submitted to and approved by the Board of Governors by a unanimous vote. It was then presented to the Iowa Supreme Court, which adopted it as its own plan by unanimous vote and recommended it to the General Assembly in a written report filed in January 1959. Later the seventy-five District Court Judges of Iowa endorsed the Amendment, with only half a dozen dissenting voices.

D. Legislative Approval. Amendments to the Iowa Constitution must be approved twice in identical form by the General Assembly before being submitted to a referendum of the people. The problem at this stage was obvious -- securing a majority of the votes in each house in two consecutive sessions of the Legislature. It was felt that a large-scale public campaign at this point would be wasteful and unnecessary. Instead, we relied mainly on individual contacts by lawyers and judges from each locality with their own legislators, as well as expressions of support by county and city bar organizations. The lawyers and judges came through; the Amendment passed by a very close vote in 1959 and by a four to one margin in 1961.

E. Timing the Election. Iowa statutes permit the submission of proposed constitutional amendments at general or special elections. If we had waited for the general election of November, 1962, we would have had the anomalous situation of asking the people to vote on an amendment to remove judges from politics at the same election in which sixty-four of our seventy-five District Court judges and three of our nine Supreme Court judges would be running for reelection on party tickets. Hence, it was decided that the Amendment should be submitted at a special

election at the time of the June, 1962 primary.

F. Planning for the Campaign. The planning began in July, 1961. We had ten months. Our thinking was confused and somewhat divided. Some felt that the Amendment would carry with no promotion whatsoever. Others felt a full-scale campaign should be launched immediately. We finally agreed that we should wage a limited campaign, aimed mainly at people who vote in primary elections, and timed to reach maximum impact just before the election.

G. Professional Counsel. Our uncertainty convinced us that we should seek help from those more skilled in advertising and promotion of public measures. A public relations firm was employed. Their first recommendation turned out to be invaluable -- to secure a motivational survey in depth of the attitudes of Iowa voters toward the plan. This survey took longer than expected, and was difficult to evaluate, but it taught some important lessons:

(1) the people were frightfully uninformed, not only about the proposed Amendment, but about selection of judges in general;
(2) the people were not particularly excited about this subject;
(3) it would be the kiss of death to have this Amendment known as a "lawyers' bill;"
(4) the people had a very high opinion of judges; and,
(5) initial reactions of the uninformed to the Amendment were likely to be negative.

Later on, we realized we had misconceived the function of public relations counsel. We had thought we could turn most of the burden over to them and let them run the campaign. This was wrong. Luckily, we found out before it was too late that the promotion of this kind of Amendment demands a fervor almost characteristic of religious evangelism, and the driving force behind such a movement cannot be hired.

H. Bar Organization for the Campaign. One member is elected to the Board of Governors of the Iowa State Bar Association from each of the twenty-one judicial districts of the state. Each board member served as chairman of the promotional committee for his district. District committees varied in size, but in most cases members from each political party were on the committee. County chairmen were appointed in each county. Similar organizations were created in the Junior Bar Section and in the District Judges' Association. The principal duties of the county and the district committeemen were to arrange for speeches before local civic groups of all kinds; to secure news coverage of such speeches; to recruit members of the county lay voters' committee; to handle arrangements for local essay contests, local advertising and direct mail; to write letters to friends and clients; and finally, to get out the favorable vote. At the height of the campaign, it is estimated that over 1,000 of Iowa's 3,200 lawyers were actively working for the Amendment. Response and activity varied from county to county, of course, and with some exceptions, this was directly reflected in the final vote.

I. Judge Support. The attitude survey provided convincing proof of the high esteem in which judges are held by the Iowa public. It was important, then that the judiciary have a pre-eminent role in the campaign. This was assured through the fine cooperation of the Chief Justice and other

members of the Supreme Court and of the officers and members of the Iowa District Judges' Association. The Iowa Judges' Association's name appeared prominently on all promotional materials. Judges gave unstintingly of their time in making speeches to groups of all sizes, and in making television and radio appearances. They also appeared as signers of direct mail and as sponsors of newspaper advertising on a local basis. When two or three district judges began to get under publicity for the opposition late in the campaign, the overwhelming support for the Amendment among the judiciary was brought home to the public by a barrage of letters from judges to editors of state-wide and local newspapers.

J. Lay Support. The League of Women Voters of Iowa officially endorsed the Amendment while it was still in the Legislature. The League printed and distributed pamphlets explaining the plan. League members made speeches, house calls, and telephone calls in support of the Amendment, and worked to get out the favorable vote on election day. A state-wide lay committee, with members in each county, was formed early in 1962 with a popular, widely-known newspaper editor as its head. The committee was called the "Voters' Committee for Judges and Courts." People from all walks of life were included, with particular attention to community leaders such as prominent farmers. Their names appeared as sponsors of advertisements in local papers and as signatories of direct mail appeals to voters. They were asked to talk or write to friends and relatives urging a "Yes" vote. Many did so. The Committee's name was used on almost all campaign materials as the sponsor of radio and television commercials. The endorsement of the program by these community leaders was the important message we wished to carry to the voters. By election day, the Voters' Committee had assumed great importance. Valuable support was also received from the teachers' and bankers' associations and from the leadership of the Iowa Farm Bureau.

K. Financing. Fortunately, we didn't have to call on our lay committee or any outside source for financial support. Much of the cost was met from the current budget of the Bar Association. Many individual lawyers, judges and local bar groups contributed on a local level to defray costs of mailings to voters and advertising in local papers.

L. Spreading the Gospel.

(1) A fifteen minute film was prepared for use in presenting the Amendment to luncheon clubs, P.T.A. groups, and the like. Panel participants in the film included the Chief Justice of the Supreme Court, a district judge, a member of the League of Women Voters, the head of the Voters' Committee, a prominent farmer, and a high school girl.

(2) An essay contest was announced in all high schools of the state. The subject matter of the essay contest was "Why the Citizens of Iowa Should Adopt the Iowa Plan for the Selection of Judges." The winner was to receive a year's tuition at any Iowa University or College of his or her choice. A number of county bar associations sponsored prizes for county winners. More than one thousand high school students participated.

(3) Pamphlets of various kinds were prepared and widely distributed.

Extensive use was also made of materials prepared by the American Bar Association and the American Judicature Society. Hundreds of thousands of sample ballots were prepared with the "Yes" square filled in, and the message "Vote Yes for America's Finest Court System" emblazoned across the front. This sample ballot and a folder bearing the picture of Chief Justice Theodore G. Garfield and containing his answers to nine key questions about the Amendment were mailed to 350,000 primary voters. We feel that this was one of the most important and effective aspects of the campaign.

(4) The primary voter was our target. Since the referendum on the Amendment was to be held at the same time as the primary election, we were confident that the vote would be small and confined mainly to those who customarily vote in the primary. This was most fortunate because we could concentrate on this group, rather than the electorate at large. In nearly every county of the state the names of the persons who voted in the last primary election were obtained and envelopes were addressed to them. Letters were prepared by state headquarters, showing endorsement of the plan by the Voters' Committee members for each county. These letters, together with the enclosures mentioned above, were then mailed by the local people in each county. The impact was much greater than if the same materials had been mailed from the state capitol, without the endorsement of local leaders.

(5) News coverage was excellent and unbiased. Favorable items were constantly placed at the editor's finger tips through news releases issued by the headquarters office and our public relations counsel. At times it appeared that our opponents obtained coverage which was disproportionate to their numbers and the actual weight of the points they were making. To offset this, countering releases were issued as soon as possible, and in some cases before the opposition's item even hit the papers.

(6) Editorial support was received from over 95% of the papers of the state. This was facilitated by an exchange of selected editorial comments, handled by our public relations counsel; thus many fine editorials were reprinted in a great many papers which otherwise might not have carried them. Television and radio stations carried public service programs in which the pros and cons of the Amendment were discussed. Such efforts met with varied success. In general, it was our conclusion, after a few such encounters, that the debate type program should be avoided where possible, because the opposition is able to raise more confusion with misleading arguments and incorrect factual statements, and more aversion to the plan through emotion-packed harangues, than can be dispelled in the limited time available on such programs.

(7) Television and radio advertising was used extensively and with great impact during the final week of the campaign. This was mainly of the one-minute and thirty second spot variety, although a number of taped five-minute television interviews also appeared on each television station in the state. Only one person was interviewed on each of these tapes, including the President of the Iowa Farm Bureau, the Chairman of the Voters' Committee, the Chief Justice, and one other member of the Supreme Court. This was pursuant to a decision late in the campaign to "beef up"

the television advertising. We feel that it was worth the cost.

(8) Newspaper advertisements were placed in every daily and weekly paper in the state. Bar groups and judges paid for many other advertisements in local papers. A half-page advertisement appeared in every Sunday paper in the state the day before the election.

(9) Pride of the voter in helping Iowa to be the first to make this fundamental change was emphasized in all of our publicity and other materials. We had no scandal to trade on. We knew that the apathy of most voters would make it impossible to command their attention long enough to truly inform and convince them of the merits of the program. Hence, we had to do our best to create a favorable image in the mind of the voter, and the appeal to state pride was the technique which was used.

M. Opposition. Very little opposition of a partisan nature was made public. Principal opposition came from a group of lawyers and two or three judges who banded together under the name of "Iowans to Preserve the Constitution." They received considerable publicity from the announcement of their formation and from the passage of a series of resolutions. Their press releases were picked up and given wide publicity. They made use of open forum columns in the papers, demanded time on radio and television stations equal to free time made available to the proponents, and arranged several television and radio debates. They also distributed pamphlets in a few localities. Their constant theme was that the Amendment would take away the right of the voters to select their judges, and that such power would henceforth be vested in the hierarchy of the bar association. We countered this argument by pointing out (1) that under the old system seventy-five per cent of Iowa's judges were originally appointed by the Governor, with no restraints; (2) that seventy-five per cent of them traditionally run for reelection without any opposition; (3) that the Amendment will thus give the voter a real chance for the first time to cast an effective vote on retention of judges; and (4) that this vote will be on the judge's own merits, free from confusion with political issues. There is no question but that our opponents scored heavily in some places and with some people, but they were hampered by ineffective organization and lack of funds. More importantly, the people they were convincing were not voters. Our converts went to the polls and theirs stayed home.

N. Results! The vote was decisive. The Amendment carried in 73 of Iowa's 99 counties. The favorable margin was 40,000 out of a total of 276,494 votes cast -- a 57.2% vote for the Amendment.

PHILADELPHIA PAPERS
REPORT ON
THE CONSENSUS AND DEMAND
FOR A CITIZENS COMMITTEE
TO MODERNIZE THE COURTS OF PENNSYLVANIA

THE PHILADELPHIA INQUIRER, SUNDAY MORNING, JANUARY 12, 1964

Citizens Demand Updating of Penna.'s Obsolete Judicial System

By EDWARD J. HUSSIE
Of The Inquirer Staff

One hundred picked men and women from throughout the State took a long, hard look at the administration of justice in Pennsylvania, found it sadly wanting and on Saturday decided to do something about it.

Upshot of the only meeting of its kind ever conducted in Pennsylvania was a call upon the State Bar Association to lay the groundwork for a citizens committee to work for repair of a judicial system found "incapable of consistently providing prompt, economical, fair and equal justice under the law."

The indictment of the courts was arrived at after 30 hours of panel discussions interspersed by six major addresses at a Citizens Conference on Modernization of the Pennsylvania Judicial System. The group—labor leaders, industrialists, clergymen, teachers, officials of women's organizations and others—gathered in the Bellevue Stratford with some 40 lawyers and judges at the invitation of the Pennsylvania Bar Association and the Joint Committee for the Effective Administration of Justice.

The sessions began Thursday night and ended Saturday morning at a general meeting in which a conference "consensus" was hammered out, with the laymen matching the lawyers in arguments over commas and definitions, and in which a motion to form the committee was adopted without dissent.

The task of forming a nucleus of the citizens' committee went to William A. Schnader, past PBA president and honorary chairman of the conference, who said he would urge both delegates to the meeting and persons who were not in attendance to serve.

In their seven page consensus, the aroused citizens declared:

"The Pennsylvania judicial system, measured by modern standards, has glaring weaknesses which must be eliminated if it is to respond to the needs of the time and this Commonwealth is to maintain its position of leadership among States.

"This judicial system, established in 1874—over 90 years ago—has failed time and time again to serve the needs of efficient administration of justice in Pennsylvania. A bewildering patchwork of courts with overlapping jurisdiction, unsupervised operations and, often, ill-trained judicial personnel has created congested dockets and costly delays which deprive the people of prompt, fair and equal justice under law.

"Pennsylvania has many dedicated and competent judges in spite of partisan political selection, uncertainty of continued tenure in office, insufficient retirement provisions and inadequate methods of discipline and removal.

"In the areas of court organization, administration and supervision this Commonwealth has one of the most backward judicial systems of any of the major States in the Union.

"In its minor courts, Pennsylvania suffers from an excess—more than 4000—of justices of the peace, magistrates and aldermen, many of whom are ill equipped for judicial office. The unsupervised fee system of compensation gives justices of the peace and others a monetary interest in nearly every case that comes before them.

"In summary, the present judicial system of Pennsylvania is incapable of consistently providing prompt, economical, fair and equal justice under the law in the courts of this Commonwealth."

The report approved "in principle" the PBA's proposals for:

—Appointment of judges for a first term by the Governor from nominees submitted by commissions comprised of three lawyers, three laymen and a judge and the second term to be obtained from the electorate voting on the jurist's record.

—Streamlining the structural organization of the courts, with the Supreme Court being given greater authority over the lesser courts all down the line.

—Complete reorganization of the minor judiciary, including abolishment of justices of the peace, aldermen and possibly magistrates and their replacement by community or district courts with full-time salaried judges meeting certain standards.

In bearing down hard on the minor judiciary, the laymen accepted without quibble the scathing condemnation of the justices of the peace contained in an address delivered Thursday night by C. Brewster Rhoads, president-elect of the PBA. Saturday's consensus stated:

"Our minor courts are often located in makeshift and undesirable quarters. Justices of the peace, magistrates and aldermen too often lack both minimum education and professional qualifications. The fee system promotes suspicion that fair and equal justice cannot be obtained."

The call for reform contained a reminder that "the courts belong to the people."

"All programs to improve the administration of justice must meet the needs of the people," the conferees stated. "Any proposal of improvement must have the support of the people. This support for relevant reform can be obtained only with militant action by informed and concerned leaders of all segments of life in Pennsylvania."

(over)

THE OLDEST DAILY NEWSPAPER IN THE UNITED STATES—FOUNDED 1771

The Philadelphia Inquirer

PUBLIC LEDGER

AN INDEPENDENT NEWSPAPER FOR ALL THE PEOPLE

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Scranton Appoints Panel to Suggest Nominees for Judges

By SAUL KOHLER

Inquirer Harrisburg Bureau

HARRISBURG, Jan. 23.—Gov. William W. Scranton on Thursday appointed a Judicial Nominating Committee to submit candidates for the five judicial vacancies in the Philadelphia courts. The Governor said he would choose the judges from the commission's recommendations.

This is the first time in the history of Pennsylvania that any Governor ever set up such a group to suggest the names of potential judges. In most cases, heretofore, judicial appointments were recommended by politicians.

SEGAL IS CHAIRMAN

The establishment of the commission was regarded as a test run of the so-called Pennsylvania Plan for judicial appointments.

Scranton chose the following members of his commission:

Bernard G. Segal, chairman of the Judiciary Committee of the Pennsylvania Bar Asssociation, as chairman.

Theodore Voorhees, Chancellor of the Philadelphia Bar Association, as secretary.

Judge Gerald S. Flood, of the Superior Court, a Democrat, who served for 23 years on Common Pleas Court 6 before his elevation.

William T. Coleman, Jr., chairman of the Judiciary Committee of the Philadelphia Bar Asscoition, and law partner of former Mayor Richardson Dilworth.

Harry A. Batten, co-chairman of the Greater Philadelphia Movement.

Dr. Millard E. Gladfelder, president of Temple University.

Dr. Gaylord P. Harnwell, president of the University of Pennsylvania.

Scranton said he appointed Segal as chairman of the commission because "few men have had his experience or equalled his knowledge in the field of judicial selection."

PRAISED BY PRESIDENTS

Segal received commendation from both former Presidents John F. Kennedy and Dwight D. Eisenhower for his work as chairman of the Committee for the Federal Judiciary of the American Bar Association which investigated candidates for appointment to the Federal bench.

Scranton said he has given "a great deal of thought" to the problem of filling five vacancies in the courts of Philadelphia, which were created by the 1963 session of the General Assembly.

Three of those vacancies will be on the Common Pleas bench —the new Common Pleas Court 8—and the others will be added to the County Court.

'COMPLEX PROBLEM'

The Governor said he discussed the appointments with leaders of the Bar, the Greater Philadelphia Movement, other citizen organizations and with leaders of the Republican Party in Philadelphia. William A. Meehan, co-leader of the Philadelphia GOP is known to have made numerous trips to Harrisburg to discuss judicial appointments with Scranton.

"Very frankly, all these many interviewers, conferences and suggestions not only as to specific individuals but also as to methods for selection, have not produced a completely satisfactory solution to this extremely complex problem," Scranton said.

'LISTENED PATIENTLY'

The Governor added that Attorney General Walter E. Alessandroni has "listened patiently" to suggestions not only of names of individuals but of methods of appointments as well.

Scranton said he was determined to take the matter of judicial appointments out of politics and place it on the highest possible level.

The five vacancies constitute more appointments to the Philadelphia courts than have existed at a single time in more than 25 years.

Some States have adopted the nominating commission method by constiutional amendment, but Scranton said this is the first time in American history such a procedure has been invoked by executive order?

PANEL OF 9 NAMES

"I shall not make any appointments to any Philadelphia courts without first submitting the name of the prospective appointee for investigation and report and without the most careful consideration of the commission," the Governor said.

He said he would ask the commission to submit to him as rapidly as possible a panel of nine names for the three vacancies in the new Common Pleas Court 8, an da panel of six names for the two vacancies in the County Court.

3 FOR EACH VACANCY

A proposed constitutional amendment and the Pennsylvania Plan provide for the submission of three names for each vacancy. The Governor said that if necessary, he would call upon the commission for additional names if the first panel does not suit him.

"But I will not appoint anyone to any of these five judgships who is not suggested to me by the commission," Scranton added.

The proposed constitutional amendment provides that the nominating commission consist of one judge, three lawyers and three laymen. Judge Flood is the jurist; Coleman, Segal and Voorhees are the lawyers; Batten and Drs. Gladfetter and Harnwell are the laymen.

AMENDMENT BACKED

A commission on constitutional revision has indorsed a constitutional amendment based on hte Pennsylvania Plan.

"The proposed new judical article would modernize and streamline our judicial system," the Governor said. "It has the indorsement of the important professional and lay groups. The present situation in Philadelphia provides an ideal opportunity to test its provisions for judicial appointments."

'HIGHEST STANDING'

Scranton said he appointed to the nominating commission "persons of highest standing in the community and of unquestioned integrity and independence."

The Governor cited the three lawyers as "outstanding attorneyy who have demonstrated their dedication to the goal of an independent and qualified judiciary."

He characterized the three laymen as "leading citizens who have participated over the years in many important and significant public causes."

EXCERPTS FROM

The New Mexico Judicial Selection Campaign—a Case History

By GLENN R. WINTERS

A PROPOSAL for a constitutional amendment to give New Mexico a method of selecting judges similar to that endorsed and advocated by the American Judicature Society and the American Bar Association was defeated by the voters of that state in a special election on September 18. Other states are now engaged in or preparing to embark upon similar projects, and for the information and guidance of these and others interested, the *Journal* has undertaken to secure and make available to its readers as complete an account as possible of the New Mexico campaign and the reasons for its failure to succeed on its first test at the polls.

THE STATE AND ITS PEOPLE

New Mexico is the fourth largest of the states in area, situated in the southwestern part of the United States. Mostly mountainous, it also has great deserts, in one of which the first atomic bomb was exploded, and where important installations of the Atomic Energy Commission still are maintained, and its eastern edge runs into the Great Plains. Its population is composed of three leading groups—the Indians, the Spanish-Americans and the Anglo-Americans. The Indians have lived there for thousands of years. Most of them are on reservations and in pueblos as wards of the federal government. The Spaniards came in about 400 years ago and ruled the land for nearly three centuries. Anglo-American immigration from the eastern states began over the historic Santa Fe Trail with the advent of Mexican rule in 1822, and increased still more after annexation to the United States in 1846. The Spanish-Americans were most numerous, and held the balance of political power, until within the past decade, when wartime and post-war military installations and other developments brought a great influx of population, most of it Anglo-American. The population of Albuquerque, the state's metropolis, jumped from 35,449 in 1940 to 97,012 in 1950, and the rest of the state has followed suit, except for the overwhelmingly Spanish-American communities, which are clustered together in the north-central part of the state, up and down the Rio Grande valley. Though now outnumbered, the Spanish-speaking element is still numerous and powerful, and election ballots are printed in both languages.

Preponderantly Democratic in politics, the state in 1950 elected its first Republican governor in many years, youthful Edwin L. Mechem, a member of the Las Cruces bar, who made judicial selection reform a part of his campaign platform. At the same time, it elected a legislature with a Democratic majority of 64 to 14. The members of the 1951 legislature were about one-third Spanish-American and two-thirds Anglo-American.

There are five supreme court justices and thirteen district court judges in New Mexico, all presently nominated and elected on political party tickets, the former for eight-year and the latter for six-year terms.

PREVIOUS HISTORY OF THE CAMPAIGN

The September vote marked the climax of a judicial selection reform movement that has been under way in New Mexico for two decades. In the legislature of 1933 two bills were introduced, one to provide for election of judges on a non-partisan ballot and one for a bar primary. Adoption of the California plan the following year stimulated interest in many states, including New Mexico, and in 1935 the State Bar of New Mexico called a conference of a dozen state-wide organizations to discuss and consider possible improvements in the selection of judges. These included the Federation of Women's Clubs, the Press Association, Educational Association, Railway Brotherhoods, State Taxpayers' Association, Bankers' Association, Cattle Growers' Association, Wool Growers' Association, American Legion, Veterans of Foreign Wars, Kiwanis Clubs, and the "Twenty-Thirty Club."

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*Reprinted from the Journal of the American Judicature Society (April, 1952).

The conference met in Albuquerque on May 25, 1935, and after extended discussion adopted a resolution favoring non-political selection of judges, and appointed a committee consisting of one person from each group represented to prepare and submit a specific plan or plans for consideration at a subsequent sitting of the conference. It does not appear, however, that the committee ever produced a plan, or that the conference ever met again. The movement lay dormant for several years, except that during the war years one effort was again made to secure non-partisan election of judges. At the 1948 annual meeting of the state bar in Roswell, a group of lawyers from Las Cruces offered a resolution to put the organization on record as favoring the Missouri plan for selection of judges, but it was not adopted. The following year, however, the state bar commissioners renewed the recommendation, and a concrete plan drafted by George Reese, Jr., of Carlsbad, now president of the state bar, was submitted to the members for study and approval at the next meeting. William W. Crowdus of St. Louis, a leader in the successful Missouri judicial selection reform campaign of 1938-1940, addressed the 1950 convention in Carlsbad, which approved the draft plan, with minor amendments, by a vote very close to unanimous.

In the 1951 Legislature

This proposal was introduced in the 1951 legislature by two lawyer members, I. M. Smalley of Deming and Waldo Spiess of Las Vegas. On its first vote in the House it was snowed under by a heavy majority. A significant amendment paved the way for its later favorable reception and passage. The original draft provided that an incumbent would be out "if a majority of those voting on the question vote against retaining him in office." The amendment added the following words: "and if the total number of votes cast on the question shall be at least fifty per cent of the total number of legal voters voting at the election."

The amended draft passed the House with a modest margin, and went through the Senate with very few dissenting votes. The proposal was one of eight submitted by that legislature to the voters, and a special election was set for September 18 to vote on these constitutional issues alone.

The Campaign for Its Adoption

The campaign for adoption of the judicial selection proposal, Amendment No. 8, was carried on under the supervision of the Board of Bar Commissioners of the State Bar of New Mexico, with Robert W. Botts of Albuquerque and George Reese, Jr., of Carlsbad, chiefly in charge. A campaign fund of between $2,500 and $3,000 was raised, almost entirely from contributions of lawyers. Two excellent pieces of campaign literature were prepared and printed. The first was an eight-page folder containing a description of the plan in its final form, a review of its background and purposes, and a well-stated and convincing argument for its adoption. The insert on page 109 pointing up the striking contrast between the recognized qualifications for a good judge and those qualifications which tend to favor the election of a candidate to judicial office was taken from this booklet. The other was a smaller, four-page leaflet, in two colors, with numerous illustrations, containing a simplified and popularized explanation of the plan. About 10,000 copies of the first piece were distributed carefully to opinion leaders and speakers. Four or five times as many of the others were printed and broadcast as widely as possible.

JUDICIAL BALLOT



SAMPLE BALLOT

INSTRUCTIONS TO VOTERS

If you desire to vote for the Amendment, mark X in square opposite the words "For the Amendment." If you desire to vote against the Amendment, mark X in the square opposite the words "Against the Amendment."

BOLETA DE MUESTRA

INSTRUCCIONES A LOS VOTANTES

Si Ud. desea votar por la enmienda, marque una X en el cuadro enfrente de las palabras "Por la Enmienda." Si Ud. desea votar encontra de la enmienda, marque una X en el cuadro enfrente de las palabras "Encontra de la Enmienda."

Constitutional Amendment No. 8

Twentieth Legislature
State of New Mexico

House Joint Resolution No. 9

Introduced by
I. M. Smalley
Waldo Speiss

A Joint Resolution

Proposing an Amendment to the Constitution of the State of New Mexico Adding a New Article to Be Numbered Article 25 Providing for the Non-partisan selection of Judges.

Be it Resolved by the Legislature of the State of New Mexico:

Section 1. That it is hereby proposed to amend the Constitution of the State of New Mexico by adding thereto a new article to be numbered Article 25 to read as follows, to-wit:

"NONPARTISAN SELECTION OF JUDGES"

"Section 1. Courts subject to plan-appointments to fill vacancies. When-ever a vacancy shall occur in the office of judge (and the word judge is used to include the word justices in this article) of the Supreme Court or of any District Court, the gover[illegible] shall fill vacancy by appo[illegible]

Enmienda Constituciónal No. 8

Vigesima Legislatura
Estado de Nuevo México

Resolución Conjunta No. 9 de la Camara
Propuesta por:
I. M. Smalley y Waldo Spiess

Una Resolución Conjunta Proponiendo Una Enmienda a la Constitución del Estado de Nuevo México Añadiendo un Nuevo Articulo para ser Numerado Como el Articulo 25 Proveyendo la Selección de Jueces No-Partidarios.

Resuelvase por la Legislatura del Estado de Nuevo Mexico:

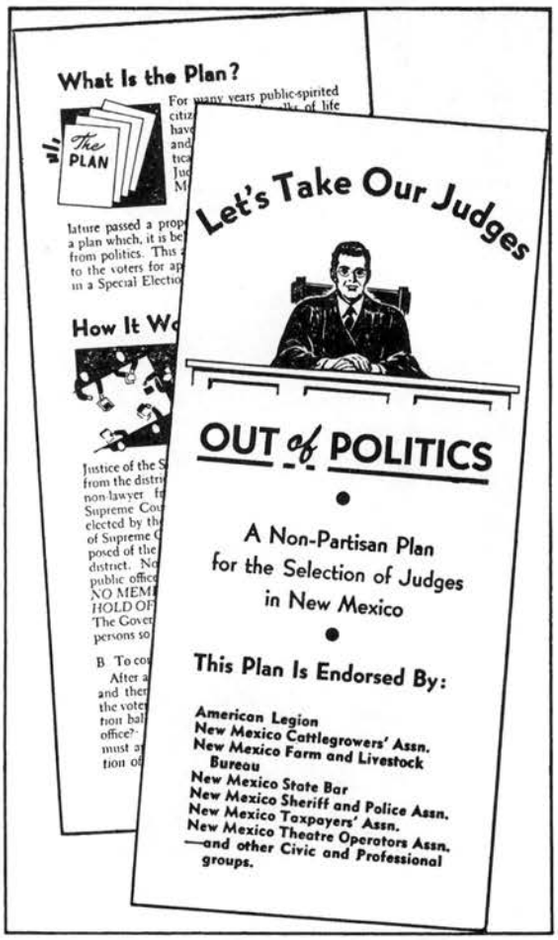
Sección 1. Por este medio se propone enmendar la constitución del Estado de Nuevo México añadiendo a ella un nuevo Articulo numerado 25 para que lea como sigue:

"SELECCION DE JUECES NO-PARTIDARIOS."

"Sección 1. Cortes sujetas al plan de nombramientos para llenar vacantes. Cuando quiera que ocurra una vacante en la oficina de Juez (y la palabra Juez se use para incluir en este articulo a los Jueces de Distrito y de la Corte Suprema) de la Corte Suprema o de cualquier Corte de Distrito, el Gobernador debe llenar tal vacante con el nombramiento de una de las tres personas cualificadas para tal cargo, quienes deben ser nominadas y sus nombres deben ser [illegible] nador p[illegible]

Nearly half of the voters in New Mexico speak Spanish, and so election ballots are printed in both Spanish and English. Here is the heading of the sample ballot for the judicial selection amendment.

CAMPAIGN LEAFLET



40,000 copies of this four-page leaflet, printed in red and black, were distributed throughout New Mexico during the pre-election campaign.

One of the long ones and a handful of the shorter ones were sent to every lawyer in the state. Arrangements were nearly completed for house-to-house distribution of the smaller leaflets in Albuquerque by boy scouts, but at the last minute that organization declined to proceed because of the controversy that had developed, and about 7,000 were thereupon sent out by direct mail to voters in selected areas of the city. All school teachers in the state were circularized. Some radio announcements were used, and time for two radio addresses was donated by an Albuquerque station to balance equal time taken by an opponent. A series of spot announcements was prepared and several smaller stations agreed to use them without charge provided the others would do likewise, but some stations refused and so none of them were aired.

Endorsements were secured from many state civic and professional organizations, including the American Legion, the New Mexico Cattle Growers' Association, the New Mexico Farm and Livestock Bureau, the New Mexico Sheriff and Police Association, the New Mexico Taxpayers' Association, and the New Mexico Theatre Operators' Association. Local organizations of the Junior Chamber of Commerce rendered substantial assistance, especially in the eastern part of the state, and some literature was distributed by the American Legion.

Governor Edwin L. Mechem strongly supported the plan during his own election campaign, during its progress through the legislature, and in the campaign prior to the election. The 1951 legislature created a new judicial district in the eastern part of the state, the judge for which the governor had the power to appoint outright under the existing system. He announced, however, that in anticipation of the adoption of the new plan and in order to demonstrate its operation, he would make this appointment under the proposed procedure. A nominating commission was accordingly created, consisting of Manford W. Rainwater of Tucumcari and Harold H. Durrin of Mosquero, attorneys elected by the bar of the district, Walter G. McMeans, a layman appointed by the governor, and Rhea M. De Oliviera, a layman appointed by the supreme court, Chief Justice Eugene D. Lujan serving as chairman. The commission nominated David S. Bonem and C. C. Davidson of Tucumcari and Keith W. Edwards of Ft. Sumner, and the governor appointed Bonem to the judgeship. It is worth noting that in this demonstration of non-political selection of judges, both the man appointed by the governor to the judgeship and the layman appointed by the governor to the nominating commission were of the other political party. The commission nominated two Democrats and one Republican.

Nearly all of the newspapers of the state were favorable to the proposal. The *Albuquerque Journal* has been an important force in the movement since its inception, and was credited by more than one person with having been a factor in spurring the bar to activity.

All Amendments Defeated

When the votes were counted, all of the

amendments had been defeated. Only 36,764 votes were cast, and the cost of the election was over $40,000. Nearest to winning was the proposal for absentee voting, which had a majority of 18,698 to 16,158, but that was not sufficient, as this item required a three-fourths overall majority and two-thirds in each county. The judges' salary amendments went down 14,780 to 19,356 and 15,040 to 19,178. Amendment No. 8, the judicial selection proposal, was beaten worst of all—12,958 to 21,935. Its largest majority was in the governor's home county of Dona Ana, where it won by 954 to 334. It carried six other counties by slender majorities and lost by narrow or modest margins in four more. Elsewhere, the vote was topheavy against it. In Santa Fe County it went down 429 to 2,172. With a few exceptions, it made its best showing in the eastern and southern counties, where the Anglo-American population is the strongest, and did the worst in the northern and central counties where the Spanish-American population is concentrated.

The Spanish-American Vote

This was no accident. The Spanish-Americans, lately dislodged from their long-standing voting majority, might have been expected to be somewhat uneasy as to what the future might hold in store for them, and opponents of the judicial amendment capitalized on that uneasiness by assuring them that if Amendment No. 8 were passed they might expect no more representation on the bench. . . .

Campaign publicity was carried on under a well-rounded program which included newspaper releases, direct mail, radio, luncheon club speeches, and other media. Efforts were made to reach the voters through home, school and other approaches. Election returns from within the city of Albuquerque showed that in those precincts where the voters had been contacted by direct mail, affirmative majorities of

BY WHICH STANDARD OUGHT JUDGES TO BE CHOSEN?

The ideal judge, said one of the New Mexico judicial selection campaign leaflets, is described in the first group of questions, but the elective system tends to favor the candidate who can successfully meet the test of the second group.

The Ideal Judge

1. Have you confidence in his integrity and character?
2. Has he adequate legal ability?
3. Would he be deliberate and fair-minded in reaching his conclusions?
4. Is he industrious?
5. Has he adequate legal experience?
6. Are his personal habits compatible with judicial office?
7. Would he engage in activities which tend to interfere with his usefulness as a judge?
8. Is he courteous and considerate?

The Elected Judge

1. Has he been involved in any major public scandal?
2. Is he on good terms with the political leaders of his party?
3. In what ways has he helped his political party in the past?
4. Is he a good public speaker and a good mixer, so that he will be able to help in electing the ticket?
5. Can he make a decent contribution to the campaign fund?
6. What connections does he have with particular pressure groups that may enable him to deliver their vote on election day?
7. Is he likely to render any decisions which might adversely affect his party?
8. Does he know enough law to "get by" on the bench?

two and three to one were obtained. They did the best they could with what they had, but they went to bat with more than three strikes against them.

Defects in the Plan

The first of these was in the product they were selling. Heralded as a New Mexico version of the Missouri plan, it differed from that tested and successful pattern in important respects which could have made little if any improvement in its operation, but which weakened its appeal to the voters. One of these was the amendment to the election feature added in the legislature. In Missouri a judge may be unseated by a simple majority of those voting on the question. The amendment that at least 50 per cent of all those voting in the election must vote on that question was presumably put in for the benefit of some judge or judges who feared being swept out of office, but such fears were unnecessary. Experience in Missouri under the simple majority rule has been satisfactory. The judges have a high degree of security, which is as it should be, but the removal machinery can be and in one instance has been applied to remove a judge. The amendment weakened the plan, opened the door to the cry of "freezing judges in office," and took its toll of negative votes.

Equally damaging, if not more so, was the departure with respect to the make-up of the nominating commissions. The A. B. A. pattern specifies that this agency shall be composed "in part of high judicial officers and in part of other citizens, selected for the purpose, who hold no other public office." There is room for doubt as to whether the supreme court judicial nominating commission offered to the New Mexico voters actually met this standard. The members of the Board of Bar Commissioners are not selected for that purpose, and in a state having an integrated bar it might be contended that theirs is a public office. In Missouri, the nominating commission for judges of the supreme and appellate courts consists of the chief justice as chairman, three lawyers elected by the bar, and three laymen appointed by the governor. For circuit and probate judges it consists of the presiding judge of the appropriate court of appeals, two members of the bar chosen by the bar of the circuit, and two laymen appointed by the governor. The commission for nominating district judges in the New Mexico plan almost fitted this pattern, but the provision that one of the laymen should be appointed by the supreme court again led critics to feel that an undue advantage was again being given to the legal profession, this time through its judicial representatives.

What made this feature all the more damaging was the fact that the campaign for adoption of the amendment was under the active sponsorship of the state bar. True, a dozen or more state-wide organizations had endorsed it, but for practically all of them their participation amounted to nothing more than adoption of a resolution at some meeting. Except for some work by local junior chambers of commerce and American Legion posts in scattered communities, the bar carried the ball alone, and it was thus in the embarrassing position of asking the voters to yield to it, or rather to its governing board, an important power of their own. Lowell C. Green, clerk of the supreme court and secretary of the state bar, still contends that an all-lawyer nominating commission for the supreme court is theoretically sound, since the work of an appellate court is concerned entirely with questions of law, but the cry of "too much power in the lawyers" is one that opponents of such a measure cannot be expected to resist raising.

Joint Lay Sponsorship

In connection with the bar's sponsorship of the campaign, it is interesting to speculate on how it might have gone if it had been continued along the lines of the excellent start made in 1935. Then, it will be recalled, representatives of a dozen state-wide organizations got together to study the problem and try to decide what could be done. The bar conceived the idea and called the meeting, but participated as just one of the interested groups. The meeting resulted in adoption of a resolution favoring non-political selection of judges and appointment of a broadly representative committee to draft a suitable plan. In Missouri the campaign was in the hands of a "Missouri Institute for the Administration of Justice" sponsored actively by a wide variety of civic and community organizations, of which the bar was just one. In California, lay organizations such as the Commonwealth Club took a leading part in the movement for judicial selection reform from its inception. Just why the beginning move in New Mexico was not followed up is not clear, but that it would

have been more effective is very clear.

Even the bar was not unanimous. Bert Prince, Santa Fe County district attorney, went so far as to assert that 80 per cent of the lawyers were opposed to it. That was surely an exaggeration, but there is no doubt that there was substantial opposition from within the bar's own ranks. Some lawyers undoubtedly were sincerely of the opinion that the elective method is preferable. Lawyers are people, and some of them may be presumed to have fallen for the racial propaganda and perhaps even for the "sleeper" story. Some who aspire to a judgeship may have felt that their chances would be less under the appointive system. Most lawyers are politically conscious, and the championing of the plan by a Republican governor may have turned some Democrats against it, although the campaign was nonpartisan and in several counties party chairmen of both parties issued joint statements in its support.

Even worse than the outright opposition of that group, however, was the apathy of a still larger group, including many who actually voted in favor of bar sponsorship of the plan at the convention, but who became evasive when asked to speak in its behalf or to make a campaign contribution. Almost surely, some of the latter were influenced by the fact that under the amended plan it would be extremely difficult to remove a judge from office. Every lawyer has his top choice and his bottom choice among the judges, and some lawyers may not have contemplated with pleasure the indefinite continuance of the latter.

The large majority by which the Carlsbad convention endorsed the proposal was not a true indication of the temper of the bar as a whole, at least as far as getting out and fighting for it was concerned. The same thing may be said of the press of the state. The *Albuquerque Journal* and others rendered loyal support, but some others were in the position of the *Las Vegas Optic*, one of a chain of four. Though nominally favoring the plan, Editor Vivian of the *Optic* said that the group's position really amounted to little more than "leaning" in that direction, and that they had actually taken no active part in the campaign.

Conclusions

1. The outstanding conclusion to be drawn from this recital is that the submission to the voters was premature. Much more groundwork needed to be done both within and without the circle of the bar. About a third of the state's 439 lawyers have attended recent annual meetings—presumably much the same crowd each time. Those who attended in 1949 and 1950 must have learned a little about the judical selection plan and it came to the rest in the printed *Proceedings*, but it may be assumed that few of them read it there, and that a large proportion of the other 300 were not even slightly acquainted with its provisions and the reasons why they should support it. The fact that it was approved by the commissioners and a majority of those attending the meeting may have influenced some of them to go along in a passive way, but not to get out as energetic and effectual champions of it. Undoubtedly a great many lawyers first learned about it from campaign literature sent out at election time. Then, instead of being won over themselves, they should have been already enlisted in the campaign to win others.

By the same token, not enough advance salesmanship was done on the rest of the public. It should have been organized as a mass movement of the entire citizenry and not as a bar association project, and a thorough job of indoctrinating opinion leaders should have been done before presenting it to the voters. Very few voters who go to the polls make any effort to digest the details of constitutional issues presented to them. Particularly if they involve things legal they approach them with a widely-held mental block to the effect that anything legal is of course incomprehensible to other than the legal mind. What they do instead is follow the lead of somebody in whom they have confidence. It may be the newspaper editor, it may be the minister or priest, it may be the governor or other political leader. A thorough selling job must be done on these people in advance of submission to the voters. And since the most effective way ever found to sell a man an idea is to make him think that he thought it up himself, they should be brought into the project at the *planning* stage, rather than having a completed draft handed them to swallow whole.

Broader sponsorship would have helped out on the finances as well as in less tangible ways. $3,000 is a pitifully small sum of money to finance any kind of effort to influence the public opinion of an entire state. Twenty times that amount would have been a modest budget

for such a project. The bar did the best it could on that score, and it was not enough.

The job of influencing public opinion is one which requires a professional skill not unlike that of the lawyer himself. All the intricate repertoire of public relations media and methods available for such a task can be effectively utilized only by a person skilled and experienced in that work. In such a field the lawyer is himself a layman. Without exception, in states where major reforms such as this have been accomplished, it has been with skilled use of public relations techniques, directed by professionals in that work. Money was not available for such assistance in this campaign, but if an adequate budget had been raised, it would have included an allowance for public relations conselling and services.

2. The two departures from the Missouri pattern were a mistake—not so much for the reasons advanced in opposition to them as simply because they gave additional ammunition to the opposition. As the *New Mexican* plainly declared in its September 12 editorial, the plan presented to the voters was a good plan, and it would have been greatly to the advantage of the people of that state to have adopted it. Probably nobody was entirely satisfied with it, but the same was true of the completed draft of the United States constitution. Statesmen of that day were wise enough, however, to see that it was as close to agreement as they were likely to get, and that as it stood it was a good thing and worthy of their support. Had they not adopted that commonsense and realistic attitude, the people of New Mexico's beautiful "Land of Enchantment" might not have been casting their ballots this year or any year on this or any other issue. Those who sincerely opposed the amendment because of disagreement with this or that detail would have served their state better had they rejoiced that a plan as good as that one had gotten that near adoption and joined in pushing it through. Those whose opposition was for political and other reasons, would, of course, have opposed it regardless of what it contained. However, even though the New Mexico plan as voted on was a good plan, the Missouri plan is a better one and it would have been better all around to have stuck more closely to it.

3. The bar association leaders badly underestimated the political repercussions of their project. Efforts to keep it non-partisan as far as the major political parties were concerned very largely succeeded, but it was a red-hot political issue just the same, and such was the experience in California and Missouri, and in other states where unsuccessful campaigns have been conducted. Not every state has a Spanish-American bloc of voters, but every state has minority groups of one kind or another, and efforts always have been and always will be made to convince them that they will be prejudiced by adoption of such a plan. We think their interests are better protected under this plan than under the elective system, and that they could be made to see it. Opposition may always be expected from judges who enjoy a measure of political power in their districts or circuits, and who are loath to be removed from the political arena, as well as from others who feel fairly secure under the existing system and are afraid to have it disturbed, not to mention lawyers who think or know that an appointive system would end their chances of being a judge.

4. New Mexico can still have an appointive judiciary. Both the lawyers and the people know a lot more about the problem now than they did a year ago, for an unsuccessful campaign has a lot of educational value. Both the *Albuquerque Tribune* and the *Santa Fe New Mexican* have made unequivocal statements which there is no reason to doubt, that they are in favor of judical selection reform and would support a plan which did not have the flaws this one did. These and other editors and publishers have studied judical selection problems intensively in recent months. They would have much to contribute to the planning of the next campaign, and could help to make it a good one. Future planning, however, hinges largely upon what is done about a constitutional convention. The present constitution is the one under which New Mexico became a state in 1912. There has been increasing talk of late about the need for a constitutional convention, and it is likely that some effort will be made to have one in the near future. If so, the next step should be of course to get the desired plan into the revised constitution. It will be 1953, when the next legislature meets, before anything can be done about that. In the meantime, if the 1951 experience in New Mexico proves helpful to the planners of judical selection campaigns in other states, it will not have been entirely in vain.

FIRST ANNUAL REPORT

1964

MINNESOTA COURTS



THE SUPREME COURT OF MINNESOTA

OFFICE OF THE ADMINISTRATIVE ASSISTANT

MEMBERS OF THE JUDICIARY

SUPREME COURT

Chief Justice
Oscar R. Knutson

Associate Justices

Thomas Gallagher
Martin A. Nelson
William P. Murphy
James C. Otis
W. F. Rogosheske
Robert J. Sheran

DISTRICT COURT

District	Name	Chambers	Term Expires
1	Robert J. Breunig	Hastings	1967
1	John M. Fitzgerald	Le Center	1971
1	Harold E. Flynn	Shakopee	1969
1	John B. Friedrich	Red Wing	1971
1	Arlo E. Haering	Glencoe	1967
2	Archie L. Gingold	St. Paul	1969
2	John W. Graff	St. Paul	1967
2	Ronald E. Hachey	St. Paul	1969
2	Leonard J. Keyes	St. Paul	1969
2	Edward D. Mulally	St. Paul	1969
2	Clayton Parks	St. Paul	1969
2	Albin S. Pearson	St. Paul	1971
2	Robert V. Rensch	St. Paul	1969
2	Harold W. Schultz	St. Paul	1971
3	John F. Cahill	Owatonna	1971
3	Donald T. Franke	Rochester	1971
3	Arnold W. Hatfield	Winona	1967
3	O. Russell Olson	Rochester	1971
3	Warren F. Plunkett	Albert Lea	1969
3	A. C. Richardson	Austin	1967
4	Douglas K. Amdahl	Minneapolis	1971
4	Leslie L. Anderson	Minneapolis	1971
4	Lindsay G. Arthur	Minneapolis	1971
4	Donald T. Barbeau	Minneapolis	1971
4	Tom L. Bergin	Minneapolis	1969
4	Irving R. Brand	Minneapolis	1969
4	Rolf Fosseen	Minneapolis	1969
4	William D. Gunn	Minneapolis	1967
4	Paul J. Jaroscak	Minneapolis	1966
4	Stanley D. Kane	Minneapolis	1971
4	Theodore B. Knudson	Minneapolis	1969
4	Earl J. Lyons	Minneapolis	1967
4	Dana Nicholson	Minneapolis	1967
4	Luther Sletten	Minneapolis	1967
4	Thomas Tallakson	Minneapolis	1971
4	John A. Weeks	Minneapolis	1971

District	Name	Chambers	Term Expires
5	Charles A. Flinn	Windom	1969
5	L. J. Irvine	Fairmont	1969
5	Walter H. Mann	Marshall	1969
5	Milton D. Mason	Mankato	1969
5	Noah S. Rosenbloom	New Ulm	1971
6	Arthur O. Anselmo	Virginia	1969
6	N. S. Chanak	Hibbing	1971
6	Sidney E. Kaner	Duluth	1967
6	Mark Nolan	Duluth	1967
6	Donald C. Odden	Duluth	1969
6	J. K. Underhill	Duluth	1967
7	Charles W. Kennedy	Little Falls	1971
7	Chester G. Rosengren	Fergus Falls	1971
7	E. J. Ruegemer	St. Cloud	1967
7	Byron R. Wilson	Moorhead	1967
8	Sam G. Gandrud	Litchfield	1971
8	Clarence A. Rolloff	Montevideo	1971
8	E. R. Selnes	Glenwood	1967
9	Hans O. Chommie	Thief River Falls	1971
9	Arnold C. Forbes	Bemidji	1969
9	John T. Galarneault	Brainerd	1967
9	Gordon L. McRae	International Falls	1971
9	James F. Murphy	Grand Rapids	1967
9	J. H. Sylvestre	Crookston	1969
10	Robert B. Gillespie	Cambridge	1969
10	Rollin G. Johnson	Stillwater	1967
10	William T. Johnson	Stillwater	1971
10	Leonard Keyes	Anoka	1971

PROBATE COURT

Name	County	County Seat	Term Expires
William C. Hudson	Aitkin	Aitkin	1967
Lawrence J. Green	Anoka	Anoka	1971
Sigwel Wood	Becker	Detroit Lakes	1967
M. A. Reed	Beltrami	Bemidji	1971
Charles Walker	Benton	Foley	1969
Hiram W. Hewitt	Big Stone	Ortonville	1969
Carl W. Peterson	Blue Earth	Mankato	1971
William B. Mather, Jr.	Brown	New Ulm	1969
Ladean A. Overlie	Carlton	Carlton	1971
Edward H. Luedloff	Carver	Chaska	1971
Arthur M. Daniels	Cass	Walker	1969
Douglas P. Hunt	Chippewa	Montevideo	1969
A. M. Bullis	Chisago	Center City	1971
Gaylord A. Saetre	Clay	Moorhead	1971
Melvin T. Anderson	Clearwater	Bagley	1969
Norris C. Hystad	Cook	Grand Marais	1967
Lucille Stahl	Cottonwood	Windom	1969
Henry W. Longfellow	Crow Wing	Brainerd	1969
Edward J. Hiniker	Dakota	Hastings	1969
Robert A. Neseth	Dodge	Mantorville	1971

Name	County	County Seat	Term Expires
Roy C. Wicklund	Douglas	Alexandria	1969
John A. Wasgatt	Faribault	Blue Earth	1969
George O. Murray	Fillmore	Preston	1971
Norris O. Peterson	Freeborn	Albert Lea	1969
Elmer J. Tomfohr	Goodhue	Red Wing	1967
Arthur H. Ackerson	Grant	Elbow Lake	1969
Melvin J. Peterson	Hennepin	Minneapolis	1967
Elmer M. Anderson	Houston	Caledonia	1969
Keith L. Kraft	Hubbard	Park Rapids	1969
Raymond T. Olsen	Isanti	Cambridge	1969
John J. Benton	Itasca	Grand Rapids	1969
William G. Kreger	Jackson	Jackson	1969
[illegible]k M. Ziegler	Kanabec	Mora	1969
M. A. Wahlstrand	Kandiyohi	Willmar	1971
Vacancy	Kittson	Hallock	
George Hnatiuk	Koochiching	International Falls	1971
Theodor S. Slen	Lac qui Parle	Madison	1967
Walter A. Egeland	Lake	Two Harbors	1969
John R. Krouss	Lake of the Woods	Baudette	1967
Ruth Brown	Le Sueur	Le Center	1969
Clinton C. Crumlett	Lincoln	Ivanhoe	1969
William R. Mitchell	Lyon	Marshall	1971
J. A. Morrison	McLeod	Glencoe	1971
Jerome L. Kersting	Mahnomen	Mahnomen	1971
Arnold A. Trost	Marshall	Warren	1967
Hubert L. Cave	Martin	Fairmont	1969
Reuben C. Erickson	Meeker	Litchfield	1969
Leonard M. Paulson	Mille Lacs	Milaca	1969
Charles A. Fortier	Morrison	Little Falls	1967
Paul Kimball, Jr.	Mower	Austin	1971
John D. Holt	Murray	Slayton	1967
Henry N. Benson, Jr.	Nicollet	St. Peter	1969
Vincent Hollaren	Nobles	Worthington	1969
Olav E. Vaule	Norman	Ada	1971
Thomas J. Scanlan	Olmsted	Rochester	1969
Owen V. Thompson	Otter Tail	Fergus Falls	1971
Herman A. Kjos	Pennington	Thief River Falls	1969
George E. Sausen	Pine	Pine City	1967
Francis O'Neill	Pipestone	Pipestone	1967
Philip A. Anderson	Polk	Crookston	1971
Gilman P. Gandrud	Pope	Glenwood	1969
Andrew A. Glenn	Ramsey	St. Paul	1969
Joseph A. Harren	Red Lake	Red Lake Falls	1971
Donald L. Crooks	Redwood	Redwood Falls	1969
George H. Jacobson	Renville	Olivia	1969
Robert W. Martin	Rice	Faribault	1969
Helga Skyberg	Rock	Luverne	1971
E. A. Dubore	Roseau	Roseau	1969
George Crago	St. Louis	Duluth	1969
F. J. Connolly	Scott	Shakopee	1969
Lloyd O. Stein	Sherburne	Elk River	1969
Kenneth W. Bull	Sibley	Gaylord	1967
John Lang	Stearns	St. Cloud	1969
Charles E. Cashman	Steele	Owatonna	1969
E. L. Cress	Stevens	Morris	1969
C. A. Larson	Swift	Benson	1969
J. Norman Peterson	Todd	Long Prairie	1967
Albin C. Hofstedt	Traverse	Wheaton	1967

Name	County	County Seat	Term Expires
Ken Kalbrenner	Wabasha	Wabasha	1969
Hugh G. Parker	Wadena	Wadena	1967
John H. McLoone	Waseca	Waseca	1967
John T. McDonough	Washington	Stillwater	1969
James F. Crowley	Watonwan	St. James	1969
Leo A. Reuther	Wilkin	Breckenridge	1971
E. D. Libera	Winona	Winona	1971
Clifford E. Olson	Wright	Buffalo	1967
Salmer N. Knutson	Yellow Medicine	Granite Falls	1969

MUNICIPAL COURT

Name	Municipality	Term Expires
George E. Becker	Adrian	November, 1968
Anthony K. Grinley	Albert Lea	December, 1970
J. G. Thornton	Alexandria	January, 1966
James T. Knutson	Anoka	April, 1965
Kenneth Kivley	Appleton	January, 1966
Fred G. Vogel	Austin	April, 1966
Vacancy	Baudette	
Frederick R. Weddel	Bemidji	December, 1970
Stanley N. Thorup	Blaine	December, 1968
Robert R. Alderman	Brainerd	January, 1966
T. J. Guidarelli	Buhl	December, 1966
O. J. Ostensoe	Canby	May, 1967
Grover F. Rowlette	Cass Lake	January, 1971
Sam S. Nenadich, Jr.	Chisholm	December, 1965
Ivars Krafts	Circle Pines	December, 1970
Hugo A. Laine	Cloquet	November, 1967
Joseph E. Wargo	Columbia Heights	May, 1968
Thomas G. Forsberg	Coon Rapids	December, 1969
Joseph Terrance Noah	Crookston	December, 1967
Gene Foote	Crosby	January, 1971
H. R. Battershell	Dawson	June, 1968
Peter F. Schroeder	Detroit Lakes	December, 1970
Thomas J. Bujold	Duluth	April, 1967
Donald E. Anderson		April, 1965
Robert J. Steward	East Grand Forks	December, 1969
John W. Somrock	Ely	January, 1969
R. J. Peshel	Eveleth	December, 1965
Everett Malluege	Faribault	December, 1970
Elliott O. Boe	Fergus Falls	December, 1965
Elmer M. Johnson	Fridley	December, 1969
Vacancy	Gaylord	
Carlo R. Paciotti	Gilbert	December, 1965
Edward J. Gavin	Glencoe	April, 1966
Vacancy	Grand Rapids	
Robert L. Carlson	Granite Falls	December, 1966
Charles F. Gegen	Hastings	December, 1968
Vacancy	Hibbing	
Donald W. Hassenstab	Hutchinson	May, 1966
Mark M. Abbott	International Falls	May, 1966
Joseph M. Schwingler	Jordan	April, 1965
Rosemary Beaver	Kasson	January, 1966
Steve Grcevich	Keewatin	December, 1966
John W. Lamb	Lake City	April, 1968

Name	Municipality	Term Expires
William E. Hottinger	Le Sueur	April, 1965
Harold M. Braggans	Little Falls	April, 1970
Logan O. Scow	Long Prairie	December, 1968
Albert Christensen	Luverne	December, 1970
Harold S. Nelson	Madison	July, 1965
Charles F. Vondra	Mahnomen	December, 1967
Leslie H. Morse	Mankato	January, 1969
John J. Kirby	Maplewood	January, 1967
Bruce V. Pierard	Marshall	April, 1969
Elmer R. Anderson	Minneapolis	December, 1966
Donald S. Burris		December, 1970
Edwin P. Chapman		December, 1970
Herbert W. Estrem		December, 1970
David R. Leslie		December, 1966
A. Paul Lommen		December, 1970
Eugene Minenko		December, 1966
O. Harold Odland		December, 1970
Edward J. Parker		December, 1966
Neil A. Riley		December, 1970
James D. Rogers		December, 1966
Bruce C. Stone		December, 1970
C. William Sykora		December, 1966
Crane Winton		December, 1966
B. J. Oyen	Montevideo	January, 1971
Frank M. Turek	Montgomery	April, 1966
Richard T. Hart, Jr.	Moose Lake	January, 1967
O. K. Alger	Morris	December, 1965
Frank Dergantz	Nashwauk	December, 1965
Donald E. Gross	New Brighton	January, 1970
Stanley F. Wagner	New Prague	April, 1965
Edward A. Nierengarten	New Ulm	January, 1971
Osmund H. Ause	Northfield	January, 1971
A. J. Berndt	North Mankato	December, 1965
Frank A. Steldt	North Oaks	December, 1967
Edgar H. White	North St. Paul	July, 1966
F. B. Wickland	Ortonville	December, 1965
David M. Leach	Owatonna	April, 1970
John Kukowske, Jr.	Perham	January, 1971
Theodore C. Coen	Pine Island	December, 1970
T. E. Fellows	Pipestone	April, 1966
Andrew R. Larson	Proctor	January, 1969
Gilbert W. Terwilliger	Red Wing	May, 1966
William S. LaPlante	Rochester	April, 1966
A. E. Hilldahl	Roseau	January, 1970
Jerome E. Franke	Roseville	December, 1968
Lyle D. Elam	St. Anthony	December, 1970
S. H. McElhaney	St. Charles	March, 1966
Wendell Y. Henning	St. Cloud	April, 1966
Otis J. Godfrey, Jr.	St. Paul	June, 1970
J. Clifford Janes		June, 1968
James M. Lynch		June, 1966
David E. Marsden		June, 1968
J. Jerome Plunkett		June, 1966
M. Leo Hedin	Sauk Centre	April, 1966
Isla L. Lindmeyer	Shakopee	May, 1967
Willard Hauser	Sleepy Eye	April, 1969
Irving W. Beaudoin	South St. Paul	April, 1969
Leo A. Berg	Springfield	April, 1966

Name	Municipality	Term Expires
L. S. Hand	Staples	April, 1970
Searle R. Sandeen	Stillwater	December, 1968
Stanley N. Mortenson	Thief River Falls	December, 1965
J. A. Johnson	Tower	February, 1968
Russell W. Brewster	Tracy	April, 1966
Thomas W. Dwan	Two Harbors	March, 1965
Thomas J. Carey	Virginia	December, 1965
Daniel B. Gallagher	Waseca	April, 1970
Joseph G. Poehler	Waterville	April, 1966
Gerald E. Carlson	West St. Paul	December, 1968
William J. Gleming	White Bear Lake	April, 1966
Allan D. Buchanan	Willmar	December, 1970
[illegible] D. McGill	Winona	April, 1965
Henry M. Fauskee	Worthington	April, 1965

CLERKS OF THE DISTRICT COURT

Name	County	County Seat	Term Expires
Robert E. Haas	Aitkin	Aitkin	1967
Raymond Nilsson	Anoka	Anoka	1969
Charles C. Greenlaw	Becker	Detroit Lakes	1969
C. Buiford Qualle	Beltrami	Bemidji	1969
S. J. Tomporowski	Benton	Foley	1967
Henry A. Larkin	Big Stone	Ortonville	1969
Audrey Handahl	Blue Earth	Mankato	1969
Carl A. Witt	Brown	New Ulm	1967
Stuart A. Beck	Carlton	Carlton	1967
Albert A. Vojtisek	Carver	Chaska	1967
Anona Riviere	Cass	Walker	1969
Clara V. Ronning	Chippewa	Montevideo	1967
Violet Zeien	Chisago	Center City	1967
D. G. Rusness	Clay	Moorhead	1969
John O. Hanson	Clearwater	Bagley	1969
Carl A. Noyes	Cook	Grand Marais	1967
David W. Flatgard	Cottonwood	Windom	1969
Leone Bouck	Crow Wing	Brainerd	1967
Eugene Casserly	Dakota	Hastings	1967
Harry E. Cowles	Dodge	Mantorville	1967
Ed Ormseth	Douglas	Alexandria	1967
Paul Belau	Faribault	Blue Earth	1967
Kerneth J. Hall	Fillmore	Preston	1969
Evan K. Wulff	Freeborn	Albert Lea	1969
Ellif W. Olson	Goodhue	Red Wing	1967
Harold Bartness	Grant	Elbow Lake	1969
Philip C. Schmidt	Hennepin	Minneapolis	1967
Claude H. Kremer	Houston	Caledonia	1967
E. W. Andrews	Hubbard	Park Rapids	1967
Henry C. Howard	Isanti	Cambridge	1969
Tyrus L. Bischoff	Itasca	Grand Rapids	1969
John Seim	Jackson	Jackson	1967
Albert E. Anderson	Kanabec	Mora	1969
Leonard Blom	Kandiyohi	Willmar	1967
Jean Pemberton	Kittson	Hallock	1967
A. J. Carew	Koochiching	International Falls	1969
Edward C. Hull	Lac qui Parle	Madison	1967
J. R. Lindgren	Lake	Two Harbors	1969

Name	County	County Seat	Term Expires
Belle M. Williams	Lake of the Woods	Baudette	1967
Edsel J. Janovsky	Le Sueur	Le Center	1967
James Gilronan	Lincoln	Ivanhoe	1967
Harris E. Persons	Lyon	Marshall	1967
Heston Benson	McLeod	Glencoe	1967
Isabel Withrow	Mahnomen	Mahnomen	1967
Edwin K. Rokke	Marshall	Warren	1967
K. W. Koenecke	Martin	Fairmont	1967
Hardy D. Silverberg	Meeker	Litchfield	1967
Waldo A. Allen	Mille Lacs	Milaca	1967
Edward L. Ciminski	Morrison	Little Falls	1967
William D. Sucha	Mower	Austin	1967
Douglas E. Johnson	Murray	Slayton	1967
Clarence Peterson	Nicollet	St. Peter	1967
Stanley E. Nelson	Nobles	Worthington	1967
Oscar H. Nordby	Norman	Ada	1967
Rosemary Forbes	Olmsted	Rochester	1969
Myrtle E. Logas	Otter Tail	Fergus Falls	1969
Henry Storhaug	Pennington	Thief River Falls	1969
Cornelius Nieboer	Pine	Pine City	1969
O. T. Johnson	Pipestone	Pipestone	1967
Raymond H. Espe	Polk	Crookston	1967
Hartvig Pederson	Pope	Glenwood	1967
Edward J. Fitzgerald	Ramsey	St. Paul	1969
Hazel Pahlen	Red Lake	Red Lake Falls	1967
Keith H. Baldwin	Redwood	Redwood Falls	1969
Glen Agre	Renville	Olivia	1967
Ray L. Sanders	Rice	Faribault	1969
Charles W. Soutar	Rock	Luverne	1967
C. A. Corneliusen	Roseau	Roseau	1969
Henry Sandstrom	St. Louis	Duluth	1969
Hugo P. Hentges	Scott	Shakopee	1967
Irvin Hetrick	Sherburne	Elk River	1967
Robert Busse	Sibley	Gaylord	1969
Albert W. Schmitt	Stearns	St. Cloud	1967
C. Jess Lee	Steele	Owatonna	1969
E. T. Jacobson	Stevens	Morris	1969
Earl H. Prall	Swift	Benson	1967
Harry L. King	Todd	Long Prairie	1969
Walter H. Klugman	Traverse	Wheaton	1969
Luke C. Beaver	Wabasha	Wabasha	1967
Florence Claydon	Wadena	Wadena	1967
Frank S. Papke	Waseca	Waseca	1969
James B. Bancroft	Washington	Stillwater	1969
Ruth Steel Eppeland	Watonwan	St. James	1967
A. W. Gruenberg	Wilkin	Breckenridge	1967
Joseph C. Page	Winona	Winona	1967
Carl Nordberg	Wright	Buffalo	1969
Edwy O. Dibble	Yellow Medicine	Granite Falls	1967

THE SUPREME COURT

Chief Justice and Six Associate Justices elected for six year terms. General appellate jurisdiction. Original jurisdiction as prescribed by law.

DISTRICT COURT

(Constitutional Court)

Constitutional Court

Original jurisdiction in all civil actions; all cases of crime, special proceedings not exclusively cognizable by some other court; appellate jurisdiction as prescribed by law.*

FIRST DISTRICT	SECOND DISTRICT	THIRD DISTRICT	FOURTH DISTRICT	FIFTH DISTRICT	SIXTH DISTRICT	SEVENTH DISTRICT	EIGHTH DISTRICT	NINTH DISTRICT	TENTH DISTRICT
Seven Counties	Ramsey County	Eleven Counties	Hennepin County	Fifteen Counties	Four Counties	Ten Counties	Thirteen Counties	Seventeen Counties	Eight Counties

PROBATE COURT

(Constitutional Court)

Original jurisdiction in law and equity for the administration of estates of deceased persons and all guardianship and incompetency proceedings and such further jurisdiction as the legislature may establish.

(may be given municipal jurisdiction)

84 COURTS — 84 JUDGES

The Probate Court is also the Juvenile Court in counties under 100,000 population.

Some are not lawers and some are part time.
(as their spots are vacant must be replaced by lawyer)

HENNEPIN COUNTY	RAMSEY COUNTY	ST. LOUIS COUNTY
One Judge	One Judge	One Judge

MUNICIPAL COURT

(Statutory Court)

Civil jurisdiction to $1000 (except cases involving title to real estate); forcible entry and detainer; misdemeanors; ordinance violations; preliminary hearings in criminal matters. Conciliation Court Jurisdiction where established by resolution.

94 COURTS — 90 JUDGES**

In 69 counties with population under 30,000 the Probate Court also has Municipal Court Jurisdiction.

HENNEPIN COUNTY MUNICIPAL COURT FOURTEEN JUDGES	ST. PAUL MUNICIPAL COURT FIVE JUDGES	DULUTH MUNICIPAL COURT TWO JUDGES
Civil jurisdiction to $4000. Conciliation Court. (up to $100)	Civil jurisdiction to $3000. Conciliation Court.	Civil jurisdiction to $4000. Conciliation Court.

Also Juvenile Court jurisdiction in the Second, Fourth and Sixth Districts

**Vacancies currently exist in four courts.*

JUSTICES OF THE PEACE

(Statutory Court)

Law provides for two justices of the peace in election district established by Section 203.07. Jurisdiction over misdemeanors and up to $100 in civil cases.

THE JUDICIARY FROM PRE-STATEHOOD TO THE PRESENT

It seems appropriate to begin this first annual report with a brief resume of the history of the state's judicial system. We are indebted to former Chief Justice Charles Loring for most of the material which has been updated from other sources.

* * *

Until the conclusion of the French and Indian War the laws of France were generally in force in this area. During these years of French influence local judges were appointed whose decisions were reviewable by the Superior Council. In certain cases the Council's judgments could be reviewed by the Council of State at Versailles.

A relatively small portion of Minnesota, the area east of the Mississippi, was for a time part of the Northwest Territory. The Northwest Ordinance provided for a court of three judges known as the General Court. In order to qualify the judges had to own a freehold of 500 acres. Once appointed they continued to hold office during good behavior. In addition to their judicial duties the three judges joined with the territorial government to form the legislature. The General Court was supplemented by county courts of common pleas, probate and orphans' courts, justices of the peace and courts of quarter sessions of the peace. The latter court was presided over by three to five justices of the peace who were specially commissioned and whose jurisdiction was confined to criminal matters.

Following the Louisiana Purchase in 1803 Congress authorized the President to vest in such persons as he might direct "all the military, civil and judicial powers exercised by the officers of the existing government." In March, 1804, Congress established that part of the Louisiana Purchase north of latitude 33° as a district to be administered by the governor and judges of the Indiana Territory who had power to enact laws and establish inferior courts.

In 1836 the Territory of Wisconsin was organized incorporating all of the area now comprising Minnesota. The act creating this territory provided for a supreme court with a chief justice and two associate justices, each of whom was required to hold a district court in one of the three districts to which he was assigned. Provision was also made for probate courts and justices of the peace. Two years later the Territory of Iowa was organized incorporating what is now Minnesota west of the Mississippi. The judicial system was comparable to that of the Wisconsin Territory.

On March 3, 1849, Congress passed an act establishing a temporary government for the Territory of Minnesota. The judicial power of the territory was vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court consisted of a chief justice and two associate justices. Each of these justices was to hold court in one of three judicial districts and then to sit with his colleagues in review of their own decisions when appeals were taken.

The constitution adopted by the people of the territory on October 13, 1857, vested judicial power in a supreme court, district court, courts of probate, justices of the peace and such other courts, inferior to the supreme court, as the legislature from time to time might establish. At the outset the supreme court consisted of a chief justice and two associates. Subsequently it was increased to a chief justice and four associates, and ultimately to the present chief justice and six associates.

Originally the district court, the trial court of general jurisdiction, was comprised of six judicial districts. Each district was limited to a single judge, thereby necessitating the creation in Hennepin and Ramsey Counties of another

trial court known as the court of common pleas. When, in 1875, the constitution was amended to permit more than one judge in a district, this court merged with the district court.

From the six original districts the structure has been redesigned to meet current needs and conditions. Presently there are ten districts with 64 judges. Prior to the most recent change in 1959 there were 14 districts. For a number of years, until a 1957 realignment, there had been 19.

PROBATE COURTS

The Constitution of 1857 provided for a probate court in each county. One judge was authorized for each court. Jurisdiction was limited to the administration of "the estates of deceased persons and persons under guardianship." There was a prohibition against the legislature's conferring additional jurisdiction. Subsequently this restriction was deleted by an amendment and the court's responsibilities have been augmented. In 1917 the legislature gave juvenile court jurisdiction to the probate courts outside of Hennepin, Ramsey and St. Louis Counties. Today these courts devote an appreciable amount of time to handling cases involving delinquent, dependent and neglected children. Municipal court jurisdiction was conferred on probate courts in counties under 30,000 population in 1959. As determined by the 1960 census, 69 probate courts are empowered to exercise municipal court jurisdiction.

MUNICIPAL COURTS

The municipal court movement had its start nearly 75 years ago. Today there are 97 such courts served by 111 judges and a number of special judges who preside in the absence of the regular judge. Under existing law a municipal court can be activated in any county seat or in a city, village or borough having a population of 1,000, by a four-fifths vote of a majority of the membership of the governing body.

In the earlier days of the municipal court there was an obvious lack of uniformity in administration and practice. The civil jurisdiction varied from $500 to $1,000 and even the method of compensating judges was dissimilar. The 1959 Legislature enacted the municipal court act which fixed the monetary jurisdiction of courts outside the three cities of the first class at $1,000. This legislation has encouraged the development of more uniform practice throughout the state.

Special provisions have been made for municipal courts in the three largest cities. The courts in Duluth and Minneapolis (Hennepin County) have jurisdiction in civil cases involving up to $4,000 exclusive of interest and costs. St. Paul's court can entertain cases in which the amount claimed does not exceed $3,000.

On January 1, 1965, a new system was inaugurated in Hennepin County where there is now a single municipal court for the entire county. To facilitate more efficient administration of justice the court has been organized with five geographical divisions, each having a principal place for holding regular terms of court. Non-jury criminal and traffic matters will also be heard in 12 other communities within the county. If suitable facilities can be secured this service will be extended to six additional locations.

The law now provides that municipal court judges must be "learned in the law." They are elected for six year terms and are prohibited from "appearing or acting for a party in any action or proceeding in such municipal court."

It has often been said that the courts of limited jurisdiction play an especially significant role in the judicial system since it is in these courts that most citizens derive their impression of justice. This maxim is particularly applicable in Minnesota where provision has been made for conciliation courts to informally

and expeditiously hear controversies involving small sums. These courts may be created by resolution of the governing body in any city having a municipal court. Special laws have been enacted covering their operation in the three major cities.

JUSTICES OF THE PEACE

The Constitution of 1857 empowered the legislature to "provide for the election of a sufficient number of justices of the peace in each county." It did so by authorizing the election of two in each election district.

At one time, before the advent of reliable and rapid means of transportation, the justices of peace served a very useful purpose in the judicial system. More recently, however, they have been subject to extensive criticism and have been abolished in many states.

The judicial article adopted in 1956 deleted any reference to justices of the peace as constitutional officers but did recite in the schedule that "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." Subsequently, however, in 1961 the old statute specifying the number of justices of the peace was amended to permit the election of two such officers in "each election district established as provided by Section 203.07." This latter section deals with the establishment of election precincts in unorganized territory. There is reason to believe justices of the peace are still being elected in election districts other than those described in Section 203.07. Some of them apparently qualify for office by taking the oath and filing a bond - others do not.

It is apparent the legislature is no longer precluded from abolishing the office of justice of the peace. Other changes in the judicial article seem to have been designed to facilitate improvement in the lower court system.

* * *

Basically the court structure is much the same as it was in the early days of statehood. Of course additional courts have been created, the geographical boundaries of districts altered, jurisdiction expanded and more judgeships authorized. Noteworthy changes have also been made in procedure and administration.

Traditionally the judicial branch of government has been slow to depart from established patterns of organization and practice. While it is prudent to avoid precipitous change it is equally wise to provide adequate machinery to assure prompt, yet thorough, consideration of litigation.

COURT ADMINISTRATION

A number of questions have been asked during the past year concerning the functions of a court administrative office. In the interest of developing a better understanding of how such an office can perform a significant public service, an effort will be made to answer some of the inquiries in this, the first annual report.

Since 1937 twenty-seven states have established court administrative offices. The federal courts have been served by an administrative office since 1939 and a number of metropolitan areas have adopted this relatively new concept in an attempt to keep pace with the complex problems involved in administering the courts in centers of dense population.

At the outset it is important to emphasize that this adjunct of the court system was originally conceived to deal exclusively with non-judicial matters. Throughout the years since the first office was activated in Connecticut there has been no deviation from this basic philosophy.

With perhaps one or two exceptions court administrative offices have been a natural concomitant of the concern about delay in the disposition of litigation. It was felt that by relieving judges of time consuming administrative responsibilities they would be free to devote all of their attention to judicial business. From the earliest days of history there has always been a concern about what is now sometimes proverbially described as the 'administration of justice.' During the past three decades this concern has deepened to the point of stimulating aggressive action by a variety of organizations and agencies, many of which have urged the creation of administrative offices. Still another contributing factor in the evolution of court administration has been the trend toward centralizing administrative responsibility for the operation of the courts in either the chief justice or the supreme court. This was done in Minnesota in 1959.

One argument in support of vesting administrative responsibility in the chief justice or supreme court advanced the premise that there was, in many jurisdictions, sufficient judicial manpower to handle the ever increasing case loads, but the absence of a responsible head of the courts precluded maximum use of available judge time. Thus it has come about that one of the primary objectives of court administrators is to effect a more equitable distribution of judicial business through the assignment of judges from one district to another. This, in part, accounts for the emphasis in the Minnesota act (Laws 1963, Chap. 758) on fact finding. It is apparent that in the absence of current, reliable and uniform data reflecting the work of the courts it is impossible to make prudent use of existing facilities and manpower. Similarly such information is often prerequisite to initiating desirable changes in the court system.

In Minnesota, as in many of the other 26 jurisdictions, the administrative assistant is directed to perform a number of other services, including making recommendations with respect to the budget for the judicial branch of government and suggesting policies designed to improve the court system. A court administrative officer can serve in a liaison capacity thereby enhancing cooperation with the legislative and executive departments and with the bar. A significant contribution of several of the established offices has been in the area of educational programs for both judges and supporting personnel. Some states have reported singular success with the preparation of manuals for the use of court clerks, bailiffs, jurors and others who play a vital role in the administration of justice.

From this summary it can be seen that this comparatively recent innovation to the judicial system can provide a service which has long been needed. A year's experience does not furnish an adequate criterion for predicting the future development of the office in this state. One thing is readily apparent - that service rather than supervision will be the key to whatever success may be forthcoming. To this end the recommendations of all those involved in judicial administration in Minnesota are solicited.

THE DELAY PROBLEM

It has been previously suggested that one of the factors which led to the establishment of this office and other court administrative offices was the increased emphasis on the problem of delay in the disposition of litigation. While admittedly delay in the courts is a matter of long standing (Hamlet classified it as one of man's seven burdens), it has been the subject of concentrated nationwide attention during the past decade or so.

The traditional method of attack has been to appoint committees, hold conferences and to ultimately make recommendations. This is not to infer that some good has not come from the multiplicity of activities. The causes have been isolated and cures have been suggested, but not infrequently there has been a lack of aggressive, positive action. One thing is certain - there is no lack of unanimity of opinion concerning the inherent evils of delay in the courts.

It is generally agreed the inordinate lapse of time between the institution of civil suits and their final disposition constitutes a threat to the effective administration of justice in at least the following ways:

1. It may result in the denial of reparation for wrongs and personal injuries.

2. It sometimes coerces litigants into unjust settlements.

3. It causes a deterioration of evidence since memories are dimmed with the passage of time.

4. It creates undue hardship on litigants who may be deprived of their livelihood.

5. It brings the entire court system into disrepute.

6. It encourages a departure from ethical practices.

This is by no means an all inclusive list. Other regrettable repercussions are readily apparent to even the casual observer.

In the beginning no one intended that there be delay in the disposition of civil litigation and no lawyer or judge who is dedicated to the high standards of his profession would openly condone the continued existence of this blot on the escutcheon of the bench and bar. Yet the truth is that those who should be the most concerned with the administration of justice have acquiesced and are now confronted with accepting responsibility for correcting this shortcoming. Since a majority of

the citizenry has only limited contact with trial courts of general jurisdiction there is an understandable public apathy about court congestion. But those persons who do find it necessary to seek recourse in the courts often become painfully aware of the cumbersome characteristics of judicial machinery. For this latter group delay is measured from the time they are apprised by their counsel that a lawsuit has been initiated. Many lawyers and judges, on the other hand, contend the courts should not be charged with responsibility for delay until after the issues are joined. Obviously the date of issue is of little significance to the average litigant who, unless he has been well oriented by his attorney, is totally unaware of the evolution of a case.

There is still another school of thought which absolves courts of any liability for delay until such time as a request for trial has been made. In the face of cumulative evidence pointing up the severity of the problem in question, this position appears untenable. In truth there are two basic concepts which reflect current thinking on the question of responsibility for the movement of cases through the trial courts. One holds that the courts should exercise complete control over their dockets and calendars, making assignments, granting continuances and ordering dismissals in such a way as to insure the orderly and timely application of the judicial process. The other theory is predicated on the premise that cases remain the exclusive property of the lawyers and litigants, even after filing, and therefore it is within their province to determine if and when cases go to trial.

It is at once apparent that if any semblance of the traditional independence of the judiciary is to be retained, the courts can ill-afford to abdicate responsibility for docket and calendar control. Experience in jurisdictions where this practice has developed manifests a trend toward the use and manipulation of courts as distinguished from the established custom of courts dedicated to serving the public.

CAUSES OF DELAY

By this time a large number of studies have been made, designed to ascertain the basic causes of delay. For the most part experts agree the trouble can be traced to the marked increase in personal injury cases which in turn have caused a proportionate rise in the number of jury trials. One writer summarized this causative factor in the following words: "The increase in the number of automobiles on our roads, plus the constant increase in their horse power, plus traffic congestion, plus irresponsible drivers, in addition to a great increase in population have brought about a phenomenal increase in tort cases."

The automobile and personal injury cases cannot shoulder all the blame, however. Other common causes include:

1. Undermanned courts.
2. Inflation.
3. Highway construction and other government sponsored construction programs.
4. Technological advances.
5. The increase in governmental agencies.
6. Stultifying procedural law.
7. Unrealistic evaluation of injury cases.
8. The population explosion.

The number of divorce cases has also increased materially. Due to the continued high level of the economy there are more controversies over property rights and the payment of alimony. Hence more divorce cases are being contested, requiring an additional expenditure of judicial time. According to a report published by the Department of Vital Statistics there were 4,577 divorces granted in Minnesota in 1963. The ratio of divorces to marriages reported that year was 1 to 5.5, compared to the peak year of 1946 when there was 1 divorce for every 4.8 marriages. No information is available to show the number of divorce cases filed but ultimately dismissed. It is reasonable to conclude, however, that cases in this category comprise at least 20 percent of the overall case load.

HOW SERIOUS IS THE DELAY PROBLEM

Delay in the courts has frequently been labeled as the most vital problem confronting the bench and bar. As might be expected the intense interest in this problem has given rise to what might become an equally disturbing situation, to wit: the temptation to equate justice with dispatch in processing judicial business.

Nevertheless when an agency such as the Institute of Judicial Administration reports in its calendar status study for 1964 that, in personal injury cases, an average of 17.6 months elapsed between filing of the answer and trial, there is genuine cause for concern. More specifically, one metropolitan area trial court reported the lapse of 57.6 months from date of issue to trial and 13 others replied to the Institute's inquiry by stating that litigants were waiting in excess of 30 months after joinder of issue to reach trial.

The two Minnesota metropolitan districts were included in this survey and reported as follows:

	AVERAGE DELAY FROM ANSWER TO TRIAL IN PERSONAL INJURY JURY CASES
Second Judicial District (Ramsey County)	23.5 months
Fourth Judicial District (Hennepin County)	19 months

In both of these courts there was some improvement over the prior year when the Second District reported average delay of 24.8 months and the Fourth District computed the average time between issue date and trial at 25.1 months. Because of procedural differences, comparisons with other jurisdictions involve a measure of uncertainty but if one seeks solace it can be found in the knowledge that a number of courts in areas of comparable size are measuring delay in terms of three years. On the other hand, if one is looking for examples of courts which have achieved the standards set by the Attorney General's Conference on Court Congestion and by the American Bar Association's Special Committee on Court Congestion, these too may be found. By these standards, the recommended guide for determining whether trial calendars are current is a lapse of not more than six months from filing to judgment in the average civil case as fixed by the Attorney General's Conference or twelve months as set by the ABA Committee.

Perhaps the only completely reliable method of determining the time required to process cases from commencement to termination is to obtain a statistical report on each individual case. The advent of electronic data processing equipment has made this approach to judicial statistics feasible in some jurisdictions, especially those having a more integrated court system. In Minnesota it was concluded the most practicable way to initially ascertain the extent of the delay problem was to take an inventory of pending cases, at the same time determining how long the pending cases had remained on the calendars. The results of this survey, made as of March 31, 1964, are shown in the following tables.

NUMBER AND AGE OF COURT CASES PENDING, MARCH 31, 1964

DISTRICT	CASES PENDING	ONE YEAR OR LESS	ONE TO TWO YEARS	TWO TO THREE YEARS	THREE TO FOUR YEARS	OVER FOUR YEARS
1	127	81.9%	8.7%	3.1%	1.6%	4.7%
2	1093	79.1%	20.7%	.2%		
3	176	85.2%	12.5%	1.7%	.6%	
4	1169	84.3%	13.2%	2.1%	.3%	.1%
5	261*	61.3%	19.9%	10.3%	5.8%	2.7%
6	311	48.9%	14.1%	10.3%	7.4%	19.3%
7	66	98.5%	1.5%			
8	45	82.2%	9.0%	4.4%	4.4%	
9	186	70.4%	18.8%	7.5%	2.2%	1.1%
10	1773**	97.8%	1.2%	.3%	.1%	.6%
TOTAL	5207	84.2%	11.0%	2.1%	1.0%	1.7%

* Exclusive of Nicollet County
** Includes 1536 tax cases in Washington County

NUMBER AND AGE OF PENDING JURY CASES, MARCH 31, 1964

DISTRICT	CASES PENDING	ONE YEAR OR LESS	ONE TO TWO YEARS	TWO TO THREE YEARS	THREE TO FOUR YEARS	OVER FOUR YEARS
1	459	53.4%	45.5%	.4%	.7%	
2	2738	64.5%	33.9%	1.6%		
3	346	87.6%	10.7%	1.7%		
4	5515	63.4%	26.5%	8.9%	1.1%	.1%
5	245*	86.5%	10.6%	1.7%	1.2%	
6	194	89.7%	5.7%	1.5%	.5%	2.6%
7	167	97.0%	2.4%		.6%	
8	112	91.1%	6.2%	.9%	1.8%	
9	243	72.0%	17.7%	6.6%	3.7%	
10	506	79.2%	17.4%	2.0%	.6%	.8%
TOTAL	10525	66.8%	26.7%	5.5%	.8%	.2%

* Exclusive of Nicollet County

This data substantiates the generally accepted conclusion that, except for isolated instances, delay is associated with urban areas. In Minnesota the Second and Fourth Districts are the trouble spots. By mid-January the average time between the note of issue and trial in the Second District had risen to approximately 28 months. In mitigation it should be pointed out that this District has been handicapped by a loss of judicial manpower due to illness and further by a marked increase in demands for jury trials in criminal cases. (There were 84 criminal jury trials in 1964.)

In the Fourth District, where a net gain of 1455 cases was made in 1964, the delay problem shows marked improvement. The number of cases pending at the end of the year was at its lowest point since 1960. Assuming new filings remain relatively constant as they have during the past five years and assuming also that the current rate of dispositions can be maintained, it is possible to envision achieving the objectives cited earlier in this report within the next 12 to 18 months. It should be pointed out, however, that there can be no slowdown in the concerted effort now in progress. On January 22, 1965, the 32 cases listed on the assignment clerk's board included 23 in which notes of issue had been filed in 1962 and one dating back to November, 1961, indicating that there are still some hard core matters of rather ancient vintage remaining on the calendar. Whether the momentum which has been built up in 1964 can be continued is problematical.

Admittedly the Fourth District has benefited from the major portion of judge time available from non-resident and retired judges. A "crash" pre-trial program utilizing the services of forty volunteer lawyer referees has freed resident judges to concentrate on jury trials. This kind of assistance cannot be anticipated indefinitely. Other innovations have contributed to reducing the backlog but for the most part the value of these techniques will not be manifested in the same proportion in ensuing months.

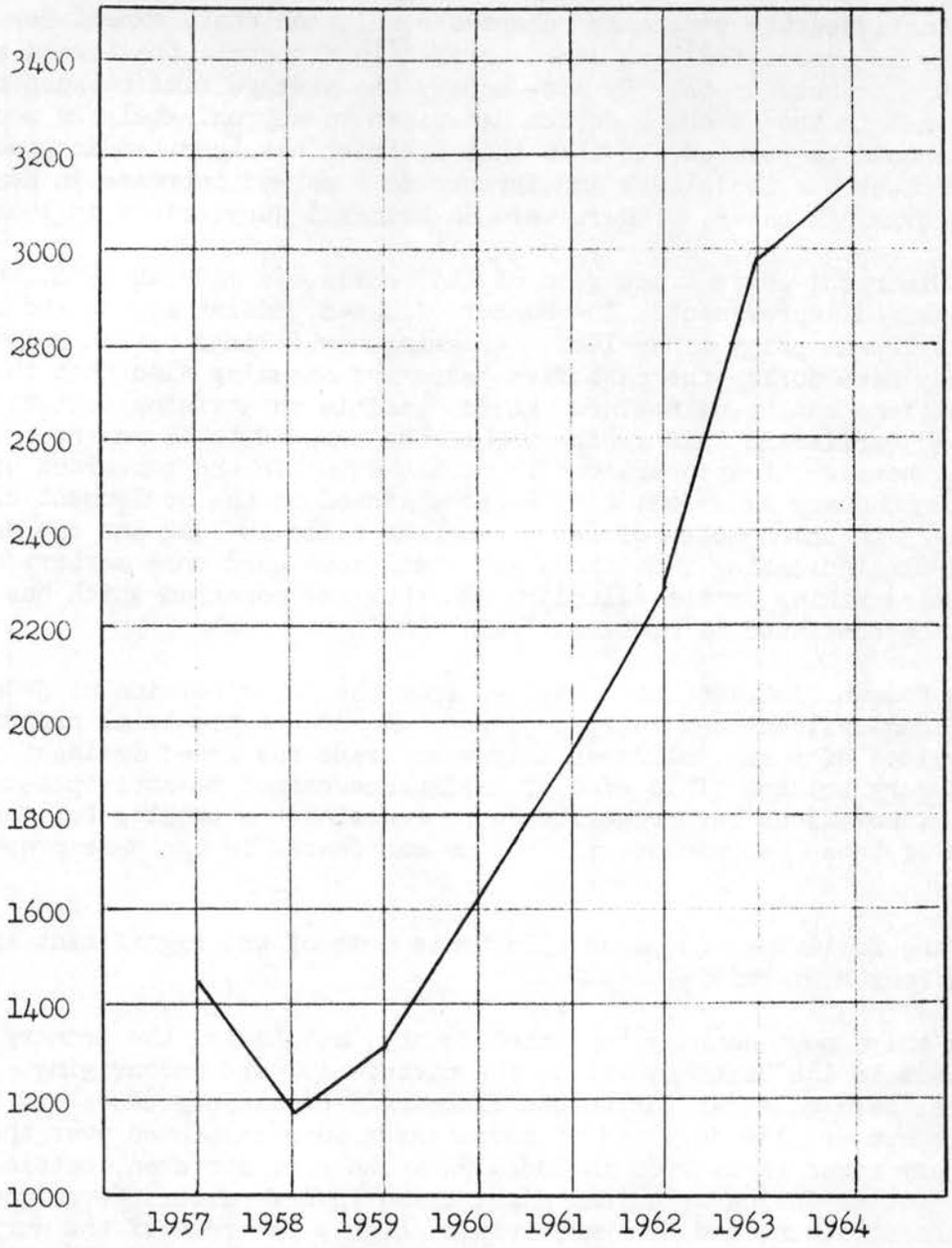
The graphs on the following two pages illustrate some of the significant trends in the Second and Fourth Districts.

In the state's third most densely populated county, St. Louis, the primary source of judicial business in the Sixth District, the picture is more encouraging. The November 1964 general term calendar for Duluth listed 229 civil jury cases and 77 court cases. Of this number, 159 jury and 64 court cases were continued over the term. The 70 civil jury cases terminated included 54 which were stricken, settled or dismissed, eight settled during trial and eight tried to a verdict. Seven court cases were settled and stricken, and six were tried. Eighty per cent of the jury cases marked 'continued' on this year-end calendar had been filed in 1964; 39% of them in the last half of the year and 41% during the first six months. With the exception of 5 matters, the remaining cases continued to the next term were commenced in 1963. Two cases filed in 1962 were yet undisposed and the oldest case bore a filing date of August 10, 1961. There is, of course, no problem with respect to the Hibbing and Virginia branches of the St. Louis County District Court.

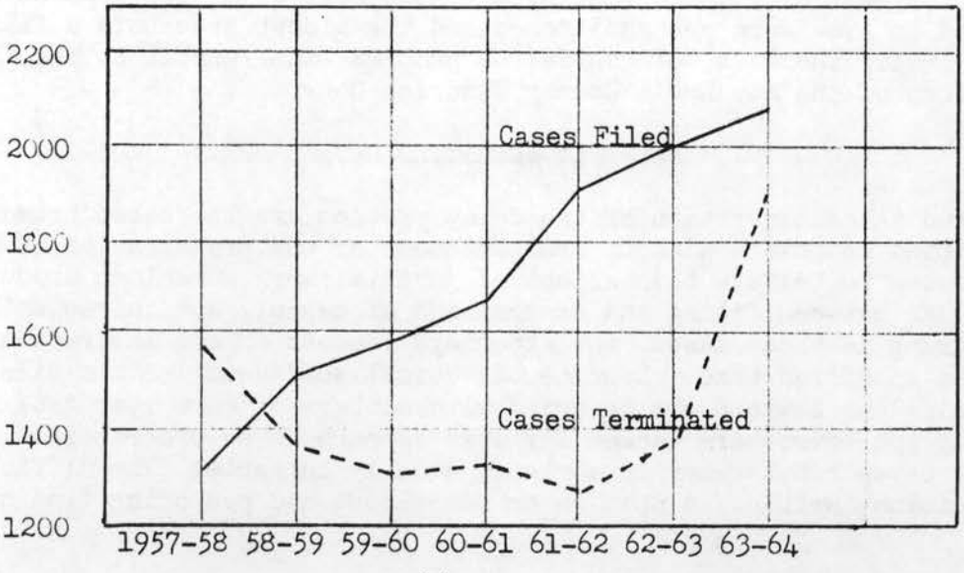
DELAY IN SUBMITTED CASES

Often overlooked in consideration of the delay problem are the cases tried to the court or submitted on briefs without oral argument or the presentation of evidence. Yet there is cause to believe this aspect of judicial work sometimes produces the most untimely lag between filing and disposition of cases. Not infrequently, at the close of a hearing in these cases, the attorneys request or are instructed to file briefs within a specified time. Despite the established deadline the files often gather dust while the lawyers are occupied with matters of more immediate urgency. Needless to say the courts are blamed for what appears to be procrastination in deciding these cases but the bar is at least equally culpable. The difficulty of reaching a decision, writing an opinion or memorandum and preparing findings

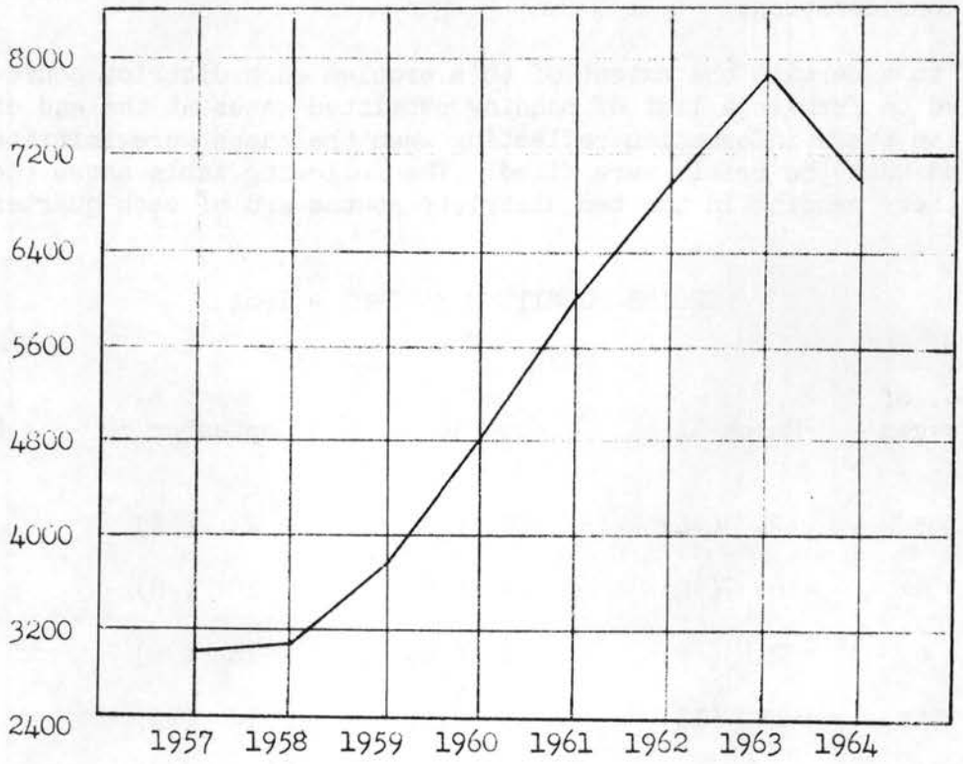
CIVIL JURY CASES PENDING IN RAMSEY COUNTY ON SEPTEMBER 1, 1957-1964



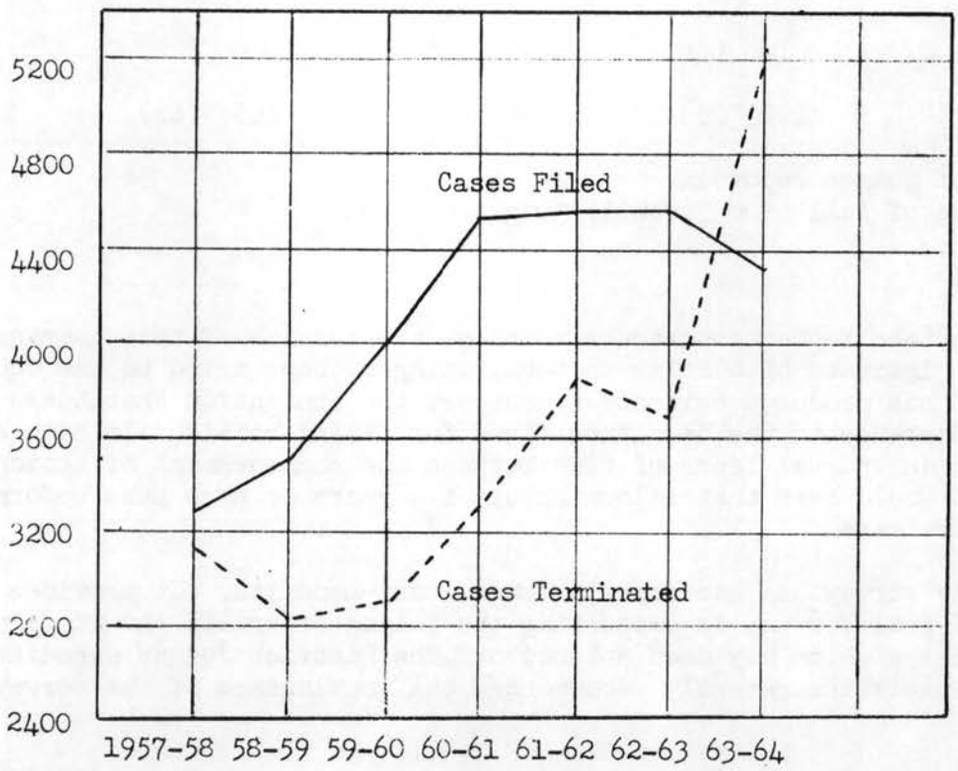
CIVIL JURY CASES FILED AND TERMINATED IN RAMSEY COUNTY, 1957-1964



CIVIL CASES PENDING IN HENNEPIN COUNTY ON JULY 1, 1957-1964



CIVIL CASES FILED AND TERMINATED IN HENNEPIN COUNTY, 1957-1964



increases in proportion to the amount of time allowed to elapse between the hearing or original submission of court cases. Hence the quality of justice is enhanced by expeditious consideration.

In an effort to ascertain the extent of this problem each district court judge has been requested to furnish a list of pending submitted cases at the end of each quarter. The report also shows information reflecting when the cases were initiated, the date of hearing and when the briefs were filed. The following table shows the number of submitted matters pending in the ten districts at the end of each quarter.

PENDING SUBMITTED MATTERS - 1964

DISTRICT	No. of Judges	March 31	June 30	September 30	December 31
1	5	24 (4)	20 (5)	23 (5)	15 (5)
2	8*	69 (8)	18 (8)	10 (8)	36 (7)
3	6	24 (6)	21 (6)	16 (6)	20 (6)
4	15*	17 (11)	13 (14)	14 (15)	16 (13)
5	5	16 (4)	29 (5)	10 (5)	3 (2)
6	6	17 (5)	16 (6)	17 (6)	12 (6)
7	4	6 (4)	4 (4)	1 (4)	- (4)
8	3	7 (2)	4 (3)	3 (3)	9 (3)
9	6	2 (5)	9 (6)	5 (5)	8 (6)
10	4	10 (4)	7 (4)	6 (4)	1 (3)
TOTAL	62*	192 (53)	141 (61)	105 (61)	120 (55)

( ) Number of judges reporting
* Exclusive of full time juvenile judges

Aside from certain rather isolated situations the results of this quarterly survey would seem to indicate that delay in terminating matters tried to the court is not critical. It has produced evidence to support the contention that there needs to be a stricter adherence to the deadlines fixed for filing briefs. In some cases there has also been an unusual lapse of time between the commencement of actions and the hearings. It would seem that seldom should two years or more pass before the assignment of a court case.

This quarterly survey has had certain comcomitant benefits. It provides judges with an additional tool for use in expediting the filing of briefs and it serves as a reminder of cases which may need attention. The District Judges Association Committee on Judicial Statistics recently recommended the continuance of the survey on a quarterly basis.

JUDICIAL MANPOWER

One of the oft repeated suggested cures for court congestion concerns itself with efficient use of available judicial manpower. This concern is responsible for the authority which now rests with the chief justice in many states to assign judges from one district or county to another. In 1957 the Minnesota legislature enacted Section 2.724, Minn. Laws, which states that "When public convenience and necessity require it, the chief justice of the supreme court may assign any judge of the district court to serve and discharge the duties of judge of any other district not his own at such times as the chief justice may determine." The apparent intent of this statute was not only to facilitate the hearing and disposition of specific cases but to make it possible to equalize the distribution of the statewide case load as well.

It would be insuperably difficult, short of creating a unified or integrated court system, to align judicial districts so as to assure each judge of an equitable portion of the state's judicial business. The reality of this fact thus makes it imperative to provide for mobility among judges. In 1964 twenty-four assignments were issued to district judges authorizing them to hold court in other districts. Nine assignments were issued to retired judges, six of whom have made invaluable contributions toward minimizing delay in the most populous areas. (The statute permits retired judges to hold court in the district in which they formerly served by assignment of the chief judge rather than the chief justice. This provision is utilized with regularity in the Second, Fourth and Sixth Districts.) Municipal courts were aided by the issuance of 14 assignments. Special judges are available in most of these courts thereby limiting the need for assignments. The following table gives specific data about assignments issued to district judges during 1964. It should be noted that some assignments were for service during 1965.

ASSIGNMENTS TO DISTRICT JUDGES - 1964

JUDGE	DISTRICT	ASSIGNED TO	ASSIGNMENT ISSUED	PERIOD OF SERVICE
Arnold C. Forbes	Ninth	Fourth	Jan. 8, 1964	April 7 - May 1, 1964
James F. Murphy	Ninth	Fourth	Jan. 8, 1964	Mar. 2 - Mar. 13,1964
Charles A. Flinn	Fifth	Fourth	Jan. 8, 1964	Mar. 16-Mar. 27, 1964
Clarence A. Rolloff	Eighth	Fourth	Jan. 8, 1964	Feb. 3-Feb. 20, 1964
L. J. Irvine	Fifth	Fourth	Jan. 8, 1964	Feb. 17-Feb. 28, 1964
Arlo E. Haering	First	Fourth	Jan. 8, 1964	Vacated due to conflict
E. R. Selnes	Eighth	Fourth	Jan. 14, 1964	Apr. 6-Apr. 17, 1964
Gordon L. McRae	Ninth	Second	Jan. 23, 1964	Mar. 2-Mar. 13, 1964
Leo F. Murphy	Third	Second	Jan. 28, 1964	Feb. 17-Mar. 6, 1964
John T. Galarneault	Ninth	Second	Feb. 5, 1964	Feb. 18-Feb. 27, 1964
William T. Johnson	Tenth	Fourth	Mar. 5, 1964	July 20-July 31, 1964
Robert B. Gillespie	Tenth	Fourth	June 30, 1964	July 6-July 17, 1964

Assignments to District Judges - 1964 (Continued)

JUDGE	DISTRICT	ASSIGNED TO	ASSIGNMENT ISSUED	PERIOD OF SERVICE
James F. Murphy	Ninth	Sixth	July 8, 1964	July 8-July 10, 1964
James F. Murphy	Ninth	Fourth	Sept. 21, 1964	Jan. 25-Feb. 19, 1965
Sam G. Gandrud	Eighth	Fourth	Sept. 21, 1964	Vacated due to conflict
L. J. Irvine	Fifth	Second	Sept. 21, 1964	Feb. 15-Mar. 5, 1965
Warren F. Plunkett	Third	Fourth	Sept. 21, 1964	Dec. 7-Dec. 18, 1964
Gordon L. McRae	Ninth	Fourth	Sept. 25, 1964	Nov. 30-Dec. 11, 1964 and Jan. 4 - Jan. 15, 1965
Ardo [illegible] Haering	First	Fourth	Oct. 1, 1964	Feb. 1-Feb. 19, 1965
John T. Galarneault	Ninth	Fourth	Nov. 2, 1964	Nov. 4-Nov. 20, 1964
E. R. Selnes	Eighth	Second	Nov. 12, 1964	Nov. 13, 1964
John T. Galarneault	Ninth	Sixth	Nov. 24, 1964	Nov. 24, 1964
J. H. Sylvestre	Ninth	Fourth	Dec. 3, 1964	Jan. 11-Jan. 23, 1965
Clarence A. Rolloff	Eighth	Fourth	Dec. 11, 1964	Jan. 4-Jan. 16, 1965

Actual judge days of service by non-resident district court judges in 1964 totaled 200½ days. The Fourth District received the benefit of 164 days; 33½ days of help went to the Second District and the remaining three days were for assistance in the Sixth District. This represents a marked increase over the prior year but still falls short of the judge time needed to keep pace with the volume of judicial business in the metropolitan areas.

When judges from the so-called rural districts hold court in the Second, Fourth or Sixth Districts they are entitled to additional per diem compensation to equalize the difference between their established salaries and those of judges in the districts having a county of over 200,000 population. The usual period of assignment is two weeks and the per diem compensation for such an assignment averages about $60.00. Assigned judges are also reimbursed for their expenses. Including the allowance for mileage the average daily expense for a non-resident judge assigned to the Second or Fourth District was $21.84 in 1964. Most judges bring their regular court reporter with them. The average daily cost of maintaining the reporters was $19.85. Of course, there are other costs involved in providing an assigned judge with supporting personnel, such as the salary of a courtroom clerk and bailiff. It can be determined with reasonable accuracy that the total per diem cost (exclusive of regular judicial and reporter salaries) of utilizing the services of a non-resident judge is approximately $76. Based on the present salary schedule of a metropolitan area judge this would produce the equivalent of 263 judge days. Deducting the eleven recognized holidays, allowing five days for judicial conferences and assuming the courts are in session from Labor Day to the end of June, there are 201 available trial days during the year. It would thus be possible to provide one and one-third years of judge time through the medium of assigned judges for a sum equal to the yearly compensation of one resident city district judge. This may be

an oversimplification of the economic implications of combating court congestion by the "Robin Hood" technique. It goes without saying there are several other significant factors which must be considered in evaluating the effectiveness of using assigned judges in an effort to minimize delay in the disposition of litigation. There is a definite correlation, however, between the mobility of judges and the currency of court calendars. States in which an orderly system for making maximum use of judicial manpower has been developed seldom are plagued by backlogs. Oregon and North Carolina are noteworthy examples.

HOW MANY JUDGES ARE NEEDED

Ever since the renaissance of interest in judicial administration there has been a continuing discussion on the issue of how many judges are actually needed to promptly hear and dispose of litigation in a given jurisdiction. For many years the consensus seemed to be that most states had an adequate judicial force but that its effectiveness was being dissipated by inefficient administrative practices. Emphasis was placed on developing a more equitable alignment between case load and judicial manpower. The addition of new judges was viewed only as an ultimate remedy for court delay. A statement made by Judge Harvey Uhlenhopp of Iowa at the Attorney General's Conference on Court Congestion in 1958 summarizes this frame of reference. Judge Uhlenhopp noted that "If we have learned anything in the past 20 years, it is that the mere addition of judges is not necessarily the answer to court congestion and delay."

Any number of persons with some alleged expertise have attempted to establish realistic yardsticks for determining the number of judges required to assure the timely yet judicious consideration of litigation in various jurisdictions. If for no other reason than the individual differences in judges, this is a hazardous venture. Nevertheless some guides should be available. Comparisons with other states can be misleading because of dissimilar jurisdiction and variances in court structure. Listed on the following page are 20 states having a population of from two to five million, giving the number of judges currently serving in the trial court of general jurisdiction, together with the population per judge.

With one trial court judge per 53,341 population, Minnesota is the median in this 20 state group. Some states have followed a rule of thumb which dictates there should be one trial court judge for a fixed number of citizens. This practice has certain obvious shortcomings, one of which is its failure to allow for the higher volume of litigation arising in areas of dense population.

Another common criterion for evaluating the need for judicial manpower is the case load. Comparison with other states in this respect is completely ill-advised since the majority of jurisdictions consider a case as being commenced when the petition or complaint is filed with the clerk rather than when a note of issue is filed. On the basis of statistical data collected for the last half of 1964 the per judge case load by district was as shown in the lower table on the following page. In the Second and Fourth Districts one judge devotes himself full time to juvenile court work. Since juvenile court cases are not included in the monthly reports submitted to this office, the table does not reflect the work of the juvenile judges in the two districts mentioned. The district court in St. Louis County also has juvenile jurisdiction but the responsibility is shared by several judges. Another factor to be remembered in evaluating this particular data is that no effort has been made to isolate the cases terminated by assigned and retired judges. This, of course, has materially affected judicial performance in the Second and Fourth Districts.

STATE	POPULATION	NUMBER OF JUDGES	POPULATION PER JUDGE
Florida	4,951,560	105	47,157
Indiana	4,662,498	115	40,543
North Carolina	4,556,155	40	113,903
Missouri	4,319,813	86	50,230
Virginia	3,966,949	75	52,892
Wisconsin	3,951,777	41	96,684
Georgia	3,943,116	55	71,693
Tennessee	3,567,089	54	66,057
Minnesota	3,413,864	64	53,341
Alabama	3,266,740	63	51,853
Louisiana	3,257,022	78	41,756
Maryland	3,100,689	54	57,420
Kentucky	3,038,156	78	38,950
Washington	2,853,214	76	37,542
Iowa	2,757,537	75	36,767
Connecticut	2,535,234	22	115,237
South Carolina	2,382,594	15	158,839
Oklahoma	2,328,284	42	55,435
Kansas	2,178,611	57	38,221
Mississippi	2,178,141	20	108,907

CASE LOAD PER JUDGE - July 1 to December 31, 1964

DISTRICT	NO. OF JUDGES	CIVIL FILINGS		CIVIL TERMINATIONS		CRIMINAL	
		COURT	JURY	COURT	JURY	FILINGS	TERMINATIONS
1	5	34	79	45	57	20	19
2	8*	98	118	83	86	33	22
3	6	25	62	27	52	17	18
4	15*	45	110	48	152	21	19
5	5	49	57	49	61	28	23
6	6	Complete information not available					
7	4	47	100	26	74	25	29
8	3	43	67	43	65	22	19
9	6	61	54	64	46	29	25
10	4	51	88	49	66	36	50

* Exclusive of juvenile court judges

HOW IS JUDICIAL TIME USED

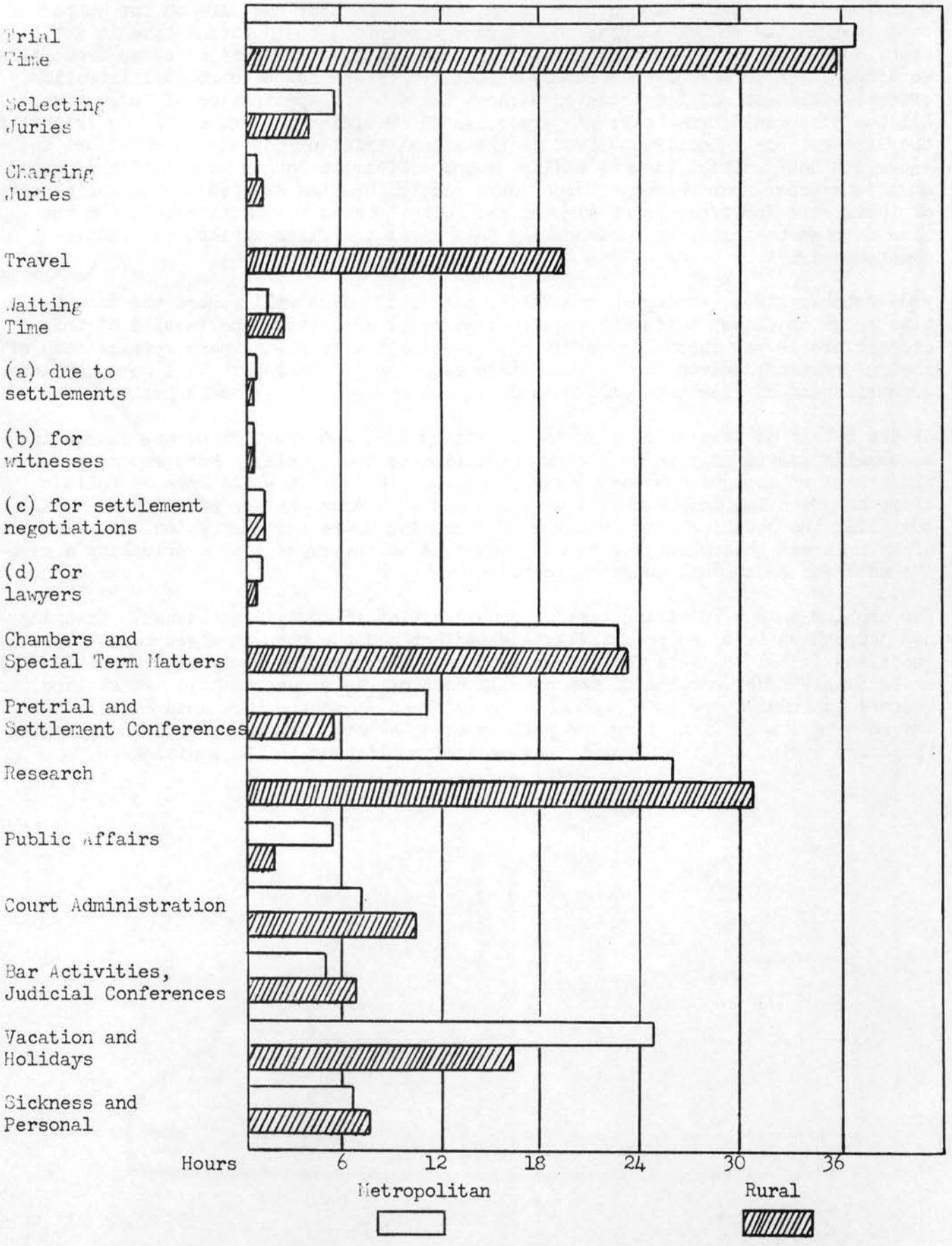
Standing alone statistics on case loads, trials and hearings, and on the number of cases terminated do not portray an accurate account of how judicial time is actually spent. It goes without saying the timely and judicious movement of cases from filing to disposition is one of the primary objectives of any sound court administration effort. This goal is not achieved without the prudent application of judge time. All too often uninformed citizens are quick to criticize members of the judiciary if they are not continuously involved in the actual trial of cases. In an effort to ascertain how judicial time is really used the District Judges Association proposed an unique experiment whereby judges would record the time devoted to various aspects of their work for a period of six months. Other states have kept records on the time devoted to trials but undoubtedly this marks the first attempt to conduct a comprehensive time study.

From October, 1964, through March, 1965, district judges will record the amount of time spent in eleven different phases of judicial activity. The results of this project are as yet inconclusive but the graph on the following page reveals some of the information derived from a scientific sampling of the reports. A more complete summarization of this data will be made at the end of the six month period.

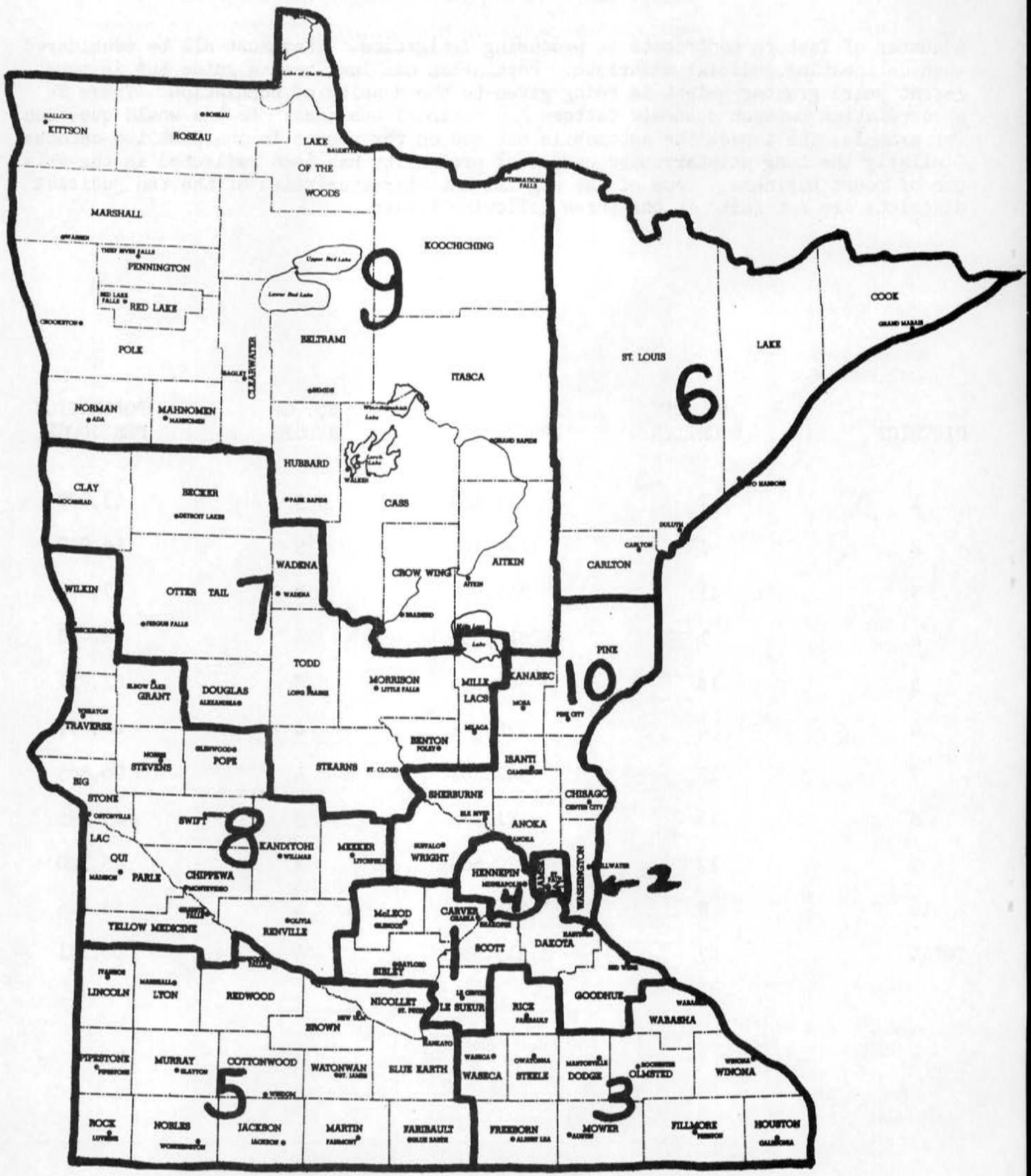
At the outset of this discussion it was stated that the creation of new judgeships is usually viewed only as an ultimate solution to court delay. More recently a new school of thought has been advanced on this issue. It would have us believe there has been too much emphasis on speed and attaining maximum efficiency. While admitting the need for and the value of improving court administration, the exponents of this latest theory suggest it has been done at the expense of overlooking a genuine need for additional judges in certain areas.

The problem is one requiring careful consideration in individual states. Creating new judgeships is often politically inexpedient and the cost involved cannot be justified (albeit budgets for the operation of the judicial branch are traditionally an extremely minor portion of the overall cost of state government). It at once becomes apparent there is a need to keep informed as to the work load and needs of the court system. It is likewise politic to do a more thorough job of interpreting the court system and its needs to the general public and to the legislature.

AVERAGE MONTHLY ALLOCATION OF JUDICIAL TIME



MINNESOTA JUDICIAL DISTRICTS



THE JUDICIAL DISTRICTS

A number of factors contribute to producing litigation. They must all be considered when delineating judicial districts. Population has long been a guide but in more recent years greater weight is being given to the density of population. There is a correlation between economic factors and judicial business. No one would question, for example, the impact the automobile has had on the courts in the past two decades. Similarly the long uninterrupted period of prosperity has been reflected in the volume of court business. Some of the significant characteristics of the ten judicial districts are set forth in the three following tables.

DISTRICT	NO. OF COUNTIES	POPULATION	NO. OF JUDGES	POPULATION PER JUDGE
1	7	215,140	5	43,028
2	1	422,525	9	46,947
3	11	343,538	6	57,256
4	1	842,854	16	52,678
5	15	309,656	5	61,931
6	4	276,599	6	46,099
7	10	307,463	4	76,865
8	13	191,385	3	63,795
9	17	270,600	6	45,100
10	8	234,104	4	58,526
TOTAL	87	3,413,854	64	53,341

DISTRICT	% OF POPULATION	% OF AREA	% OF JUDGES	% OF CASES FILED * CIVIL AND CRIMINAL JULY 1 - DEC. 31, 1964
1	6.3%	4.3%	7.8%	7.7%
2	12.4%	.2%	14.1%	21.4%
3	10.1%	7.7%	9.4%	6.7%
4	24.7%	.7%	25.0%	28.4%
5	9.1%	11.4%	7.8%	7.2%
6	8.1%	13.5%	9.4%	Not available
7	9.0%	13.0%	6.2%	7.4%
8	5.6%	10.7%	4.7%	4.2%
9	7.9%	32.7%	9.4%	9.3%
10	6.8%	5.8%	6.2%	7.7%

* Exclusive of Sixth District cases filed

DISTRICT	1962 TAXABLE VALUE REAL AND PERSONAL PROPERTY	SQUARE MILES	1962 MOTOR VEHICLE REGISTRATION	1962 ACCIDENTS
1	152,695,527	3,657	120,839	3,621
2	323,446,811	171	215,457	14,862
3	217,175,863	6,471	188,869	5,991
4	657,651,800	609	447,654	28,896
5	250,552,127	9,594	184,609	4,713
6	190,114,674	11,434	135,112	4,834
7	138,467,820	11,021	169,523	4,544
8	139,911,711	9,070	118,520	2,408
9	139,235,693	27,614	159,285	3,611
10	112,752,342	4,882	115,789	4,166

THE SUPREME COURT

One account of territorial days in Minnesota reports that "the first session of the Supreme Court was held at the American House in the town of St. Paul on January 14, 1850. There were three cases on the calendar." It wasn't long, however, before the volume of work increased materially. The first year of statehood the three member court wrote 97 opinions. During the seven year tenure of those first three justices 504 majority opinions were written.

Compared with more recent years the case load in those early years was negligible but for a three member court it was substantial. And, as a 1927 Minnesota Law Review article states, "their (the first court's) good work has prevented much injustice, uncertainty in the decisions of the courts and has minimized unnecessary litigation and legislation."

In 1964 the court's work, based on the number of cases heard, increased by nearly 17% over the previous year. There were 192 regular cases heard compared to 173 in 1963. Special cases heard went up from 100 to 127 and a total of 207 opinions were written, an increase of 13. There were six fewer petitions for reargument.

The graph on the following page depicts the court's case load trend during the past 20 years.

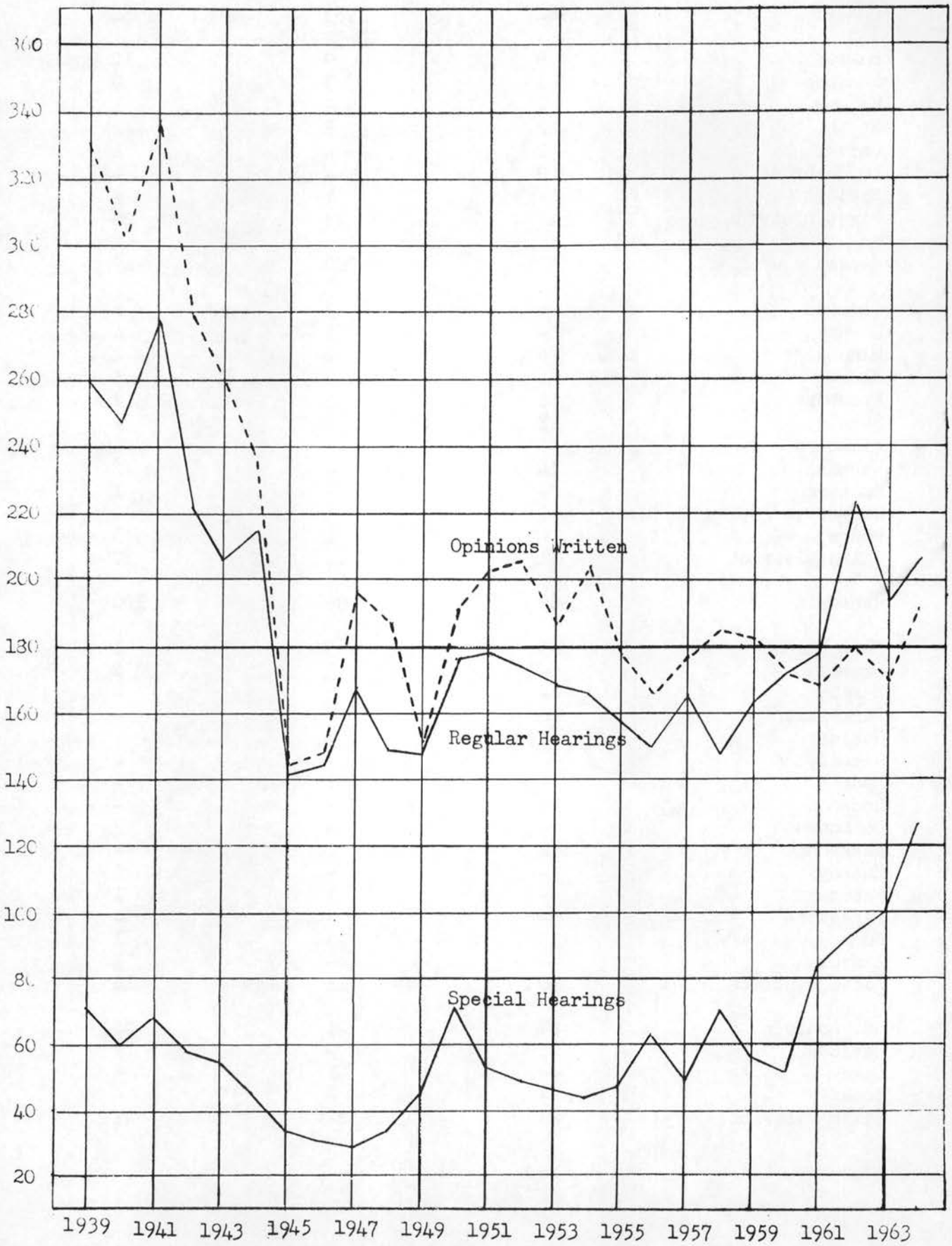
Recent decisions in the field of criminal law have led to an influx of post conviction cases and more criminal appeals. For the most part this development is accountable for the increase in the court's work load.

GEOGRAPHICAL ORIGIN OF CASES APPEALED

As would be expected, the major portion of the supreme court's business comes from the three largest cities. In 1962 fifty percent of the appeals from the trial courts originated in the Second, Fourth and Sixth Districts. The following year, despite a slight decrease in the number of appeals from the Sixth District, the percentage had increased to 56 percent. Last year these three districts accounted for 53.7 percent of the direct appeals from trial courts. It is interesting to note, by way of comparison, that in 1927 Hennepin, Ramsey and St. Louis Counties produced 48 percent of the Supreme Court's work load. Ten years later 50 percent of the cases appealed originated in these three cities. The table on pages 32 and 33 shows the source of cases appealed during the past three years by county and district. The counties are listed in descending order by population.

Exclusive of petitions for writs of certiorari to review the decisions of administrative agencies there was an increase of 42 percent in the court's volume in 1964 over 1962. It is difficult, in the absence of a more scientific sampling of data, to predict whether this upward trend will continue. New filings in the Fourth District have remained somewhat constant since 1960 but the Second District case load has continued to increase. If the ratio of cases appealed to the number filed in these two districts goes on at the same pace the Supreme Court can expect uninterrupted growth in the volume of its business.

WORKLOAD TRENDS - SUPREME COURT, 1939 THROUGH 1964



ORIGIN OF CASES APPEALED TO THE SUPREME COURT

COUNTY	1962	1963	1964
Dakota	9	9	12
Goodhue	1	3	9
McLeod	2	2	1
Scott	2	8	2
Carver	1	-	4
Le Sueur	2	-	-
Sibley	-	1	-
First District	17	23	28
Ramsey	52	80	49
Olmsted	6	3	6
Mower	-	6	4
Winona	6	2	2
Rice	6	2	5
Freeborn	5	4	2
Steele	1	2	2
Fillmore	-	-	-
Wabasha	14	-	2
Houston	-	-	1
Waseca	3	1	-
Dodge	-	1	3
Third District	41	21	27
Hennepin	68	86	130
Blue Earth	3	5	1
Brown	-	3	2
Martin	-	3	-
Faribault	4	-	-
Nobles	-	-	-
Nicollet	-	-	2
Lyon	-	1	-
Redwood	-	-	-
Cottonwood	-	-	3
Jackson	1	2	-
Murray	-	-	3
Watonwan	-	1	1
Pipestone	-	-	-
Rock	2	3	1
Lincoln	-	-	1
Fifth District	10	18	14
St. Louis	27	21	20
Carlton	1	-	1
Lake	-	1	-
Cook	-	-	-
Sixth District	28	22	21

COUNTY	1962	1963	1964
Stearns	3	8	9
Otter Tail	-	3	1
Clay	6	3	2
Morrison	-	3	9
Becker	-	-	-
Todd	8	2	4
Douglas	-	4	-
Benton	1	1	-
Mille Lacs	2	-	-
Wadena	-	1	2
Seventh District	20	25	27
Kandiyohi	1	1	4
Renville	1	2	1
Meeker	1	4	2
Chippewa	3	-	-
Yellow Medicine	-	1	2
Swift	2	1	1
Lac qui Parle	1	-	-
Pope	-	1	-
Stevens	2	-	-
Wilkin	-	-	1
Big Stone	-	-	1
Grant	1	-	1
Traverse	-	-	1
Eighth District	12	10	14
Itasca	5	-	-
Polk	1	1	1
Crow Wing	4	5	4
Beltrami	2	3	4
Koochiching	3	-	-
Cass	3	10	2
Marshall	-	2	2
Pennington	-	-	-
Aitkin	3	-	2
Roseau	1	-	3
Norman	1	2	1
Hubbard	-	1	2
Clearwater	-	-	-
Kittson	-	-	1
Mahnomen	-	-	-
Red Lake	1	-	-
Lake of the Woods	-	1	1
Ninth District	24	25	23
Anoka	6	8	9
Washington	12	16	27
Wright	1	-	1
Pine	1	2	-
Isanti	-	-	-
Chisago	-	-	-
Sherburne	-	-	2
Kanabec	1	-	-
Tenth District	21	26	39

JUDICIAL STATISTICS

Someone has said the initial step in any effort to upgrade the administration of justice or to promote court reform is the availability of accurate and up-to-date information reflecting the work of the courts. Notwithstanding the tendency to belittle statistics and to minimize their utility, it has been well established there is a need for regular reports on the volume of litigation commenced, the number of cases pending and terminated, and the time elapsing between filing and disposition. Additional information can also be of assistance in developing sound court administration policy. There is, of course, no justification for collecting statistics which would primarily be of historical or social significance.

Several approaches to collecting judicial statistics have been tried in Minnesota in the past. Twenty-five years ago the Judicial Council inaugurated a system of annual reports from the district court clerks. These reports furnished information on the number of cases on the calendar and the number tried. They were discontinued when the Council became dormant due to a lack of funds. A special study on redistricting in 1953 and 1954 precipitated another venture into the field of gathering judicial statistics. At that time an effort was made to reconstruct the volume of judicial business since 1946. More recently the general term calendars have served as the source of information about the work of the courts.

In July of 1964 a new judicial statistics reporting program was initiated. Believing it is important to determine the prospective work load, reports are now being furnished by the clerks each month. The format of the report, designed with the assistance of a committee of district court judges and several clerks, is simple, yet, if accurately completed, can provide meaningful material which will be of invaluable assistance in administering the courts.

Probably because it is a different concept and further because it envisions obtaining comparable data from every county, the results thus far have not been as reliable as they should be. However, with the accumulation of six months experience and with the anticipated cooperation of all the district court clerks, the ensuing year should mark the beginning of a reasonably adequate system.

The problems encountered during the early stages of the program preclude making any detailed analysis or comparisons. Instead summaries of the data collected have merely been reproduced on the six following pages. The counties are listed in descending order by population. If it appears feasible to continue publishing the monthly bulletin, "Minnesota Courts," which was circulated for the first time last August, it will be used as a medium for commenting on deductions and conclusions reached from an examination of the monthly reports. In any event, the statistics collected during 1965 will be the basis for a more comprehensive annual report next year.

Meanwhile the administrative assistant's office will be glad to furnish information on the work of the courts to any interested person. Recommendations directed toward improving this or other areas of the office's responsibility will be appreciated.

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	CASES PENDING July 1, 1964		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1964		NET GAIN OR LOSS	
	Court	Jury	Court	Jury	Court	Jury	Court	Jury	Court	Jury
Dakota	38	247	53	165	66	78	25	334	+13	-87
Goodhue	8	11	5	42	7	32	6	21	+2	-10
McLeod	31	43	67	42	80	58	18	27	+13	+16
Scott	16	75	13	45	29	28	-	92	+16	-17
Carver	17	22	12	34	19	37	10	19	+7	+3
Le Sueur	24	16	5	36	13	31	16	21	+8	-5
Sibley	1	4	17	31	10	23	8	12	-7	-8
First District	135	418	172	395	224	287	83	526	+52	-108
Ramsey	885	2931	783	944	664	689	1004	3186	-119	-255
Olmsted	65	103	35	87	37	71	63	119	+2	-16
Mower	34	70	18	64	24	58	28	76	+6	-6
Winona	15	17	22	54	22	24	15	47	-	-30
Rice	7	32	23	43	6	21	24	54	-17	-22
Freeborn	9	33	15	34	22	34	2	33	+7	-
Steele	22	32	11	17	23	28	10	21	+12	+11
Fillmore	2	13	1	9	2	14	1	8	+1	+5
Wabasha	6	3	11	6	6	6	11	3	-5	-
Houston	8	5	9	19	13	17	4	7	+4	-2
Waseca	6	12	3	29	6	23	3	18	+3	-6
Dodge	2	4	-	9	1	13	1	-	+1	+4
Third District	176	324	148	371	162	309	162	386	+14	-62
Hennepin	1024	5550	678	1652	720	2291	982	4911	+42	+639
Blue Earth	59	130	30	42	75	56	14	116	+45	+14
Brown	35	54	36	22	31	53	40	23	-5	+31
Martin	27	16	16	38	6	34	37	20	-10	-4
Faribault	17	17	15	31	14	32	18	16	-1	+1
Nobles	20	3	16	22	10	21	26	4	-6	-1
Nicollet	20	32	8	14	10	22	18	24	+2	+8
Lyon	22	7	16	25	15	13	23	19	-1	-12
Redwood	10	6	10	12	10	14	10	4	-	+2
Cottonwood	2	1	18	9	17	7	3	3	-1	-2
Jackson	4	-	7	14	4	14	7	-	-3	-
Murray	4	1	13	18	5	12	12	7	-8	-6
Watonwan	3	-	40	19	29	13	14	6	-11	-6
Pipestone	8	1	16	10	10	6	14	5	-6	-4
Rock	6	2	5	6	10	7	1	1	+5	+1
Lincoln	1	-	1	2	-	1	2	1	-1	-1
Fifth District	238	270	247	284	246	305	239	249	-1	+21
St. Louis - Duluth	Not included in Sixth District total						64	159		
Hibbing	18	28	23	34	23	31	18	31	-	-3
Virginia	20	21	15	43	24	35	11	29	+9	-8
Carlton	4	7	14	25	11	17	7	15	-3	-8
Lake	-	-	9	12	-	1	9	11	-9	-11
Cook	-	1	8	6	4	6	4	1	-4	-
Sixth District	42	57	69	120	62	90	113	246		

	CASES PENDING July 1, 1964		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1964		NET GAIN OR LOSS	
	Court	Jury	Court	Jury	Court	Jury	Court	Jury	Court	Jury
Stearns	3	23	42	137	11	93	34	67	-31	-44
Otter Tail	9	13	17	59	12	22	14	50	-5	-37
Clay	4	3	37	67	7	44	34	26	-30	-23
Morrison	2	4	3	26	2	17	3	13	-1	-9
Becker	7	5	14	16	16	14	5	7	+2	-2
Todd	2	6	11	25	8	13	5	18	-3	-12
Douglas	2	8	16	25	16	26	2	7	-	+1
Benton	-	12	11	17	5	25	6	4	-6	+8
Mille Lacs	4	6	7	12	7	16	4	2	-	+4
Wadena	-	13	31	16	21	26	10	3	-10	+10
Seventh District	33	93	189	400	105	296	117	197	-84	-104
Kandiyohi	6	20	13	45	12	37	7	28	-1	-8
Renville	9	23	19	31	19	44	9	10	-	+13
Meeker	5	14	5	12	6	24	4	2	+1	+12
Chippewa	1	4	8	15	5	8	4	11	-3	-7
Yellow Medicine	3	1	5	11	4	9	4	3	-1	-2
Swift	2	2	7	13	9	12	-	3	+2	-1
Lac qui Parle	4	2	41	5	45	7	-	-	+4	+2
Pope	4	4	7	11	10	10	1	5	+3	-1
Stevens	-	2	8	7	8	4	-	5	-	-3
Wilkin	3	1	3	8	3	3	3	6	-	-5
Big Stone	-	2	2	17	-	7	2	12	-2	-10
Grant	1	1	5	10	3	9	3	2	-2	-1
Traverse	1	10	5	15	6	20	-	5	+1	+5
Eighth District	39	86	128	200	130	194	37	92	+2	-6
Itasca	4	18	52	38	54	44	2	12	+2	+6
Polk	14	11	13	21	24	29	3	3	+11	+8
Crow Wing	35	34	21	67	23	54	33	47	+2	-13
Beltrami	9	10	12	27	11	27	10	10	-1	-
Koochiching	56	10	9	53	60	27	5	36	+51	-26
Cass	2	5	9	19	6	9	5	15	-3	-10
Marshall	1	1	134	4	120	1	15	4	-14	-3
Pennington	Not included in Ninth District total						7	2		
Aitkin	2	11	11	34	10	27	3	18	-1	-7
Roseau	2	2	-	8	-	9	2	1	-	+1
Norman	3	2	-	12	3	14	-	-	+3	+2
Hubbard	12	-	52	15	22	13	42	2	-30	-2
Clearwater	-	-	17	11	16	5	1	6	-1	-6
Kittson	2	-	2	5	1	5	3	-	-1	-
Mahnomen	3	3	8	3	7	6	4	-	-1	+3
Red Lake	1	1	5	4	6	5	-	-	+1	+1
Lake of the Woods	1	-	19	1	18	1	2	-	-1	-
Ninth District	147	108	364	322	381	276	137	156	+17	-46
Anoka	65	254	79	153	41	121	103	286	-38	-32
Washington	768	178	40	99	99	55	709	222	+59	-44
Wright	18	28	20	30	14	29	24	29	-6	-1
Pine	5	7	11	16	8	14	8	9	-3	-2
Isanti	7	9	10	13	3	8	14	14	-7	-5
Chisago	4	10	17	7	10	7	11	10	-7	-
Sherburne	6	24	13	25	7	20	12	29	-6	-5
Kanabec	2	2	15	10	15	9	2	3	-	-1
Tenth District	875	512	205	353	197	263	883	602	-8	-90

COURT, JURY AND CRIMINAL CASES TERMINATED, JULY 1 TO DEC. 31, 1964
SHOWING METHOD OF DISPOSITION

	Trial		Settled During Trial		Settled, Stricken or Dismissed		Criminal	Total
	Court	Jury	Court	Jury	Court	Jury	Dispositions	Dispositions
Dakota	41	11	3	2	22	65	24	168
Goodhue	2	3	-	11	5	18	28	67
McLeod	75	11	-	12	5	35	27	165
Scott	11	10	6	-	12	18	4	61
Carver	2	13	-	3	17	21	2	58
Le Sueur	7	5	1	5	5	21	9	53
Sibley	5	5	-	4	5	14	1	34
First District	143	58	10	37	71	192	95	606
Ramsey	370	32	11	28	283	629	173	1526
Olmsted	12	9	-	5	25	57	25	133
Mower	15	14	1	3	8	41	14	96
Winona	13	-	-	1	9	23	4	50
Rice	3	4	-	4	3	13	8	35
Freeborn	14	9	1	1	7	24	14	70
Steele	4	4	-	-	19	24	8	59
Fillmore	1	4	-	1	1	9	5	21
Wabasha	2	1	-	-	4	5	11	23
Houston	5	2	2	1	6	14	4	34
Waseca	3	1	-	7	3	15	6	35
Dodge	-	-	-	2	1	11	7	21
Third District	72	48	4	25	86	236	106	577
Hennepin	87	182	1	60	632	2049	287	3298
Blue Earth	51	8	-	7	24	41	30	161
Brown	8	9	-	7	23	37	26	110
Martin	3	8	-	4	3	22	5	45
Faribault	9	10	-	1	5	21	2	48
Nobles	2	2	-	2	8	17	10	41
Nicollet	2	5	-	2	8	15	13	45
Lyon	11	5	-	-	4	8	2	30
Redwood	1	2	3	10	6	2	5	29
Cottonwood	-	3	-	2	17	2	3	27
Jackson	2	2	-	2	2	10	1	19
Murray	2	-	1	1	2	11	4	21
Watonwan	21	-	-	1	8	12	4	46
Pipestone	7	1	3	-	-	5	3	19
Rock	7	1	-	-	3	6	3	20
Lincoln	-	-	-	-	-	1	3	4
Fifth District	126	56	7	39	113	210	114	665
St. Louis - Duluth	Not included in Sixth District totals							
Hibbing	16	9	3	7	4	15	23	77
Virginia	16	7	3	5	5	23	11	70
Carlton	5	1	1	2	5	14	22	50
Lake	-	-	-	-	-	1	5	6
Cook	3	5	-	-	1	1	-	10
Sixth District	40	22	7	14	15	54	61	213

	Trial		Settled During Trial		Settled, Stricken or Dismissed		Criminal	Total
	Court	Jury	Court	Jury	Court	Jury	Dispositions	Dispositions
Stearns	-	22	-	8	11	63	29	133
Otter Tail	-	-	1	2	11	20	12	46
Clay	6	8	-	-	1	36	11	62
Morrison	1	6	-	1	1	10	12	31
Becker	4	2	-	-	12	12	14	44
Todd	3	4	-	2	5	7	3	24
Douglas	10	6	-	1	6	19	5	47
Benton	2	3	-	2	3	20	14	44
Mille Lacs	2	1	-	5	5	10	7	30
Wadena	2	1	-	6	19	19	8	55
Seventh District	30	53	1	27	74	216	115	516
Kandiyohi	7	15	-	-	5	22	13	62
Renville	12	7	3	2	4	35	3	66
Meeker	1	2	1	5	4	17	1	31
Chippewa	2	4	-	2	3	2	6	19
Yellow Medicine	3	1	-	2	1	6	-	13
Swift	8	3	-	1	1	8	12	33
Lac qui Parle	1	1	1	2	43	4	6	58
Pope	3	4	-	1	7	5	5	25
Stevens	7	-	-	4	1	-	-	12
Wilkin	1	2	-	-	2	1	7	13
Big Stone	-	2	-	-	-	5	1	8
Grant	-	2	-	-	3	7	2	14
Traverse	1	4	3	2	2	14	-	26
Eighth District	46	47	8	21	76	126	56	380
Itasca	38	6	2	4	14	34	22	120
Polk	9	2	-	3	15	24	11	64
Crow Wing	11	11	-	2	12	41	16	93
Beltrami	2	4	-	2	9	21	24	62
Koochiching	7	7	-	5	53	15	15	102
Cass	3	-	-	1	3	8	12	27
Marshall	14	1	-	-	106	-	8	129
Pennington	Not included in Ninth District totals							
Aitkin	4	3	1	1	5	23	14	51
Roseau	-	-	-	1	-	8	4	13
Norman	-	8	-	-	3	6	2	19
Hubbard	21	4	-	-	1	9	6	41
Clearwater	16	-	-	-	-	5	1	22
Kittson	-	-	-	-	1	5	5	11
Mahnomen	5	1	-	-	2	5	2	15
Red Lake	3	-	-	1	3	4	4	15
Lake of the Woods	3	-	5	-	10	1	5	24
Ninth District	136	47	8	20	237	209	151	808
Anoka	10	16	1	3	30	102	28	190
Washington	3	6	-	1	96	48	133	287
Wright	2	2	-	1	12	26	14	57
Pine	1	1	-	2	7	11	9	31
Isanti	1	3	-	2	2	3	3	14
Chisago	9	1	-	-	1	6	1	18
Sherburne	7	2	-	1	-	17	7	34
Kanabec	12	1	-	2	3	6	3	27
Tenth District	45	32	1	12	151	219	198	658

CRIMINAL CASES

	Pending July 1, 1964	Filed	Terminated	Pending Dec. 31, 1964	DISPOSITIONS				
					Jury Trial	Court Trial	Settled During Trial	Settled, Stricken or Dismissed	Plea of "Guilty"
Dakota	35	33	24	44	1	8	-	4	11
Goodhue	9	30	28	11	5	1	-	2	20
McLeod	26	9	27	8	2	2	-	5	18
Scott	6	9	4	11	-	-	-	1	3
Carver	2	11	2	11	-	-	-	-	2
Le Sueur	5	9	9	5	-	-	-	-	9
Sibley	2	1	1	2	1	-	-	-	-
First District	85	102	95	92	9	11	-	12	63
Ramsey	45	262	173	134	15	7	-	15	136
Olmsted	15	16	25	6	1	1	2	7	14
Mower	-	18	14	4	1	1	-	3	9
Winona	2	8	4	6	2	-	-	-	2
Rice	4	9	8	5	1	-	-	4	3
Freeborn	12	14	14	12	2	1	1	4	6
Steele	2	12	8	6	-	-	-	-	8
Fillmore	2	3	5	-	-	1	-	-	4
Wabasha	5	8	11	2	2	-	-	2	7
Houston	3	1	4	-	-	-	-	-	4
Waseca	4	7	6	5	-	1	-	1	4
Dodge	3	5	7	1	1	-	-	2	4
Third District	52	101	106	47	10	5	3	23	65
Hennepin	118	311	287	142	35	9	-	13	230
Blue Earth	75	36	30	81	-	-	1	5	24
Brown	7	23	26	4	6	-	-	6	14
Martin	3	3	5	1	-	2	-	1	2
Faribault	1	6	2	5	1	-	-	1	-
Nobles	2	13	10	5	-	-	-	-	10
Nicollet	9	18	13	14	1	-	-	4	8
Lyon	3	9	2	10	-	-	-	1	1
Redwood	-	5	5	-	-	-	-	-	5
Cottonwood	1	2	3	-	1	-	-	-	2
Jackson	-	3	1	2	-	-	-	-	1
Murray	3	2	4	1	-	-	-	-	4
Watonwan	3	5	4	4	-	-	-	-	4
Pipestone	-	6	3	3	-	-	-	-	3
Rock	1	4	3	2	1	-	-	-	2
Lincoln	-	3	3	-	-	-	-	-	3
Fifth District	108	138	114	132	10	2	1	18	83
St. Louis - Duluth	Complete information not available - Not included in totals								
Hibbing	2	22	23	1	6	-	-	2	15
Virginia	5	10	11	4	1	-	-	-	10
Carlton	7	25	22	10	-	-	1	4	17
Lake	-	6	5	1	-	-	-	-	5
Cook	1	2	-	3	-	-	-	-	-
Sixth District	15	65	61	19	7	-	1	6	47

	Pending July 1, 1964	Filed	Terminated	Pending Dec. 31, 1964	DISPOSITIONS				
					Jury Trial	Court Trial	Settled During Trial	Settled, Stricken or Dismissed	Plea of "Guilty"
Stearns	16	20	29	7	1	-	-	11	17
Otter Tail	7	17	12	12	3	-	-	3	6
Clay	2	16	11	7	2	2	-	1	6
Morrison	4	11	12	3	-	-	-	-	12
Becker	4	13	14	3	2	-	-	1	11
Todd	-	4	3	1	1	-	-	-	2
Douglas	2	5	5	2	1	-	-	2	2
Benton	10	7	14	3	3	-	1	5	5
Mille Lacs	8	5	7	6	-	-	-	3	4
Wadena	8	3	8	3	2	-	-	2	4
Seventh District	61	101	115	47	15	2	1	28	69
Kandiyohi	3	15	13	5	1	-	-	-	12
Renville	1	2	3	-	-	-	-	-	3
Meeker	-	3	1	2	-	-	-	-	1
Chippewa	-	10	6	4	-	-	-	-	6
Yellow Medicine	-	-	-	-	-	-	-	-	-
Swift	-	12	12	-	-	1	-	-	11
Lac qui Parle	1	7	6	2	-	1	1	-	4
Pope	3	2	5	-	-	-	-	2	3
Stevens	-	2	-	2	-	-	-	-	-
Wilkin	1	9	7	3	1	1	-	-	5
Big Stone	-	1	1	-	-	-	-	-	1
Grant	-	2	2	-	-	-	-	-	2
Traverse	-	1	-	1	-	-	-	-	-
Eighth District	9	66	56	19	2	3	1	2	48
Itasca	5	24	22	7	4	6	-	3	9
Polk	5	9	11	3	1	-	-	-	10
Crow Wing	4	15	16	3	3	1	-	3	9
Beltrami	18	32	24	26	2	1	1	3	17
Koochiching	7	16	15	8	3	-	-	1	11
Cass	8	19	12	15	-	-	-	2	10
Marshall	-	8	8	-	-	-	-	4	4
Pennington	Not included in total			-					
Aitkin	9	13	14	8	-	-	-	8	6
Roseau	2	6	4	4	-	-	-	-	4
Norman	-	2	2	-	-	-	-	-	2
Hubbard	1	11	6	6	1	-	-	1	4
Clearwater	1	2	1	2	-	1	-	-	-
Kittson	-	6	5	1	-	-	-	-	5
Mahnomen	-	3	2	1	-	-	-	-	2
Red Lake	4	-	4	-	-	-	-	1	3
Lake of the Woods	-	5	5	-	-	-	-	-	5
Ninth District	64	171	151	84	14	9	1	26	101
Anoka	14	28	28	14	2	1	-	16	9
Washington	68	79	133	14	-	-	-	28	105
Wright	6	18	14	10	-	-	-	3	11
Pine	2	8	9	1	-	-	-	1	8
Isanti	3	2	3	2	-	-	1	-	2
Chisago	1	4	1	4	-	-	-	-	1
Sherburne	5	4	7	2	-	-	-	-	7
Kanabec	2	1	3	-	-	-	-	1	2
Tenth District	101	144	198	47	2	1	1	49	145

SELECTED READINGS ON ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT

EDITED BY

GLENN R. WINTERS

AND

SUZETTE A. SUNWALL

AMERICAN JUDICATURE SOCIETY

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PREFACE

In November, 1959, more than 150 American citizens, representing many areas of business, professional and public life, met in the Edgewater Beach Hotel, Chicago, at the invitation of the American Judicature Society, the American Bar Association and the Institute of Judicial Administration, Inc., for a three-day National Conference on Judicial Selection and Court Administration. In its final session the Conference approved a consensus statement calling for adoption of various specific judicial reform measures and recommending, among other things, that similar conferences be held at the state and regional levels.

The first follow-up conference took place in Lincoln, Nebraska, just seven months later, in June, 1960. An Ohio conference followed, in Columbus, in March, 1961. In June, 1961, the Joint Committee for the Effective Administration of Justice was founded, with the Honorable Tom C. Clark, Associate Justice of the Supreme Court of the United States, as its chairman. The Joint Committee was founded by the same three organizations that had co-sponsored the National Conference, but the list of sponsors was enlarged to include a total of 17 national legal organizations. These were, in addition to the Judicature Society, the Institute and the ABA, the American Bar Foundation, the American Law Institute, the Conference of Bar Presidents, the Conference of Bar Executives, the Conference of Chief Justices, the National Conference of State Trial Judges, the National Conference of Judicial Councils, the National Conference of Court Administrative Officers, the American College of Trial Lawyers, the Association of American Law Schools, the Columbia Project for Effective Justice, the Junior Bar Conference, the National Council of Juvenile Court Judges and the National Legal Aid and Defender Association.

A generous grant of funds was obtained from the Kellogg Foundation of Battle Creek, Michigan, to be expended over a three-year period, and the Joint Committee embarked upon an ambitious three-fold program of judicial training seminars for trial judges, court modernization conferences patterned after the 1959 National Conference, and some miscellaneous projects. After 1962 emphasis was centered on the seminars and conferences. During 1962, 1963 and 1964, the entire country was blanketed with trial judges' seminars and the National College for State Trial Judges was established, initially at Boulder, Colorado, and later at Reno, Nevada. By the end of 1964 a total of 17 citizens' conferences on court modernization had been held, as follows:

1. National Conference on Judicial Selection and Court Administration, Chicago, Illinois, November 22, 23, 24, 1959.

2. State Conference on Judicial Selection and Court Administration, Lincoln, Nebraska, June 9, 10, 11, 1960

3. Ohio Conference on Judicial Selection, Columbus, March 1, 2, 3, 1961

4. Conference on Selection and Tenure of Wisconsin Judges, Madison, May 17, 18, 19, 1962

5. Modern Courts for Oklahoma Conference, Norman, December 9, 10, 11, 1962

6. Nevada Conference on Selection of Judges, Reno, December 15, 1962

7. Second Ohio Conference on Selection and Tenure of Judges, March 22, 23, 1963

8. Colorado Conference on Selection of Judges, Boulder, November 15, 16, 1963

9. Citizens Conference on Modernization of the Pennsylvania Judicial System, Philadelphia, January 9, 10, 11, 1964

10. Louisiana Conference on Selection and Tenure of Judges, New Orleans, January 23, 24, 25, 1964

11. Texas Conference on Judicial Selection, Tenure and Administration, Austin, April 16, 17, 18, 1964

12. Indiana Conference on Judicial Selection, Tenure and Administration, Indianapolis, May 7, 8, 1964

13. Citizens Conference on New Mexico Courts, Albuquerque, June 11, 12, 13, 1964

14. Citizens Conference on Modernization of the Kansas Courts, Lawrence, September 24, 25, 26, 1964

15. Citizens Conference on Judicial Selection and Tenure, Bismarck, October 23, 1964

16. Citizens Conference on the Courts, New York, December 1, 2, 1964

17. Citizens Conference on Florida's Judicial System, Jacksonville, December 3, 4, 5, 1964

On December 31, 1964, the Joint Committee for the Effective Administration of Justice came to an end in accordance with the original plan, and responsibility for its projects was assumed by the various sponsoring organizations. The citizens conferences, which had been conducted for the Joint Committee by American Judicature Society staff, were carried on as a continuing project of the Society, with the help of a renewal grant from the Kellogg Foundation as a part of a renewal grant to the trial judges' college.

In addition to the Joint Committee for the Effective Administration of Justice and the American Judicature Society, each conference has been co-sponsored by one or more local organizations, usually the state bar association. Cooperating organizations have included law schools, local citizens organizations, ~~usually the state bar association. Cooperating organizations have included law schools, local citizens organizations~~, women's organizations and other groups.

The costs of the conferences have been divided several ways. The American Judicature Society has contributed its staff time in the planning and conduct of the conferences; funds from the Kellogg grant have been used for staff travel in conference promotion and planning, for the reading materials, and for expenses of out-of-state speakers and panelists; the local co-sponsors have borne the cost of printing, mailing, conference luncheons and dinners, and incidental expenses; and the travel and hotel expenses of the conferees have been a very substantial contribution of the conferees themselves.

The Society assisted in the planning and conducting of the Twenty-Seventh American Assembly on "The Courts, the Public and the Law Explosion," at Arden House, Harriman, New York, April 29, 30 and May 1, 1965, as the eighteenth in the citizens' conference series, and since then the following have been added:

19.. Citizens Advisory Conference on the Arkansas Judicial System, Hot Springs, September 23, 24, 1965

20. Citizens Conference for Court Study, Pierre, S. Dak., October 6, 8, 1961

21. Citizens Conference on Missouri Courts, Jefferson City, October 20, 21, 22, 1965

22. Tennessee Conference to Improve the Administration of Justice, Nashville, April 14, 15, 16, 1966

23. Citizens Conference on Georgia's Judicial System, Atlanta, April 21, 22, 23, 1966

All of the conferences have followed the Arden House format, wherein the conferees are divided into a number of discussion groups. Teams of panelists and discussion leaders move from group to group leading discussions on various conference topics until each group has met each team and discussed each topic. A consensus statement is drafted by the reporters and presented at the closing assembly and after correction and approval it becomes the voice of the conference in the topics dealt with, and in most instances forms the basis for citizen action to achieve the recommendations which it submits.

In addition to discussion sessions, the conference includes assemblies at which leading authorities in the various areas of judicial administration give lectures presenting the best of modern thinking and the experience of other states with regard to court organization and administration, selection, tenure, compensation, retirement, discipline and removal of judges and problems of courts of

limited and special jurisdiction. The lectures alone are not sufficient, however, to give the citizen conferees an information background adequate to permit intelligent discussion of these complex matters, and all of the conferences, from the first, have had a selection of background reading materials for the conferees to study in advance of the meeting.

The reading materials have been presented in a loose-leaf binder, and have included a summary of essential facts regarding the existing judicial system of the state and excerpts from various reports and writings by authorities in the field of judicial administration, chosen with a view to giving a non-lawyer reader a non-technical understanding of what is being proposed and done in other states in the various problem areas of judicial administration.

During the early part of the series the reading materials were frequently changed, as one item was found to be more helpful than another. After the first ten or twelve conferences, however, these materials became fairly well standardized, and the same articles, charts and other materials were used in conference after conference with little change except for updating some statistical items and, of course, the special section on the judicial system of the state in which the conference was being held.

Loose-leaf books were provided in sufficient quantity to last through the twenty-second and twenty-third conferences, in April, 1966. Meanwhile, ideas for further changes and improvements had developed, with the result that the entire book has been revised and re-edited and is now produced in more convenient and permanent form for use in the remaining 1966 conferences and in subsequent years. The revision has been primarily the work of Suzette A. Sunwall of the American Judicature Society staff.

A chapter on the existing court system of the conference state will continue to be a part of each book, and will be inserted in each book as a supplement tucked into a pocket in the cover. Another pocket affords a convenient place to include brochures, leaflets and miscellaneous additional materials.

Suggestions from users of these books as to how they might be improved will be gratefully received by the editors and borne in mind in future revisions. It is our hope that the book will not only serve well its primary purpose of facilitating informed discussion in court modernization conferences of judicial administration topics by non-lawyer citizen conferees, but also may find a wider use in helping to create a better understanding of the courts and their problems on the part of many citizens who have not had the opportunity of participating in the conferences but are equally willing to learn and to join in the nation-wide crusade for more effective justice.

Glenn R. Winters
Executive Director

Chicago,
May, 1966

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Shortly after the founding of the Joint Committee for the Effective Administration of Justice, it was suggested that "effective administration of justice" was a desirable but vague objective and that the committee's efforts should be directed toward achievement of more specific and clearly-defined goals. A subcommittee consisting of Louis H. Burke, Albert E. Jenner, Jr., and Glenn R. Winters was appointed by Chairman Clark to prepare a draft of what was to become known as the "Effective Justice Standards." The subcommittee's draft, as revised and approved by the full Joint Committee, has had wide publication and acceptance as a concise statement of the goals of the court modernization movement in the country. Its text follows:

EFFECTIVE JUSTICE STANDARDS

JUSTICE IS EFFECTIVE WHEN --

1. Fairly Administered Without Delay

   With all litigants, indigent and otherwise, and especially those charged with crime, represented by competent counsel,

2. By Competent Judges

   Selected through non-political methods based on merit,

   In sufficient numbers to carry the load,

   Adequately compensated, with fair retirement benefits,

   With security of tenure, subject to an expeditious method of removal for cause,

3. Operating in a Modern Court System

   Simple in structure, without overlapping jurisdictions or multiple appeals,

   Businesslike in management with non-judicial duties performed by a competent administrative staff,

   With practical methods for equalizing the judicial work load,

   With an annual conference of the judges for the purpose of appraising and improving judicial techniques and administration,

4. Under simple and Efficient Rules of Procedure

   Designed to encourage advance trial preparation,

   Eliminate the element of surprise,

   Facilitate the ascertainment of truth,

   Reduce the expense of litigation,

   And expedite the administration of justice.

Robert Hall - Court Organization and Administration -

Unification, flexibility, conservation of judicial power, responsibility are needs of the court. Divided responsibility is no responsibility at all. Bar assn. recommended unification of courts in 1938.
Supreme Court
Court of Appeals
Dist. Court
Magistrate Court - petty, civil & criminal matters.

Illinois has integrated all trial courts. Internal distribution of judges. One answer has been increased judges - but need better administration. Are we using present judge to best advantage? Should preserve judges from cumbersome administrative details.

Consolidation of clerical staffs would reduce duplication and waste. One man should have administrative authority over courts - Logically chief justice of Supreme Court. Each district should have a chief judge - not beholden to fellow judges.
Should have - ① Uniform standards - ② Official organization
Uniform procedures

Statistical aids

Jurisdiction is being taken over more & more by the Federal courts because of superior organization.

Eliminates conflict - allows judges to become specialists
Keeps a firm hand on the tiller.
Ideal should be right men with the right machinery.

William Klein -

Justice is not who makes the laws but who interprets it.

Courts of Limited and Special Jurisdiction.

William Burnett. presiding judge of Denver County courts.

The need for a neighborhood court is a myth.
Question of J. P's.
Why the circuit courts? Judges traveling about.
Why not one court - the district court with jurisdiction over all cases. Not specialized courts but specialized judges.
Providing justice for the uninformed and unrepresented is the greatest challenge. Shouldn't they be entitled to the highest kind of justice. All courts are courts of record. One trial - One appeal.
* Lower court judges have no tools for reform. Needs best corrective and diagonistic facilities.
Success will be judged by the degree to which lower courts have been elevated

Feinberg - Hennepin Co. consolidated in 1963 by legislature.
No more J. P's or part time judges. Now all full time municipal judges.

Jack Frankel - Judicial Compensation, Retirement, Discipline and Removal

Compensation must be high enough to attract competent judges.

Judicial immunity cannot be thought to be threatened if the whole idea is carried out at the judicial level - or in the judicial branch.
California Plan.
All courts under jurisdiction
Permanent, Independent body.

A

Barnabas Sears –

Liberty of the Individual was the concept of good –
Distribution of powers – Judicial – Life Tenure. appointed
by chief executive – passed by legislature.
Only here and in Russia are judges elected. Andrew Jackson

Elmo Hunter

Merit plan. take politics outof courts. Raise quality of judiciary
Story starts with selection. – Missouri has had it for 26 years.
Non-political commission is the place to start – Staggered terms.
Issues public notice inviting suggestions – and makes its
own survey.
Jo trial court – 5 members

Charles Hoass

Compensation is the heart of the problem

B William Stevenson – Canada is jealous of independence of judiciary.
All Canadian judges appointed – all federally and paid
federally – lower court $18,000 plus expenses – upper up to $30,000
Non contributory pension plan – mandatory retirement at 75.
No discipline short of removal