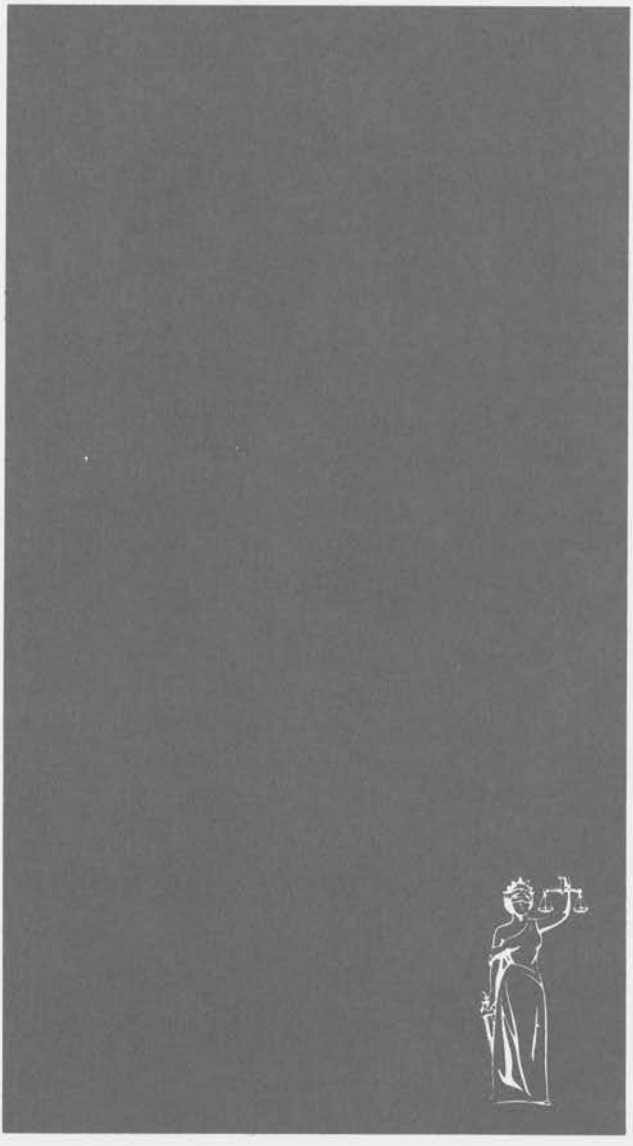
Emily Anne Staples Tuttle papers.

Copyright Notice:

Version 3
August 20, 2018

Roscoe Pound...

Principles and Outlines of a Modern Unified Court Organization



Reprinted from
The Journal of the American Judicature Society

THE AMERICAN JUDICATURE SOCIETY *is a national and international organization of over 45,000 lawyers, judges and laymen, in all 50 states, Canada and 43 other countries of the world, founded on July 15, 1913, to promote the efficient administration of justice. Its activities include publishing a monthly journal and other books and literature; conducting meetings, institutes, conferences and seminars; and maintaining an information and consultation service with respect to all aspects of the administration of justice and its improvement. Voting memberships are open to all lawyers and judges in this or any country, and associate memberships are open to anyone interested in the betterment of the administration of justice. Dues are $10.00 a year. Persons interested in membership should write directly to the Society at 1155 East Sixtieth Street, Chicago, Illinois 60637.*

Principles and Outline 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.* 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. I repeat what I said of procedural reform in 1909. Besides procedural reform there are a number of "other problems connected with the administration of justice in America which are of equal, or even possibly of greater importance. Three of these problems have a direct and immediate relation to procedural reform, namely, the organization of courts, and, in consequence, the personnel, mode of choice and tenure of judges, and the organization, training and traditions of the bar. The importance of organization of the courts, of unification of the judicial system in order to obviate waste of judicial power, and of organization of the administrative business of courts, is something we are only beginning to perceive."

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.

At the outset a caution is needed. Experience shows that even with the best of plans it is important not to go into much detail in authorizing or requiring certain courts. Recent constitutional amendments in some states have too much detail even for statutes. Continual legislative amendment of the statutes governing the organization and administration of the courts was the bane of judicial administration of justice in America in the last century. Certainly a constitution is not the place for details which, if they work badly, can only be removed or improved by the slow and sometimes painful process of constitutional amendment. Authority to set up a modern organization and responsibility for doing it and doing it effectively are the main points to be attended to.

With these general principles, let us turn to the general plan of organization. The whole judicial power should be concentrated in one court, which I would suggest might be called the Court of Justice of this or that state. Professor Walter F. Dodd proposed to call it the General Court of Justice. This court should be set up in three chief branches. To begin at the top, there should be a single ultimate court of appeal, which might be given the name which is most generally in use in this country, the supreme court. Second, there should be a superior court of general jurisdiction of first instance for all cases, civil and criminal, above the grade of small causes and petty offenses and violations of municipal ordinances. It should have numerous local offices where papers may be filed, and rules of court should arrange that these local offices, being offices for the whole court, may function for all branches or for one or more, as the exigencies of business demand. It is arguable whether this court should be organized in divisions, one for actions at law and other matters requiring a jury, or of that type, one for equity causes, and one for probate, administration, guardianship, and the like. My own feeling would be that

this would depend on the traditions of the state, the amount of business of each sort, and the conditions in localities, and should be left to rules of court to be determined in accord with experience. Divorce would be regarded in many jurisdictions as so serious a matter that it should be committed to this branch. On the other hand, there might be sound reason for committing it to the third branch where a family court division, in large cities, might be better adapted to deal with all the incidents of difficulties in family relations. I should prefer to call this branch the superior court. . . It is important that this branch be thought of and treated as one court for the whole state rather than a congeries of local separate courts. The term district court is too suggestive of a type of organization from which we must seek to get away.

At any rate, however this branch is organized, all the judges should be judges of the whole court. If they are chosen primarily for one or the other branch, and assigned to this or that division in some appropriate way by the administrative head, yet they should be eligible to sit in any other branch or division or locality, when called upon to do so, and it should be the duty of the appropriate administrative head to call upon them to go where work awaits to be done whenever the general state of business of the whole court makes that course advisable.

No doubt opinions will differ as to the proposal to include the tribunals for the disposition of causes of lesser magnitude in a plan for unification of the judicial system. But no tribunals are more in need of precisely this treatment. 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. Even small causes call for a high type of judge if they are to be determined justly as well as expeditiously. A judge dignified with the position and title of Judge of the Court of Justice of the State, assigned to the county courts, 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. It was the original plan of those who drew the judicature act in England to include the county courts in their scheme; but this part of the plan was not adopted. None the less, when one notes the extensive jurisdiction which is committed to the district courts in Massachusetts and very generally to municipal courts, he must feel that the tribunals which would be included in the third branch have shown themselves worthy of inclusion.

As I said in the report of the American Bar Association in 1909, these courts have shown (if in view of the English county courts, it needed showing) that it is perfectly feasible to administer a much higher grade of justice in small causes than that formerly dispensed by justices of the peace, without resorting to the more expensive methods of the superior courts. The judges who are assigned to small causes should be of such caliber that they could be trusted and would command the respect and confidence of the public, so that there would be no need of retrial on appeal but review could be confined to ascertaining that the law was properly found and interpreted and applied. The further we can get away from the old justice of the peace idea for small causes the better.

Organization of Supreme Court

As to the first branch, the supreme court, while the head of the judicial system might well sit there, it should have its own head, immediately charged with responsibility for its proper functioning, since the chief justice,

as I assume the head of the whole court will be called, will have much to do in exercising a superintending control over the entire system. According to rules of court and under his authority, perhaps in conference with the heads of the two branches, judges may be called from the superior court to sit in the supreme court, or vice versa, as the state of the dockets may require. It should be possible for the supreme court to sit in divisions if necessary to the prompt despatch of business. When dockets are swollen, three judges ought to be enough for all but the most difficult and important cases. Thus there would be more time for oral argument, which with lawyers of the caliber of those who alone should appear in the highest court on cases of any consequence, is of the greatest assistance to the bench. Also there would be more time and opportunity for consultation and consideration of the merits of cases.

Administrative appeals are likely to become a large part of the work of our courts, if a simple, speedy, expeditious appellate procedure can be devised which will insure adherence to law and due process of law in hearings and determinations without substituting the discretion of the court for that of the administrative agency. As this type of work increases, it may be advisable to set up a division to deal with it, and there should be a flexible organization and rule-making power adequate to find how to meet such situations as they arise.

The Statistical System

One of the functions of the head of the judicial system, but not necessarily of the head of the supreme court, should be to insure and direct the compilation of reliable and intelligently organized statistics of the administration of justice in the jurisdiction, and embody them in recommendations which with those of the judicial council might well

make an annual report of much value for furthering the work of the courts both in their own state and in others. Certainly the earlier reports of the municipal court of Chicago, under the leadership of Chief Justice Olson, were of great use throughout the land in the formative period of such courts in the first three decades of the present century. Some of the judicial councils have been giving us well compiled and useful statistics. But there is much to be done in the way of working out a system of gathering, compiling and reporting them which will insure that they tell what needs to be told and give an accurate picture both as the basis of criticism and as the basis of legislation, of rulemaking, and of administrative regulations. To be of value they must be made upon a system which can be required of each and every tribunal and its clerks and administrative officers in the state. Only a unified judicial system with a responsible head and responsible heads of branches and divisions under him, can insure that this work is well done, and unless well done it is not worth doing at all.

The Superior Court

The second branch, the superior court, should be given complete jurisdiction of first instance, civil and criminal, the civil jurisdiction, for reasons set forth in preceding chapters, to include law, equity, and probate. Certainly there should be no mandatory setting off of these types of cases to separate divisions. But the organization of this branch should be so flexible that if experience showed good reason for setting off some or all of them in that way, it could be done by rule of court, or more simply by assigning cases to judges in such a way as to effect a practical segregation, which, however, could be changed or revoked later if experience or changed conditions made such action advisable.

This branch should be organized under a chief justice and in some states it might well be advisable to have regional subdivisions, each under a presiding judge, responsible to the chief justice of the superior court, as he would be responsible to the chief justice of the state. Rules of court would determine the times and places of sittings in the several counties, and all the judges, being judges of the one court, would be subject to be assigned where the demands of judicial business might make it advisable. Rules should provide for regional or local appellate terms according to the requirements of the court's business. Thus there would be no need of intermediate tribunals of any sort. As has been suggested in other connections, the procedure at these terms could be as simple as at the old hearings in bank at Westminster after a trial at circuit. Three judges assigned to hold the term would pass on a motion for a new trial or judgment on or notwithstanding a verdict, or for modification or setting aside of findings and judgment accordingly (as at common law upon a special verdict). If, as I assume would be true, it proved necessary to limit the cases which could go thence to the supreme court, rules could restrict review to those taken by the highest court on certiorari. Even then, there need be nothing more in the nature of a double appeal than there is now in states where a motion for a new trial in the trial court is a necessary preliminary to review in the higher court. But heard before three judges at an appellate term it would not be a mere perfunctory step in review but a real hearing of the questions raised which should enable the case to stop there unless the points of law were serious enough to warrant certiorari.

Effective Reviewing

By hearing motions for new trials to set aside findings, or to render judgment notwithstanding verdicts or findings, or for modification or setting aside of decrees and orders, at such appellate terms, with no more formal or technical procedure than is involved in such motions made in a trial court today, not only would there be a simple and speedy means of reviewing the great bulk of the litigation in the court of general jurisdiction of first instance, but the plan would help rid us of the burdensome multiplication of reports which has come with the setting up of intermediate appellate courts. It is felt that an appellate court, if only as a matter of dignity, must write opinions, and that its filed opinions must be published. There is no doubt a real function of an opinion as a check upon the bench, even if the decision adds nothing to the law. But that purpose and the further purpose of advising the court of review, if the case goes to the supreme court, would be served sufficiently by a *memorandum* of the *questions decided* and the *grounds* of *decision.*

Much time and energy are wasted in writing opinions in cases which involve no new questions or new phases of old questions. A brief statement of points and reasons will suffice both as a check and as an aid to the court above. Some such publication as the New York Miscellaneous Reports, under a qualified and responsible reporter, having no interest except to make the reports useful to the public and the profession, could select occasional memoranda worth reporting. It might well be at times that at county court appellate terms questions may come up and be decided which will deserve publication of the memoranda of grounds of decision. An energetic chief justice at the head of the judicial system, and energetic chiefs in the superior court and the county courts, with the aid of a judicial council, could devise rules to govern these things and if the courts or the bar, especially an integrated bar, were given control of reporting, one of the hard problems of the law and of the profession in America might be solved.

It would seem clear that three judges should be enough to sit at these terms. Benches of three have proved satisfactory in intermediate appellate courts in many states. If, however, it were felt that more should sit, either as a general practice or in some cases or classes of cases, the matter should be left open to be settled by rules of court in the light of experience.

Where, as in some jurisdictions, there are heavy criminal dockets, rules could set up criminal appellate terms for felony cases or county court appellate terms for misdemeanors with a flexible make-up, as in the English court of criminal appeal. From these appellate term cases should go directly to the supreme court by certiorari. There should be no retrial in the superior court of what has been tried in the county courts except as rules might provide for removal of exceptional cases by certiorari.

The County Court Branch

As to the county court branch, this, too, should be organized under the headship of a chief justice and perhaps in states of wide territorial extent, such as California and Texas, with regional presiding judges under him. Rules could set up municipal courts in large cities as branches of the county court, with power by rules to provide for juvenile and family and domestic relations and small cause courts as divisions, as they are needed. There should be appellate terms and causes could go from these terms to the Supreme Court by certiorari. Large metropolitan cities have peculiar needs which may make such divisional courts advisable. But while each municipal court should have an administrative head subject to the superintendence of the chief justice of the county court, there should be such complete flexibility of organization that judges could be taken from a municipal court to a rural county court or vice versa, or from these to the superior court or from the superior court to relieve congestion in the county

court, as the state of work in the respective courts may require. It might be that in the municipal court in cities, rules could work out appellate terms for small causes with a simple inexpensive procedure so that the public could be persuaded that causes too small to justify retaining a lawyer were not for that reason neglected, and such terms might even have to be allowed by rule to review the whole case.

Powers of Chief Justice

Supervision of the judicial-business administration of the whole court should be committed to the chief justice, who should be made responsible for effective use of the whole judicial power of the state. Under rules of court he should have authority to make reassignments or temporary assignments of judges to particular branches or divisions or localities according to the amount of work to be done, and the judges at hand to do it. Disqualification, disability or illness of particular judges, or vacancies in office could be speedily provided for in this way. He should have authority also, under rules of court, to assign or transfer cases from one locality or court or division to another for hearing and disposition, as circumstances may require, so that judicial work may be equalized so far as may be and clogging up of particular dockets and accumulation of arrears prevented at the outset. He may require assistance in this work of superintendence of the working of the court as a whole, and there should be authority to provide it. As has been said, each of the branches, and where conditions require them, each division or regional organization within a branch, should have a responsible head, charged with the duty of immediate superintendence. Just as the chief justice should be held to see to it that the energies of the judiciary are fully and efficiently employed upon its tasks, so these heads of branches and divisions should each be responsible for efficient despatch of the

work of his organization. These are not matters for clerks, although clerks under proper direction and control may do much. They call for strong men with clear responsibility laid upon them to preclude their falling into perfunctory routine or allowing abuses to grow up through their inertia.

It is but little less important to organize thoroughly the incidental non-judicial business of the court and all its branches and divisions. Legislation should not lay down details for this side of the administration of justice. As is now beginning to be done, competent business direction should be provided and the clerical and stenographic force be put under control and supervision of a responsible director. There very likely may have to be a like officer in each branch and major division or, if regional organization becomes necessary, each region. But it would be a mistake for legislation to go into much detail upon this subject. It is enough to settle the general principles and leave details to rules of court to be drawn up, altered and improved, with the aid of judicial councils, as experience shows defects and abuses and indicates the best way of dealing with them.

Emancipating the clerical work of the courts from politics and patronage and putting control of it where it ought to be, namely, in the courts themselves, must be an important item in any program of improving the administration of justice. To specify but one item, the system, or rather want of system, which prevails generally is a prolific source of needless expense in the courts.

Control of Clerical Force

Decentralization of courts was carried so far in the last century that the clerks were made independent functionaries, not merely beyond effective judicial control, but independent of any administrative supervision and guided only by legislative provisions and limitations. No one was charged with supervision of this part of the work of the courts. It was no one's business to look at it as a whole, seek to find how to make it more effective and to obviate waste and expense, and promote improvement. There is much unnecessary duplication, copying and recopying, and general prolixity of records in the great majority of our courts. In the clerical no less than on the judicial side most of our courts are like Artemus Ward's proposed military company in which every man was to be an officer and the superior of every other. The judiciary is the only great agency of government which is habitually given no control of its clerical force. Even the pettiest agency has much more control than the average state court. But scientific management is needed in a modern court no less than in a modern factory. With no one responsible there is no incentive to progress in the clerk's office. Much that could be done to reduce costs in litigation and the expense of operating the courts remains undone because it is no one's business to see it done. . . The established institutions of the past can maintain their claims to appropriations, in the face of this competition, only if they use to the best advantage the money appropriated to them. . . Organization of the non-judicial administrative business of the courts calls for complete and efficient supervision, under rules of court, which is best to be obtained by unification of the judiciary as a whole, with responsible headship, charged with supervision of the subordinate supervising and superintending officers.

Some of the things of which I could make just complaint twenty-five years ago, in a statement of what would be done away with by the kind of organization I am urging, have been remedied in the progress toward unification which has been going on. The bad practice of throwing cases out of court, to be begun over again in case they were brought in the wrong court, has been generally given up, or at least much modified.

Yet transfer from one court to another at the cost of the appellant who has guessed wrong, after argument very likely, and perhaps construction of an indefinite or ambiguous statute, and it may be a difference of opinion between the court making the transfer and the one to which it is made, while an improvement, is not all that may be done in a program of reform. There ought to be no questions of jurisdiction under rigid constitutional or statutory provisions. Rules of court may deal with such situations fully and satisfactorily if they arise between branch and branch of the same court and are subject to superintending control of one official.

Principles of Administration

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 classes 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.

The Judicial Council

There are two checks which may be relied upon to secure against abuse of the power which must be accorded the responsible head of a unified court. One is his clearly defined responsibility both for what he does and lets his subordinates do and for what he omits

to do. The other is the institution of the judicial council. . . Such councils exist now in an increasing number of states and are doing much for the improvement of the administration of justice in all parts of the land. Especially valuable reports have come from them in New York, Michigan, California, Massachusetts, New Jersey, and Kansas. The history, achievements and possibilities of judicial councils are not germane to the subject, however, and need not be pursued. It is enough in the present connection to point out that these councils, commonly made up of representatives of the bench, the bar, and representative lay citizens, consulting with the judges and advising and assisting them in the exercise of their rulemaking power, are certain to prove not only a stimulus to effective rising by the courts to their responsibilities, but also an effective and intelligent check upon abuses, which will be palpable to such men in their close contact with the work of the judges. It might be suggested, however, that with the unification of courts there might well come local councils for county and municipal courts, and that in states with an exceptionally large and diversified domain there might even be subordinate regional judicial councils. Moreover, a further check which will prove most effective is to be seen in the unified or integrated bar. With responsible organization of the lawyers, nothing could go very wrong without producing immediate action by the profession. . .

Courts Need Power

It should not be forgotten that where not hampered by legislative prescribing of details of organization and procedure, our courts have, on the whole, the best constructive record of any of our institutions. It was no mean task to develop an American law, a body of judicially found and judicially declared precepts suitable to America, out of the old English cases and old English statutes with the help of such books as

Coke's Institutes and the more orderly but less detailed and thorough-going exposition by Blackstone. The task was well done in about three quarters of a century, so well, indeed, that the newer states as they became settled and admitted to the Union found their body of law substantially made for them. No other judicial achievement, and no legislative or administrative achievement in the English-speaking world, will compare with this.

From the beginning of American law, however, the courts have been hampered by minute prescribing of detail in legislation. Control of their administrative agencies have been taken away from them. Their organization has been prescribed in extreme detail. Courts have been set up with rigid but ill-defined jurisdictional lines. Constitutions and statutes have prescribed successive or double appeals. In Indiana, the legislature even tried to take away from the Supreme Court the superintending control over the lower courts conferred upon it by the constitution. After the middle of the last century, the legislature in many states prescribed the minutiae of legal procedure, so that as Mr. Hornblower used to say of the New York code of civil procedure in its heyday, there was a rule for every action of the judge from the time he entered the court house except to prescribe the exact peg on which he should hang his hat. It is enlightening to compare the results in the substantive law, where the courts had a free hand, with those in procedure and the mechanics of justice where their hands were tied. The causes of popular dissatisfaction with the administration for very much the greater part lie in the mechanics of applying the substantive law by courts and judges—the use of a mechanism which has been put beyond judicial control and beyond effective judicial employment by constitutions and by detailed statutes carrying out the spirit of constitutional provisions.

Unification Is Essential

Unification of the courts would go far to enable the judiciary to do adequately much which in desperation of efficient legal disposition by fettered courts, tied to cumbersome and technical procedure, we have been committing more and more to administrative boards and commissions. Ours is historically a legal polity and the balance of our institutions will be sadly disturbed if the courts lose their place in it. If they are to keep that place they must be organized to compete effectively with the newer administrative bodies.

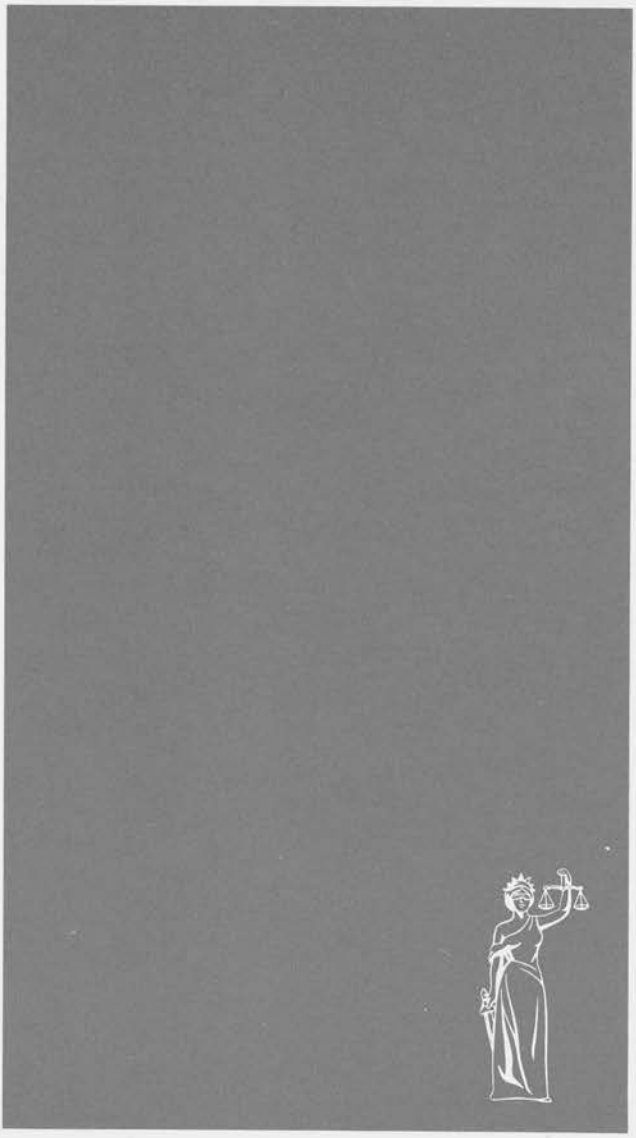
We are told in the Federalist that the judiciary is least able to hold its own in a competition of the three departments of government. Judges are inhibited, with respect to the will to power, by the taught tradition which requires them to refer their action on all occasions to principles, to hew to precepts established in advance of action and to find the measure of decision by applying a traditional technique to predetermined premises. Their quest of ends is restricted by their habitual regard for means. The legislature and the executive are aggressive in their will to power. The judiciary do little more than obstruct when the department of government comes into conflict. There is nothing to be feared from making it efficient.

Unification of the courts will not do everything. There must be judges equal to their tasks and unafraid to do them. The mode of selection and tenure must be such as to insure such judges as far as may be. But no judges can achieve results such as are demanded today if they are held to the machinery of the last century. Things are done by the combined working of men and machinery. In that combination machinery is no negligible item. The right men will do much no matter what machinery is given them to work with. But our ideal must be the right men with the right machinery.

With the rulemaking power restored to them, with effective organization, with proper provisions as to selection and tenure, there is every reason to believe that the work of American courts in the period of development on which we have entered will be worthy of the beginning made without substantive law in the formative era.

The National Movement to Improve the Administration of Justice

by Glenn R. Winters



Reprinted from
The Journal of the American Judicature Society

THE AMERICAN JUDICATURE SOCIETY *is a national and international organization of over 23,000 lawyers, judges and laymen, in all 50 states, Canada and 43 other countries of the world, founded on July 15, 1913, to promote the efficient administration of justice. Its activities include publishing a monthly journal and other books and literature described in this brochure; conducting meetings, institutes, conferences and seminars; and maintaining an information and consultation service with respect to all aspects of the administration of justice and its improvement. Voting memberships are open to all lawyers and judges in this or any country, and associate memberships are open to anyone interested in the betterment of the administration of justice. Dues are $10.00 a year. Persons interested in membership should write directly to the Society at 1155 East Sixtieth Street, Chicago, Illinois 60637.*

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.

---

*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.

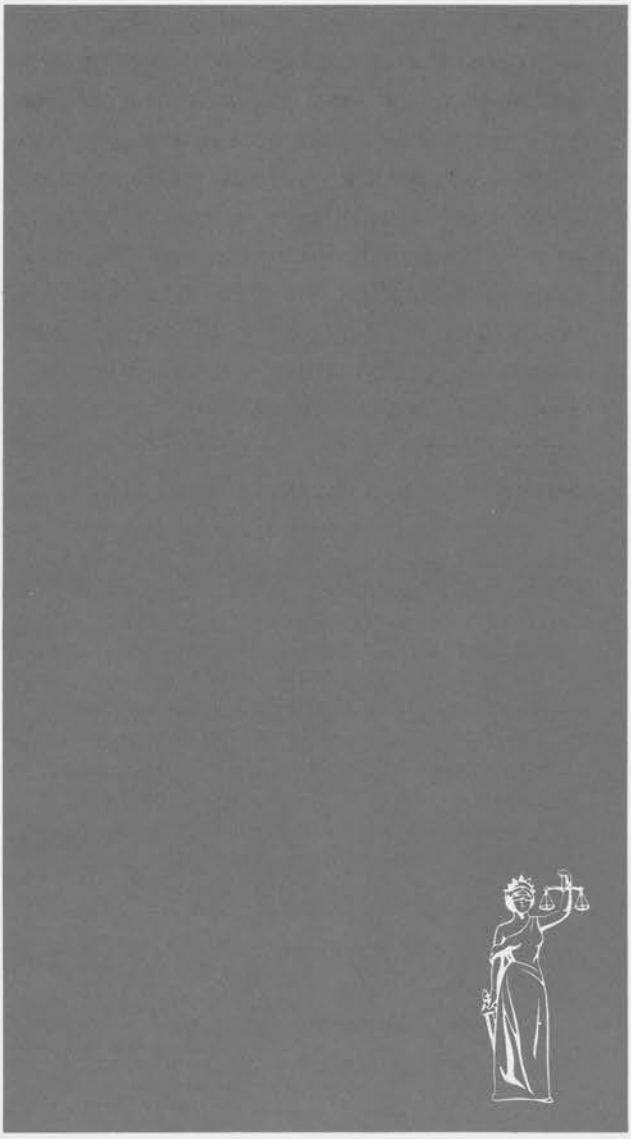
The Supreme Court shall have the power to prescribe rules governing appellate jurisdiction, rules of practice and procedure, and rules of evidence, for the judicial system. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

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.

Roscoe Pound...

The Causes of Popular Dissatisfaction With the Administration of Justice



Reprinted from
The Journal of the American Judicature Society

The Causes of

POPULAR DISSATISFACTION

with the

ADMINISTRATION OF JUSTICE

by

Roscoe Pound

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 cavilations 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

*Address delivered at annual convention of American Bar Association in 1906.

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.

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 respect 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 permit, from judicial review, have become the fashion. It will be assumed, then, that there is more than the normal amount of

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.

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

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.

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 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]

(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 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. Mod-

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

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

(3) A third perennial source of popular dissatisfaction with the administration of justice according 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

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

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

(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

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

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. The concrete man in the street or the 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

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

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.

(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 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

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

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.

(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

16. Bl. Comm. 139.

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 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, according 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

17. Wigmore, Evidence, 127.
18. Wigmore, Evidence, 1112.

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 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,

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

instituted to administer justice according to law, are made agents or abettors of lawlessness.

Political Jealousy—Doctrine of Judicial Supremacy

(3) Another source of irritation at our American courts is political jealousy 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 peculiarly 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

21. Collectanea Juridica, 1, 173.

phase of the common law doctrine of supremacy of law which produces political jealousy 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 occur 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 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.

(5) The defects of form inherent in our

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

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 *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 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 Chamber 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,

---

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

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 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. Cases 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 concen-

trated. 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.

(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

---

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 ten volumes of the Federal Reporter referred to, there are, on the average, twenty-five writs of error in civil cases to 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

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.

1900 of 32,000,000, employs for the same civil litigation ninety-five judges, that is, 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.

The Influence of Environment

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 efficacious. Another

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

strain upon our judicial system results from 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.

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 and are the penalty we pay for uniformity;

30. Bentham, Theory of Legislation (tr. by Hildreth), 401.
31. Niagara Fire Ins. Co. *vs.* Cornell, 110 Fed. 816.

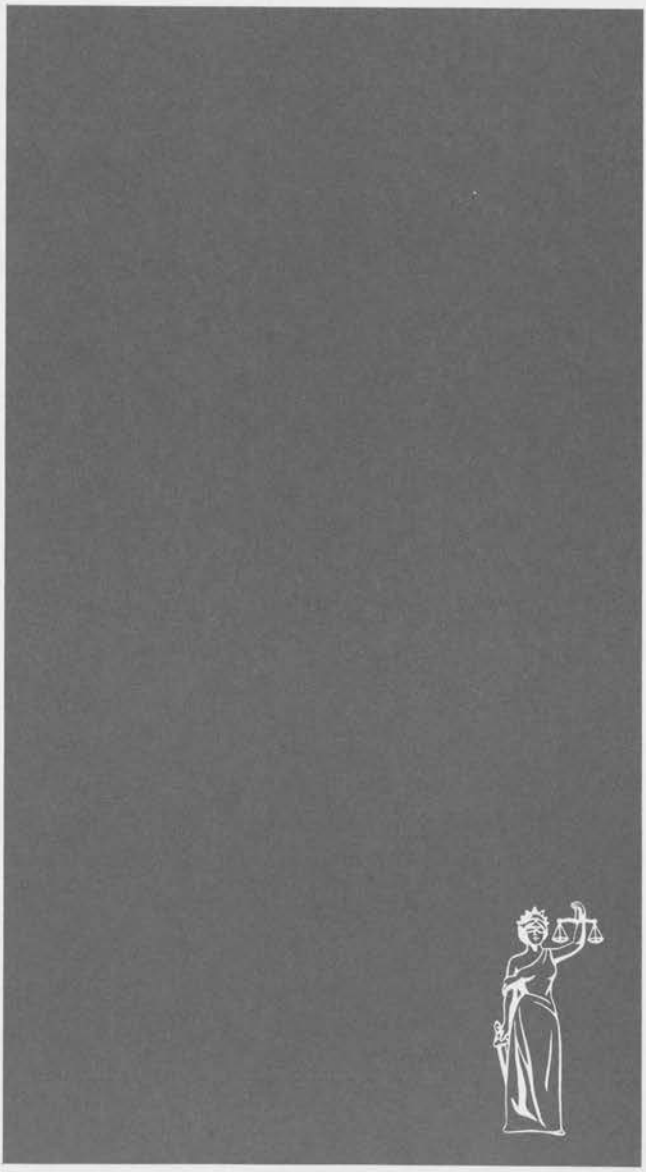
that some inhere in our political institutions and are the penalty we pay for local self-government and independence from bureaucratic control; that some inhere in the circumstances of an age of transition and are the penalty we pay for freedom of thought and universal education. These will take care 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.

A Comparative Study by Byron W. Daynes

The Commission Plan

for the Retirement, Discipline and Removal of Judges



The American Judicature Society June 1968

JUDICIAL QUALIFICATIONS COMMISSIONS

	STATE	CALIFORNIA	COLORADO	FLORIDA	MARYLAND	NEBRASKA	NEW MEXICO	OHIO	PENNSYLVANIA	TEXAS	VERMONT
	Members of Commission	2 judges of Courts of Appeal 2 judges of Superior Courts 1 Municipal Court judge 2 members of bar 2 non lawyers	3 judges of district courts 2 judges of county courts 2 lawyers 2 non lawyers	2 judges of the district courts of appeal 2 judges of the circuit court 2 lawyers 3 non lawyers	3 judges from the court of appeals, the circuit court or Supreme Bench of Baltimore City 1 lawyer 1 non lawyer	2 judges of the Supreme Court 2 judges of the District Court 1 judge of a municipal court 1 judge of the Nebraska Workmen's Compensation Court 1 judge of a county court 2 lawyers 2 non lawyers	2 judges 2 lawyers 5 non lawyers	Board of Commissioners on Grievances and Discipline which is an existing board with other functions. There are 17 lawyers, appointed by the Supreme Court on the Board	3 judges of courts of common pleas 2 judges of Superior Court 2 lawyers 2 non lawyers	2 Court of Civil Appeal judges 2 District Court judges 2 lawyers 3 non lawyers	Supreme Court
	How Members Selected	appointed by Supreme Court appointed by Supreme Court appointed by Supreme Court appointed by board of governors of state bar appointed by governor and approved by Senate	appointed by Supreme Court appointed by Supreme Court appointed by majority vote of governor, attorney general and chief justice appointed by governor	appointed by district court of appeals appointed by circuit court appointed by board of governors of state bar appointed by governor	appointed by governor appointed by governor appointed by governor	appointed by chief justice appointed by chief justice appointed by chief justice appointed by chief justice appointed by chief justice appointed by executive council of state bar appointed by governor	to be fixed by law to be fixed by law appointed by governor		selected by Supreme Court selected by Supreme Court selected by governor selected by governor	appointed by Supreme Court with consent of Senate appointed by Supreme Court with consent of Senate appointed by board of directors of state bar with Senate consent appointed by governor with consent of Senate	
	Term of Members	four years	four years	6 years staggered terms	four years	not specified	four years four years five years staggered	not specified	four years	six years, staggered	not applicable
	Judges Subject to Commission	any judge	any justice or judge of a court of record	supreme court, district courts of appeals and circuit courts	all judges who are elected, subject to election or appointed to a term of 4 or more years	judge of any court	any justice, judge or magistrate of any court	any judge	any justice or judge	judges of the appellate court, district court and the criminal district courts	any judicial officer
	Who May Complain	not specified but practice is to allow anyone to complain	not specified, but presumably anyone may complain	not specified but presumably anyone may complain	not specified but presumably anyone may complain	any citizen of the state	not specified but presumably anyone may complain	any individual	complaints may come from "any source"	complaints may come from "any source"	not specified, but presumably anyone can complain
Reasons for Removal	Discipline	willful misconduct in office, willful and persistent failure to perform his duties, habitual drunkenness or conduct prejudicial to the administration of justice that brings the judicial office into disrepute	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	misconduct in office, persistent failure to perform the duties of his office, or conduct which shall prejudice the proper administration of justice	(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 misconduct in office or willful and persistent failure to perform his duties or habitual intemperance	misconduct involving moral turpitude, violation of judicial ethics, conviction of a crime involving moral turpitude or disbarment	violation of §17 of Art. 5 of the Constitution or misconduct in office, neglect of duty, failure to perform his duties or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute	willful or persistent conduct which is clearly inconsistent with the performance of his duties, or if he casts public discredit upon the judiciary or administration of justice	willful misfeasance of malfeasance in office, persistent neglect of judicial duties, habitual intemperance or any wrongful or immoral personal or official conduct rendering a judicial officer unfit to act or command public confidence and tending to bring his judicial office into disrepute or failure to comply with ethical standards issued by the Supreme Court
	Retirement	disability that seriously interferes with the performance of his duties and is, or may become permanent	a permanent or near permanent disability interfering with the performance of his duties	a permanent or near permanent disability that seriously interferes with the performance of his duties	a permanent or near permanent disability that seriously interferes with the performance of his duties	physical or mental disability seriously interfering with performance of his duties if such disability is likely to become permanent	a permanent or near permanent disability that seriously interferes with performance of his duties	permanent physical or mental disability which prevents the proper discharge of duties of his office	disability seriously interfering with the performance of his duties	permanent or near permanent disability seriously interfering with performance of his duties	
Procedure	Commission	receives verified complaints and makes a preliminary confidential investigation; holds formal hearings if necessary, or it may order hearings before 3 special masters appointed by the Supreme Court; it may recommend to the Supreme Court, a judge's retirement, censure or removal	receives verified complaints and makes a preliminary investigation; holds formal hearings if necessary, or it may order hearings before 3 special masters appointed by the Supreme Court. These proceedings are then filed with the Supreme Court. If the commission finds good cause, it shall recommend removal or retirement	receives verified complaint and makes a preliminary confidential investigation; holds formal hearings if necessary, or it may order hearings before 3 special referees appointed by the Supreme Court; these proceedings are then filed with the Supreme Court; if the commission finds good cause it shall recommend removal, discipline or retirement	receives verified complaints and makes a preliminary confidential investigation; holds formal hearings if necessary and then files them with the General Assembly; if the commission finds good cause it shall recommend retirement or removal	receive complaints and make preliminary investigation; it may in its discretion order a hearing to be held before it or before one or more special masters appointed by the Supreme Court; all proceedings before the commission or a master are confidential; if the commission finds good cause it shall recommend removal or retirement	receives complaint and makes preliminary confidential investigation; holds formal hearings if necessary, or appoints 3 masters to hold hearing; the proceedings are then filed with Supreme Court; if the commission finds good cause it shall recommend discipline, removal or retirement	Board of Commissioners on Grievances and Discipline receives complaints; it investigates complaint and if ⅖ of members of Board find substantial credible evidence in support of complaint a report is filed with the Supreme Court which then appoints a commission of 5 justices; the judges hold a hearing and if a majority finds grounds established it shall order retirement, removal or suspension	keeps informed as to matters relating to grounds for suspension, removal, discipline or retirement; receives complaints and makes a preliminary confidential investigation; holds formal hearings if necessary and then files them with the Supreme Court; after the hearings the Commission if it finds good cause, shall recommend suspension, removal, discipline or retirement	keeps itself fully aware of circumstances; receives complaints and makes preliminary confidential investigation; holds formal hearings if necessary, or may order hearings before a special master appointed by Supreme Court; these proceedings are then filed with the Supreme Court; after hearing, if the commission finds good cause it shall recommend removal or retirement	
	Supreme Court	may review the matter, and make the final disposition which may result in retirement, censure or removal	reviews the record of the proceedings on the law and facts; may hear further evidence and shall order removal or retirement as it finds just and proper, or reject the recommendation	reviews the record of the proceedings on the law and facts and it shall remand, order removal, discipline or retirement as it finds just and proper, or reject the commission recommendation	the *General Assembly* reviews the record of the proceedings on the law and facts; it may receive new evidence; ¾ of the elected members of the *general assembly* shall by joint resolution order removal or retirement as it finds just and proper, or reject the commission recommendation	reviews the record of the proceedings; may permit the introduction of additional evidence; may make such determination as it finds just and proper; may order removal, retirement or may reject the recommendation	the *general assembly* reviews the record of proceedings on the law and facts; it may receive new evidence, and order retirement, discipline or removal; or reject the commission's recommendation	the defendant judge may appeal the decision of the 5-man court to the Supreme Court which may affirm, reverse or modify the order of the commission	reviews the record of the proceedings on the law and facts; may permit additional evidence and shall order suspension, removal, discipline or retirement or reject the commission's recommendation	reviews the record of proceedings on the law and facts; may hear further evidence and shall order removal or retirement as it finds just and proper, or reject the recommendation	the Court receives the complaints; may dismiss it or if it appears that disciplinary action might be necessary, a designee of the Court will make a preliminary confidential investigation; if court then determines formal hearings shall be held it appoints a commission or committee to conduct the hearing; the Court shall review the matter and dispose of it by written order

The problem of maintaining judicial competency is one of vital interest to any judicial system concerned with the efficient administration of justice. Although it is possible to devise adequate means of selection of well-qualified individuals for the judiciary, no such plan can guarantee that all of the judges selected will remain competent throughout their careers. Thus it becomes essential to devise adequate strategies to investigate complaints about judicial officers, find sufficient means to discipline without ruining the reputations of those involved, and when the need warrants it, structure responsible methods of removing those judges who prove inadequate in the exercise of their duties. The plan that now seems to be most practicable and workable for this situation is the *commission plan* first pioneered by the state of California, but now adopted in full by ten of the states.[1] It is the purpose of this comparative summary to highlight the similarities and differences incorporated within the commission plans of these 10 states in the hope that it might encourage other states to adopt similar plans to effectively handle the problems of judicial incapacity and misbehavior.

I.
THE JUDICIAL QUALIFICATIONS COMMISSION PLAN

Among the ten states that now use the Judicial Qualifications Commission Plan, all states except Ohio and Vermont include as members of their commissions, representatives from the Judiciary, the Bar Organization, as well as laymen, seating them for a term of from 4 to 6 years. In Ohio the disciplinary and removal function has been absorbed by the already existing Board of Commissioners on Grievances and Discipline consisting of 17 lawyers appointed by the Supreme Court. Vermont, as well, deviates from the norm since its whole commission is made up of the entire body of the Supreme Court. While selection of membership to the Commission generally involves the authority of the court, the Bar Association, and the Governor, in Maryland it is the Governor that selects the full commission. In Texas, on the other hand, it is the state senate that must ratify all commission appointments.

Most of the states utilizing this plan apply it to the removal and disciplining of all judges. In Florida and Texas, however, only particular courts are covered. Removal of judges for disciplinary reasons occurs in all states for failure to perform judicial duties, for personal misconduct in office, and for intemperance. In Nebraska and Ohio a judge also chances removal for moral turpitude and disbarment. In addition, removal from office can occur in every state due to a permanent or near permanent disability that may interfere with the performance of judicial duties.

The legal procedure for commission action is somewhat the same in all of the states as well. Any citizen in the state can bring a complaint concerning a judge before the Commission. The Commission then makes a preliminary investigation holding a formal hearing whenever necessary, or conducting a hearing before special masters or referees of the state supreme court before it recommends to the High Court, (or the General Legislative Assembly in the case of Maryland and New Mexico), the disciplinary action to be taken. Upon receipt of the recommendation, the High Court, or the General Assembly, then reviews the evidence and makes final disposition. In Vermont it is the court that first receives the complaint and selects a designee to make the preliminary investigation. If necessary an ad hoc commission is appointed to hold formal hearings and make recommendations. But again, it is the Supreme Court that makes the final review and disposition.

The Chart that follows details these particulars for each state:

CONSTITUTION OF THE STATE OF CALIFORNIA, ARTICLE VI

Section 8. The Commission on Judicial Qualifications consists of two judges of courts of appeal, two judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; two members of the State Bar who have practiced law in this State for 10 years, appointed by its governing body; and two citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are four years.

Commission membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

Section 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his removal or retirement.

(b) On recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States he pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If his conviction is reversed suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the Supreme Court shall remove him from office.

(c) On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court he is suspended from practicing law in this State.

(e) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

[1] Another five states have adopted a special commission plan that is designed to deal exclusively with the involuntary retirement of judges, but ignores the disciplinary problems of the judiciary. A full detailed account of the special commission plan and the other plans for judicial discipline and removal can be obtained from the Society's *Report No.* 5 entitled "Judicial Discipline and Removal."

Rule-Making Power

SECTION 15. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Court Administration

SECTION 16. The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at his pleasure and to supervise the administrative operations of the judicial system.

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.

A MODEL JUDICIARY FOR THE 49TH STATE

The Constitution of Alaska

American Judicature Society

ARTICLE IV: THE JUDICIARY

Judicial Power and Jurisdiction

SECTION 1. The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Supreme Court

SECTION 2. The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

Superior Court

SECTION 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Qualifications of Justices and Judges

SECTION 4. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Nomination and Appointment

SECTION 5. The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Approval or Rejection

SECTION 6. Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Vacancy

SECTION 7. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Judicial Council

SECTION 8. The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to the rules which it adopts.

Additional Duties

SECTION 9. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Incapacity of Judges

SECTION 10. Whenever the judicial council certifies to the governor that a supreme court justice appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a board of three persons to inquire into the circumstances, and may on the board's recommendation retire the justice. Whenever a judge of another court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the judicial council shall recommend to the supreme court that the judge be placed under early retirement. After notice and hearing, the supreme court by majority vote of its members may retire the judge.

Retirement

SECTION 11. Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

Impeachment

SECTION 12. Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

Compensation

SECTION 13. Justices, judges, and members of the judicial council shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

Restrictions

SECTION 14. Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

American justice. But the task will not accomplish itself.

The courts and their problems have never engaged the informed, active and sustained interest of the public, even of our community leadership. Law and legal institutions are slighted in public education, and an inadequate picture seems to come through from most coverage in the press, radio, and television. This is profoundly disturbing because basic reforms in legal institutions require citizen participation and cannot be achieved by lawyers and judges alone.

In the legal system of a free society, it is as vital that justice be seen to be done as that justice be done in fact. Fidelity to law is impaired whenever court processes are carried on without dignity or with even the appearance of haste, impatience, prejudice or mechanical impersonality.

Trial courts and trial judges are central in the administration of justice; this is particularly true of the lower tribunals which are the only point of contact most of our citizens have with the legal order. It is as important that a lower court magistrate be a man or woman of character and ability as it is that our high courts be staffed by judges of intellectual and moral excellence. A nation's law is never much better than the judges who administer and apply it.

Considerations of party politics dominate the election and appointment of judges in the overwhelming majority of our states, with consequent adverse effects on the quality of judicial personnel, particularly in the lower courts where great masses of criminal cases are processed. We have many fine judges, but the prevailing quality of American judicial personnel is not as high as it should be.

Law's great missions include the preservation of individual rights and the protection of public peace and order. Respect for law is the foundation of society, and every resource of support must be given to those who have responsibility for law enforcement in the endlessly difficult conditions of

contemporary society. At the same time, persons accused of criminal offenses are entitled to fairness and deliberation in the adjudication of the charges against them and to the effective assistance of counsel for their defense.

Today the lower courts in many great cities manage to keep up with the flood of criminal cases that reach them only by the employment of assembly line procedures that often make a mockery of the common law tradition of dignity, decorum and individualization in the adjudication of penal charges. Hundreds of thousands of misdemeanor cases are disposed of each year by the overworked judges of our lower criminal courts on a hectic, keep-moving basis. Respect for law, judicial institutions, and justice itself are undermined when the administration of justice takes on the features of a mass production operation.

Civil claims should be speedily adjudicated. Today the law's delays in civil suits are intolerable. An unrelenting flow of automobile accident personal injury cases has inundated our trial courts. Cases are delayed a year, two years or more in reaching trial, and the delays are often longest when the need for prompt relief is most imperative. The more severe and disabling a claimant's injuries are, the longer he has to wait for reparation.

We must be candid in appraising the day-to-day operations of our legal institutions. We must be imaginative in constructing new solutions and determined to carry them through, whatever self-interested opposition may be encountered. Basic legal reforms can be achieved only by political action in the state legislatures and at the polls. The problems of the courts in contemporary society must be made plain to all citizens everywhere. Once the problems of the legal order are clearly understood, we are confident that broadly based citizen support for long needed judicial reforms will be forthcoming.

On the basis of our shared convictions, we make the following recommendations:

RECOMMENDATIONS OF THE 27th AMERICAN ASSEMBLY
ON THE COURTS, THE PUBLIC AND THE LAW EXPLOSION

Unified Court System and Effective Administrative Management

1. A state-wide unified court system should be adopted in every state, with effective administrative management to coordinate and supervise judicial business and all related aspects of law administration. Centralized authority and responsibility should be established. Persons professionally trained in administration should be brought into the operations of the court system. We suggest that a management survey of the courts be conducted in each state. The knowledge and experience of experts in business and public administration should be drawn on to improve the efficiency of court operations.

Merit Selection of All Judges

2. A plan of merit judicial selection and tenure should be adopted in every state and made applicable to the selection of all judges, from judges of courts of last resort down to and including the magistrates in lower criminal courts, small claims courts and the like. We commend the practicable and proved method of merit judicial selection now embodied in the Model Judicial Article of the American Bar Association.

Voluntary Use of Merit Selection

3. Pending the enactment of merit judicial selection, state and municipal executives should, on a voluntary basis, follow the procedures of the merit selection plan in exercising their appointing powers. Governors and mayors who take this step are to be commended.

Professional Education of Judges

4. Programs of judicial education have proved their worth and should be intensified and extended. We are convinced that effective judicial performance requires continuing in-service training, and we recommend that arrangements be made whereby judges, particularly new judges, are enabled to participate in special training programs at public expense.

Judicial Compensation

5. 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.

Mandatory Retirement

6. 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.

Involuntary Retirement and Removal

7. Cumbersome procedures, e.g., impeachment, should be supplemented by effective machinery for the investigation of complaints against judges and for the removal of those found unfit or guilty of misconduct in office. The commission plan of judicial removal adopted by constitutional amendment in California in 1960 seems admirably designed for these purposes and is worthy of adoption in other states.

Increase of Judicial Manpower

8. Provisions should be adopted to keep trial court judgeships in line with continuing increases in population. We recommend specifically that statutes be enacted for the creation of trial court judgeships in proportion to state or local population, with provision for automatic increase in the number of judges as the population increases.

Judges of Criminal Courts

9. In most of the great cities of the United States the number of judges now sitting in the lower criminal courts is grossly inadequate and should be increased. Every effort should be made to improve the quality of personnel in these courts. Merit selection of lower court magistrates and greatly improved salary and working conditions are important steps to this end.

Representation of Accused Indigents by Public Defenders

10. Steps should be taken at once to provide effective assistance of counsel to all indigent persons accused of felonies or serious misdemeanors. We are convinced that the establishment of tax-supported professionally competent defender offices is by far the best way to insure this objective in metropolitan areas.

Law Enforcement Agencies

11. Measures should be taken to furnish substantially increased financial support for police and prosecution agencies, and probation and parole services to equip them to handle the heavy burden of effective and fair enforcement of the law.

Pre-trial Detention and Bail Bond System Needs Revision

12. The existing bail system should be drastically modified. Accused persons should not be held in detention pending determination of charges against them merely for lack of funds to raise bail.

Alcoholism and Narcotic Addiction

13. Alcoholics and persons addicted to narcotics should not be processed through regular criminal channels but should be committed by court order for necessary medical and psychiatric treatment under court supervision. Other approaches to the control of problems of alcoholism and narcotics addiction should be vigorously explored.

Minor Acts of Misconduct

14. To reduce the heavy caseload of the criminal courts, minor acts of misconduct should, whenever possible, not be handled by criminal sanctions, but by the employment of administrative penalties with simplified procedures to enforce them. In this connection, we warmly approve the growing practice of handling minor traffic offenses without the necessity of court appearance.

Automobile Injury Cases and Delay in the Courts

15. New measures must be devised to assure prompt relief to hundreds of thousands of automobile accident victims and to reduce court delays caused by the press of personal injury litigation. Remedial devices to accomplish these ends should be thoroughly explored, among them: 1. eliminating the fault principle in determining liability in most automobile accident personal injury cases; 2. the "basic protection plan" whereby the first $10,000 of loss would be recovered on an insurance basis; and 3. the establishment of machinery for administrative compensation, as in industrial accidents.

Trial by Jury

16. In civil cases generally the right of trial by jury should be retained, although there is need for reform in the administration of the jury system.

Court Congestion Remedies

17. Measures should be taken to increase the judicial manpower available for the trial of civil cases, particularly as long as trial courts have to carry the present burden of personal injury cases arising from automobile accidents. We recommend that effective procedures be established for the temporary assignment of judges to places where judicial business is most pressing. We recommend further that courts be kept open during the summer months for the trial of civil as well as criminal cases, and that court-room facilities be modernized to make summer sessions possible.

Citizens' Committees on the Courts for Each State

18. We recommend that citizens' committees on the courts be established in all parts of the country to enlist the informed and active support of the public in the cause of judicial reform. Justice is everybody's business, and every American has a stake in the fair and efficient operation of our courts.

Participants

At the close of their discussions the participants in the Twenty-seventh American Assembly at Arden House, Harriman, New York, April 29-May 2, 1965, on *The Courts, the Public and the Law Explosion,* reviewed as a group this statement. Although there was general agreement on the final report, it is not the practice of The American Assembly for participants to affix their signatures, and it should not be assumed that every participant necessarily subscribes to every recommendation.

FRANK S. ADAMS
Editorial Board
The New York Times

ROBERT E. ALLARD
Assistant Executive Director
American Judicature Society
Chicago

MARION P. AMES
League of Women Voters
of N. Y., Scarsdale

EDWARD M. BARNES
President
Somerset Hills National Bank
Bernardsville, N.J.

EDWARD L. BARRETT, JR.
Dean, School of Law
University of California
Davis

GENE BLAKE
Los Angeles Times
California

GILBERT R. BOUTIN
President
Mattatuck Manufacturing Co.
Waterbury, Conn.

GEORGE P. BROCKWAY
President
W. W. Norton & Co.
New York

HERBERT BROWNELL
Former U. S. Attorney General
Lord, Day & Lord
New York

DAVID B. BRYSON
Harriman Scholar
Columbia University

*TOM C. CLARK
Associate Justice
Supreme Court of the
United States Washington, D.C.

CHARLES B. CRISMAN
Executive Director
Committee for Modern Courts
New York

WILLIAM CUFF, IV
Harriman Scholar
Columbia University

CHARLES U. DALY
Vice President
University of Chicago

LEROY G. DENMAN, JR.
Chairman
San Antonio Loan & Trust Co.
Texas

BARBARA DILLINGHAM
Executive Committee
Harris County Grand Jury
Association
Houston

ROBERT W. DUGGAN
District Attorney of Allegheny
County
Pittsburgh

CHRISTOPHER F. EDLEY
Public Affairs Program
The Ford Foundation
New York

DUNCAN ELDER
Chairman, Executive Committee
Committee for Modern Courts
New York

ROBERT C. FINLEY
Judge
The Supreme Court of Wash.
Olympia

C. CLEMENT FRENCH
President
Washington State University

JAMES G. FULTON
Representative from Pennsylvania
Congress of the United States

*Delivered formal address.

WILLIAM GILES
Editor
The National Observer
Silver Spring, Md.

*ARTHUR L. GOODHART
Professor of Jurisprudence,
Emeritus
Oxford University

MILTON D. GREEN
Professor of Law
New York University

LLOYD GRIFFIN
President (Television)
Peters, Griffin, Woodward
New York

LAWRENCE GUSSMAN
President
Stein, Hall & Co.
New York

DANIEL GUTMAN
Dean
New York Law School

HARRY HALPERN
Rabbi
East Midwood Jewish Center
Brooklyn

GEOFFREY C. HAZARD, JR.
Administrator
American Bar Foundation
Chicago

DOROTHY I. HEIGHT
National President
National Council of Negro Women
New York

WILLIAM P. HOBBY, JR.
Executive Editor
The Houston Post
Texas

MICHAEL L. HOFFMAN
Executive Vice President
Lambert International Corporation
New York

JEROME H. HOLLAND
President
Hampton Institute

W. E. HUSSMAN
President
Palmer Media Group
Camden, Arkansas

BOISFEUILLET JONES
President
Emily and Ernest Woodruff
Foundation
Atlanta

HARRY W. JONES
Professor of Law
Columbia University

EDWARD W. KELLEY, JR.
President
Kelley Manufacturing Co.
Houston

FLORENCE M. KELLEY
Administrative Judge
Family Court of the State
of New York

FANNIE J. KLEIN
Assistant Director
The Institute of Judicial
Administration
New York

SIGURD S. LARMON
Former Chairman
Young and Rubicam
New York

BOYD LEWIS
President and Editor
Newspaper Enterprise Association
New York

ALBERT R. McMEEN, III
Harriman Scholar
Columbia University

ELTON F. MacDONALD
E. F. MacDonald Co.
Detroit

ORISON S. MARDEN
President Elect
American Bar Association
New York

FRANCIS M. MASSIE, M.D.
Lexington, Kentucky

CECIL MORGAN
Dean, School of Law
Tulane University

MARGARET W. NELSON
Staff Associate,
The Law and the Citizen
American Association of
University Women
Washington, D.C.

THOMAS H. NELSON
Management Consultant
New York

HUBERT H. NEXON
Vice President
Commonwealth Edison Company
Chicago

D. W. OAKLEY
President
Mobil Finishes Co.
New York

PHIL PEDEN
Judge, District Court
Houston

JOHN de J. PEMBERTON, JR.
Executive Director
American Civil Liberties Union
New York

JOHN D. PENNEKAMP
Editor
The Miami Herald
Florida

WARREN H. PIERCE
Chief Editorial Writer
St. Petersburg Times
Florida

WILLIAM H. PRESS
Executive Vice President
The Metropolitan Washington
Board of Trade
D.C.

MAURICE ROSENBERG
Professor of Law
Columbia University

HENRY E. SANTO
Judge, District Court
Denver

ROBERT SAUDEK
Robert Saudek Associates
New York

LEONARD COE SCRUGGS
Financial Vice President
American General Life
Insurance Companies
Houston

ABRAHAM SHORE
Abraham Shore & Co.
Elkins Park, Pa.

FRED N. SIEVERS
The Evansville Press
Indiana

JOHN SLAWSON
Executive Vice President
American Jewish Committee
New York

FRANCIS A. STATEN
President
Acme Metal Works
Portland, Oregon

JOHN TEMPLE SWING
Director of Administration
Council on Foreign Relations
New York

EARL D. WALLACE
Chairman of the Board
Shakertown
Kentucky

STERRY R. WATERMAN
Judge, Second Circuit
U. S. Court of Appeals
Vermont

ALAN F. WESTIN
Professor of Public Law
& Government
Columbia University

ROBERT M. WHITE, II
President and Editor
The Mexico Ledger
Missouri

GLENN R. WINTERS
Executive Director
American Judicature Society
Chicago

DENNIS A. YORK
Lt. Col.; JAGC
Washington, D.C.

DONALD R. YOUNG
The Rockefeller Institute
New York

THE AMERICAN ASSEMBLY

The American Assembly was established by Dwight D. Eisenhower at Columbia University in 1950. It holds nonpartisan Assemblies of American leaders and publishes authoritative books to illuminate issues of United States policy.

Currently two national programs are initiated each year. Authorities are retained to write background papers presenting essential data and defining the main issues in each subject.

About 60 men and women representing a broad range of experience, competence and American leadership meet for several days to discuss the Assembly topic and consider alternatives for national policy.

All Assemblies follow the same procedure. The background papers are sent to participants in advance of the Assembly. The Assembly meets in small groups for four or five lengthy periods. All groups use the same agenda. At the close of these informal sessions participants adopt in plenary session a final report of findings and recommendations.

The background papers for each Assembly program are published for use by individuals, libraries, businesses, public agencies, non-governmental organizations, educational institutions, discussion and service groups.

The Courts, the Public and the Law Explosion, 192 pages, edited by Harry W. Jones, Cardozo Professor of Jurisprudence at Columbia University and published by Prentice-Hall, can be ordered from the American Judicature Society, 1155 East 60th Street, Chicago, Illinois 60637. The paperbound edition is $1.95 and the clothbound edition is $3.95 each.

The chapters are: *Introduction,* by Harry W. Jones, Columbia University; *The Business of the Trial Courts,* by Milton D. Green, New York University; *Court Congestion: Status, Causes, and Remedies,* by Maurice Rosenberg, Director, Project for Effective Justice, Columbia University; *After the Trial Court—The Realities of Appellate Review,* by Geoffrey C. Hazard, Administrator, American Bar Foundation; *Criminal Justice—The Problem of Mass Production,* by Edward L. Barrett, Jr., Dean, School of Law, University of California, Davis; *The Trial Judge: Role Analysis and Profile,* by Harry W. Jones; and *Judicial Selection and Tenure in the United States,* by Glenn R. Winters, Executive Director, and Robert E. Allard, Director of Special Projects, American Judicature Society.

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.

☆ ☆ ☆ ☆

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.

THE COURTS, THE PUBLIC *and the* LAW EXPLOSION

The Final Report of the 27th American Assembly

THE administration of justice in the United States is in trouble. Existing judicial resources and old ways of doing things are clearly inadequate to meet the burdens imposed on our courts by the "law explosion" of the mid-20th century. In most jurisdictions there is far too much work for too few judges even in the best of circumstances, and antiquated patterns of court organization and management are wasteful of badly needed judicial manpower.

We affirm our belief in the historic values of the common law system of adjudication. We are confident that the changes necessary to adjust existing judicial institutions to the conditions and problems of today can be accomplished without in any way endangering judicial independence or the quality of

tial 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.

This National Conference should be followed by similar conferences in the several states in order to build upon its accomplishments.

National conferences of this character should be held periodically in the future.

The National Conference
on
Judicial Selection
and
Court Administration

Chicago, Illinois
November 22-24, 1959

Sponsoring Organizations

American Bar Association
JOHN D. RANDALL, PRESIDENT

Institute of Judicial Administration, Inc.
PHILBRICK McCOY, PRESIDENT

American Judicature Society
ALBERT E. JENNER, JR., PRESIDENT

Printed and Distributed as a Service of the American Judicature Society

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

CONSENSUS of the National Conference on Judicial Selection and Court Administration

Sponsored by
AMERICAN BAR ASSOCIATION
INSTITUTE OF JUDICIAL ADMINISTRATION, INC.
AMERICAN JUDICATURE SOCIETY

The Conference Consensus

The National Conference on Judicial Selection and Court Administration, the first nation-wide event of its kind attended by both lawyers and laymen, brought together 157 leading judges, lawyers and representatives of the lay public from 36 states, Canada and England for a three-day program of speeches and panel discussions.

The entire membership of the Conference was divided into seven panel discussion groups, and an equal number of discussion topics was selected. Each of the seven groups then discussed each of the seven topics, under leadership of a discussion team. Each team went from group to group presenting the same topic each time. At the conclusion of the Conference all members had participated equally in its deliberations.

The *consensus* presented here is the result of each discussion team's summary of the response of seven different panel groups as modified by a closing plenary session and final revision by a Committee on Style. Consensus, therefore, does not necessarily mean unanimity of opinion by each and every participating member of the Conference. Consensus does mean substantial reflection of the general attitudes expressed by members of the Conference as interpreted by discussion teams of experts on each of the seven topics.

The consensus on these topics is reproduced here by the American Judicature Society in the hope that it may serve as a point of departure for similar conferences and for all persons who are concerned with problems of judicial selection and court administration.

1. HOW SHOULD JUDGES BE SELECTED?

The objective of any method of selection should be to obtain judges free of political bias and possessed of qualities that will lead to the highest performance of their judicial duties.

It is indispensable to the proper functioning of the judicial system that men who are to be elevated to the bench be selected solely on merit, on the basis of their qualifications for judicial office. In the process of their selection as well as in their work and tenure they must be free of all collateral influence and partisan political pressures.

Each of the panels examined the methods of selection in use in the various states. Some conferees from states having an appointive system reported that with an enlightened and cooperative governor the appointment of judges of consistently high quality has resulted. This method has the merit of focusing direct responsibility upon the appointing authorities.

Even under elective systems, most judges have been appointed initially because in those states the governor has the power to fill vacancies by appointment.

Criticism was directed mainly at the partisan elective system and particularly with reference to the metropolitan centers, where its defects appear in their most aggravated form.

Although the non-partisan elective system lessens party dominance in the selection of judges, it is not a method to be recommended for securing the best qualified men. The non-partisan system dissipates responsibility; furthermore it does not prevent interim appointments on a partisan basis. A judge so appointed may be difficult to remove even though unqualified.

The American Bar Association plan affords the means of avoiding the weaknesses in other existing methods, while retaining their desirable features. It provides for the filling of judicial vacancies by appointment by the governor from nominations submitted by a nonpartisan commission composed of lawyers, judges and layman. Tenure of judges so appointed is subject only to vote of the people at a non-competitive election. This relieves the judge from the necessity of campaigning for office against opposing candidates, but still requires him to answer to the electorate. These two distinctive features tend to assure selection and retention of the best qualified judges.

Considerable variation in individual drafts is possible under the American Bar Association plan. Careful consideration must be given to the composition of the body that is to make the recommendations to the appointing officer. Provision should be made for appointment by the chief justice or other responsible official in case the governor fails or refuses to act.

Further study should be given to these and other features of the plan in the light of the experience in states in which it has been in operation.

2. MAKING THE EXISTING STATE SELECTION SYSTEMS WORK

In every state, whatever its existing system of judicial selection, there is much that can be done by lawyers and others to bring about the election or appointment of better judges. Important improvements are possible without constitutional amendment in most localities. These improvements should be undertaken even though campaigns for changing the method of selection are in progress or in prospect since these programs usually take years to accomplish.

In states having an appointive judiciary, and in elective states where most judicial vacancies are filled by executive appointment, the governor or other appointing authority should have the benefit of the advice of the bar as to the qualifications of persons under consideration for appointment.

Political party leaders as well as candidates for governor or other offices which hold the power of appointment should be asked to commit themselves to a policy of cooperation with the bar in the filling of judicial vacancies. Lawyers should enlist representative citizens to join with the bar in seeking these commitments.

If possible, cooperation should include supplying the appointing authority with names of qualified persons suitable for appointment, preferably chosen from both major parties. In any event, the bar should be afforded an opportunity to appraise the qualifications of proposed appointees sufficiently in advance of the time of appointment to express objection to those not qualified.

By conferences with party leaders and otherwise, the bar should exert its influence toward inducing the political parties to slate the best possible candidates for judicial office.

The informed opinion of the members of the bar as to the qualifications of judicial candidates should be brought to the attention of the voters. This should be more than a mere poll of the relative popularity of the various candidates among the members of the bar.

The bar should not be content with the mere announcement of its recommendations. It should campaign actively in support of its position for or against judicial candidates. The public should be encouraged to look to the bar for guidance in choosing among candidates.

The bar should make the public aware of the need for qualified judges. Non-lawyer citizen groups should be enlisted in this continuing educational effort. It should be directed toward students and school children as well as adult voters.

Adequate judicial salaries and retirement benefits, and security of tenure are necessary if good lawyers are to give up their practice for the bench. In elective states, security of tenure requires assurance that sitting judges whose records are satisfactory will have the active support of the bar for reelection, regardless of who may run against them.

3. PROBLEMS OF FEDERAL JUDICIAL SELECTION

The following problems were raised and discussed:

1. The role of United States senators in federal judicial selection in view of the fact that appointments to the federal judiciary are by and with the advice and consent of the Senate; in view of the fact that United States senators in anticipation of their exercise of this power recommend possible appointees to the president; and in view of the fact that the practice of "senatorial courtesy" may enable a senator to block consideration of any appointee personally distasteful to him.

2. The role of the Department of Justice in federal judicial selection in light of the fact that the United States government is the chief litigant in the federal courts; in light of the number of judicial appointments from federal departments and agencies; including the Department of Justice; in light of the understandable ambition of some federal judges for judicial promotion; and in light of the president's natural reliance upon his attorney-general to advise him

with respect to judicial appointment.

3. The role of the American Bar Association's Standing Committee on the Federal Judiciary and the role of state and local bar associations.

4. The apparent contradiction in the American Bar Association resolution adopted at the 1959 annual meeting which recommends on the one hand that the best qualified lawyers and judges available be selected and appointed, and on the other hand that appointments be made on a bi-partisan basis.

5. The formulation of standards for the selection of federal judges.

6. The role of the Federal Bureau of Investigation.

7. Searching out and bringing to the attention of the president the lawyers and judges best qualified for appointment.

8. The expediting of appointments and confirmations to effect the prompt filling of vacancies.

Both the immediate and the long range goals should be the implementation of a system of selection which will assure the prompt appointment of the best qualified men available, on a non-partisan basis.

The following procedures were recommended as immediate steps toward the achievement of these goals.

1. State and local bar associations should take the initiative by making their services available to United States senators, or to the attorney-general or in proper cases to the president by way of submitting the names of highly qualified lawyers and judges for their consideration, or in passing upon the qualifications of those lawyers and judges under consideration.

2. The present practice under which the president through the attorney-general's office seeks the opinion of the American Bar Association's Standing Committee on the Federal Judiciary with respect to the qualifications of lawyers and judges under consideration for appointment to federal judicial office is a step forward and should continue to be encouraged. Presidential candidates should be approached as to their willingness to continue this practice if elected.

The American Bar Association should take steps to acquaint state and local bar associations with the work of the American Bar Association's Standing Committee and with the standards by

which prospective appointees to the federal judiciary are measured.

3. A candidate should not be rejected simply because he is over 60 years of age. However, age should be considered, along with health, possible imminence of retirement, and similar factors.

Trial experience should be considered in weighing a candidate's qualifications, particularly for the trial bench, but lack of it should not necessarily disqualify him.

State and federal trial and appellate judges should be given serious consideration for appointment to federal trial and appellate court vacancies.

The fact that a lawyer is active in politics or is a member of the staff of a federal department or agency should not be held against him, nor should it be a factor upon which his recommendation for appointment is based.

4. JUDICIAL TENURE, COMPENSATION AND RETIREMENT

Security of tenure must be provided for judges. If the method of selection is such that the lawyers chosen for the bench are of the highest caliber, then long terms of office are desirable. They serve both to attract qualified lawyers to the bench and to provide a climate of independence and impartiality. A relatively short term may be desirable as a testing period prior to a long or good behavior term.

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. The initial term should be approximately three to five years, to be followed by a longer or good behavior term if the electorate votes that the judge should be retained.

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.

Judicial salaries should be fully adequate to attract to the bench lawyers of high caliber and to maintain them and their families at a level of dignity commensurate with the high office in which they serve. Judicial salaries in all jurisdictions both state and federal should be reviewed periodically to ensure that they are always currently adequate.

5. DISCIPLINE AND REMOVAL OF JUDGES

The traditional methods of impeachment and legislative address should be retained, but they are inadequate for most needs and should be supplemented.

There is a need for a less cumbersome method to bring about the discipline or removal of a judge of any federal, state or local court whose conduct has subjected or is likely to subject the court to public censure or reproach or is prejudicial to the administration of justice.

The most urgent need is for methods to deal with judicial conduct of a nature not warranting

or requiring removal.

The ultimate responsibility for disciplinary action or removal should rest in the highest court of the state. That responsibility and the power to discharge it should be recognized and clearly defined.

Provision should be made for the initiation and investigation of complaints before presentment of formal charges, and precautions should be taken for the protection of all persons involved. Hearings should be private unless the judge under consideration otherwise requests.

6. 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 colleague-ship 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.

7. 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 substan-

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?"

Printed and Distributed as a Service of the
American Judicature Society
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.

NOMINATE
APPOINT
ELECT

The Missouri Plan for Judicial Selection

American Judicature Society
to promote the efficient administration of justice

Too often the benches of our courts are occupied by political mediocrities long on tenure and short on ability. Now Missouri and California have shown how all states can select judges—and remove them—strictly according to merit

By Paul Friggens

Is That Judge Fit to Sit?

"Of all people in our society, the judge must remain the most incorruptible, because he is the final protector of our rights to life, liberty and property under the law," declares Louis H. Burke, justice of the Supreme Court of California. Indisputable. But suppose that a case involving you came before a judge like one of the following:

• Three state Supreme Court justices in Oklahoma who shared an alleged $150,000 bribe to "throw" their decisions in favor of a shady investment company fighting a state tax claim. One justice has served a nine-month prison sentence for income-tax evasion; another has been convicted and impeached; the third has resigned under threat of impeachment.

• A district judge in a western state who flunked his bar examinations five times before he was finally admitted to practice.

• A Michigan recorder's court judge who was convicted for failure to file any income-tax returns since 1945.

• Two Louisiana Supreme Court justices who had a fist fight in the court's chambers.

"The administration of justice in the United States is in trouble," says a report put out by the American Assembly of Columbia University entitled "The Courts, the Public and the Law Explosion." Indeed, in state after state there is growing alarm over judges who are sick or senile, corrupt, guilty of unconscionable gold-bricking, habitually intoxicated or otherwise unfit to serve on the bench. To be sure, the great majority of our judges are honest, hardworking and capable. But, as distinguished judge and public

servant Samuel I. Rosenman of New York said in an address to the bar: "Let us face the sad fact that in too many instances the benches of our courts are occupied by men of small talent, undistinguished in performance, technically deficient and inept."

The truth is that we are victims of two costly evils in our horse-and-buggy judicial system: popular election of county, municipal and state judges, a practice which abandons our courts to entrenched politics; and a scandalous tenure system which allows a judge to hang on "during good behavior" even though he may suffer mental decrepitude, neglect his duties or be otherwise incompetent.

How can we improve this situation?

Run on the Record. Fortunately, there are excellent "model" programs already in operation. The first is the so-called Missouri Plan of merit selection, adopted a generation ago to thwart the corrupt Pendergast political machine.* The heart of this plan is a *nonpartisan* nominating panel, usually consisting of seven members: three lawyers named by the state bar association, three outstanding laymen appointed for staggered terms by the governor, and a judge as chairman. Whenever an incumbent judge dies, retires or is voted out of office, this panel carefully screens possible replacements, then puts forward a slate of three or more of those it considers the best-qualified candidates. The governor then fills the judgeship from the recommended slate.

Thereafter, when a judge's term is up, he runs not against another individual and on a party label, but *on his own record*. For example, at general elections, voters in Missouri are confronted with this simple judicial ballot: "Shall Judge X of the Supreme Court of Missouri be retained in office? YES NO (Scratch one)."

To help them decide, voters are given valuable guidance. Before each election, lawyers conduct a poll within their profession on the candidates' qualifications for retention, and the results are given wide publicity in local news media. In addition, newspapers publish biographies, records of reversals and conduct in office, and make recommendations.

An editorial in the Kansas City *Star* sums up the proved benefits: "A judge doesn't have to borrow and spend money to conduct a campaign. He is not forced to make political promises to men who control votes. He does not have to answer to a political boss, nor does he need to accept campaign contributions from lawyers who will practice in his court. It is by far the best plan yet devised to keep the bench out of partisan campaigns."

*The plan was drafted by the American Judicature Society. Its basic idea originated with a Northwestern University Law School professor, Dr. Albert M. Kales, as a remedy for scandalous conditions in the courts prior to World War I.

Says Loyd E. Roberts, Joplin attorney and recently president of the state bar association, "Unquestionably, we have better-qualified personnel. Excellent lawyers who would not submit themselves to the ordeals of the old political system now agree to serve on our bench."

Says Justice Laurance M. Hyde of the Missouri Supreme Court, "Our judges can now be working on the next *case* instead of on the next *election*." Since it's no longer necessary to take time out to campaign and mend political fences, the judges are disposing of substantially more cases.

Are there any criticisms of the Missouri Plan?

A few. The most frequent complaint is that the appointive system "takes the judiciary away from the people," and is, therefore, undemocratic. "But the idea that voters themselves select their judges is something of a farce," Judge Rosenman told a meeting of the American Judicature Society. "The real electors are the political leaders who nominate practically whom they choose. The voters, when they reach the judicial part of the ballot, usually vote blindly for the party emblem."

Altogether, the Missouri merit plan has proved a highly significant reform. Today essential features of it are in use statewide or in some courts or cities in Alabama, Alaska, California, Colorado, Florida, Illinois, Iowa, Kansas, Nebraska, New York, Oklahoma, Puerto Rico, Utah and Vermont. Its adoption or extension is under consideration in some 30 other states. Moreover, some jurists feel that its key concept of a nonpartisan nominating commission might strengthen our federal judiciary appointments as well.

Marriage Mills and Golf Games. But getting good judges *onto* the bench still leaves us with the problem of getting bad judges *off*. At present, in most states, once a judge is elected, there is no way to remove him, save by defeat at the polls, impeachment or conviction for felony. Federal judges are even harder to remove, since appointment is for life. In some states the highest court holds the power of removal of state judges, but it is rarely used. In others, a special Court of the Judiciary may be convened, or disbarment tried, with ultimate removal by the high court. But the procedure is cumbersome and ineffective.

Recognizing this weakness, California a few years ago launched a legislative investigation of its courts. Among other disclosures, this inquiry found that a 68-year-old municipal judge had convened court on only nine mornings in two years. Claiming a heart ailment, he nevertheless managed to play golf—while his backlog of cases mounted. He had collected $33,000 for nine mornings' work!

The investigation also exposed judges who failed to show up in their courtrooms for months at a time because of sickness or age, who

indulged in short work weeks and lengthy vacations, who refused to try cases that they believed would be unpleasant or dull, who delayed decisions for so long that they forgot key points in a case. Some ran marriage mills as a flourishing sideline. A few were unable to appear for scheduled trials because of intoxication, or sat on the bench while drunk.

Shocked by these disclosures, California in 1960 voted a constitutional amendment establishing a Commission on Judicial Qualifications. Composed of nine members (five judges appointed by the California Supreme Court, two public members appointed by the governor, two lawyers named by the state bar association), the commission is a permanent body empowered to investigate complaints about the courts at all levels. Upon recommendation of the commission, the Supreme Court may hold a public hearing and remove a judge.

Protecting the Public. Now in its sixth year of operation, the commission works this way:

Any attorney, public official, litigant or private citizen may report a judge for a disability or dereliction. If the commission staff finds that the complaint has merit, it immediately investigates. For example, there were recent complaints that a trial judge,* although only in his 60's, was apparently senile and "doesn't know half the time what he's doing." The commission made a preliminary inquiry, found that the judge was indeed unable to perform his duties and wrote to him requesting an explanation. Within two days, the judge conceded his senile condition and retired on a generous pension.

In another case, the commission investigated a judge who habitually lost his temper and abused counsel and litigants. Confronted with the charges, the judge was profoundly shocked. "I didn't realize this was happening," he pleaded. The man was emotionally disturbed; six months later he resigned his judgeship. Had he not resigned, the commission had power to order medical and psychiatric examination.

In this manner, the commission is keeping tabs on nearly 1000 California judges, from justices of the peace on up. Since its establishment, the commission has received more than 400 complaints, induced 30 judges to resign or quietly retire, and recommended one removal. Although judges have been retired for many reasons, the majority have stepped down because of disabling illness or mental impairment due to age. Nearly all have withdrawn without hardship under a state pension.

While the resignations and retirements alone have strengthened the courts, the power of investigation and removal accomplishes something else: it is a perpetual prod and stimulus to judges to conduct themselves as the office demands. A simple registered letter from the commission advising that it is investigating a complaint usually works wonders. Says Superior Court Judge William B. Neeley of Los Angeles, currently commission chairman: "Like all human beings, judges can slip into shoddy attitudes —but they are less likely to do so now that they realize there is a body to which the public can complain."

Last year, after careful study, the California plan was adopted in Texas district and appellate courts, and currently is being promoted by concerned citizens' groups in half a dozen states. The American Assembly's conference on the courts strongly endorsed the plan as a model for other states. Sen. Joseph Tydings of Maryland, chairman of a judiciary subcommittee, has been holding hearings on the program for possible application to the federal bench. At this writing, Sen. Hugh Scott of Pennsylvania plans to introduce a bill in Congress to establish a nonpartisan commission to advise the President on federal judicial appointments.

Needed: A Citizens' Campaign. How can you secure the Missouri and California reforms in your state?

To enact such sweeping measures, citizens must gird themselves for a hard, intensive campaign, and be prepared for setbacks. In Missouri, for example, tremendous citizen effort was required. Repeatedly blocked in the legislature, the people finally circulated petitions and won a referendum by 90,000 votes. Within 60 days, the spoils politicians were back again with another petition demanding a repealer. This time the reform carried by 160,000 votes. But there have been still other attempts to knock it out and, ironically, Missouri's rurally dominated legislature has not yet extended the system to the entire state, as have other states like Alaska, Iowa and Nebraska.

In these states, as elsewhere, a vigorous lawyer-layman campaign of public education finally carried the day. In Texas, this combination put over adoption of the California commission idea in just 18 months; the people voted it in three-to-one. Wherever citizens seek judicial reform, the same teamwork will be required. For, as Judge Rosenman warns, "Only an aroused citizenry can overcome the entrenched political forces, which will always oppose. But this should only multiply our determination to succeed—and succeed soon!"

*This and other cases cited are disguised, since all procedures and records of the California Commission on Judicial Qualifications are strictly confidential.

REPRINTED FROM THE JULY 1966 ISSUE OF THE READER'S DIGEST

July 1966 Reader's Digest

Is That Judge Fit to Sit?

By Paul Friggens

Personalities in the News

BY

ESTYR BRADLEY PEAKE

CA 7-6200 — CA 2-4952

During the month of April we attended more conferences, seminars and annual meetings ever before in my 43-year newspaper career. From time to time, as space permits, I'll give you the highlights of some of them. The Second Minnesota Citizens' Conference on Courts at the Thunderbird Motel in Bloomington on April 30 and May 1 was informative and different from any other Conference. It was jointly sponsored by the Minn. Citizens for Court Reform, Inc., the Minn. State Bar Association and the American Judicature Society. The purpose was to consider the adequacy of the present judicial system in Minn., the need for modernization of the judicial process and ways and means by which more effective administration of justice may be secured. The Conference was divided into five groups with five teams of leaders. I was in Group No. 3 and the only other Black American in my group was a senior student at the College of St. Thomas, **Joseph P. Hudson,** who plans to attend Law School at the University of Minnesota . . . **Father Denzil A. Carty,** who participated in the first conference in 1966, came for the second day. . . . The Consensus of the groups was that some form of merit system for selecting judges would be superior to the present system of selecting judges by election. In regard to tenure, there was general consensus that the judges should be approved by the electorate and prior to the election, there should be a referendum by the appropriate bar association so that voters could be informed. There is a dire need for increased compensation in order to attract and retain competent personnel in judicial offices and also a need for a California commission plan for discipline and removal of judges. . . . It was noted that the present organization and administration of Minnesota's courts has produced numerous problems incompatible with the effective, efficient and equal administration of justice. A three-level unified court system was proposed composed of a Supreme Court, and intermediate Court of appeals and a trial court of general jurisdiction. . . . It will take citizen participation to change the courts. . . . Interested in this for a club or study project, you can get additional information from William J. Cooper, Secretary, Minn. Citizens for Court Reform, Inc., 725 N. W. Bank Bldg., Mpls., John Verstraete at 3-M Center, Harold Shipira, "the Mayor of Highland Park," or Christopher O. Batchelder, Chairman of the Executive Board, 415 — 16th Ave. S. W., Rochester, Minn.

Bloomington, Minnesota
Thunderbird Motel
April 30—May 1, 1970

THURSDAY, APRIL 30

9:00 A.M. REGISTRATION

10:00 A.M. GENERAL ASSEMBLY (Chippewa Room)

Presiding:
CHRISTOPHER O. BATCHELDER, *Chairman, Minnesota Citizens for Court Reform, Inc., Rochester*

Welcome:
HONORABLE HAROLD LEVANDER, *Governor of Minnesota*

HONORABLE OSCAR R. KNUTSON, *Chief Justice, Supreme Court of Minnesota, St. Paul*

Lecture:

A REVIEW OF MINNESOTA'S COURT SYSTEM
By: HONORABLE ROBERT J. SHERAN, *Associate Justice, Supreme Court of Minnesota, St. Paul*

11:00 A.M. SEMINARS — First Session

Group	*Team*	*Topic*	*Room*
1	A	Minnesota Courts Today	Cherokee
2	B	Minnesota Courts Today	Navajo
3	C	Minnesota Courts Today	Pawnee
4	D	Minnesota Courts Today	Cheyenne Suite
5	E	Minnesota Courts Today	Blackfoot Suite

12:00 NOON LUNCHEON (Chippewa Room)

Presiding:
HONORABLE OSCAR R. KNUTSON, *Chief Justice, Supreme Court of Minnesota, St. Paul*

Lectures:

JUDICIAL SELECTION AND TENURE
By: GLENN R. WINTERS, ESQ., *Executive Director, American Judicature Society, Chicago, Illinois*

JUDICIAL COMPENSATION, RETIREMENT, DISCIPLINE AND REMOVAL

By: HONORABLE WILLIAM H. BURNETT, *Chairman, Colorado Judicial Qualifications Commission, Denver*

2:00 P.M. COFFEE BREAK

2:30 P.M. GENERAL ASSEMBLY (Luncheon Session Continued — Chippewa Room)

Lecture:
COURT ORGANIZATION AND ADMINISTRATION
By: CARL H. ROLEWICK, ESQ., *Deputy Director, Administrative Office of the Illinois Courts, Chicago, Illinois*

3:00 P.M. SEMINARS — Second Session

Group	*Team*	*Topic*	*Rooms*
1	A	Judicial Selection and Tenure	Cherokee
2	B	Judicial Compensation, Retirement, Discipline and Removal	Navajo
3	C	Court Organization and Administration	Pawnee
4	D	Judicial Personnel: Selection, Retirement, Compensation and Discipline	Cheyenne Suite
5	E	Court Organization: All related topics	Blackfoot Suite

4:00 P.M. SEMINARS — Third Session

Group	*Team*	*Topic*	*Room*
1	C	Court Organization and Administration	Cherokee
2	A	Judicial Selection and Tenure	Navajo
3	B	Judicial Compensation, Retirement, Discipline and Removal	Pawnee
4	E	Court Organization: All related topics	Cheyenne Suite
5	D	Judicial Personnel: Selection, Retirement, Compensation and Discipline	Blackfoot Suite

5:00 P.M. SEMINARS — Fourth Session

Group	*Team*	*Topic*	*Room*
1	B	Judicial Compensation, Retirement, Discipline and Removal	Cherokee
2	C	Court Organization and Administration	Navajo
3	A	Judicial Selection and Tenure	Pawnee
4	D	Modern Courts for Minnesota	Cheyenne Suite
5	E	Modern Courts for Minnesota	Blackfoot Suite

6:00 P.M. RECESS

6:30 P.M. DINNER (Chippewa Room)

Presiding:
HONORABLE JAMES C. OTIS, *Associate Justice, Supreme Court of Minnesota, St. Paul*

Address:
MODERN COURTS FOR MODERN AMERICANS
By: ERNEST C. FRIESEN, JR., ESQ., *Executive Director, Institute for Court Management, University of Denver Law Center, Denver, Colorado*

8:00 P.M. RECESS

FRIDAY, MAY 1

9:00 A.M. GENERAL ASSEMBLY (Chippewa Room)

Presiding:
HAROLD B. SHAPIRA, *Member, Executive Committee, Minnesota Citizens for Court Reform, Inc., St. Paul*

Lecture:
COURT MODERNIZATION IN AMERICA AND THE CITIZENS' ROLE
By: R. STANLEY LOWE, ESQ., *Associate Director, American Judicature Society, Chicago, Illinois*

9:45 A.M. SEMINARS — Fifth Session

Group	*Team*	*Topic*	*Rooms*
1	A	The Citizens' Role	Cherokee
2	B	The Citizens' Role	Navajo
3	C	The Citizens' Role	Pawnee
4	D	The Citizens' Role	Cheyenne Suite
5	E	The Citizens' Role	Blackfoot Suite

10:45 A.M. COFFEE BREAK

11:00 A.M. GENERAL ASSEMBLY (Chippewa Room)

Presiding:
CHRISTOPHER O. BATCHELDER, *Chairman, Minnesota Citizens for Court Reform, Inc., Rochester*

SUMMARY OF DISCUSSIONS AND CONSENSUS STATEMENT
By: MRS. WILLIAM W. WHITING, *Member, Executive Committee, Minnesota Citizens for Court Reform, Inc., Owatonna*

12:00 Noon LUNCHEON (Chippewa Room)

Presiding:

CHRISTOPHER O. BATCHELDER, *Chairman, Minnesota Citizens for Court Reform, Inc., Rochester*

Address:

COURT REFORM — MERIT SELECTION AND THE FEDERAL RESPONSIBILITY

By: HONORABLE WILLIAM J. GREEN, *Member of Congress, (5th District of Pennsylvania), Philadelphia*

1:30 P.M. ADJOURN

DISCUSSION TEAMS

TEAM A: *JUDICIAL SELECTION AND TENURE*

Leader:	GLENN R. WINTERS, ESQ., *Chicago, Illinois*
Out-of-State Panelist:	F. W. TOMASEK, ESQ., *Member, Board of Governors, Iowa State Bar Association, Grinnell, Iowa*
Panelist:	IRVING R. BRAND, ESQ., *Former Hennepin County District Judge, Minneapolis*
Reporter:	JOHN R. KENEFICK, ESQ., *St. Paul*

TEAM B: *JUDICIAL COMPENSATION, RETIREMENT, DISCIPLINE AND REMOVAL*

Leader:	HONORABLE WILLIAM H. BURNETT, *Denver, Colorado*
Out-of-State Panelist:	ROBERT F. LEHMAN, *Executive Secretary, Indiana Citizens for Modern Courts of Appeal, Indianapolis*
Panelist:	LEONARD J. KEYES, ESQ., *Former Judge, Minnesota District Court, St. Paul*
Reporter:	WILLIAM SOMMERNESS, ESQ., *Duluth*

TEAM C: *COURT ORGANIZATION AND ADMINISTRATION*

Leader:	CARL H. ROLEWICK, ESQ., *Chicago, Illinois*
Out-of-State Panelist:	HONORABLE MARK G. LIPSCOMB, JR., *State Representative, Wisconsin Legislature, First District, Milwaukee*
Panelist:	RICHARD E. KLEIN, ESQ., *Administrative Assistant, The Supreme Court of Minnesota, St. Paul*
Reporter:	ANDRE J. ZDRAZIL, ESQ., *St. Paul*

TEAM D: *JUDICIAL PERSONNEL: SELECTION, RETIREMENT, COMPENSATION AND DISCIPLINE*

Leader:	JOHN C. MCNULTY, ESQ., *Former President, Hennepin County Bar Association, Minneapolis*
Out-of-State Panelist:	ROBERT J. MARTINEAU, ESQ., *Associate Professor of Law, University of Iowa, Iowa City*
Panelist:	THEODORE J. COLLINS, ESQ., *Past Member, Board of Governors, Minnesota State Bar Association, St. Paul*
Reporter:	JAMES P. CULLEN, ESQ., *Minneapolis*

TEAM E: *COURT ORGANIZATION: ALL RELATED TOPICS*

Leader:	VINCENT P. COURTNEY, ESQ., *Former President, Ramsey County Bar Association, St. Paul*
Out-of-State Panelist:	MARSHALL R. CASSEDY, ESQ., *Executive Director, The Florida Bar, Tallahassee*
Panelist:	C. STANLEY MCMAHON, ESQ., *Former Member of Board of Governors, Minnesota State Bar Association, Winona*
Reporter:	ROGER P. BROSNAHAN, ESQ., *Winona*

CONFERENCE COMMITTEE

WILLIAM J. COOPER, *Minneapolis, Chairman*
CHRISTOPHER O. BATCHELDER, *Rochester*
ROBERT J. BROWN, *St. Paul*
THEODORE COLLINS, ESQ., *St. Paul*
SANDER M. GENIS, *Minneapolis*
RICHARD KLEIN, ESQ., *St. Paul*
JOHN C. MCNULTY, ESQ., *Minneapolis*
DR. SIDNEY A. RAND, *Northfield*
HAROLD B. SHAPIRA, *St. Paul*
MRS. LORING M. STAPLES, JR., *Wayzata*
MRS WILLIAM W. WHITING, *Owatonna*

SECOND MINNESOTA CITIZENS' CONFERENCE ON COURTS

BLOOMINGTON, MINNESOTA

April 30—May 1, 1970

Thunderbird Motel

Sponsors:

Minnesota Citizens for Court Reform, Inc.
Minnesota State Bar Association
American Judicature Society

Two Dozen Misconceptions about Judicial Selection and Tenure

by

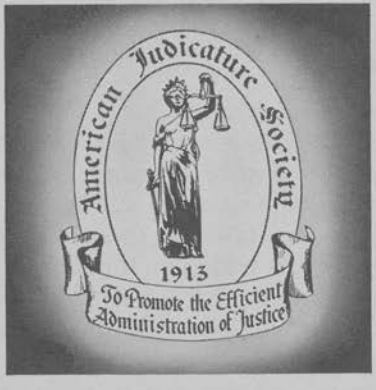
GLENN R. WINTERS

Executive Director

and

BOB ALLARD

Director of Special Projects



Courts for 20th Century America

THERE is no area of government in this country which is less understood than the administration of justice under law in our courts. Not only is the man in the street functionally illiterate about how the third branch of government operates, but civic leaders of local, state and national life are uninformed about the judiciary and its functions in our society. It must also be acknowledged, albeit without pride, that altogether too many members of the legal profession, both bench and bar, are shamefully ill-informed about the courts.

The most striking example of this compounded ignorance about the administration of justice is in the field of judicial personnel. Virtually everyone has an opinion about judges, but only a very small number have informed opinions. And yet, during recent months in over a dozen states, it has been demonstrated that when civic leaders and members of the legal profession seriously study the problems of judicial personnel, intense interest is created and there is always a demand for improvement.

The common misconceptions about judicial selection enumerated in this article are those that have been found among more than 2,500 leading citizens who attended conferences or meetings on this subject in recent months. These are, of course, not the only false ideas about selection of judges, but they are the ones that seem to recur most frequently.

Misconception No. 1: *It does not make much difference personally to the average citizen who may be a judge.* If a person never has to go to court and has no sense of civic responsibility for those who do, this may be true. It makes no difference to Mr. Average Citizen what kind of fire engines or personnel the local fire department employs, if he never has a fire. But any night a fire may break out; and also any night a police officer may come to the door and, before the sun rises, Mr. Average Citizen may find himself falsely accused and in jail. At this point, the judge becomes the most

important person in the world to him.

Misconception No. 2: *The only method of selecting judges is the one used in this state.* There are five leading systems of judicial selection used today in America:

1. Appointment, with or without confirmation
2. Selection by the legislature
3. Partisan political election
4. Nonpartisan election, and
5. A combination of nomination by commission, appointment and periodic re-election.

Within each of these five systems, there are as many variations as similarities and many states now use two or three of the five systems for selecting judges for different kinds of courts.

Misconception No. 3: *The elective judiciary is a part of the American heritage.* The great men who founded our nation and wrote the Constitution wrought well, and their ideas have earned our respectful consideration. If they were to come back today they would find many surprises, but none more than the elective judiciary. They never thought of such a thing. They provided in the federal and the first state constitutions for appointment by the governor subject to some kind of check or control by a council or a legislative body. It was not until three quarters of a century after our nation was founded, in the era of so-called "Jacksonian democracy," that the vogue of popular election for short terms swept into the judiciary, following New York's lead in 1846. Within 20 years a reaction set in and there has been dissatisfaction and debate ever since.

Misconception No. 4: *The federal appointment system is less political than election.* Life tenure does, indeed, take a judge out of politics once he has been appointed; but with both Republican and Democratic presidents averaging better than 95 per cent of appointments from their own party, with

senators of the president's party dominating appointments in their states, with appointments going to politicians who have been pronounced unqualified by those best fitted to judge their judicial fitness, with vacancies left unfilled for political reasons while backlogs accumulate, and more, it can hardly be argued that the federal system provides an effective method of taking judges out of politics.

Misconception No. 5: *Judges are actually elected, even in so-called elective states.* Most American judges have always gone on the bench by *appointment*—not by election. This is true because of the almost universal provision that in case of a vacancy caused by death or resignation, the governor may appoint someone to fill out the remainder of the term. This is the way most vacancies occur, and so a majority of the judges even in the elective states have become judges by appointment, not election.

In ten years, 1948-1957, more than 56 per cent, 242 out of 434, of the justices of courts of last resort in 36 so-called *elective* states went on to the bench by appointment. Three such courts were composed entirely of appointed judges. Four states had over an 80 per cent average and ten *elective* states had 60 to 80 per cent of their judges appointed.

An equivalent study of trial courts has not yet been undertaken, but specific instances indicate a similar condition. Eight years ago, 70 of the 78 judges then sitting in the Los Angeles Superior Court had gone on by appointment. Two thirds of the general trial judges now sitting in New Mexico were appointed; 19 of the 41 Colorado district judges in 1963; 29 of 36 Philadelphia Common Pleas judges from 1896 to 1937; 42 per cent of the Wisconsin circuit judges up to 1953; three-fourths of the Minnesota district judges sitting in 1941; 66 per cent of all Texas judges between 1940 and 1962—all these are *appointed* judges in so-called *elective* states.

If to the number of judges formally appointed by governors to fill vacancies, is added those *de facto* appointees whose names are selected by political party leaders to run without opposition or on coalition tickets so that the voters have no choice, the percentage is even higher.

Misconception No. 6: *Minorities and special interests are better served by the elective judiciary.* In the first place, minorities have a better chance of placing "their man" by appointment than by election. If they are a minority, they will be defeated when the votes are counted, but governors are anxious to curry the favor of minority blocs, and appointments are a very popular way to do it. The Spanish-speaking population of New Mexico is nearly 50 per cent of the total, but has had only four judges elected since statehood. The rights of minorities are not likely to be better served, however, by having their man on the bench. The judge will "lean over backward" to avoid giving the impression of partiality toward the group with which he is identified. All anybody has a right to ask for is a bench of able and honest judges, and the rights of all are best protected by such a bench. The system that will procure that kind of bench is the best system, and where the judges are drawn from is of secondary importance.

Misconception No. 7: *The people really want to elect their judges.* We need to distinguish between what they *say* they want and what their actions *show* they want. Nobody likes to have anything taken away from him, and if you tell the people they are going to be deprived of their right to have judges of their own choosing it is not hard to raise a protest. But look at the voting on election day. The judicial ballot is always the most neglected. There is good reason for this: normally the people are unfamiliar with the candidates and don't know which ones to vote for, and so they simply leave it blank.

Misconception No. 8: *The few voters who*

do vote for judges know for whom they are voting. A survey of 1,300 men and women in New York over and under the age of 45 immediately after the 1954 general election revealed that while virtually all could remember the name of the gubernatorial candidate for whom they voted, over 75 per cent of those who voted for judges could not name one of the judicial candidates for which they had voted. But the most revealing fact was that 402 of the 1,300 interviewed were from a semi-rural area, Cayuga County, and over 95 per cent of this group could not name one judicial candidate for whom they had voted.

Misconception No. 9: *If voters are not qualified to pick a judge in the first place, they are not qualified to decide whether or not he should be kept in office.* The question of whether a judge should be retained in office is much different than that of who should be selected to become a judge. On initial selection only the best is good enough, and the most careful evaluation of candidates should be made. Once a lawyer has sacrificed his practice and made a life investment in a judicial career, however, the only relevant question is whether he has done so badly that he should be removed. If so, the voters should have the right to remove him. On rare occasions, judges have been voted out of office on the noncompetitive ballot where the judge runs only against his record. On the other hand, judges, who are doing responsible jobs, should have the job security which this system regularly gives. This is not "freezing a judge in office." It is businesslike conservation of talent and experience on the job. It is also retaining the right of the people to decide who shall continue to serve as their judges.

Misconception No. 10: *Nonpartisan election takes judges out of politics.* Nonpartisan election usually does take judges out of *party* politics, but it only substitutes the *politics* of *nonpartisanship.* No longer need the voter fear the power of political boss-

ism, but he now has to fear the equally dangerous dictatorship of irrelevancy. Whichever candidate has the catchiest name, the biggest campaign fund or the most appealing profile will win. There is no guarantee of even minimum competence. In fact, if a person is good enough as a lawyer there is some probability that he will not run for judicial office. He can't afford to take the risk, especially if he must fight to defend himself against any and all challengers every few years by political means, and without any help from a party. With exceptions, of course, this system tends to put on the bench men who have little or nothing to lose if they don't make it and who will earn enough more as a judge, even at modest judicial salaries, than they could earn otherwise, to make the risk worthwhile.

Misconception No. 11: *Experience in nonpartisan states has demonstrated the success of the nonpartisan system.* The reverse is true. There is just as much dissatisfaction with the elective system in nonpartisan states as in partisan states and just as many reform campaigns under way. Nebraska, formerly a nonpartisan state, has already changed to the Merit Plan for selection of its state court judges. Active reform campaigns for adoption of the Merit Plan are already under way in Ohio and North Dakota, two other nonpartisan states. A number of the other nonpartisan states, including Montana, South Dakota and Wyoming, are moving in the same direction.

Misconception No. 12: *Being a judge is no different than being a lawyer.* Becoming a judge is much like becoming a brain surgeon. Being a good practitioner, at law or medicine, is not enough. Specialized training and experience are necessary. Any thoughtful judge will gladly admit that it took three to five years of judicial experience before he began to feel that he was competent to do his job. This experience and competency results from investments, not only by the judge but by the public,

MERIT JUDICIAL SELECTION . . .

Citizens Endorse Missouri Plan

BANKER

After many years of watching the Missouri Court Plan in actual operation, I am convinced that it is superior to any other plan of judicial selection about which I have read or heard and infinitely better than the method usually followed based on popular elections. Like anything else designed by man, the Missouri Plan is susceptible of some improvement, but I know of no major changes I would recommend or suggest after approximately 25 years of actual experience.

CHARLES G. YOUNG, JR., *President*
City National Bank & Trust Company

BAR PRESIDENT

Any person who must go to court to protect his legal rights can be sure of a fair trial under law before our Missouri Plan judges. No one, be he lawyer or litigant, can expect more and none get less in our courts.

CLEM W. FAIRCHILD,
President
The Kansas City Bar Association

CIVIC LEADER

The right of the people to determine who shall judge them is one of the most important privileges we possess. Under our Missouri Plan, we insure the right of the people to make that choice, not blindly, but intelligently, on the basis of able judicial performance.

MRS. STEPHEN D. HADLEY, *President*
League of Women Voters of
Kansas City

LABOR LEADER

It is as important to labor as to any other segment of our society that we have and maintain an independent judiciary of capable, honest men of complete personal integrity. We are extremely happy that our Missouri Plan has given us this kind of judiciary.

CARL L. STEVENS,
Area Director
United Auto Workers, AFL-CIO

BANKER

After years of watching the slates of judicial nominees sent by commissions to our governors, I am convinced that we cannot help but get good judges. As I understand it, the governor has no choice but to appoint well qualified men because all nominees are persons of ability, character and fine reputation.

R. J. CAMPBELL, *President*
Kansas City Bank and
Trust Company

EDITOR

Public pride and confidence in our courts have become a Missouri tradition since adoption of the Missouri court plan 25 years ago.

JOHN W. COLT, *Executive Editor*
The Kansas City Star

These assessments by representative leaders of Kansas City, Missouri, where merit judicial selection has been in operation for almost 25 years, are reproduced here because of repeated requests from states across the nation where equivalent plans are under consideration by judges, lawyers, citizen groups, and legislative bodies.

PUBLISHER

Our people depend on our courts to protect their legal rights and freedoms. This requires judges with integrity and ability. The Missouri Plan has proved most effective in obtaining such judges.

GARRETT L. SMALLEY, JR., *President*
The Kansas City News-Press

MANUFACTURER

Any enterprise, be it business, education or government is successful if the right men get on the job and work at getting that job done. This is one of the reasons why I favor the Missouri Court Plan. Judges spend their time deciding cases, not running for the next election. They do not have to worry about being swept out of office as long as they do their job because they are judged only on their performance. As a result, our courts are doing a good job.

JOHN A. MORGAN, *President*
Butler Manufacturing Company

LABOR LEADER

Fair, honest courts are of paramount importance to our American way of life. The Missouri Plan has resulted in the selection of the type of men to serve as judges who preserve our court system in the highest tradition.

R. E. EISLER, JR.,
Business Representative
Building Service Employees Union

CLERGYMAN

People who come before our courts need understanding as well as justice. That is why it is so important that the judge be a person of deep understanding and compassion so that justice is tempered with mercy. Our judges, selected under the Missouri Plan, meet this high requirement.

BEN MORRIS RIDPATH, *Minister*
Trinity Methodist Church

EDUCATOR

Judicial independence to decide cases according to law, whether those decisions are popular or unpopular, is a first requirement in a society of ordered freedom. The independence of Missouri judges has been proven time and time again since the adoption of our plan in 1940.

DR. CARLTON F. SCOFIELD,
Chancellor
University of Missouri at Kansas City

BAR PRESIDENT

This plan has given all citizens of this state the assurance of able and impartial courts in which each citizen is certain of a fair trial. Such a system is fundamental to the continuation of our democratic system. Since the adoption of this plan in 1940, the Missouri courts under the plan have fulfilled these high requirements.

JOHN H. KREAMER, *President*
The Lawyers Association

both taxpayers and litigants, who have borne the expense of that training. Election landslides which have swept hundreds of trained judges out of office without reference to their experience or competency are a costly luxury which no society can afford to pay.

Misconception No. 13: *If a man is a good lawyer he will make a good judge.* He might. But the lawyer's job is to urge one viewpoint so hard that it will win; the judge's is to weigh and compare so carefully that he will rule the right way regardless of the lawyer's urging. These are different skills. One may have, or acquire, both, but they certainly do not go together. On the other hand, it is equally unsound to say that a man does not have to be a good lawyer to be a good judge. Many people think that if a judge is honest and well meaning, a good family man, a decent and respectable citizen, he can be trusted to do what is right on the bench. They should try arguing a case before one of these judges once, or listen in and see how frustrating it can be to a good lawyer and how often such a judge does injustice rather than justice.

Misconception No. 14: *Any lawyer has a "right" to be a judge and the Merit Plan somehow deprives him of that right.* Even the practice of law is only a privilege, not a right. Certainly nobody has an automatic right to be a judge. Every lawyer should be equally eligible to be *considered* for judicial office, but it is the right of the people who are going to be judged that only the applicant best qualified in ability, temperament and character be chosen. The means most likely to pick the best man on those bases is the fairest to everybody.

Misconception No. 15: *The combination system, best known as the "Missouri Plan," is a new and untried method for selecting judges.* The combination nomination by commission, gubernatorial appointment and periodic noncompetitive re-election plan

was first advocated in 1913, more than 50 years ago, by the American Judicature Society. This judicial selection method is known as the *Kales Plan* after Professor Albert M. Kales of Northwestern who conceived it, the *American Judicature Society Plan,* the *American Bar Association Plan,* after the ABA's endorsement of it in 1937, and the *Missouri Plan* after Missouri became the first state to put it into actual operation. Since the successful campaign in 1962 to adopt the plan in Nebraska, it has become known as the *Merit Plan.* In brief, this combination plan provides for appointment of judges by the governor from a list of nominees selected by a nominating commission made up of laymen and lawyers. Each of the judges so appointed then goes before the voters periodically on the sole question of whether or not he is to be retained in office, without competing candidates on the ballot.

Misconception No. 16: *With a Merit Plan nominating commission, judges are actually chosen by lawyers.* If the commission were composed solely of lawyers, this would, of course, be true. But no commission is so composed and none should be. All have *some* lawyers, because the commission cannot do its job without professional appraisal of the candidates' professional qualifications. Nobody but a lawyer can adequately evaluate a judge's legal skill. Doctors and nurses work together in hospitals somewhat as lawyers and judges do in court. Who knows better than the nurses which are the most competent doctors, and *vice versa?* But all commissions have nonlawyer members and it is their job to see to it that character, experience and other factors as well as legal ability are taken into account by the commission.

Misconception No. 17: *The only lawyers who are nominated and appointed under the Merit Plan are "conservative defense attorneys" from the big law firms.* With almost a quarter of a century of experience

in Missouri, the opposite is true. Most of the lawyers nominated and appointed have either held public office or been individual practitioners or have come from law offices with three or less lawyers. Of the lawyers in private practice who have been appointed, most have been known as general practitioners who would try any case that came in the office, whether it was a plaintiff's case or a defendant's case.

Misconception No. 18: *Under the Merit Plan, governors always appoint members of their own party so that the plan still keeps judges in politics.* Missouri governors have most often chosen from the commission's nominations persons who were members of the governor's party, but there have been numerous exceptions. All but one governor have appointed members of the opposing political party to the bench. The real issue, however, is whether these men, without regard to party affiliation, are highly qualified. Under the Merit Plan, every potential nominee is carefully screened by a commission made up of both leading non-lawyer citizens and lawyers. When the governor receives the slate of nominees from which he must make his appointment, all of the nominees are highly qualified men so that it makes little difference which one he chooses. After the judge is appointed, he no longer is under any debt to any political party or group since he thereafter runs only against his record. Judges, then, are indeed taken out of politics by the Merit Plan.

Misconception No. 19: *Judges appointed under the Merit Plan are "frozen in office" and so become arrogant and autocratic.* Experience shows that most judges selected under this plan do remain in office for life; however, the periodic re-election feature keeps the judges aware that they have a responsibility to the voters and to the litigants and lawyers who appear before them. Most responsible bar associations conduct secret polls when particular judges are coming up for re-election and the results are widely

distributed for the benefit of the voters. Newspapers and other media also assist in reminding the judge of his duty. A modern system of retirement and an effective and fair method of disciplining and removing judges are also needed to assure a competent bench. Many states have already provided for these problems and an even larger number of states are presently sponsoring proposals similar to the dramatically successful California commission plan for judicial discipline and removal.

Misconception No. 20: *Elective judges are good enough.* Herbert Brownell, former Republican Attorney General, declared in a *Saturday Evening Post* article that the curse of the elective judiciary is not so much outright venality as mediocrity. He called these mediocre judges "gray mice" and said that a "pretty good" judge is like a "pretty good" egg—not good enough. Judge Samuel I. Rosenman, former special counsel to two Democratic presidents, stated at an annual meeting of the American Judicature Society in New York, 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." He called the Merit Plan "a better way to select judges."

Misconception No. 21: *Judges don't like the Merit Plan.* This is true only if they don't understand it or are trying to avoid doing their job. Judges are no different than other human beings. They prefer the known to the unknown. Occasionally a judge will be against the Merit Plan because he prefers to spend his time and money playing the political game rather than on the hard job of judging. Such a judge may be against the plan because it forces him to work on the next case rather than on the next election. Although the cost of re-election of a competent judge under the Merit Plan has gone up 25 percent in the last few years, it is still not prohibi-

tive since it consists only of an increase of four cents to five cents for the stamp to mail his filing papers. This is the only campaign expense a judge under that plan must incur. There is no necessity for him to spend his time at political rallies or soliciting funds or taking a year off before the election to make so-called nonpolitical speeches about his own qualifications. All he has to do is go to his chambers and get on with his job of administering justice under law.

Misconception No. 22: *It is sufficient to change the method of selection of supreme court justices and leave the trial judges as they are.* It is true that the finest legal minds in the state should be found on the supreme court bench. Their decisions affect the outcome of nearly every case in every court. Something like 99 per cent of the judicial work, however, is finally disposed of in the trial courts. A court system that lavishes its attention on the appellate courts and ignores the trial courts is like the bakery that fusses over the wedding cakes and neglects the ordinary loaf of bread, which is the main product of any bakery.

Careful selection and protection of tenure are important not only for the judges of the appellate courts and the circuit courts, but also for judges of the county courts, the criminal courts of record, and, of course, courts like the Metropolitan Court of Dade County, Florida, which is already operating under a Merit Plan. So also, since the 1964 elections in the County Court of Denver, Colorado, and, by voluntary action of Mayor Robert H. Wagner of New York City, the nominative feature is being used for his judicial appointments in that city.

Misconception No. 23: *Only two of 114 counties in Missouri have adopted the plan, which shows that most people in Missouri are against it.* This is false. The plan applies to all of the justices of the state supreme court, the three intermediate appellate courts, the trial courts of Jackson County (Kansas City) and the trial courts of the city of St. Louis (which is not a county). Jackson County and St. Louis city account for 36 per cent of the circuit judges of the state, and these judges together do most of the trial work in the state. There have been strenuous efforts to get the plan extended to St. Louis County and other counties, but they have so far been blocked by political elements in the state legislature which have always resented a nonpolitical judiciary. The plan was originally submitted to the voters by initiative petition after the politically minded legislature had refused to do so. The people of Missouri have voted on their plan three times, each time approving it by a larger majority than before.

Misconception No. 24: *The "Missouri Plan" has not been accepted outside of Missouri.* The adoption of the merit selection and tenure plan in Missouri came at the very start of the last world war, and that conflict delayed action by other states for just about a decade. In 1950, however, Alabama adopted the nominating commission for the circuit court of Jefferson County, in which Birmingham is located. In 1956, Alaska adopted the entire plan for its supreme court and general trial courts. In 1958, Kansas adopted it for its supreme court. In 1962, Iowa and Nebraska adopted it for all state courts, and Illinois adopted the feature of tenure by noncompetitive election for all judges above the level of magistrate. California preceded Missouri with the elective features for its appellate courts. In 1963, the voters of Dade (Miami) County, Florida, approved it for selection of their Metropolitan Court judges. In 1964, the voters of Denver, Colorado, approved the plan for their County Court judges. Mayor Wagner of New York voluntarily has created a nominating commission to provide candidates for his judicial appointments in New York City and governors of both Colorado and Pennsylvania have set up equivalent commissions to fill judicial vacancies. When it is recognized

that taking anything out of political control is bound to incur intense political opposition, it must be acknowledged that this is an impressive record of progress in the last few years.

The next few years will show even more. Serious study or movements for its adoption or for its extension to courts not now covered, with support of lawyers, judges and lay citizens, are now under way in Arkansas, Colorado, Florida, Illinois, Indiana, Kansas, Louisiana, Maryland, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas and Wyoming. This, of course, amounts to a "bandwagon" for judicial reform, and a bandwagon that is gathering more momentum and enthusiasm everyday.

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.

The Judicial Nomination Commission

Elmo B. Hunter

It is essential to put into perspective the background and purpose of merit plan selection to understand the Judicial Nominating Commission which is acknowledged to be *the* vital part of the plan.

In the formation of our republic our forefathers established a government of three departments: the executive, the legislative, and the judicial. Also, recognizing that under a two-party system the executive and legislative branches had political purposes and political functions to serve, our forefathers provided for political party selection by election for the heads of those two departments. However, recognizing that the judicial branch had no political purpose or function to serve and that political election of judges was unwise, they provided for judges to be appointed.

While many states, especially during the Jacksonian era when the motto was "to the victor belongs the spoils," changed over to political election of judges, history has clearly demonstrated that this change-over was unwise, and that party politics has no proper place in our court system. This recognition, made clear by the immense problems and deterioration of our courts in state after state using the political elective system for the judiciary produced a great and ever-growing movement in this country to take the judiciary out of party politics and to obtain and retain judges on a merit basis. In 1940 my own state, Missouri, beset by political problems that were seriously hampering and degrading our courts, became the first to adopt a merit system. Many other states experiencing a downgrading of their courts have either adopted or are in the process of adopting non-political merit selection.

We are not so naive today about our courts as we have been in the past. Long overlooked, our court systems are now receiving much public attention, study, and analysis. The numerous recently held citizens' conferences across our nation on courts and court procedure consistently reveal that laymen, perhaps even more than lawyers or judges, recognize that politics has no proper place in our courts and recognize the need for improving the *quality* of our courts by merit selection. They want and expect our courts to be manned by the best judges obtainable who will decide cases on the basis of the law, not politics. They want men chosen on the basis of their ability, personal integrity, impartiality, judicial temperament, legal training and possessed of the physical and mental vigor necessary for the arduous work of the position, rather than selected for personal or political affiliations.

To summarize, there are two fundamental reasons why the people of this country in state after state have adopted or are in the process of adopting non-political merit plan selection of judges: first, to keep politics out of the judicial branch of government, and second, to assure that we obtain and retain the best judges possible.

Under the merit plan system the people have made the Judicial Selection Commission their sworn trustee to obtain these two fundamental objectives, and nothing should be permitted to cause it to violate this great public trust. Loyalty to political party, to Governor, to business associates, to friends, or to personal philosophy must never be permitted to cause any member of a judicial commission to break the great trust that he accepted by becoming a member of a Judicial Selection Commission. If the judicial commission fails in its trust the merit plan fails.

Every Judicial Selection Commission has been pressured and/or tempted because of local or current religious, racial, political, or personal conditions to consider factors other than merit alone. The question is, is a commission ever justified in *any* deviation from merit selection? This is a large question and

ELMO B. HUNTER, judge of the U.S. District Court in Kansas City, Missouri, delivered this address at the Nebraska Judicial Nominating Commissioners' Institute in Lincoln in January 1968.

perhaps it is not accurately subject to generalization. As one great man said, "no generalization is worth a damn, not even this one." Even so, based on my experience with judicial selection, I doubt if there is ever any justification for deviation from selection on merit and merit alone. In those rare instances where I have felt some deviation occurred I was convinced that the public interest suffered, not to mention the ethical breech of trust that is inherently involved.

There is one principle that every member of every judicial commission should honor both in letter and in spirit without exception. That is, no member should ever reveal, indicate or hint how any other member voted, felt, or acted with regard to the consideration, selection or rejection of any potential nominee; or reveal any part of what occurred in that process. To do so is to destroy the integrity of the judicial selection commission and to destroy the ability and willingness of the individual commission members to freely discuss the potential nominees before it and to bring relevant considerations and information to the attention of the other commission members. All such matters should be deemed to be a part of the completely confidential executive nature of the selection process.

It is almost inconceivable how clever lawyers and their friends can be in obtaining such confidential information. If a commission member says to a nominee who failed to make a panel—"You got my vote," the nominee is materially aided in discovering who voted against him. A repetition of this with one or two other members and he can make that determination. So also if anyone—lawyer or not—is told anything, it soon gets back to the candidate and he concludes who was for and who was against him. All this is destructive of the ability of the commission to function properly and must not be permitted to occur. I recommend that every commission consider devising a carefully written commission member oath or code of ethics containing such a prohibition so as to focus attention on and obtain clear responsibility for commission members refraining from such conduct. The need for protection of commission members by absolute observance of confidentiality of the selection process is too great to miss any opportunity to obtain total observance by all commissioners.

Necessary to the carrying out of the purpose of the commission is to have a fair and practical procedure for its operation. And it is very helpful and desirable that as much of the procedure as possible be contained in some rule or by-law so that all may be aware of it and will follow it. There is no one magic procedure. Methods and techniques may well need to vary to meet local conditions; however, a free exchange of information as to how different states and different commissions operate is stimulating and helpful to all.

Preliminary to establishing procedures, some key questions must be answered. First, why is a Judicial Selection Commission in a better position, and as the lawyers say, "if so," than a governor to select a judge? The answer perhaps lies in these considerations. A governor is the political head of his political party and is subject to daily political pressure and political considerations. Under our form of government it is intended that he be in this position. When he has appointments to make he customarily seeks advice and recommendations from his party political leaders of the area involved. They, in turn, advise the governor from a political standpoint. The ultimate decision is therefore made in that political context. Ordinarily, he is under no sworn duty to disregard political considerations or personal friendships. Usually the governor is under pressure to make quick selections to avoid prolonging political pressures that build up. Seldom, if

ever, can he investigate on a confidential basis or have available purely objective personnel to assist him in obtaining relevant facts about the people involved. Often he is not a lawyer and may be unacquainted with the factors that go to make a good judge and the capabilities required to properly carry out that function. In contrast, a judicial nominating commission is under a duty to be and to remain free of political considerations. Commission members are duty bound to nominate solely on the basis of the merits of the individuals concerned. They are to study and to specialize in the technique of sound judicial selection, and are empowered to use all reasonable tools to assist them in their endeavors. They have the necessary time and means to make a careful, confidential, deliberate, intelligent, impartial, and objective study of all those who are eligible for judicial consideration. The quality of their performance depends on how sensitive they are to the needs of the particular court position to be filled, and on their personal commitment to their oath and duty to select the best.

Now for some procedural details. First, how are the names of those that should be considered obtained? Obviously it is better to err on the side of considering too many than to overlook a truly eligible person. Thus the technique should be flexible to meet local conditions and problems. The commission should receive names for consideration from any proper source, including lawyers, judges, and laymen. Broad publicity should be given that the commission welcomes submission of names of eligible lawyers believed to merit consideration. The public should be advised as to when the commission will meet to consider its selections. No one should be considered without his prior consent and his indication that if selected he will serve. The governor, because he has his own independent function to serve, should not submit names nor indicate in any manner, directly or indirectly his particular interest in or support of any person. His duty and the full extent of his authority is to make his own independent study of the panel names submitted to him and to appoint that one which in his objective judgment will make the best judge irrespective of political or personal considerations. He is not to intermeddle in the commission's affairs. Nor is the commission to try to influence the governor. Nor to out-guess or manuever him by sending a panel selected on any basis other than merit. The commission members should endeavor to interest outstanding lawyers to make themselves available for consideration.

After the name gathering process comes the selection process. How does the commission receive or obtain the data it is to consider? Generally, it should be in writing and distributed in advance in confidential form to all members of the commission for study. When the commission meets all should be prepared for a free exchange of views in one or more executive sessions.

The members of a nominating commission must ask themselves the following questions. Have they divested themselves in the nominating process of all political and *personal* considerations? Are they wholly objective? Do they give sufficient time and care to the selection process? Have they been sufficiently ingenious and imaginative in developing tools, techniques, and methods to fully assist them in their nominating duties? Do they need to develop such aids as questionnaires, investigators, personal interview, private and public inquiries, medical reports, court reports, qualification check list and so on?

The procedure should afford each commissioner full opportunity to express his views and to vote meaningfully and confidentially if requested. Confidential minutes of each meet-

ing should be kept omitting all but such essentials as who attended, what names were considered and who was nominated.

Since the clear duty is to nominate the best men available from the standpoint of them becoming the best judges obtainable, the next question they must ask themselves is what are the qualities of a good judge, and how are they to be recognized in the various individuals considered for judicial nomination. Based on my experience as lawyer and judge, I would suggest the following qualities as being among those that should be given special consideration, but not necessarily in the order stated: 1. personal integrity; 2. health; 3. legal education and training; 4. general intelligence; 5. capacity for work; 6. common sense and sound mature judgment; 7. legal experience; 8. trial experience; 9. personality; 10. patience and courtesy, consideration of others; 11. personality, voice and personal appearance; 12. humility; 13. leadership; 14. moral courage; 15. industry; 16. ability to be objective and impartial; 17. desire to work and good work habits; 18. clean and acceptable background and good reputation; 19. dependability; 20. reasonably temperate; 21. balanced and socially acceptable viewpoints; 22. dedication to getting a matter fully and promptly handled; 23. good personal habits compatible with judicial dignity and deportment; 24. avoidance of procrastination or of unduly putting off decisions; 25. knowledge and understanding of human nature; 26. reasonable knowledge of current events and of the business and social problems confronting our courts and our people; 27. acceptable age—not too young nor too old; 28. cooperativeness and ability to get along with and work with others—including lawyers, court staff, and other judges.

After the selection of the nominees, their names and some basic data, such as their questionnaires, should be forwarded to the governor before any news release is made. This is a necessary courtesy to the governor, and one he will deeply appreciate—especially if he is given the opportunity to be the one to first release the names of those nominated. Otherwise, he is plagued by calls, questions, and persons before he has even received the commission's official nominations or knows who the nominees are.

All information gathered about the nominees should be confidentially preserved for possible consideration on future vacancies.

One thing that must not be overlooked is the necessity for doing all that is necessary to assure that the personnel of the Judicial Nominating Commission are people who can and will carry out their duties faithfully, intelligently and impartially. Only those should be appointed who will follow the letter and spirit of the merit plan in all respects, and whose very name is such that their appointment assures public confidence in the commission. They need to be fully advised of their duties and responsibilities from the outset. They should be given, hopefully in printed pamphlet form, a carefully drawn explanation of the purpose of the judicial commission, its part in merit plan selection, and the rules and procedures it employs as well as the duties and obligations of every commission member. The pamphlet should make it clear that once appointed to a judicial commission the appointee owes no duty to the governor or other appointing authority and must perform his duties free of such influence.

Once a qualified commission is operating it is imperative that it constantly evaluate itself, and strive for improvement. Constant attention to faithful and intelligent performance of its duties will assure that the people of the area involved will indeed have outstanding judges of top quality as is so necessary if our judiciary is to function properly.

To Promote the Efficient Administration of Justice

JUDICATURE

JUNE-JULY 1967 / VOLUME 51 / NUMBER 1

Citizen Action Organizations

The Journal of The American Judicature Society

THE AMERICAN JUDICATURE SOCIETY is a national and international organization of 24,815 lawyers, judges and laymen, in all 50 states, Canada and 43 other countries of the world, founded on July 15, 1913, to promote the efficient administration of justice. Its activities include publishing this journal and other books and literature; conducting meetings, institutes, conferences and seminars; and maintaining an information and consultation service with respect to all aspects of the administration of justice and its improvement. Voting memberships are open to lawyers and judges in this or any country, and associate memberships are open to anyone interested in the betterment of the administration of justice. Dues are $10.00 a year. Persons interested in membership should communicate with one of the directors listed on the inside back cover, or write directly to the Society at 1155 East Sixtieth Street, Chicago, Illinois 60637.

JUDICATURE is a clearing house of fact and opinion with respect to all phases of the administration of justice and its improvement. Readers are cordially invited to submit articles, news of developments in their localities, and letters for publication. Manuscripts should be preferably not more than 3,000 words.

JUDICATURE, the Journal of the American Judicature Society, Volume 51, Number 1, June–July, 1967. Published monthly, except bi-monthly in June–July and August–September. Circulation, 31,500. Individual subscriptions $4.00 a year. Views and opinions in editorials and articles are not to be taken as official expressions of the American Judicature Society's policy unless so stated. Permission is hereby given to quote from or reprint, with credit, any article or editorial originating in this or any other issue. Editorial communications and notices on form 3579 are to be sent to 1155 East Sixtieth Street, Chicago, Illinois 60637. Second-class postage paid at Chicago. Printed by The University of Chicago Printing Department.

JUDICATURE

Volume 51 / Number 1 / June–July, 1967

The Journal of The American Judicature Society

Honolulu, August 1967

The Honorable Ramsey Clark, Attorney General of the United States, will address the Fifty-fourth Annual Meeting of the American Judicature Society at breakfast on Wednesday, August 9, in the Pacific Ballroom of the Ilikai Hotel at 8:00 in the morning. The program also will include election of officers and directors and other matters that may come before the Society's annual business meeting.

Following Attorney General Clark's address the Society will offer in cooperation with the National Conference of Court Administrative Officers, a presentation of "Applications of Systems Analysis to Aid in the Efficient Administration of Justice," by Miss Jean Taylor and Dr. Joseph Navarro of the Institute for Defense Analyses. The illustrated lecture will portray the computer simulation of a portion of the operations of the District of Columbia District Court which was recently prepared for the President's Commission on Crime and the Administration of Justice.

The Society will cooperate with the National Conference of Court Administrative officers in a similar program with special emphasis on "Computer Simulation Aid to Court Administration," at the Conference's own meeting at 2:00 p.m., Thursday, August 3, in the Carousel Room of the Hilton Hawaiian Village. This session will also include commentary by Eldridge Adams, Research Scientist, Law-Science Research Center UCLA, Los Angeles, California, on the theory of computers and their application to trial courts and commentary by Lester E. Cingcade, Administrative Director of Hawaii Courts, Honolulu, on the Honolulu court's experience with computers. Tickets are not required for this meeting.

Breakfast tickets at $3.00 each may be secured in advance by mail from the Society's office, or may be purchased at the ABA registration desk in the Ilikai or at the door. All members and friends are cordially invited.

An historic landmark of Honolulu, site of the Society's 1967 annual meeting, is the judicial building (shown above), erected back when Hawaii was a monarchy. The statue is of King Kamehameha I. The 1967 legislature gave the go-ahead to plans for a new courthouse, and this structure soon will be torn down.

Citizens, Court Reform and Popular Self-Government

When this epoch of world history is written, America's greatest contribution may turn out not to have been in science and technology, as we often suppose, but in developing ways to make what Abraham Lincoln called "government of the people, by the people and for the people" a living reality.

This is not accomplished simply by declaring universal suffrage and handing every adult citizen a ballot on election day, and recent efforts to establish democratic institutions in new African nations confirm this. Real popular government means widespread citizen participation based on broad public understanding. Viewed from this standpoint, the American Judicature Society's citizens' conferences on court modernization and the follow-up organizations are making a significant contribution to the success of popular self-government. They are helping the people to improve the important third branch of government which serves as a balance wheel for the other two and without which true popular government cannot exist. They are also providing the means for the citizenry to acquire an understanding upon which healthy citizen participation in government must be based–interest and participation which will not stop with judicial affairs but will carry over into other departments of local, state and national government.

There are two possible functions for a citizens' follow-up organization: one, an educational one to make the populace more aware of the judicial system and its problems and of their responsibility to help improve it; and, the other, the actual lobbying of specific reform measures through to enactment or adoption. The Internal Revenue Service has ruled that the exempt status of an educational organization was not affected by its non-partisan study, research and assembly of materials in connection with court reform and dissemination of such materials to the public (Rev. Rul. 64–195, 1964–2 CB 138). In most states that is the job most needing to be done. In a few instances, however, the citizens have found themselves in the midst of a legislative battle where they wanted to make their influence felt at once for or against pending legislation, and they have wisely foregone tax exemptions and joined the fray. The decision as to which course to take is one to be carefully considered in consultation with competent tax counsel in the light of the job to be done and the considerable body of revenue rulings and court decisions on tax exempt organizations.

Citizen Action—Key to Successful Judicial Reform

Glenn R. Winters

The biggest package of judicial reform legislation in 1967 or in any recent legislative year was enacted during the recently-adjourned session of the Idaho legislature. As reported in our March issue it included bills establishing a judicial council, creating the office of administrative assistant to the courts, consolidating judicial districts throughout the state and appropriating funds for a new supreme court building, plus resolutions submitting to the voters constitutional amendments to provide for the filling of judicial vacancies by nomination and appointment under a merit plan and for a judicial procedure for discipline and removal of judges. A bill for modernization of the minor courts through a state-wide two-level court system fell short by only five legislative votes of a majority sufficient to pass it over a gubernatorial veto.

What was behind this remarkable accomplishment? Many things, of course. There were years of effort by the Idaho State Bar, the excellent studies and drafts prepared during the preceding year and a half by the Idaho Legislative Council, and a Citizens' Conference on Idaho Courts held in Boise in June, 1966, which issued a consensus statement endorsing the Legislative Council's proposals and recommending a comprehensive court improvement program for the state. In too many instances in the past, however, drafts and recommendations have fallen on deaf ears and come to nought. The biggest single reason why this did not happen in Idaho was the work of the Citizens' Committee on Courts, Inc., during the months between the citizens' conference and the opening of the legislature.

The Citizens' Committee on Courts, Inc., was a direct outgrowth of the Citizens' Conference on Idaho Courts. During the closing discussion sessions of that conference, a steering committee was appointed to formulate plans for continuing the work of the conference and carrying its message back to the rest of the people of the state. The steering committee met at lunch immediately after adjournment of the Conference and elected T. M. Walrath of Orofino as its chairman and Mrs. Donna Kay Soderlund, Boise, as secretary. In succeeding weeks the Citizens' Committee on Courts, Inc., was established as a non-profit corporation and plans were laid for a comprehensive promotional program centered around a series of follow-up conferences throughout the state during the autumn months.

One-day citizens' conferences, patterned in miniature after the initial state conference in Boise, were held in Nampa on October 15, Twin Falls on November 10, and in Idaho Falls and Pocatello both on December 10. These were supplemented by many lecture appearances before educational and civic groups by representatives of the Citizens' Committee on Courts, Inc., the Legislative Council, the State Bar, and the judiciary, along with widespread distribution of literature on judicial administration topics and generous publicity given to the court reform program by newspapers, radio and television throughout the state. The Idaho Citizens' Committee was the key to this outstanding judicial reform record.

TEN CITIZENS' CONFERENCES IN 1966

The Citizens' Conference on Idaho Courts was one of 10 citizens' conferences held in 1966 in Tennessee, Georgia, Idaho, Minnesota, North Dakota, Wyoming, Montana, Utah, Washington and Alabama. In these, from 75 to 150 leading non-lawyer citizens of a state participated in a three-day round of lectures and discussions on the judicial system of their state, its problems and possible solutions to those problems based on the experience of other states. The conferees in each instance were sufficiently representative of the state's population, and influential in it, so that the conference itself was an important force in focusing popular attention on court improvement programs. In all of these states, however, as in Idaho, and in other states in which citizens' conferences had been held in prior years, the impact of the initial conference was multiplied many fold by the follow-up work of a citizens' action organization founded for that purpose.

GEORGIA

The Citizens' Judicial Study Commission of Georgia, Inc., was founded by a steering committee selected by the conferees at the Citizens' Conferences on Georgia's Judicial System in Atlanta in April, 1966. Julius A. McCurdy, a savings and loan executive of Decatur, Georgia, was chosen as its chairman. The Commission's first undertaking was to procure the drafting of a proposed judicial article embodying the conference recommendations. The Commission was able to get a modest foundation grant in support of the drafting project, which was conducted with the help of a liaison committee of the State Bar of Georgia. The draft was presented at a second convocation of the Citizens' Conference, attended by a majority of the original conferees, on December 2, in conjunction with the mid-year meeting of the State Bar of Georgia, at which the draft was approved and a promotional program authorized to acquaint the bar and the citizenry as a whole with its features. William P. Corley of Atlanta was engaged as public relations counsel to assist in that endeavor.

TENNESSEE

Citizens for Court Modernization, Inc., is the name of the organization established at a meeting in Nashville, Tennessee, on June 24 and 25, 1966, of the steering committee that was selected by the members of the Tennessee Conference to Improve the Administration of Justice. Herbert L. Shulman, Elizabethton, Tennessee, a business executive, was elected its president. Louis Williams, Chattanooga, Dr. Horace W. Williams, Nashville, and J. L. Boren, Sr., Memphis, are vice-presidents; Dr. William R. Bell, Jackson, is secretary and Virgil H. Moore, Jr., Columbia, is treasurer. Four standing committees were created: budget and finance, headed by Thomas P. Kennedy, Jr., Nashville; membership, Mr. C. B. Huggins, Jr., Murfreesboro; information, Dr. Hollis A. Moore, Jr., Nashville; and liaison, Turner O. Lashlee, Humboldt. The information committee met in Nashville on August 16, and a one-day follow-up conference was held under the direction of Dean Ella V. Ross of the East Tennessee State University, Johnson City, in October. Because of the unusually difficult procedure of amending the Tennessee constitution, initial efforts are being directed toward the calling of a limited constitutional convention to act on these and other matters.

WASHINGTON

The Citizens' Conference on Washington Courts, at its concluding session on November 12, authorized and directed Robert W. Graham, conference chairman, to designate from the conference membership a small organizing committee to proceed with establishment of a follow-up organization. This group has met three times, December 29, January 24 and May 10. A new corporation entitled Citizens' Committee on Washington Courts has been established. In order to leave it free to work for enactment of specific legislation, tax exempt status will not be sought. Mr. Norman Allen, a Seattle business executive, was chosen first as temporary chairman and later as permanent chairman. Miss Maryan Reynolds is

secretary, Anthony Eyring treasurer and Irvine Rabel finance chairman. Publicity and program chairman were to be selected later.

Members of the organizing committee represented the Citizens' Conference in legislative hearings and in other ways during the 1967 session of the Washington legislature. The legislature passed a joint resolution submitting to the voters a proposal for an intermediate court of appeals, one of the major conference recommendations. The legislature also submitted a proposed amendment to make it possible for all supreme court judges to receive the same compensation without regard to their terms of office; it appropriated funds to enlarge the staff of the state court administrator and to provide a staff for the judicial council; and it enacted salary increases for superior court judges.

MONTANA

The Montana Citizens for Court Improvement is an association organized at the conclusion of the Montana citizens' conference on October 1, 1966. Claude R. Erickson, Livingston, a banker, is its chairman. In the 1967 legislative session, the group was successful in procuring enactment of badly-needed legislation improving the provisions for retirement of judges. Measures for judicial selection and minor court reform were introduced but did not pass. The committee is now laying plans for a state-wide promotional program to be initiated at a state meeting next January and to be conducted during the spring, summer and fall of 1968. Present tentative plans include a series of one-day regional conferences like those held in Idaho last fall.

ALABAMA

Walter W. Kennedy, bank executive of Montgomery, Alabama, is chairman of the executive committee which was organized at the conclusion of the Citizens' Conference on Alabama State Courts in December. Papers have been filed for its incorporation as a nonprofit educational corporation, and it is supporting a liaison committee which has been drafting a series of legislative bills and resolutions embodying the substance of the recommendations of the conference consensus for introduction in the legislative session which was to convene in June.

MINNESOTA

A Steering and Study Committee was established following the Minnesota Citizens' Conference on Courts. Mr. Lawrence O'Shaughnessy, St. Paul, was temporary chairman and presided at a preliminary meeting on December 27 and a full meeting on January 20 at which a slate of officers was elected consisting of Gerald T. Mullin, chairman, Robert Gomsrud, vice chairman, Mrs. Darrell R. Yates, secretary and Mrs. Loring M. Staples, Jr., treasurer. Bills covering most of the conference recommendations failed to pass in 1967, but Governor Harold Levander is proceeding to establish judicial nominating commissions on a voluntary basis. At the January meeting drafts of legislation to effectuate conference recommendations were reviewed, some for introduction in 1967 and some in future sessions.

UTAH

The steering committee arising out of the November Citizens' Conference on Utah Courts met on January 24 and laid long range plans for permanent organization and program of the Utah Citizens' Organization for Judicial Improvement and immediate plans for support of bills then pending in the legislature. Mrs. N. A. Talvitie, Salt Lake City, is secretary. Bills for a court administrator and for the filling of judicial vacancies under a merit plan were enacted in the 1967 legislature.

WYOMING

A steering committee selected by the conferees of the Citizens' Conference on Wyoming Courts operating under the guidance of W. Hume Everett, conference co-chairman, and Mrs Jean McClintock, Cheyenne, as secretary, was able to procure approval by the voters of the minor courts amendment at the November 1966 election, following which the 1967 legislature appropriated $10,000 for the drafting of a minor courts statute for introduction and enactment in 1969.

NORTH DAKOTA

The one-day citizens' conference held in Minot, North Dakota, on September 17, 1966, was itself a follow-up to the prior Citizens' Conference on Judicial Selection and Tenure held in Bismarck in October, 1964. It was scheduled for the purpose of stimulating public interest in the judicial amendment that was to be voted on in November. The amendment was defeated by a very narrow margin. The 1967 legislature thereupon approved submission in the next election of an improved amendment including both merit selection and tenure and judicial procedures for discipline and removal of judges. Murray Baldwin of Fargo was chairman of the citizens' organization that conducted the 1966 campaign and will continue the campaign for adoption of the new version in 1968.

We have here undertaken to portray in some detail the organization and work of the citizens' groups organized after the ten 1966 conferences. The last mentioned one, however, was in fact a follow-up from 1964, and if space permitted we could go on at considerable length with reports from practically all of the 29 states in which state citizens' conferences have been held since 1960. Seven more of these are deserving, for various reasons, of mention here.

CONSTITUTIONAL MODERNIZATION

In two of the states, Pennsylvania and Florida, the movement for judicial reform has become a part of a larger effort to modernize the entire state constitution. Pennsylvania's "Project Constitution" was initiated in 1961 during the tenure of William A. Schnader as president of the Pennsylvania Bar Association. That Association co-sponsored the Citizens' Conference on Modernization of the Pennsylvania Judicial System in January, 1964, and it was that conference that sparked the founding of a nonprofit citizens' organization, A Modern Constitution for Pennyslvania, Inc., dedicated not only to judicial reform but to complete constitutional revision. Richard C. Bond of Philadelphia is its chairman, and, unlike most of the organizations thus far mentioned, it has been fortunate in being able to engage the resources of a full time executive director, Robert Sidman of Philadelphia. Some years ago a decision was made to divide the total constitutional revision project into 12 separate submissions. Up to May, 1967, three of these had been approved by the voters and had taken effect. On May 16 six more were adopted and the voters approved a limited constitutional convention to deal with the remaining topics, one of which is the judicial article. The successful campaign for the May 16 election was managed by a separate committee known as the "Committee for Nine Yes Votes" headed by former Governors William W. Scranton and George M. Leader and Executive Director John B. Davis. The convention will meet on December 1, and the possibility is real that the modernization of the Pennsylvania constitution, including its judicial article, will be an accomplished fact when the convention's proposals finally go to the voters on April 23, 1968.

The Citizens' Committee on Florida's Judicial System originated in the Citizens' Conference on Florida's Judicial System held in Jacksonville in December, 1964, and it came into being in a dramatic way.

The Conference was drawing to a close, and the conferees were in their final discussion session, talking about possible action programs to implement the recommendations they were about to make in their consensus statement. Then one of the conferees spoke up.

"How do we know that these things ever will be done?" he asked. "It's easy to sit here and say they should be done, but they won't be done unless somebody takes the responsibility for following through. I don't think we should leave this hotel until we know that somebody has been designated for that purpose and has agreed to take it."

There was enthusiastic agreement around the table, and the upshot was that the group selected two of its members, including the man who had first spoken, to go down the hall to the other discussion groups and invite them to select two of their members to form a steering committee to arrange for a follow-up program. They all did so, the steering committee met immediately after adjournment the following morning and the Citizens' Committee on Florida's Judicial System was on its way. Under the chairmanship of Dr. Jere W. Annis of Lakeland, a practicing physician, the Committee has carried on an active program in support of judicial improvements, and made its influence felt in the drafting of the judicial article of the draft constitution produced last year by the Constitutional Revision Commission. In January, 1966, the Citizens' Committee held a one-day follow-up conference in Tampa.

OKLAHOMA

Two citizens' organizations have carried the banner of judicial reform in Oklahoma since the Modern Courts for Oklahoma Conference in Norman in 1962. The Oklahoma Institute for Justice, Inc., spearheaded the successful drive for the Court on the Judiciary in 1965. This past year, for technical reasons, a new organization, Judicial Reform, Inc., was founded to conduct the successful campaign for signatures to an initiative petition for the Sneed plan, a complete judicial article patterned closely after the Model Judicial Article. While the sufficiency of the signatures has been in litigation the legislature has voted its own plan as a rival to the Sneed plan, and it was to go to the voters on July 11. In no other state in recent history has judicial reform been as crucial an issue as it has been in Oklahoma since the Oklahoma Conference, and 1967 seems certain to be the payoff year.

ARKANSAS

The Arkansas Judicial Foundation, Inc., came into being after the 1965 Citizens' Advisory Conference on the Arkansas Judicial System. A Judicial Study Commission created by the legislature two years before had presented its report and recommendations to the Conference, which had approved and endorsed them. The Foundation was first established with the thought of preparing the way for an initiative submission to the voters in 1966, but early in 1966 a determination was made to aim for 1968 instead. The Foundation, headed by Walter E. Hussman, a newspaperman of Camden, in recent months has been gathering its resources for that effort next year. Meanwhile, the Arkansas Constitutional Revision Study Commission has voted to work toward a constitutional convention.

MISSOURI

The Citizens' Conference on Missouri Courts, held in Jefferson City in October, 1965, within a few days of the twenty-fifth anniversary of the adoption of the Missouri Nonpartisan Court Plan, designated a steering committee headed by Robert M. White III, Mexico, Missouri, also a newspaperman. The first year after the conference was spent working with the bar's liaison committee in drafting a judicial article to embody the conference recommendations. For both sentimental and practical reasons, steps are now under way to reactivate as a citizens' action organization the Missouri Institute for the Administration of Justice, Inc., which conducted the successful initiative campaign for adoption of the Nonpartisan Court Plan in 1940.

NEW YORK

The New York citizens' organization, like the M.I.A.J., also antedated the citizens' conference. In fact, the Committee for Modern Courts, Inc., founded in the early 1950's, was co-sponsor of the 1964 New York conference. It was largely responsible for the administrative reorganization of New York courts in 1960, and is a leading influence in behalf of merit selection of judges and other needed improvements in the constitutional convention that is now in session. Another New York organization, the Citizens' Union of the City of New York, has been active for many years in behalf of improvements in all departments of government, including the judicial. Richard S. Childs is chairman of its very active constitutional revision committee.

HAWAII

This story would not be complete without mention of the most recent citizens' conference and its aftermath. The Hawaii Citizens' Conference on the Administration of Justice, held in January, 1967, produced a steering committee which began work at once on the formation of a permanent citizens' organization. Meanwhile, however, a delegation from the steering committee made formal presentation of the conference consensus to the Governor and the legislature. Governor John A. Burns, co-sponsor with Chief Justice William A. Richardson of the conference, received the presentation with thanks, and the legislature took the unusual step of adopting a joint resolution of thanks to the conference sponsors.

An account of citizen support for judicial reform would not be complete without mention of at least three other such organizations of prior years. Without taking space to tell their story again, we refer to the New Jersey Committee for Constitutional Revision, headed by Winston Paul, which paved the way for the New Jersey constitutional revision of 1947 and 1948; the Iowa Voters Committee for Judges and Courts, headed by Mason City newspaper editor W. Earl Hall, which was responsible for the Iowa judicial selection victory of 1962; and the Illinois Committee for Modern Courts, headed by James E. Rutherford of Chicago, a retired insurance executive, which conducted the campaign for voter approval of the Illinois judicial amendment of 1962.

The story of the 1966 Colorado Committee for Non-Political Selection and Removal of judges is told at length in a separate article in this issue.

Additional citizens' conferences are now scheduled for the fall months of 1967, and still more will follow in 1968. The number of citizens' organizations working for court modernization will continue to rise. As the one common co-sponsor of the conferences that gave them all their start, the American Judicature Society is serving as a medium of communication through which they can be aware of the existence and work of the others and share ideas and experiences with them.

List of Citizens' Conferences

1. National Conference on Judicial Selection and Court Administration, Chicago, Illinois, November 22–24, 1959.
2. State Conference on Judicial Selection and Court Administration, Lincoln, Nebraska, June 9–11, 1960.
3. Ohio Conference on Judicial Selection, Columbus, March 1–3, 1961.
4. Conference on Selection and Tenure of Wisconsin Judges, Madison, May 17–19, 1962.
5. Modern Courts for Oklahoma Conference, Norman, December 9–11, 1962.
6. Nevada Conference on Selection of Judges, Reno, December 15, 1962.
7. Second Ohio Conference on Selection and Tenure of Judges, Columbus, 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 9–11, 1964.
10. Louisiana Conference on Selection and Tenure of Judges, New Orleans, January 23–25, 1964.
11. Texas Conference on Judicial Selection, Tenure and Administration, Austin, April 16–18, 1964.
12. Indiana Conference on Judicial Selection, Tenure and Administration, Indianapolis, May 7–8, 1964.
13. Citizens' Conference on New Mexico Courts, Albuquerque, June 11–13, 1964.
14. Citizens' Conference on Modernization of the Kansas Courts, Lawrence, September 24–26, 1964.
15. Citizens' Conference on Judicial Selection and Tenure, Bismarck, North Dakota, 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 3–5, 1964.
18. The Courts, the Public and the Law Explosion, the 27th American Assembly, Arden House, Harriman, New York, April 29–30, and May 1, 1965.
19. Citizens' Advisory Conference on the Arkansas Judicial System, Hot Springs, September 23–24, 1965.
20. Citizens' Conference for Court Study, Pierre, South Dakota, October 8–9, 1965.
21. Citizens' Conference on Missouri Courts, Jefferson City, October 20–22, 1965.
22. Tennessee Conference to Improve the Administration of Justice, Nashville, April 14–16, 1966.
23. Citizens' Conference on Georgia's Judicial System, Atlanta, April 21–23, 1966.
24. Citizens' Advisory Conference on Idaho Courts, Boise, June 2–4, 1966.
25. Minnesota Citizens' Conference on Courts, Minneapolis, September 8–10, 1966.
26. North Dakota Follow-up Conference, Minot, September 17, 1966.
27. Citizens' Conference on Wyoming Courts, Laramie, September 22–24, 1966.
28. Citizens' Conference on the Montana Judicial System, Great Falls, September 29–30, 1966.
29. Citizens' Conference on Washington Courts, Seattle, November 10–12, 1966.
30. Citizens' Conference on Utah Courts, Salt Lake City, November 17–19, 1966.
31. Citizens' Conference on Alabama State Courts, Montgomery, December 8–10, 1966.
32. Citizens' Conference on the Administration of Justice, Honolulu, Hawaii, January 26–28, 1967.
33. Mississippi Citizens' Conference on Courts, Jackson, Mississippi, September 7–9, 1967.
34. Citizens' Conference on Arizona Courts, Phoenix, Arizona, October 26–28, 1967.
35. Citizens' Conference on the Administration of Justice, Montpelier, Vermont, November 2–4, 1967.
36. Citizens' Conference on Administration of Justice in West Virginia, Charleston, November 9–11, 1967.

Typical Citizens' Conference Program

Thursday

4:00 P.M. REGISTRATION

6:00 P.M. DINNER

Presiding: Leading lawyer or judge, e.g., state bar president

Welcome: Governor, chief justice, or both

Address: [State] Courts and Judges Today, by a leading lawyer, judge or law teacher.

8:00 P.M. GROUP DISCUSSIONS—FIRST ROUND

GROUP	TEAM	TOPIC	ROOM
1	A	(All groups and teams	000
2	B	discuss the present situa-	000
3	C	tion in light of the speech	000
4	D	just delivered)	000

Friday

9:00 A.M. GENERAL ASSEMBLY

Presiding: Prominent lawyer, judge or layman

Addresses:

Court Organization and Administration
Courts of Limited and Special Jurisdiction
Judicial Compensation, Retirement, Discipline and Removal

These addresses are delivered by leading authorities brought in from other states.

10:30 A.M. COFFEE

10:45 A.M. GROUP DISCUSSIONS—SECOND ROUND

GROUP	TEAM	TOPIC	ROOM
1	A	Court Organization and Administration	000
2	B	Courts of Limited and Special Jurisdiction	000
3	C	Judicial Compensation, Retirement and Removal	000
4	D	Judicial Selection and Tenure	000

12:00 NOON LUNCHEON

Presiding: Prominent lawyer, judge or layman

Address: Twenty-five Years under the Missouri Plan, by a Missouri lawyer or judge

1:45 P.M. GROUP DISCUSSIONS—THIRD ROUND

GROUP	TEAM	TOPIC	ROOM
1	D	Judicial Selection and Tenure	000
2	A	Court Organization and Administration	000
3	B	Courts of Limited and Special Jurisdiction	000
4	C	Judicial Compensation, Retirement and Removal	000

2:45 P.M. COFFEE

3:00 P.M. GROUP DISCUSSIONS—FOURTH ROUND

GROUP	TEAM	TOPIC	ROOM
1	C	Judicial Compensation, Retirement and Removal	000
2	D	Judicial Selection and Tenure	000
3	A	Court Organization and Administration	000
4	B	Courts of Limited and Special Jurisdiction	000

4:00 P.M. GROUP DISCUSUSIONS—FIFTH ROUND

GROUP	TEAM	TOPIC	ROOM
1	B	Courts of Limited and Special Jurisdiction	000
2	C	Judicial Compensation, Retirement and Removal	000
3	D	Judicial Selection and Tenure	000
4	A	Court Organization and Administration	000

5:00 P.M. FREE TIME

6:00 P.M. DINNER

Presiding: Chairman of citizens' conference

Address: Justice is Everybody's Business, by outside speaker

8:00 P.M. GROUP DISCUSSIONS—FINAL ROUND

GROUP	TEAM	TOPIC	ROOM
1	A	Priorities for Improve-	000
2	B	ment: All groups will	000
3	C	discuss simultaneously	000
4	D		000

Saturday

9:00 A.M. GENERAL ASSEMBLY

Presiding: Prominent lawyer, judge or layman

Topic: Summary of discussions and approval of consensus statement

11:00 A.M. Adjournment

Questions and Answers about the American Judicature Society's Citizens' Conferences on Court Modernization

More than a thousand leading citizens in more than half of the states have attended Citizens' Conferences on Court Modernization since the series began in 1959. More are being planned in other states, and already some of the earlier ones have had follow-up conferences. Here are answers to questions that are being asked about this important development in the judicial reform movement in America.

Q. *What is a court modernization conference?* **A.** It is a meeting in which a group of citizens, usually of one state, get together for two or three days of lectures and discussions on the administration of justice in their states, its problems, and what may be done to solve them. It usually concludes with adoption of a consensus statement and establishment of a citizen organization to work toward carrying out the recommendations of the consensus.

Q. *In what states have they been, or will they be held?* **A.** The list of conferences already held, which appears on page 12, covers well over half of the states, and planning is in progress for conferences in most of the rest of them.

Q. *Under whose sponsorship are the conferences held?* **A.** Some have been a governor's conference, called by the governor of the state. Others have been sponsored jointly by governor and chief justice. In these, and others like them, the state bar association, law schools, and other legal and judicial organizations have cooperated, while in still other states these organizations and others have been the actual sponsors. The American Judicature Society has participated as a co-sponsor or cooperating organization in all of the conferences, and the National College of State Trial Judges is also a co-sponsor this year.

Q. *Who is invited to the conferences?* **A.** Citizens drawn from all geographic areas of the state and all segments of the population.

Q. *How are they selected?* **A.** An invitations committee procures from various sources the names of citizens known to have an interest in civic affairs or governmental improvement or who for other reasons might be expected to be a useful member of such a conference. This initial list is checked to be sure that it contains adequate representatives of business, industry, labor, agriculture, the professions, education, religion, ethnic and minority groups, and any population group of special importance in the particular state. It is then screened down to about 200 of the best names. Invitations to these will produce a conference of 100 to 150 conferees.

Q. *Where are the conferences held?* **A.** Most of them have been in a large hotel in a centrally located city. Some have used law school and university facilities; two have been in churches. The requirements are facilities for luncheons, dinner meetings and group assemblies, and several small conference rooms for group discussions, plus housing accommodations for out-of-town conferees, speakers, and panelists.

Q. *What is the conference format?* **A.** It follows what has come to be known as the Arden House format, from the American Assembly of Columbia University at Arden House, Harriman, New York. This is a three-day program wherein assemblies of the entire conference addressed by leading authorities are intermingled with discussion sessions in which the conference is broken down into a series of small simultaneous discussion groups. For each conference topic there is a discussion team consisting of a chairman chosen for his skill as a discussion leader, a reporter to take notes, the speaker who has lectured on the topic, and another panelist from another state brought in to give the conference the benefit of the experience of his state. These teams move from group to group until by the end of the conference each team has led a discussion of its topic by each group. The conference ends with an assembly in which the conferees adopt a consensus statement based on the reporters' notes and make plans for follow-up activities. An example of a typical conference program appears on page 13.

Q. *What are the conference topics?* **A.** These are selected by the local sponsors on the basis of their appraisal of the local situation and needs. Most often they have included court organization, court administration, selection, tenure, compensation, retirement, discipline and removal of judges, and the minor courts. Other topics sometimes used have included court congestion and delay, civil and criminal procedure and appellate court problems.

Q. *Who are the speakers?* **A.** There is always an introductory address by a leading local lawyer or judge selected by the local planning committee, explaining the fundamentals of that state's judicial system and pointing up its problem areas. Outside speakers are selected by the American Judicature Society on the basis of their national reputation and experience, and in the past have included such men as Justices Tom C. Clark and William J. Brennan, Jr. and Former Justice Charles E. Whittaker of the United States Supreme Court, Judge Sterry R. Waterman of the U.S. Court of Appeals, U.S. District Judge Elmo B. Hunter, Judge Robert H. Hall of the Georgia Court of Appeals, Judge W. St. John Garwood, retired justice of the Supreme Court of Texas, Judge William H. Burnett of the Denver County Court, John W. Freels, Illinois court administrator, Herbert Brownell, president, and Glenn R. Winters, executive director of the American Judicature Society, and Governors Daniel J. Evans of Washington, Orval E. Faubus of Arkansas, William L. Guy of North Dakota, John A. Burns of Hawaii, and Robert E. Smylie of Idaho. In addition, from two to four lawyers, judges or lay citizens from other states attend each conference as panelists to bring in additional outside experience to enrich the discussion sessions.

Q. *Who pays the travel expenses of these speakers and panelists?* **A.** Since 1962 these have been paid by the American Judicature Society out of a grant from the Kellogg Foundation of Battle Creek, Michigan, received through the National College of State Trial Judges, a co-sponsor of the conferences. From the fund also is supplied to each conferee a book of reading materials on the conference topics. The Society contributes staff services for planning and arranging the conferences, working with local committees in the states involved.

Q. *How are other conference costs paid?* **A.** Out-of-pocket expenditures for travel expenses of speakers and panelists are usually approximately matched by local contributions for conference luncheons and dinners and for mailing and miscellaneous expenses. The largest single item, the travel and hotel expenses of the conferees, are paid by the conferees themselves. Costs vary widely from state to state, but it may be said that an average conference costs about $10,000, half of which is represented by the expenses and lost time of the conferees, while the other half may be divided fairly equally between travel expenses and local expenses. Contributions toward the latter have been made from bar association funds, gifts of individual lawyers and citizens, law schools, lay and governmental organizations and local foundations.

Q. *How can a conference of 100 lay people significantly affect the judicial system of a*

state? **A.** In several ways. These people are influential enough so that their personal influence will have substantial effect. Furthermore, most of them are in positions of responsibility in various groups. One may be a bishop of his church, another the president of a labor union, mayor of a city, or editor of a newspaper. Such people can have great impact on the people of their own constituency. The conferences usually get very good publicity and the addresses of visiting speakers and the text of the conference consensus are well publicized. Finally, in most instances a follow-up organization is established to carry the message of the conference to the rest of the state.

Q. *How are the follow-up groups organized?* **A.** The conferees in their discussion groups or in some other way designate members of a steering committee which usually organizes a nonprofit corporation of which all conferees are charter members and which others are invited to join.

Q. *What sort of follow-up activities have been undertaken?* **A.** They have conducted additional state-wide and regional conferences; they have arranged for lectures and distributed literature; they have arranged for the drafting of statutes and constitutional amendments; and they have campaigned for the enactment of legislation and approval by the voters of constitutional amendments.

Q. *How are these activities financed?* **A.** Locally, of course. If the organization decides to limit itself to educational and promotional efforts, it can qualify under Internal Revenue Service rules so that contributions to it will be deductible on the contributor's federal income tax return. If they wish to go to work at once for enactment of specific legislative or constitutional changes this cannot presently be done, although legislation to permit it is pending in Congress. Just how to proceed in this regard is a matter for local determination in light of the existing situation and needs.

Q. *Have actual judicial improvements been accomplished as a result of citizens' conferences?* **A.** Yes indeed. Plans for merit selection and tenure of judges were adopted in Nebraska in 1962 following the 1960 Nebraska conference and in Colorado and Utah in 1966 following conferences in those states. Improved machinery for discipline and removal of judges has been adopted in Texas, Oklahoma, Florida, Nebraska, and Colorado, all conference states. The Montana legislature enacted improvements in the judicial retirement system, Idaho established the office of state court administrator, New Mexico voters replaced the justices of the peace with a new magistrate court system, South Dakota voters approved reorganization and simplification of the county courts, and many lesser improvements recommended by citizens' conferences are accomplished facts. More and more of such accomplishments will be reported in future issues of JUDICATURE as the impact of more recent conferences makes its way to the legislative halls and the voting booths.

Q. *How can we go about getting a citizens' conference on court modernization in our state?* **A.** First, talk it over with some of your associates and community leaders and find some other people who agree with you that it would be a good thing. Then discuss it with your state bar president, or a member of the American Judicature Society's board of directors in your state. You may find that preliminary planning for it is already under way. If not, urge these people to communicate with the American Judicature Society, 1155 East Sixtieth Street, Chicago, Illinois 60637, or do so yourself.

The Colorado Amendment Story

Alfred Heinicke

A proposal for a constitutional amendment to give Colorado a merit selection plan for judges of all courts of record plus a discipline and removal law, similar to those plans endorsed and advocated by the American Judicature Society, was ratified by a 32,213 vote majority of that state's voters in the general election last November. By trial and error we developed a campaign strategy which may prove to be of value to others who now may be preparing to do the same thing.

This campaign did not completely lack precedent in Colorado. A campaign to rewrite our judicial article from an organizational and administrative standpoint had been successfully waged in 1962. We learned a basic lesson from its effective use of the non-lawyer campaign committee, Citizens' Committee for Modern Courts. This time we used a similar organization incorporated by the bar's committee of judicial selection and tenure called "Committee for Non-Political Selection and Removal of Judges, Inc." organized in January before the campaign started. Like the 1962 group it was headed up by prominent laymen, a retired college president as chairman and a major university chancellor and newspaper editor sharing roles as co-chairman. However, the real work of the campaign was directed by an executive committee composed mostly of lawyers and some trustees of the committee.

CAMPAIGN ORGANIZATION

Our campaign organization was broken down further into special committees to carry out special functions such as finances, public relations, petitions, block canvass, a women's division and a speaker's bureau. The headquarters, housed in offices loaned by a bank and equipped by furniture and machinery both loaned and rented, was headed by a retired businessman as executive secretary and a small staff costing a total of $14,000 for salaries. Public relations were handled by a hired professional firm costing $5,000, and for a time we used the services of a hired fund raiser at a cost of $2,000. However, due to difficulties in getting a finance chairman, a formal drive was abandoned, and the work of getting money was eventually undertaken by the committee as will be described in more detail later.

Though the organization for the campaign was basically similar to the one used in 1962, the work to be accomplished was quite different. In 1962 an amendment was being sold to the voters that had been devised after some three years of hearings by a legislative committee with the prestigious name of the Committee on Administration of Justice of the Colorado Legislative Council. Following this the amendment was proposed to the people by a recognized authoritative source, the legislature.

This was not true in 1966. The legislature had refused to submit the 1966 proposition to the people, and therefore it became necessary to wage two campaigns, the first to get enough petition signers to place it on the November ballot, and the second to get it adopted. The first we found to be difficult because of apathy and a general unwillingness to be committed.

Only the most dedicated people outside of the headquarters had faith that the effort would succeed. Partisan election of the judiciary was so firmly established that it had even been carried over into the new 1962 judicial article. The issue was so politically explosive that it might have endangered the new article to have attempted a change then.

However, we had some things happen afterwards that had an impact upon the voters' thinking. The first one occurred as far back as November, 1963, when the Colorado Conference on Selection of Judges was held in

Boulder under the co-sponsorship of the American Judicature Society and the Joint Committee for the Effective Administration of Justice. This group of leading citizens adopted a consensus statement strongly endorsing non-political judicial selection, and it supplied citizen leadership for the subsequent campaign. Following this the voters of Denver approved an amendment to the charter of the city and county to provide for merit selection of its county court judges. This was accomplished in 1964 and accounts for the fact that the 1966 amendment expressly exempts Denver's county judges. This working model of a merit plan already established in our midst greatly helped to demonstrate the thing we were asking the voters to approve. Meanwhile, Governor John A. Love helped in the same way by voluntarily establishing by executive order a nominating commission similar to that of the proposed plan.

INITIATIVE PROVISIONS

When the legislature failed to approve our amendment, we decided to proceed under the initiative provisions of Colorado law. We only needed about 47,000 signatures, which might not sound like very much to those in more heavily populated states or with stricter requirements, but nevertheless the petition campaign proved to be quite difficult.

Our first plan was to get the necessary signatures by having the lawyers circulate the petitions throughout the state. To accomplish this we sent 3,000 petitions to the lawyer chairman of each judicial district and then we mailed 2,600 petitions to every member of the Colorado Bar Association. This was done toward the first of the campaign in March, but this approach did not yield the results we had hoped. The petitions were not circulated as energetically as they might have been and so we had to work out plans for another method of operation.

We decided to concentrate the drive in Denver, the largest population center in the state. We turned to the usual source of getting things like this done—women. The League of Women Voters accepted the campaign as a project, and the metropolitan leader of our women's campaign group effectively organized teams of women. To these were added, in the last days of the campaign, employees of banks and law firms loaned to help put us over the top.

SOLICITING SIGNATURES

These people went to work soliciting signatures in shopping centers, bank and building lobbies and even busy street corners. They found that they were most effective where the traffic count was high and when the circulators approached the prospects with a request to sign rather than wait for the latter to come to them.

In the end, we met our July 8 deadline by filing 71,476 signatures. The excess of approximately 25,000 names more than exceeded our loss estimates for invalid signatures. About 80 per cent of the signatures were turned in from the Denver metropolitan area, and lawyers, lawyers' wives and secretaries accounted for a substantial part of the signatures. Although for purely mechanical reasons we got most of the petition signatures in the Denver area, it should be pointed out that in the final vote the amendment carried both in the metropolitan area and outstate.

The proposition was designated Amendment No. 3 and was submitted with four other amendments, and two referred laws dealing with daylight saving time and capital punishment. Ours received a larger total vote than any other question.

The two most potent ingredients of the campaign were concentrated advertising and

ALFRED HEINICKE is a member of the Colorado Springs bar and president of the Colorado Bar Association.

local committees. The speakers' bureau was also of immense help, and the use of speakers' kits aided in maintaining a uniformity of presentation. Hundreds of speeches were made throughout the state by leading lawyers and members of the League of Women Voters.

PUBLICITY

Everything done during the campaign was geared toward getting a maximum of publicity value out of each activity. This was accomplished notwithstanding the fact that a majority of the press, including one of the two leading newspapers in the state, opposed the amendment. But our stories got printed.

Every time a local committee was organized or had a luncheon it was publicized regardless of the number attending. Some local groups even got publicity when they appointed officers and committee members of various subcommittees. Publicity was given resolutions of organizations which endorsed the amendment. Whenever a representative of the speakers' bureau was assigned to an engagement, a report of this was sent to public relations to permit full exploitation for news value.

Of course, heavy reliance was placed on the standard means of public communication, paid advertisements in news media like TV, radio and newspapers, costing a total of $26,000. Brochures, bumper stickers and handbills (including the expense of their distribution house to house in metropolitan districts) cost an additional $17,000. However, every possible opportunity was seized to use free services. Letters to the editors, radio phone-in programs, public service time on TV and radio, donated appearances on TV panel shows, and the like, were fully exploited. Guest editorials and editorial kits for editors proved helpful notwithstanding the lack of some newspaper support.

Trying to maintain good public relations during the entire campaign was difficult due to lack of interest or emotional appeal and the people's difficulty in understanding the amendment.

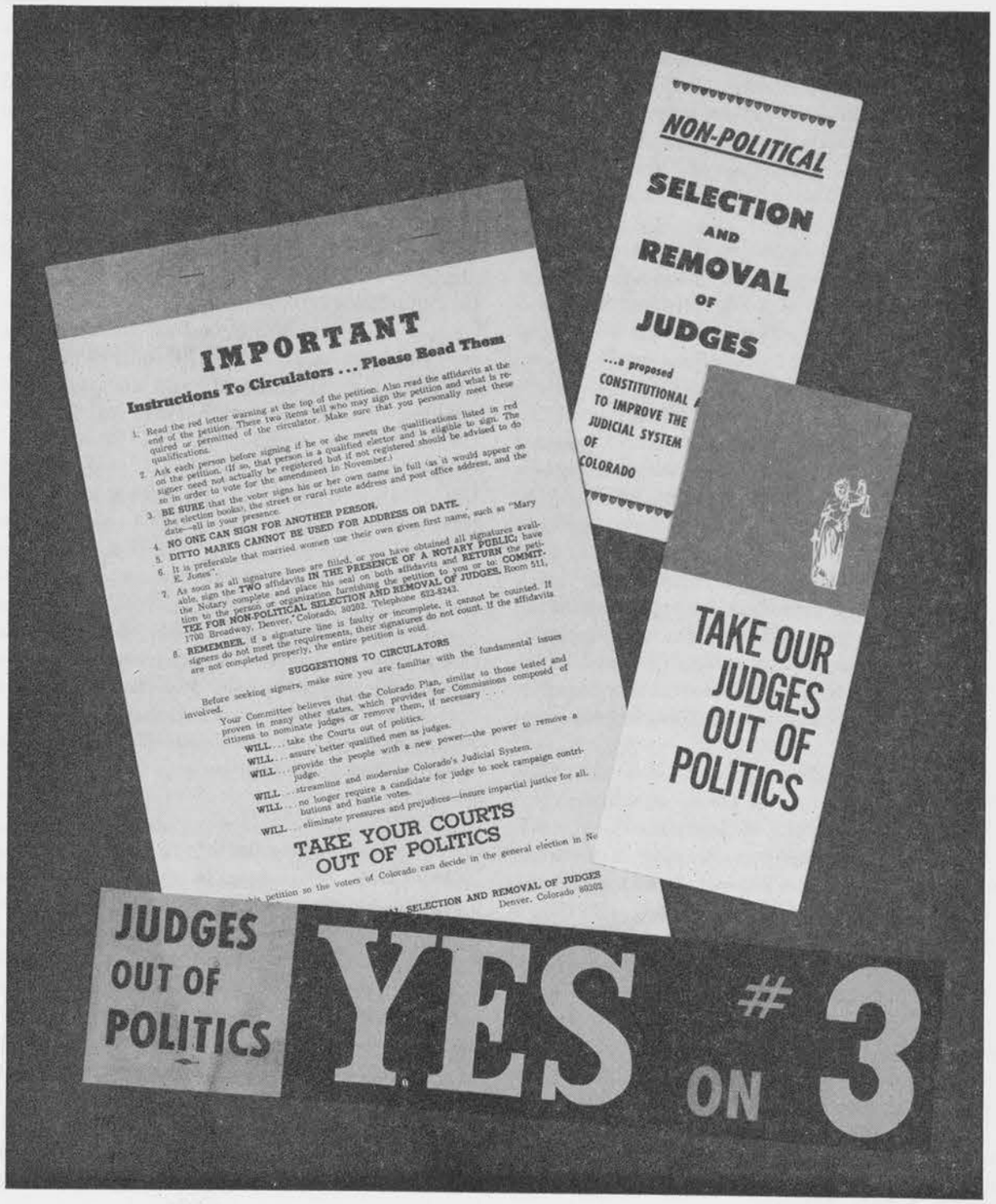
A public opinion poll study early in the campaign gave us vital information for beaming our advertising properly to the public. Total poll expense was $2,500 but it was well worth it.

The theme was kept simple in all advertising: "Keep our judges out of politics." The amendment was referred to as the "non-political courts amendment" and the committee as the "Committee for Non-Political Courts." References to such words as "commissions," "governor," and "appointment," were avoided since they are words the opposition could have jumped on and exploited. Emphasis was placed on terms such as "selection," "vote on their merit," etc. Controversy and controversial issues were avoided, although perhaps contributing to public apathy, because this deprived the opposition of a forum. Moreover, the committee did not have the funds to spare for getting involved in a costly sparring contest with the opposition over some one or two confusing issues.

ADVANCE PLANNING

Planning and production of advertising was done well in advance to avoid last minute overload and the inevitable crises which always come at the busiest moments. We anticipated the opposition would strike their hardest on the last week-end before election (which they did), and our advertising program was scheduled for a gradual build-up to reach the peak of its crescendo over the last week-end flurry of activity.

Prorating of advertising costs among all media as cash became available was avoided. It was the policy of public relations counsel



and the executive secretary to pay the total amount budgeted for a single medium, such as billboards and TV. This meant we might be fully committed at any one time on one or two media and be completely without coverage on other media. This furnished the fund raisers with a persuasive argument to get more money to buy advertising in the remaining media.

Nearly half of our total budget was spent on advertising, and four-fifths of this was spent during the last week. Here is a recapitulation of the last weeks' advertising program: Six to seven letters to the editor were published during the week, and on Thursday every weekly newspaper in the state ran 24-column-inch ads. On Sunday, large ads were run in the state's two largest newspapers, two letters to the editor appeared, one news story on our poll was carried showing a favorable prediction and one fifteen minute TV panel show was run. Monday the same large sized ads were run in the two major papers together with a thirty-column-inch ad in both of them listing names of 280 state-wide sponsors, and another fifteen minute TV panel show was aired.

LOCAL CITIZENS' COMMITTEE

Aside from the publicity program, the local citizens' committees were a most effective device. Efforts to organize these by correspondence during the petition drive failed for the most part, and therefore the executive secretary personally went about the state to assist in setting them up. This was accomplished at luncheon meetings arranged by local lawyers, to which key community leaders were invited.

Although organizations' endorsements were difficult to get, they were valuable as an entreé to distribute petitions and brochures, to solicit money, to get the use of the name for influencing other similar groups, and to provide useful news items. Though neither political party endorsed the amendment, partisan people who favored the amendment worked within their respective organizations distributing brochures and bumper stickers, identifying opposition and lining up support at party gatherings.

FUND RAISING

Fund raising, as usual, was a never ending task. It was started off by letters sent members of the Colorado Bar Association after a committee had appraised the probable contribution ability of each member. Several letters were sent, some to follow-up previous ones and nudge the lawyers along and others asking for further support. All were written in a light vein calling upon the team spirit, and they were informative about the needs of the campaign.

The business and industry fund campaign was stymied with the problem of getting a leader. Finally a banker undertook the task, and together with the executive secretary they conducted a fairly successful campaign. The way it worked was this. A meeting was held with members of law firms, and lists of the business firms represented by the lawyers were examined. From these lists likely prospects were selected and assigned to the lawyers for solicitation. The chairman wrote the prospects first, following which the lawyers made their personal solicitation. In many cases the prospect mailed a check in response to the letter before the solicitor called. A few law firms were reluctant to participate, while others did and with good results. Out of a total of 350 business firms asked, about 100 contributed. Many businesses were deterred by the non-deductibility of the contribution under income tax law, and many complained of excessive solicitation since the

United Way was conducting a concurrent campaign. However, the campaign demonstrated, among other things, that while deductibility of contributions is important, it is not absolutely essential, and they can be obtained without it.

Finances for the entire program came, therefore, from the following sources, in rounded figures: 15 per cent from business and industry, 35 per cent from lawyers and 50 per cent from bar organizations. We fell short of our originally planned receipts by about $20,500, but by careful budgeting we were able to conduct a comprehensive action program, and all the bills were paid at the end.

IDEAS FOR FUTURE CAMPAIGNS

This completes a general description of what was done. Now let us look at some of the other good ideas that emerged as we went along but which we were not able to carry out due to lack of either funds or time.

We might have arranged for business firms to distribute brochures to their employees, and literature might have been put out at all major political rallies. More mailings could have been made to groups such as members of endorsing organizations, occupants, unaffiliated voters, and a weekly newsletter could have been sent local committee chairman. We might have used cartop signs, handed out marked sample ballots, and reached more people through business firms' house organs and telephone committees. These would have been inexpensive additions to our advertising program.

Instead of spending time on activities of questionable value, like booths at bar association and medical society conventions, we might have gained more by distributing handbills at public events such as football games, conventions or even just standing on busy street corners. Brochures could have been placed in doctors' and dentists' offices, and block canvasses should have been organized for distribution of literature house to house. Time should have been allowed for more trips out into the state to meet with local committees and to organize more.

If we had it to do over again, we would recruit our sponsors and endorsers earlier as well as our key non-lawyer citizens for the local committees. An early personal call on newspaper editors might have helped tilt more newspaper support our way. Last, but not least, a longer and heavier advertising buildup before election would have been wiser because, although we did win, it might have provided us with a wider margin for safety. But that would have taken more money than we had, and so we had to make do with what we had.

Some of our campaign material is pictured with this article. Readers may wish to have some of it for guidance in planning their campaign. The American Judicature Society has samples of it for distribution, and will send them on request.

How to Win Campaigns

William H. Wilcox and James J. O'Brien

Today, volunteer citizen campaigns for or against referenda issues sometimes fall hopelessly behind schedule. The reasons are: (1) too ambitious a program, (2) inadequate planning, and (3) too little manpower. This article cannot provide manpower, though it does suggest when to get started recruiting a volunteer force in time to use it most effectively.

The suggestions contained here should be most helpful in keeping the campaign activities within a realistic limit and timing them so that each will occur early enough to permit the succeeding activities to be completed by election day.

Nearly everyone connected with a referendum campaign has seen important activities completed, like drafting a sample speech for the speaker's bureau, well after the time they were most needed. This article should help prevent that, too.

We have attempted to adapt to referenda campaigns a modern planning and management technique known as the critical path method. This technique was first developed in the years 1956 to 1958 by a group of researchers at the E. I. du Pont de Nemours Company. The critical path method is being used increasingly for construction and engineering projects and was recently employed to help develop, on an accelerated basis, a capital program for Philadelphia's board of education. This method of scheduling a network of complex and interrelated activities will be applied to an increasing range of planning problems in the years ahead.

THE BASIS OF THE CRITICAL PATH METHOD

The basis of the CPM technique is the arrow diagram, which starts at the beginning and is constructed independent of the desired goals. For instance, if we are going to purchase a car, there are three things we must do. First, we must decide what car we are going to purchase. Secondly, we negotiate for the new car and, finally, we actually purchase the car. In arrow diagrams, these steps are represented in the following fashion:

Select new car model → Negotiate → Purchase new car →

These arrows represent logical sequence and say that we cannot start on the activity represented by the arrow until the preceding arrow has been completed. For instance, we cannot negotiate with a dealer until we have selected the car which we hope to purchase. Also, we cannot purchase the car until we have negotiated a deal. Expanding the example, let us define more of the steps involved in the car purchase. The specific will, of course, depend upon the purchaser's individual situation. Under "selection of car model," these might be:

(1) Decision that purchase is necessary (economic study and/or wife's assent, whichever is applicable);

(2) Decision on type and make based upon research or past experience;

(3) Decision whether to purchase a new or used car;

(4) Spruce up old car prior to negotiations.

Under "negotiations," we might include:

(5) Obtain list of applicable dealers;

(6) Visit dealers and discuss price;

(7) Select one dealer based upon price and reputation;

(8) Agree on final deal.

This article appeared in the May, 1967, issue of the *National Civic Review*, Volume LVI, Number Five, and is reprinted here with the permission of the National Municipal League, publishers of the *Review*.

WILLIAM H. WILCOX is executive director of the Greater Philadelphia Movement and has observed at close hand the conduct of several referenda campaigns in Philadelphia over the last decade.

The steps to "purchase car" might include:

(9) Borrow money;

(10) Transfer insurance;

(11) Pick up car.

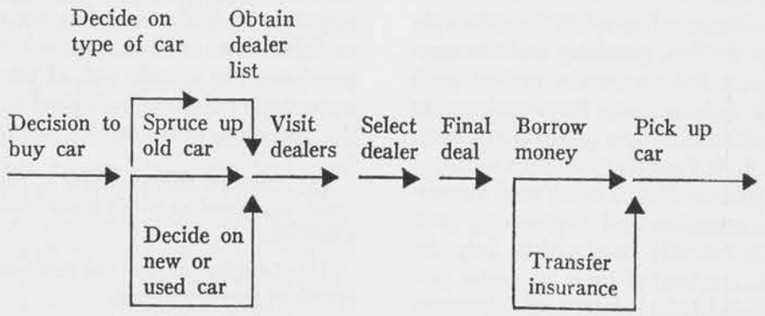
In preparing our arrow diagram (below) with eleven steps rather than three, we see that relationships are identified across the original three activities.

Thus, we see that an operation can be planned in any degree of detail desired, the detail being directly proportional to the number of activities defined. Networks with several thousand activities are not unusual, and in such cases an electronic computer must be used to calculate the values and find the path of activities requiring the most time, i.e., the critical path. A computer was not used in the network analyzed in this article.

CPM IN A CIVIC PROGRAM

The following analysis and accompanying network diagram (see page 26) are the first application of these techniques to a civic program known to the authors.[1] Now that the application of network scheduling to election campaigns has been discovered, we predict early use of the method on a rather sophisticated plane for campaign planning for both issues and candidates at local, state and national levels of government.

The network diagram is shown on a time scale of weeks. Since some network sequences of activities take less time to complete than others, these have time "slack" or "give" in their scheduling. This amount of "give" or elasticity is represented by the waving lines connecting the solid lines of activities.



The critical path diagram was based on data developed from observing two referenda campaigns in Philadelphia, one in 1965 for the adoption of a school home rule charter supplement and a 1966 campaign for a school bond issue.

Several conclusions are indicated:

1. The critical path (shown as a heavy dashed line) in the campaign, i.e., the path requiring the most time to complete, involves the following sequence of activities: (*a*) recruit chairman; (*b*) recruit citizens committee; (*c*) raise funds; (*d*) print basic literature; and (*e*) distribute basic literature.

2. The next longest path is: (*a*) recruit chairman; (*b*) recruit cabinet; (*c*) recruit volunteers; (*d*) select speaker's bureau; (*e*) train speakers' bureau; and (*f*) operate speakers' bureau.

3. A financial "constraint" (represented by the lighted dashed line) must be solved, i.e., funds must be raised, before the following activities can occur: (*a*) print basic literature; (*b*) print sample ballots; (*c*) write TV scripts; (*d*) write radio scripts; (*e*) print election day tags; and (*f*) preview newspaper ad proofs.

4. A campaign chairman should be recruited almost a hundred working days before election if the campaign is to operate at maximum efficiency.

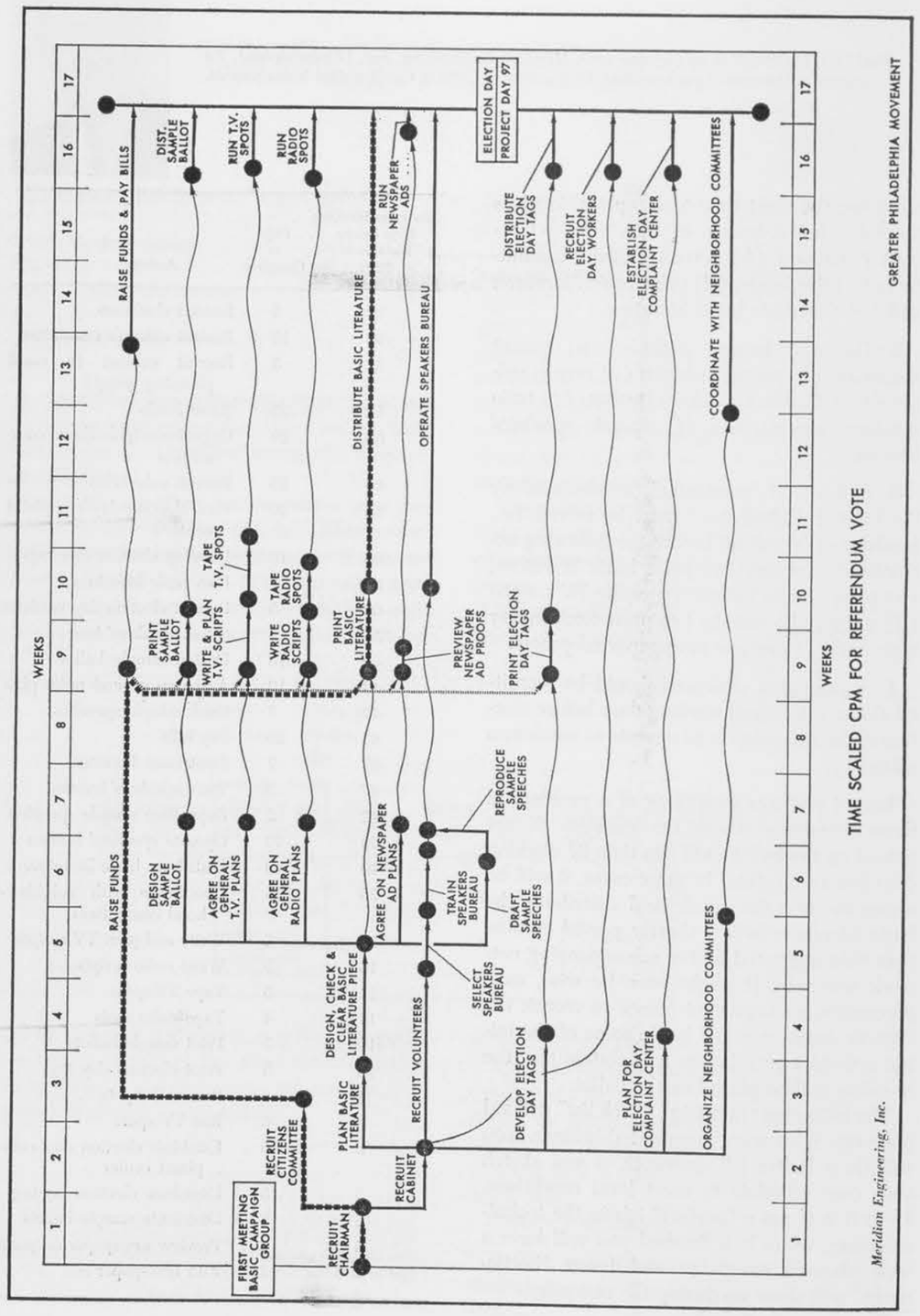
Item 4 presents something of a problem in those situations where the question is not placed on the ballot until less than 97 working days before election. In these cases, it will be necessary to raise funds and distribute the basic literature over a shorter period of time than that suggested by the accompanying network schedule. It might even be wise, as a precaution on important issues, to recruit the citizens committee and begin some of the initial activities even before it is certain that the question will be placed on the ballot.

The following "campaign check list" will aid planners in meeting required deadlines. You will do a better job, however, if you sketch your own schedule to meet local conditions. Even if it is not a "perfect" job in the technical sense, when it is finished you will have a well planned campaign and fewer "bottlenecks" will show up during the campaign.

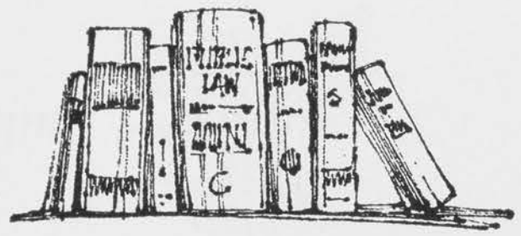
JAMES J. O'BRIEN is an engineer with Meridian Engineering, Inc. (Philadelphia). An expert in the critical path method, he is author of CPM in Construction Management.

Minimum Working Days Before Election to Start	Days to Complete	Activity
97	5	Recruit chairman
92	10	Recruit citizen's committee
92	5	Recruit cabinet (a small planning group)
82	35	Raise funds
66	20	Organize neighborhood committees
66	15	Recruit volunteers
66	10	Plan election day complaint center
66	10	Develop election day tags
66	7	Plan basic literature
66	5	Recruit election day workers
50	5	Select speakers' bureau
49	10	Design sample ballot
49	10	Agree on general radio plan
49	7	Draft sample speeches
47	20	Pay bills
47	7	Print basic literature
47	5	Train speakers' bureau
42	2	Reproduce sample speeches
40	40	Operate speakers' bureau
40	40	Distribute basic literature
25	25	Coordinate with neighborhood committees
17	6	Write and plan TV scripts
16	5	Write radio scripts
11	5	Tape TV spots
11	4	Tape radio spots
10	5	Print sample ballots
10	5	Print election day tags
6	6	Run radio spots
6	6	Run TV spots
5	5	Establish election day complaint center
5	5	Distribute election day tags
5	5	Distribute sample ballots
5	2	Preview newspaper ad proof
2	2	Run newspaper ads

1. The authors report that the Critical Path Method was used to plan and conduct a civic campaign in Philadelphia early this year for (1) a limited constitutional convention, (2) eight constitutional amendments, (3) a school charter amendment and (4) a stadium bond issue, all eleven times passed.



Literature of Judicial Administration



Selected Writings of Arthur T. Vanderbilt. Edited by FANNIE J. KLEIN and JOEL S. LEE. Dobbs Ferry, New York: Oceana Publications, Inc., 1965. Vol. 1, pp. 1–231, Vol. II, pp. 1–278. Set $15.00.

There are some men who are so completely and unselfishly devoted to a cause which they are convinced is in the public interest that they are indifferent whether or not their names will be remembered when final success has been achieved. For them it is the cause that is all-important and not the man who fought so gallantly to achieve it. This is true in particular of Arthur Vanderbilt who probably did more to reform American law than any other man, with the possible exception of Dean Roscoe Pound, during the present century. We, therefore, owe a debt of gratitude to the authors of these books who have prepared a permanent record of the main features of Vanderbilt's work. Mrs. Klein studied under Vanderbilt when he was a professor of law at New York University, and she is now the assistant director of the Institute of Judicial Administration which he was instrumental in founding. Mr. Lee, a graduate of the New York University Law School, is now a professor of law.

The authors point out that Vanderbilt was "a lawyer, scholar, educator, leader of the bar, statesman and judge" so that they have had a wide field to cover. They have done so by giving us a representative selection from his various writings. These are introduced in each case by a most useful note which gives us the necessary relevant facts.

Volume I deals with the legal profession and the modernization of the law. As was natural, Vanderbilt, who was a great teacher, was deeply concerned with how lawyers acted. He felt that it was the duty of the law school not only to teach law but also to train lawyers in the exercise of their profession. Thus he says, "these five—counselling, advocacy, improving his profession, the courts and the law, leadership in molding public opinion and the unselfish holding of public office—are the essential functions of the great lawyer." It is interesting to note that Vanderbilt himself was able to perform these five functions but there must be very few other men who have ever been able to do so. The advice which he gives to the advocate is also sound, but here again it is doubtful how many lawyers are able to meet all his requirements. They are: (1) capacity for grasping all the facts of the cases; (2) thorough understanding of the relevant principles of law; (3) knowledge of human nature in all its manifestations; (4) a comprehension of economic, political and social environment; (5) the ability to reason; (6) the art of expressing oneself clearly and appropriately.

Of greater practical importance is the advice that he gives to the young lawyer when he first appears in court. He emphasizes the great importance of opening the case clearly so that the judge and the jury will know what it is about. In particular the advocate should read as little as possible from the cases and his own notes. In the summation it is essential to develop one's strongest points, but also to answer those made by one's opponent.

In discussing appeals Vanderbilt compares in an interesting way the English system of oral argument with the American system based primarily on written briefs. On the whole Vanderbilt prefers the written brief, but he points out that the oral argument may be of great importance in making it easier for the judge to understand what the case is about. All the way through this chapter he emphasizes how essential it is for counsel to be accurate because, apart from any moral question, he is almost certain to lose his case if the judge or the jury realize that he is misleading them. In the case of the judge it is particularly important to give

a correct citation; it is also essential for the advocate to know and state correctly the facts of the cases he cites. Vanderbilt is in favor of putting one's best points first as the weak ones may prejudice the court. This, however, is a view that is not universally held as it may be argued that it is the last point which will be best remembered. Finally, it is safest to disclose a troublesome fact in one's own case before one's opponent can do so.

There are many other interesting suggestions with some of which one may disagree. Thus he quotes President Tappan of the University of Michigan as advising a young professor: "Never stop dead; keep saying something." I should have thought that an occasional pause would be of value, especially if it would enable one to avoid a possible error.

In the section of his book dealing with the "Modernization of the Law" Vanderbilt places particular attention on Procedure which has always been the legal Cinderella sitting forlornly in her kitchen. For Vanderbilt she becomes the beautiful Princess as she did for Maitland who always pointed out that our rights and liberties are founded on due process. Vanderbilt, therefore, argues that far more attention should be given to procedure in the law schools which today tend to regard it as a part of legal history. Contrary to the usual view he would make the legal history part, which is chiefly concerned with causes of action, an introduction to the substantive law of contract and tort, and deal with modern procedure in an entirely separate course. There is much to be said for this view as such a course would be both practical and interesting. It would, however, be a difficult one for students and it may be that it ought to be a third year course rather than an introductory one.

In the second book there is a particularly interesting essay on "Education for the Law." While recognizing the value of the case system as a method of training for the young student in legal analysis, he prefers the problem method after the first year. This, he points out, will emphasize law in action rather than law in the books. It is typical of his thoroughness that he has studied the English method of examining under which examinations are set and graded by professors who do not give the course; this encourages independence of thought on the part of the student as he is less influenced by what the lecturer has said.

The major part of Volume II is concerned with judicial administration. In an introductory note of great interest the authors point out that the four heroic figures who contrbiuted most to this subject were Roscoe Pound, John J. Parker, Charles E. Clark and Arthur T. Vanderbilt. Of these four, Vanderbilt has probably exerted the greatest influence in his books and articles, as president of the American Judicature Society, as chairman of the National Conference of Judicial Councils, and as Chief Justice of the Supreme Court of New Jersey which enabled him to play a leading part in putting his ideas into practice. Fortunately his influence will continue to grow because in 1952 he established at the New York University Law School the Institute of Judicial Administration which has earned not only a national, but also an international reputation. This would not have been possible if Vanderbilt had thought of administrative law as a collection of separate arbitrary rules which had no scientific foundation, but as these essays show he felt that this branch of the law deserved the same careful historical study, and the same detailed analysis by the scholar as well as by the practitioner as did the substantive law subjects. It is due, in large part to him, that the universities now tend to accept this view as being self-evident.—ARTHUR L. GOODHART, emeritus professor of law, Oxford University, England.

Reader's Viewpoint

Additions to Wiretapping Article After Supreme Court Decision

Since the Supreme Court's decision of *Berger v. New York,* No. 615, June 12, 1967, 35 Law Week 4649 renders a good deal of my article, "Wiretapping and Bugging: Striking a Balance Between Privacy and Law Enforcement," which appeared in last month's JUDICATURE out of date, I have summarized in the following paragraphs what seem to me the central aspects of the case.

Its narrow holding is that a search that would otherwise be unconstitutional because of the element of physical trespass is not validated by a court order, when the statute under which the court order was issued does not require sufficient particularity in the orders concerning the place to be searched, the person's conversations to be overheard, and the expected nature of these conversations and the times at which they will be heard. The language of the opinion suggests a number of broader points however. As in *Warden v. Hayden,* No. 480, May 29, 1967, 35 Law Week 4493, which eliminated the "mere evidence" rule, the Court emphasizes that the primary purpose of the fourth amendment is to protect privacy. Its treatment of the principle that bugging absent physical invasion is always constitutional suggests almost certainly (assuming the new Justice, Thurgood Marshall, accepts the majority's point of view) that the rule will disappear.

Similarly, the opinion's language is inconsistent with the holding in *Olmstead v. United States,* 277 U.S. 438 (1927), that the fourth amendment does not govern wiretapping. Discussion of *Osborn v. United States,* 385 U.S. 323 (1966), indicates the likelihood that the circumstances in which consent of a party renders monitoring permissible will be narrowed.

In short, the opinion casts doubt upon the constitutionality of law enforcement wiretapping or eavesdropping, except under the strictest procedural safeguards, and gives little assurance that the necessary safeguards can be developed as part of a practical scheme. Whether and when notice to the party searched may be dispensed with, for example, is left unclear.

The decision does not undermine the need for legislation. Even if its broadest implications are realized, it will not reach private eavesdropping, and the exclusionary rule needs to be supplemented by other deterrents to law enforcement overhearing. However, the decision does reduce the viable legislative approaches to authorized tapping and bugging.

PROFESSOR KENT GREENAWALT
School of Law
Columbia University
New York, New York

Relationship of Ombudsman System to the Judiciary

We received a request from Mr. Bernard Frank of the Pennsylvania Bar inquiring into the relationship of the judiciary to the Ombudsman System. We asked Professor Walter Gellhorn of the Columbia University School of Law to answer Mr. Frank's inquiry. Mr. Gellhorn is author of When Americans Complain —Governmental Grievance Procedures, *and* Ombudsmen and Others—Citizens' Protectors in Nine Countries, *both published by Harvard University Press, Cambridge. Since we believe this subject is of interest to our readers, the correspondence is printed below.*

There is a bill pending in the Pennsylvania Legislature for the establishment of the Om-

budsman System, and I am making a study of it for several members of the Legislature. I have just begun my studies but one of the problems which was raised in my own mind is the relationship of the Ombudsman to the judicial branch.

It is true that there is a relationship to the executive branch of government but there is a possibility of relationship to the judiciary as well.

The Ombudsman in some of the countries such as Sweden does relate to the activities of the judiciary. A draft called No. 2 by Professor Gellhorn specifically states that the term "administrative agency" does not include any "court or judge." On the other hand, the bill proposed in the Pennsylvania Legislature states that "administrative agency" does not include "any judge" and makes no reference to "court."

Neither Professor Gellhorn's recommended bill, nor the proposed Pennsylvania bill refers to an exclusion for clerks, other officers, and employees of a court. On the other hand, the bill introduced by Congressman Reuss on January 23, 1967, in the House of Representatives states that the act shall apply to all officers and employees except judges, clerks, commissioners, referees in bankruptcy, and other officers (other than attorneys of such) and employees of any court of the United States. . . .

In view of the wording of the various proposed bills, I wonder whether the Ombudsman System would apply to courts, the makeup of courts, the procedure, clerks of court, employees of the court, attorneys as officers of the court in the absence of an express exception.

Could the Ombudsman under the Pennsylvania bill take a complaint which involves the minor judiciary such as Justice of Peace, alderman, or magistrate, or a complaint against the Courts of Common Pleas for some administrative error such as the failure to expedite cases? I don't know the answer, but in my mind there does exist a possible relationship between the Ombudsman and the judicial branch in view of the wording of some of the bills.

BERNARD FRANK
Allentown, Pennsylvania

Your letter of May 31 encloses a letter from Mr. Bernard Frank and requests my comment on questions he has raised.

1. The Swedish and Finnish Ombudsmen do have power to deal with judges and with court staffs along with all other law administrators. Nowhere else is this true.

2. My draft bill does not empower an ombudsman to concern hemself with any "court or judge." I cannot imagine that an ombudsman would attempt to extend his activities to the staffs (or functionaries) of a court or judge—or that, if an ombudsman were so silly, he would be supported by either the courts or the legislature. Every ombudsman discussion I have heard in this country has stressed that the system has to do with administrative oversight, not with supervision of judicial institutions. A bill prepared for municipal use by the Association of the Bar of the City of New York says the ombudsman may deal with the acts of any "Agency," which is defined as any New York City governmental unit "other than . . . (3) the courts. . . ." Apparently this group of able lawyers thought that "the courts" meant the entire judicial apparatus. So do I.

3. The likelihood of an ombudsman's trying to keep a watchful eye on attorneys because they are "officers of the court" seems to me to be exceedingly remote. I would not myself draft a bill that explicitly catalogues every conceivable exception. In the first place, the draftsman is likely to overlook something; and, if he has precisely listed a dozen things he means not to be covered by the law, the forgotten thirteenth is likely then to be regarded as within its scope even though of the same genus as the things that were excepted. Secondly, why stir up a debate that nobody wants? Nobody in the United States, so far as I know, has advocated extending the ombudsman's power to reach lawyers, judges, law clerks, and court officials. But I'll wager that if somebody now advocates *omitting* them from the ombudsman's jurisdiction, some wild man from the prairie will begin a crusade to include them. I really do not think any doubt exists at present, and I would leave matters as they now stand, with a generic exception of courts and judges.

4. None of these remarks are meant to suggest that, in my view, the judicial apparatus should be forever immune from critical examination by a vigilant outsider. "Judicial independence" does not mean freedom from criticism or accountability. In my belief some of the supervisory mechanisms so well discussed in your pages (notably, the California commission on the judiciary) will be refined and adopted widely, in years to come. But I rather suspect that ombudsmen will be so busy with administrative agencies that they will not hunger for responsibility to deal with courts and their staffs, as well.

WALTER GELLHORN
Professor of Law
Columbia University
New York, New York

At the time that I wrote I had available only one of the two bills which had been presented in the Pennsylvania House of Representatives. My correspondence, therefore, related to a bill which excluded "any judge." The other Pennsylvania bill, however, excludes "any court" which was identical to language used by Professor Gellhorn in a model draft referred to as number 2. Professor Gellhorn has revised his draft as of June 12, 1967 and I note that his draft, which was originally to the effect that "administrative agency" . . . "does not include (1) any court or judge" now reads "does not include (1) any court or judge or appurtenant judicial staff".

If I were forced to state a conclusion, I would say that perhaps the words excluding "any judge" might create problems whereas the words excluding "any court or judge or appurtenant judicial staff" would be on safer ground. I believe that the correspondence bears out the proposition that there may be a relationship of the Ombudsman to the judiciary and, for that reason, the American Judicature Society should bring the Ombudsman System within its orbit of interest if only to prove that the possibility is remote.

I was quite interested to read in Professor Gellhorn's book, *Ombudsman and Others,* that in Denmark the Ombudsman had at one time considered lawyers as a class as a suitable object of his concern but a controversy was raised concerning which Professor Gellhorn states, "Discussion between the Ombudsman and the Chairman of the Bar Association produced a retreat but not a complete surrender. The Ombudsman did agree that future complaints should in the first instance be handled by the Bar Association and he did withdraw any pretense of present jurisdiction over the entire profession."

BERNARD FRANK
Allentown, Pennsylvania

News Briefs

Oklahomans to Choose Merit or Non-Partisan Judicial Selection

Two proposals for constitutional amendments were approved by the Oklahoma legislature in May for submission to the voters at a special election to be held July 11.

Senate Joint Resolution 16, which was assigned the ballot designation of State Question 447, would require merit selection of supreme court justices and judges of the court of criminal appeals. House Joint Resolution 508, on the other hand, proposed a complete reorganization of the state's court system including election of these judges as well as all other judges on nonpartisan ballots. Its ballot designation was S.Q. 448.

Reflecting a legislative compromise which resulted in the dual proposal, S.Q. 447 relating to merit selection declared that it would not become effective even though approved by the voters if S.Q. 448 was not likewise approved. Therefore, this meant that there would not be merit selection unless reorganization also passed, but that there could be reorganization without merit selection.

S.Q. 447 calls for a judicial nominating commission of 13 members consisting of six lawyers and six nonlawyers selected from the state's congressional districts, the lawyers to be elected by fellow lawyers and the nonlawyers to be appointed by the governor on a bi-partisan basis. The thirteenth member would be a nonlawyer chosen at large by the others.

Judicial vacancies would be filled by gubernatorial appointment from a list of three names of persons who had agreed in writing to serve if appointed. The chief justice would appoint if the governor failed to do so in 60 days. Appointees would serve at least 12 months before running on their records upon an uncontested retention ballot and then, if approved, serve six-year terms.

The reorganization prescribed by S.Q. 448 would superimpose a unified trial court system onto the present district courts and would vest in it state-wide jurisdiction over all matters regardless of the amounts or penalties involved in all civil and criminal cases. Several existing courts would be absorbed into the new system. Judges of the present superior courts would be district judges and those of the common pleas, county, children's and juvenile courts would be associate judges in the new system. The business of courts of limited jurisdiction would be handled by special judges appointed by the district judges in each judicial administrative district. These districts would encompass one or more judicial districts. All three grades of judges would be lawyers except nonlawyers could be appointed special judges if no lawyers were available.

To stay in office, supreme court justices as well as district court judges and associate judges would have to remain members of Oklahoma's unified state bar. Disbarment, therefore, would be another means of removal from office besides impeachment and proceedings instituted before the recently created court of the judiciary. (May, 1966 Journal, p. 237.)

The court reorganization program provided by S.Q. 448 would include a comprehensive administrative plan for all courts. All administrative authority, including temporary assignments, would be vested in the supreme court and exercised by the chief justice assisted by an administrative director and staff. Presiding district judges elected by the judges of the judicial administrative districts would exercise administrative authority subject to the supreme court's rules.

In addition to eliminating five courts and justices of the peace, S.Q. 448 would give the legislature authority to enact legislation to change or abolish the court of criminal appeals, Oklahoma's special appellate tribunal which like Texas' is restricted to hearing only criminal appeals. This authority to change was supplemented to permit the creation of a new intermediate court of appeals system to handle both civil and criminal appeals. Also, the proposal would allow the legislature to alter or eliminate four other special and limited jurisdiction courts as well as statutory boards, agencies and commissions.

In addition to these two proposed amendments, a third one called the Sneed plan will probably be submitted to the voters in November, 1968. It too would completely revamp the Oklahoma court system but, in addition, would provide for merit selection of all judges, instead of just those of the appellate courts. As reported earlier, it awaits a ruling by the state supreme court on the validity of the initiative petitions to have it placed on the ballot. (May, 1967 JUDICATURE, p. 320.) The supporters of the Sneed plan have vowed to continue the fight for it notwithstanding the outcome of the July 11th election, but they have nevertheless endorsed at this time both S.Q. 447 and S.Q. 448.

Constitutional Convention Wins Approval in Pennsylvania

Pennsylvania voters in the May 16th primary elections approved a referendum for a limited constitutional convention to rewrite the judicial article of that state's constitution. Official tabulations were not completed at the time of this writing, but unofficial results showed the issue was apparently favored by a three to two vote.

Besides revamping the state's judicial system, the convention will consider taxation and state finances, local government and apportionment of the legislature.

As provided in the referendum, 150 delegates to the constitutional convention will be elected November 8, 1967. The convention will convene December 1, 1967, and is to finish up by February 29, 1968. Pennsylvanians will vote on the convention's proposals next April.

A bipartisan preparations committee made up of the lieutenant governor, six senators and six representatives has already started to prepare for the convention. John Ingram, administrative secretary to former Governor William W. Scranton, has been named executive secretary. Dean Burton R. Laub of Dickinson School of Law has been designated by Governor Raymond P. Shafer to coordinate the various plans for court reorganization.

At the same election, in addition to the convention question, seven separate proposed amendments changing parts of the constitution were submitted by the legislature and approved by the voters. An eighth amendment authorizing a $500 million bonded indebtedness for public improvements also was ratified.

The adoption of the seven amendments was the finest achievement in Pennsylvania's long battle for constitutional reform since the Pennsylvania Bar Association launched its "Project Constitution" program in 1961. Two proposals had been previously adopted in 1966 elections. If the four subjects assigned to the convention by the legislature are acted upon favorably next year all the objectives of "Project Constitution" will have been accomplished.

Substantial support was given the Pennsylvania Bar Association's efforts by A Citizens' Conference on Modernization of the Pennsylvania Judicial System held in Philadelphia, January 9–11, 1964, and A Modern Constitution for Pennsylvania, Inc., organized the following year. The latter organization has had offices in Harrisburg operated by its executive director, Robert Sidman, and it has been primarily engaged in educating the public on the need for a modern constitution.

• Formation of a new International Legal Center, aided by American philanthropic foundations and aimed primarily at helping developing nations to strengthen their systems of law, was announced in June by John B. Howard, President of the new Center. Initial financing of $3 million has been made available by the Ford Foundation to establish the Center and to provide general support for the first six years. Headquarters for the International Legal Center have been established at 866 United Nations Plaza in New York City. The International Legal Center will have three main purposes: to give systematic and continuing attention to the role of law in the development of modern nations; to provide an international vehicle for developmental assistance and exchange of information on the basis of the best available knowledge and experience; and to help in the creation and mobilization of greater competence and resources of personnel, here and abroad, for the solution of legal problems in the international field.

• "A Change of Pace" Conference on Legal Services, sponsored by the National Legal Aid and Defender Association in cooperation with 12 other national legal organizations will be held on August 6, 1967, from 9 A.M. to 4:30 P.M. at the Sheraton Heeia Lodge, Honolulu, Hawaii. The Conference will be followed by a Luau, from 5–9 P.M., with live Hawaiian entertainment, hosted by the Legal Aid Society of Hawaii and the resident recipients of the OEO programs. Topics scheduled for the morning seminar include "Practice of Law by Law Students," "Changes Needed in Lawyer Referral Services," and "Constitutional Amendment to Balance Rights of the Public with Rights of the Accused." Senator Joseph D. Tydings will deliver the luncheon address. The afternoon program will be a roundtable discussion on "Legal Services Supported by the Government." Tickets for this event are available by writing to the American Bar Association, and may also be purchased at the ABA registration desk in the Hotel Ilikai.

Calendar of Conferences and Seminars

Citizens' Conferences on the Courts
co-sponsored by the American Judicature Society

Mississippi Citizens' Conference on Courts Jackson, Mississippi	September 7–9, 1967
Citizens' Conference on Arizona Courts Phoenix, Arizona	October 26–28, 1967
Citizens' Conference on the Administration of Justice Montpelier, Vermont	November 2–4, 1967
Citizens' Conference on Administration of Justice in West Virginia Charleston, W.Va.	November 9–11, 1967

Trial Judges' Seminars
of the National College of State Trial Judges

Pennsylvania	Hershey	June 1–2
Nebraska	Lincoln	June 15–16
Missouri	St. Louis	June 15–17
Oregon	Cottage Grove	June 22–24
Florida	Miami Beach	June 21–23
Idaho–Montana–Wyoming	Coeur d'Alene, Idaho	August 28–30
Louisiana	New Orleans	October 2–3
Mississippi	Oxford	October 5–6

American Judicature Society Meetings

Annual Breakfast Meeting Honolulu, Hawaii	August 9, 1967
Midyear Meeting Chicago, Illinois	February, 1968
Regional Meeting Denver, Colorado	June, 1968

The AMERICAN JUDICATURE SOCIETY·1913

To Promote the Efficient Administration of Justice

The American Judicature Society

TO PROMOTE
THE EFFICIENT ADMINISTRATION OF JUSTICE

1155 E. Sixtieth St.—Chicago, Illinois 60637

Founded in 1913

Hawaiian Resolution

An unusual expression of appreciation for one of the American Judicature Society's citizens' conferences on the administration of justice was the concurrent resolution adopted by the legislature of Hawaii in March, 1967.

WHEREAS, Governor John A. Burns and Chief Justice William S. Richardson, with the cooperation of the Judicial Council of Hawaii, the Bar Association of Hawaii, the Young Lawyers Section of the Bar Association of Hawaii, the National College of State Trial Judges, and the American Judicature Society, sponsored a Citizens' Conference on the Administration of Justice on January 26–28, 1967; and

WHEREAS, this conference of ninety leading laymen was honored by the presence and participation of Associate Justice Tom C. Clark of the United States Supreme Court and a number of other distinguished jurists, as well as Executive Director Glenn R. Winters of the American Judicature Society; and

WHEREAS, this conference labored diligently in its discussions and produced a consensus statement indicating that the following areas urgently need improvement:

1. The method of selection and the tenure of judges;
2. The backlog of cases in the First Circuit Court;
3. Delays in the termination of litigation;
4. Physical facilities are inadequate;
5. Modern management methods including mechanization and the use of computers have not been adopted;
6. The lack of public understanding of the judicial system and the absence of a program of communication and education to overcome this;
7. Statutory revision has not kept pace with the administrative problems of the courts; and

WHEREAS, growing out of the conference, a citizens' educational organization will be formed to seek the continuing improvement and public understanding of the judicial system; and

WHEREAS, in an effective democracy, it is necessary that there be the widest public awareness that the law, grounded in reason and justice, is the foundation of our society; now, therefore,

BE IT RESOLVED by the Senate of the Fourth Legislature of the State of Hawaii, General Session of 1967, the House of Representatives concurring, that we congratulate and commend the Governor and the Chief Justice for sponsoring the Citizens' Conference, the various supporting organizations and participating jurists for their contributions, and the conference laymen for their conscientious participation, their constructive consensus statement and their plans to establish an ongoing educational program; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Governor and the Chief Justice of the Hawaii Supreme Court.

Planning Committee for the
Second Minnesota Citizens Conference on Courts

Thunderbird Motel - April 30th, 1970 and May 1st, 1970

Christopher O. Batchelder	Administration Mayo Clinic Office: 1 - 507 - 282-2511	Rochester, Minnesota
Robert J. Brown (Residence - Stillwater)	St. Thomas College Faculty Office: 1 - 612 - 647-5277	St. Paul, Minnesota
Theodore Collins, attorney	Degree of Honor Building Office: 1 - 612 - 227-8231	St. Paul, Minnesota
William J. Cooper	725 Northwestern Bank Bldg., Office: 1 - 612 - 333-6374 Res: 1 - 612 - 925-1594	Minneapolis, Minnesota
Richard Klein, attorney & administrator	Minnesota Supreme Court Office: 1 - 612 - 221-2474	St. Paul, Minnesota
John C. McNulty, attorney	Builders Exchange Bldg. Office: 1 - 612 - 339-8015	Minneapolis, Minnesota
Dr. Sidney A. Rand, President	St. Olaf College Office: 1 - 507 - 645-9311	Northfield, Minnesota
Harold B. Shapira	625 Snelling Ave., S. Office: 1 - 612 - 698-0841	St. Paul, Minnesota
	H.B. Shapira Highland Drug Center 2056 Ford Parkway Office: 1 - 612 - 698-3831	St. Paul, Minnesota
Emily Staples (Mrs. Loring M. Jr.)	Route 2, Box 700 Res: 1 - 612 - 473-9120	Wayzata, Minnesota
Annete Whiting (Mrs. William W.)	622 East School Street Res: 1 - 507 - 451-6670	Owatonna, Minnesota
R. Stanley Lowe, attorney Associate Director	American Judicature Society 1155 East Sixtieth St., Office: 1 - 312 - 667-2727	Chicago, Illinois

Backups

Larry O'Shaughnessy	Sister Fides (Alberta Huber)	Fletcher Waller
Sander Genis	Marie Slawik	
John E. Tilton	Father Denzil A. Carty	
Sophie Marblestone	James Borman	
Dr. Richard Frey	Phil Duff	

Minnesota Citizens for Court Reform, Inc.

625 SOUTH SNELLING
TELEPHONE 628-0841

ST. PAUL, MINNESOTA 55116
AREA CODE 612

January 16, 1970.

To: 1966 Conferees of "Minnesota Citizens Conference on Courts".

It is a pleasure for us to announce the "Second Minnesota Citizens Courts".

The location will be at the Thunderbird Motel very near the Metropolitan Stadium - Bloomington.

The dates are April 30th and May 1st, 1970.

Our plans are to follow the same format as we used in 1966 at Holiday Central. The Executive Committee is working very closely with the National office of the American Judicature Society in planning this meeting.

We exist to promote the efficient administration of Justice. We seek to improve our Court system in Minnesota. There is no unanimity of opinion on how to accomplish these goals.

The opening portion of the conference will deal with the Court system in Minnesota today. The closing portion will deal with an action program.

The subjects to be covered are three:

1. Judicial selection and tenure.
2. Judicial compensation, retirement, discipline and removal.
3. Court organization and administration.

The subject of improving minor courts will be included under "court organization and administration".

For the second conference we hope:

1. To have about ninety new conferees to get the benefits of the educational aspects of the program. These new conferees will go into the regular discussion sessions

to talk about the subject matter as was done in 1966.

2. The returning conferees from our first conference in 1966 will delve into the conference topics more deeply than before. This group will accentuate a Court modernization program for Minnesota and follow up educational activities to be conducted by our citizens' organization.

We will, of course, have general assembly meetings.

In 1966 many distinguished judges and lawyers from Minnesota and outstate spoke and led our discussion group. Again this year you will be impressed and pleased with the leadership.

Much effective work has been done in these past few years in Minnesota. Our goals remain unreached. We need the broad base of interested citizens throughout the state if we are to succeed in attaining the most efficient administration of justice in our state. We encourage your continuing interest and active co-operation.

Will you please write to me at your early convenience and do these things:

1. Indicate whether you will - or you may or you will not attend this conference.

2. Will you want room accomodations - single or double?

3. Will you recommend a person or persons to be one of the ninety new conferees. We would need - full name - address - and a brief statement of why you are recommending that person. Please print the name.

Your co-operation is vital to us. We are all volunteers - representing all walks of life. You understand, of course.

Sincerely,

William J. Cooper
Secretary

WJCjec

SECOND MINNESOTA CITIZENS' CONFERENCE ON COURTS

Minneapolis/St. Paul, Minnesota

April 30 - May 1, 1970 (?)
May 7 - 8, 1970 (?)

SECOND MINNESOTA CITIZENS' CONFERENCE ON COURTS

Minneapolis/St. Paul, Minnesota
April 30 - May 1, 1970 (?)
May 7 - 8, 1970 (?)

(First Day)

9:00 A.M. REGISTRATION

10:00 A.M. GENERAL ASSEMBLY

Presiding:

Welcome: Honorable Harold Le Vander, Governor of Minnesota

Honorable Oscar R. Knutson, Chief Justice of the Supreme Court of Minnesota

* (Please Note: Of course, neither of these dignitaries have been contacted to perform this function. They are merely inserted as a suggestion of the kind of speakers to get.)

Address:

A REVIEW OF MINNESOTA'S COURT SYSTEM

By:

11:00 A.M. GROUP DISCUSSIONS -- First Session

Group	Team	Topic	Room
A	1	Minnesota Courts Today	
B	2	Minnesota Courts Today	
C	3	Minnesota Courts Today	
D	4	Minnesota Courts Today	
E	5	Minnesota Courts Today	

(Please Note: Groups A - C will consist of new conferees; Groups D - E will be old conferees who attended the 1966 conference.)

12:00 Noon LUNCHEON

Presiding:

Addresses:

MERIT JUDICIAL SELECTION AND TENURE

By:

JUDICIAL COMPENSATION, RETIREMENT, DISCIPLINE AND REMOVAL

By:

2:00 P. M. COFFEE BREAK

2:30 P. M. GENERAL ASSEMBLY (Luncheon Session Continued)

Address:

COURT ORGANIZATION AND ADMINISTRATION

By:

3:00 P. M. GROUP DISCUSSIONS -- Second Session

Group	Team	Topic	Room
A	1	Merit Selection and Tenure	
B	2	Judicial Compensation, Retirement and Discipline	
C	3	Court Organization and Administration	
D	4	Judicial Personnel: Selection, Retirement, Compensation and Discipline	
E	5	Court Organization: All related Topics	

4:00 P. M. GROUP DISCUSSIONS -- Third Session

Group	Team	Topic	Room
A	3	Court Organization and Administration	
B	1	Merit Selection and Tenure	
C	2	Judicial Compensation, Retirement and Discipline	
D	5	Court Organization: All related Topics	
E	4	Judicial Personnel: Selection, Retirement Compensation and Discipline	

5:00 P. M. GROUP DISCUSSIONS -- Fourth Session

Group	Team	Topic	Room
A	2	Judicial Compensation, Retirement and Discipline	
B	3	Court Organization and Administration	
C	1	Merit Selection and Tenure	
D	4	Minnesota Modern Courts' Plan	
E	5	Minnesota Modern Courts' Plan	

6:00 P. M. RECESS

6:30 P. M. DINNER

Presiding:

Principal Address:

MODERN COURTS FOR MODERN AMERICANS

By:

8:00 P.M. RECESS

(Please Note: After this recess, the reporters and discussion leaders of each team will meet in private to draft a consensus statement for presentation of the next day's final general assembly session.)

(Second Day)

9:00 A.M. GENERAL ASSEMBLY

Presiding:

Address:

THE CITIZENS' ROLE IN MODERNIZING THE COURTS

By:

9:45 A.M. GROUP DISCUSSIONS -- Fifth Session

Group	Team	Topic	Room
A	1	The Citizens' Role	
B	2	The Citizens' Role	
C	3	The Citizens' Role	
D	4	The Citizens' Role	
E	5	The Citizens' Role	

10:45 A.M. COFFEE BREAK

11:00 A.M. ASSEMBLY SESSION

Presiding:

Summary of Discussions and Consensus Statement

By:

12:00 Noon ADJOURN

1:30 P.M. (Optional) Meeting of Board of Directors of Minnesota Citizens for Court Reform, Inc.

rmh

MINNESOTA CITIZENS FOR COURT REFORM

Thunderbird November 7th, 1969.

10:30 A.M. meeting convened by Chairman, Christopher O. Batchelder.

Minutes read by Secretary, William J. Cooper

a) of Annual meeting of 9/13/68
b) officers and members of Executive Committee elected at the meeting of 2/14/69.
c) Liaison Committee report of Sidney A. Rand, Chairman - submitted 9/30/68.
d) A review of John E. Tilton' semi-annual report for Minnesota Citizens for Court Reform, Inc. (MCCR) - with an emphasis on the final part of the report stating the role of MCCR.

Legislative report by Annette Whiting (Mrs. William).

WJC: Get report from Mrs. Whiting - for minutes record.

Harold Shapira: motion to accept minutes as read. Approved.
Harold Shapira: motion to accept Mrs. Whiting' legislative report. Approved.

Informal comments:

Bruce Campbell - works especially for Senate Judiciary Committee - Assistant Senate Counsel - Minnesota:

1. Too many changes - all at once - extremely difficult to achieve - minimal chances of success in getting passed by legislature.

2. Feels that feeling is among his legislative contacts that some court reform is desirable.

3. Need for appellate court - considered questionable. Problem: cost to person making appeal to higher court; appellate level would be second appeal.

4. Is probably pertinent to note that many bills that are drafted either by a legislator or staff - are meant to open discussions and study - and are not necessarily meant to be the actual legislation.

Judge Bujold - Duluth - commented briefly on need for compromise of desired legislation by individuals and groups - to actually get positive legislation.

Mr. C. Stanley McMahon:

You can't put a price tag on justice. (re - a person who has a $5,000 claim - is entitled to as competent and specialized judge - as a person who has a $6,000 claim).

Mr. McMahon has a long history and involvement in the structure of Minnesota courts. He feels - our group and any other group should propose the very best court system - and attempt to get it all as soon as possible - not piecemeal. "If anyone would propose our present system of courts - he would be committed." Improvements will not come via the Bar - but from the people. Inexperienced - expensive - mediocre - is how he explains our present system of courts and judges. It is not that things are bad - just mediocre.

Mr. Lowe: Unification is present national trend - compromise along the line - breaks down the desired long range goal of an improved court system.

Important: to maintain the image of the court - as one in which public has confidence.

Hope of Minnesota rests on the MCCR Committee.

Comments:

John McNulty: Stan McMann is Mr. Court Reform in the Minnesota Bar. Hennepin County Bar - much opposition to reform.

Opposition: Technical and legalistic - e.g. on the selection of a merit selection committee.

From this Hennepin Bar meeting came much understanding and interest of this movement. John feels that as time unfolds - the Bar will be receptive to reform.

Present bills - not helpful - and would create more problems than cures - and would reverse efforts of MCCR.

John McNulty feels that our Committee has really been very positive - bills proposed and opposed; he encourages conversation in legislature, among bar members, among the public. Really the more conversation the better.

Strong feeling of opposition to fact that a majority of merit selection committee would be lay people and not lawyers.

Stanley Lowe - American Judicature Society.

Citizens' Conferences have been held in 39 states. In many states notable progress has been made.

Idaho - has been notable in its success for implementing reforms - e.g. unification of minor courts - etc. and still progressing.

Colorado - has achieved almost everything except integration of minor courts and major courts. All courts in Colorado are all state supported - no local money involved - with disadvantages that would attend local money.

Wisconsin - developing.

Iowa - have merit selection of trial and appellate judges - now. Other areas proceeding.

Arkansas - constitutional convention pending incorporating - complete court reform.

Mississippi - commission bill after 10 years - implemented primarily at final impetus of citizens committee.

Florida - is going to voters in 1970.

West Virginia - power blocks behind the court reform movement are Democratic Farmer Labor party + another major organization.

Roscoe Pound first stated something was wrong with our courts in a bar meeting - St. Paul, Minnesota. So it started here. Year 1906. Mr. Pound was an obscure Nebraska lawyer at the time.

John McNulty (director of the American Judicature Society) introduced Professor Robert J. Martineau, University of Iowa Law School. Professor Martineau has a long history of involvement in efforts for Court Reform:

A copy of Mr. McNulty's introduction is attached.

A copy of Professor Martineau' address is attached.

William J. Cooper
Secretary

Board of Directors & Executive Committee meeting - November 7, 1969 - P.M. Session. Thunderbird Motor Hotel, Minneapolis, Minnesota.

Mr. Christopher Batchelder presiding. Minutes of 9/17/69 meeting read and approved.

Treasurer' Report - approved. Report appended to these minutes.

Elections:

Three directors nominated by the Nominations Committee - to go on the Executive Committee:

State District Judge, Donald C. Odden, Duluth, Minnesota.

Mr. Charles R. Murnane, Attorney, St. Paul, Minnesota.

Mr. John C. McNulty, Attorney, Minneapolis, Minnesota.

Additional nominations invited from floor.

Mrs. Staples moved - after adequate pause - that nominations be closed. Seconded and passed.

Above three members unanimously elected members of the Executive Committee.

New business:

Sander Genis:

Commenting on Senator Rosenmeier' bills - re Court Reform. In general - not acceptable to our committee.

Sander indicated his great and profound respect for the courts of our state and the nation. He referred to John McNulty' opening remarks in introducing Professor Martineau.

He moves the establishment of a committee - to be called an "Educational Committee" - to be appointed by the Chairman - and to be a watchdog of our legislature and bills submitted to legislature re Court Reform - and to keep our Executive Committee informed of such bills.

Mrs. Staples - second.

Discussion: Mr. McMann - thinks Mr. Genis' statement was excellent and agrees. Feels - chairman should be a non lawyer - in effect a layman. Motion carried without dissent. (Sander recommends appointment of Mr. McMann and John McNulty to committee)

Membership - discussion -
Harold Shapira - feels we should have 1000 members.

Judge Odden mentioned need to disseminate information - and need to show what other states have done. Stan Lowe was asked if it is in written form what other states have done. His answer; situation is so fluid - as new states are making progress in this answer.

Comments on our need for funds for 1970 Citizens Conference. Judge Bujold asked if perhaps there might not be some Minnesota foundations that would be interested in helping us financially.

[illegible] suggested we interest such groups as the Jaycees. Suggested a composite report of statements of 1966 conference plus comments and position of reports today - be widely circulated as an educational effort.

Judge Bujold asked if we have a list of service clubs throughout the state? No - we do not. This area should be studied and reviewed as a further effort to disseminate - educational information on need and details of Court Reform.

Motion: Mrs. Whiting -

That there be another Citizens Conference on Court Reform in Minnesota sponsored by the Minnesota Citizens on Court Reform, Inc.

Harold Shapira - seconded. Passed - unanimously.

Attending Executive Committee Meeting:

Judge Bujold - Duluth
Mr. Stanley McMahon - Winona
Stanley Lowe - Chicago (American Judicature Society)
Professor Martineau - University of Iowa
Harold Nelson - Bloomington
Annette Whiting - Owatonna
Harold Shapira - St. Paul
Mrs. Marbelstone - White Bear Lake
Mrs. Staples - Minneapolis
John McNulty - Minneapolis
Judge Mason - Mankato
Christopher Batchelder - Rochester
Judge Donald C. Odden - Duluth
Robert Brown - St. Thomas
Sander Genis - had to leave early
William J. Cooper - Minneapolis

Stan Lowe explained steps of organizing a Citizens Conference - which he will make available to us including pre-approach - follow-up - etc.

Motion:

Judge Odden - name to be "Second Minnesota Citizens Conference on Courts".

Mrs. Whiting - seconded - passed unanimously.

Locality to be: Metropolitan area - determined by motion of Mrs. Whiting - seconded by Harold Shapira - passed.

Date: Planning Committee to determine - about April 30th - May 1st - or May 6th or May 7th. Any other major activities planned. See Chamber of Commerce.

A planning committee - to do preliminary planning - and to report to Executive Committee.

Finance Committee to be established - by Chairman; moved - Mrs. Marblestone - seconded - Harold Shapira; passed.

Content of conference (re second conference on courts). Mr. Lowe: three subjects are probably the maximum number of subjects that can be handled.

1. Judicial selection and tenure
2. Compensation, discipline, removal, retirement.
3. Court organization and unification.

Bob Brown is very articulate as is Mrs. Whiting on the care needed to properly select a broad cross-section of people to be invited and whose presence will be important - at the second Conference of Citizens on Court Reform. Their views will be most important - when the invitation list will be prepared.

The Judicature Society will provide all the material and its printing - all up-dated through summer of 1969.

How many are to be invited?
Limitation: standard to pay for their lunches - such as was done first conference 9-66.

Three topics - 3 discussion groups. 25 to 30 is an ideal number in the discussion group + the 4 team members.

Therefore ideal objective - 90 first comers. Those who came to first conference in 1966 could have their meeting for more depth discussions - e.g. how and what has been done in other states.

Bob Brown

We must have a program of implementation. Judge Bujold (Beshoo) - we must have shock troops - to follow up.

Bob Brown: invite Senator Rosenmeier to be a speaker on his bills at the Conference. Will be an opportunity to get the depth of his proposals.

New conferrees desired - 90. plus returnees of the first conference of 1966.

No state has brought in new conferrees and old conferrees - and separated them at the 2nd conference.

Adjourned at 4:00 P.M.

William J. Cooper

William J. Cooper
Secretary

TREASURERS REPORT

The fiscal year for Minnesota Citizens for Court Reform is from October 1st to September 30th.

Balance October 1, 1968	$ 1,766.15
Balance September 30, 1969	1,226.24

Have received dues from 104 members

Receipts of	$ 487.00
Disbursements	1,026.91

November 7, 1969 - Executive Committee meeting. Above report by Mrs. Staples move accepted. The above report is now formal part of minutes of this meeting.

Accepted.

THE CONSENSUS
of the
MINNESOTA CITIZENS' CONFERENCE TO IMPROVE THE ADMINISTRATION OF JUSTICE

* * * *

Minneapolis, Minnesota
September 8-10, 1966

I

MINNESOTA COURTS AND JUDGES TODAY

The Minnesota judicial system, measured by modern standards, has certain weaknesses which should be eliminated or minimized. It has been our good fortune to have many dedicated and competent judges. We are here concerned with improving a judicial system that has been generally progressive and free of corruption and incompetence experienced by some other states.

Among the defects in the present system are the political selection of judges, and the uncertainties in the matters of judicial tenure and retirement.

In the area of court organization and administration, Minnesota suffers both from a lack of a unified system of courts and also from the lack of effective administrative organization.

II

JUDICIAL SELECTION AND TENURE

The administration of justice and the selection of judges must be removed from partisan political considerations. The judicial branch of government demands an independent non-political and highly qualified judiciary. The existing appointment and elective procedure for selecting judges in Minnesota is not designed to obtain or secure the most qualified and able persons as judges on our bench. The full-time judges of Minnesota who are presently serving our courts, have been and are rendering dedicated and competent service. This is in spite of our present selection policy, not because of it. The needs of a modern society demand that our haphazard judicial selection policies be abandoned and that a systematic procedure be adopted to insure that the most able and most qualified persons are recommended for judicial service.

In the opinion of this conference, the method of selecting judges must be designed to remove political considerations and to secure the services of the best qualified persons by some form of a pre-selection committee or commission. The composition of the selection committee should be so constructed as to eliminate to the greatest extent possible any undue influence or control by any special interest group, be it political or professional. The selection committee should recommend judicial nominees to the Governor who will make the final appointment from the recommended nominees. This appointment procedure will act

as a final check on the function of the selection committee and will maintain the participation of the executive which gives greater dignity and respect to both the judicial and executive branch of our government. The selection committee must be an on-going body with staggered terms of office to insure continuity of the selection policies. No member of the judicial selection committee should be eligible for selection to judicial office until some period of time has elapsed following termination of his services on the commission.

Once appointed, judges should be subject to a strong removal or disciplinary commission to act as a continuing check on the professional capacities of the judge. All judges should be subject to periodic performance review at stated intervals either by direct election by the citizens or by review of the judge's performance record by vote of the citizens or by review of a removal commission. No choice among these methods of periodic review is recommended.

A proper selection and tenure procedure is merely one factor in securing and retaining a highly qualified and independent judiciary. Other considerations are a more realistic compensation level for judges and an improved retirement program. An impartial judicial selection procedure will permit non-political consideration by the legislative branch of the need for creation of additional judicial positions.

III

JUDICIAL COMPENSATION - RETIREMENT - DISCIPLINE & REMOVAL

On Judicial Compensation -

A further study should be made of the subject with the view toward increasing the compensation of judges at all levels.

On Retirement -

The present system is generally satisfactory except that increased sums might be considered after further study, insofar as voluntary retirement is concerned.

In the case of involuntary retirement - a specific (though arbitrary) age should be established, which would be mandatory in operation.

The mandatory rule will result in instances of competent and productive judges being retired. This result can be ameliorated by such judges being called upon to assist the active judiciary as the operations of the judicial system warrant.

Discipline and Removal -

While there is a system of sorts for the disciplining and removal of judges today, in historical fact it has not operated effectively or even well. There is insufficient infor-

mation upon which to adopt a definitive set of rules on discipline and removal. There are worthwhile features in the California plan, but further study should be undertaken with the view of recommending a specific plan on such problems. Any plan so proposed should encompass the basic idea that its purpose would be to improve the quality of justice and its administration, would provide a sounding board for citizens with real or fancied grievances concerning the judiciary, and would yet provide protection and safeguards for members of the judiciary against unwarranted attacks.

IV

COURT ORGANIZATION AND ADMINISTRATION

Realizing that the present judicial system has served the state well in years past, we recognize its inadequacies to meet the needs of the 20th Century. Hence, we endorse a program of reorganization and modernization.

The principles of sound administration should be applicable to the judicial system with authority vested in the highest judicial officer or the court of last resort. Administrative staff should be made available to fulfill these non-judicial duties. Administrative assistance should also be provided for multi-judge trial courts.

A unified court structure, composed of a supreme court, an intermediate court of appeals, a trial court of general jurisdiction and a people's or magistrate's court to handle small claims and minor criminal cases, appears to be well-suited to the needs of Minnesota.

Final and complete abolition of the office of justice of the peace should be effected at the earliest possible date.

In the interest of providing even-handed justice for all the citizenry a concentrated effort should be made forthwith to minimize delay in the disposition of litigation. Action in this area need not await a program of court reorganization but can be initiated within the framework of the existing system.

To this end, there should be no reluctance to provide sufficient judicial manpower to hear and determine cases with all reasonable dispatch.

V

COURTS OF LIMITED AND SPECIAL JURISDICTION

To eliminate the multiplicity of suits; costly appeals; conflicts of interest on the part of fee justices of the peace and part-time judges; overlapping of the jurisdiction of courts; to utilize the best available manpower and special court services; and to promote economy, impartiality, simplicity, and efficiency, the consensus was that the system of courts of limited and special jurisdiction in Minnesota needs improvement and should be reorganized in the best possible way to achieve the same level of justice for litigants in all courts.

The consensus was to favor the unification of courts; but the prevailing sentiment was that the form unification and reorganization should take -- whether complete unification of all courts by constitutional amendment or partial unification by legislative enactment -- should evolve from further discussion and study by the interested groups, with the final form dependent upon a careful assessment of its chances for success.

The sentiment in favor of the elimination of justice of the peace courts was almost unanimous.

The group unanimously adopted a resolution that a plan for reorganizing the lower court system be one in which there would be only full-time salaried lawyer judges in whom the public would have confidence and in which justice would be rendered on the same level as provided in the highest court of the state.

The prevailing sentiment of all groups would favor this resolution.

VI

IMPLEMENTATION OF THE VIEWS OF THE CONFERENCE

From the conferees there shall be formed a steering committee consisting of two (2) persons from each congressional district in the state. After formal organization, they shall promptly take such steps as they deem necessary to formulate courses of action by which these recommendations on court improvement may be implemented.

Second Minnesota Citizens' Conference on Courts
Thunderbird Motel, Bloomington, Minnesota 4/30 & 5/1/70

Each group has all Discussion Sessions in the same room.

Group 1	Cherokee Room
Group 2	Navajo Room
Group 3	Pawnee Room
Group 4	Cheyenne Suite
Group 5	Blackfoot Suite

Conferees attending their First Conference on Courts.

Group 1

Cherokee Room for all Five Discussion Sessions.

Robert H. Adams		Caledonia
John M. Burke	1810 Ashland Ave.	St. Paul
Mrs. John Dyer-Bennet	907 Winona St.	Northfield
Matthew Eubanks	1702 Newton Ave. No.	Minneapolis
Dr. Albert D. Flor, (D.D.S.)		New Richland 56072
Thomas Gilsenan	2400 - 24th Ave. So.	Minneapolis 55406
Naomi Huffman (Mrs. Charles)	426 Hiawatha Ave.	Hopkins 55343
Jerry J. Kigin	N. W. Bank & Trust Co.	St. Cloud
Duane Klaustermeier		Glencoe
Ray Lappegaard	3018 Asbury Ave.	St. Paul 55113
Robert LaShomb	1821 University Ave.	St. Paul 55104
Elden LeBert	1019 No. Broadway	New Ulm 56073
Mrs. Carlos Luis	225 E. 5th Ave.	Shakopee 55379
Mrs. W. P. Mahoney	1211 N. 57th Ave. West	Duluth 55807
W. P. Mahoney	1211 N. 57th Ave. West	Duluth 55807
Emily Peake	1919 - 2nd Ave. So.	Minneapolis
Jerome Richgels	418 Auditorium St.	St. Paul
Joseph Rusinko	6016 Morgan Ave. So.	Minneapolis
Jerry Scott	Student, College of St. Thomas	St. Paul
Artley Skenandore	117 University Ave.	St. Paul
Mrs. Lynn Stoker	405 Channel Rd.	Albert Lea 56007
Edward G. Van Hoven	1377 Highland Pkwy.	St. Paul 55116
R. M. Young	3901 York Ave. So.	Minneapolis
Irene Wales (Mrs. Harry)	325 Brimhall	St. Paul 55416
Austin C. Wehrwein	6208 Wyman Ave.	Minneapolis
Mrs. DePaul Willette		Olivia 56277
N. E. Wohlwend	1314 - 10th Ave. So.	Moorhead
J. C. Wolfe, Jr.	1202 St. Paul Ave.	St. Paul 55116

Second Minnesota Citizens' Conference on Courts
Thunderbird Motel, Bloomington, Minnesota 4/30 & 5/1/70

Each group has all Discussion Sessions in the same room.

Group 1	Cherokee Room
Group 2	Navajo Room
Group 3	Pawnee Room
Group 4	Cheyenne Suite
Group 5	Blackfoot Suite

Conferees attending their First Conference on Courts.

Group 2

Navajo Room for all Five Discussion Sessions.

Dennis J. Banks	1337 E. Franklin Ave.	Minneapolis
Robert H. Brunner	Fritsche Building	New Ulm 56073
Bernard Casserly	244 Dayton Ave.	St. Paul
Tony De Ziel	418 Auditorium St.	St. Paul
Clarence J. Elsenpeter		Walker 56484
The Reverend Robert D. Fenwick	1016 S. W. 8 Ave.	Rochester
Edward J. Gallagher	Student, College of St. Thomas	St. Paul
Robert F. Henson	1200 Title Insurance Bldg.	Minneapolis
Francis Hubbard	5725 Blake Rd.	St. Paul
Gwen Jones	News Room, Mpls. Star	Minneapolis
Mrs. Vernon Krejci		Ellendale
Fred J. Lauerman	740 River Dr.	St. Paul 55116
Mrs. Greer E. Lockhart	1314 W. Minnehaha Pkwy.	Minneapolis
Mrs. Lloyd K. McNeal	5040 Belmont Ave.	Minneapolis 55419
Elwood H. McVeety	5616 Kellogg Pl.	Minneapolis 55424
Clarence W. Myers	1010 So. Galbraith	Blue Earth 56013
Dr. Bror F. Pearson,(M.D.)	116 Holmes	Shakopee 56379
E. F. Robb, Jr.	130 Courthouse	Minneapolis 55415
Richard H. Rowan	101 E. 10th St.	St. Paul 55101
David I. Schore	9708 Sandra Lane	Minnetonka
Herman J. Sittard	Room 248 Courthouse	Minneapolis
Mark T. Spinner	6506 - 5th Ave. So.	Minneapolis 55423
Miss Helen Stager	306 N. Spring	Luverne 56156
Lawrence Steiner	841 W. Nebraska	St. Paul 55117
Bernard M. Troje	310 Commerce Bldg.	St. Paul 55102
The Reverend Paul M. Youngdahl	5025 Knox Ave. So.	Minneapolis 55419
Marion E. Watson	2140 W. Hoyt Ave.	St. Paul
Howard M. Winholtz	1683 - 7½ Ave. N. E.	Rochester

Second Minnesota Citizens' Conference on Courts
Thunderbird Motel, Bloomington, Minnesota 4/30 & 5/1/70

Each group has all Discussion Sessions in the same room.

Group 1	Cherokee Room
Group 2	Navajo Room
Group 3	Pawnee Room
Group 4	Cheyenne Suite
Group 5	Blackfoot Suite

Conferees attending their First Conference on Courts.

Group 3

Pawnee Room for all Five Discussion Sessions.

Keith Boyum	U o M Faculty, 1414 Soc. Sci. Tower	Minneapolis
David C. Brandon, Jr.	106 No. 3rd	Montevideo 56265
Charles Buckanaga	2509 W. 54th St.	Minneapolis
Phyllis Flor Cooper (Mrs. W. J.)	5500 Mirror Lakes Dr.	Edina 55436
A. B. (Tony) Courier	700 Minn. Ave.	Bemidji 56601
Margaret Courtney (Mrs. Vincent P.)	2142 Carroll Ave.	St. Paul 55104
Richard C. Ericson	215 Produce Bank Bldg.	Minneapolis 55403
Lois Flor (Mrs. A. D.)		New Richland 56072
Lyle George		Jackson
George E. Green	Faculty, Mankato State College	Mankato
Paul Horn	3145 So. Rivershore Dr.	Moorhead
Joseph P. Hudson	Student, College of St. Thomas	St. Paul
Russell H. Johnson	First National Bank	St. Paul 55101
Donna Keyes (Mrs. L. J.)	1132 Ashland Ave.	St. Paul 55104
Harry H. Kirby	1834 Hampshire Ave.	St. Paul
Jerry Lutz	5933 Thomas Ave. So.	Minneapolis 55410
Mrs. Charles McCoy	2312 Lake Place	Minneapolis 55405
Mrs. John C. McNulty	4427 E. Lake Harriet Blvd.	Minneapolis
Diana Murphy (Mrs. Joseph E., Jr.)	2116 W. Lake of Isles	Minneapolis 55405
Dr. Paul F. Nevin (D.D.S.)	300 East 1st Ave.	Shakopee 56379
Dr. Edmund A. Nightingale (Prof.)	U of M School of Bus. Adm.	Minneapolis 55455
Mrs. Estyr Bradley Peake	809 Dayton Ave.	St. Paul
Mrs. Noah S. Rosenbloom	128 Camelsback Rd.	New Ulm 56073
Walter Rupert	Dellwood	White Bear Lake
Joseph J. Scherer	Faculty, College of St. Thomas	St. Paul
Louise Steiner (Mrs. L.M.)	841 W. Nebraska	St. Paul 55117
Lowell Thompson	3317 Belden Dr., N.E.	Minneapolis
Esther M. Tomljanovich (Mrs. Wm.)	3970 Hidden Bay Rd.	North St. Paul
William W. Whiting	622 E. School St.	Owatonna 55060

Second Minnesota Citizens' Conference on Courts
Thunderbird Motel, Bloomington, Minnesota 4/30 & 5/1/70

Each group has all Discussion Sessions in the same room.

Group 1	Cherokee Room
Group 2	Navajo Room
Group 3	Pawnee Room
Group 4	Cheyenne Suite
Group 5	Blackfoot Suite

1966 Conferees returning for their Second Conference.

Group 4

Cheyenne Suite for all five Discussion Sessions.

Dr. Paul M. Arnesen, (M.D.)	18 Sumner Hills	Mankato
Dr. Robert A. Barrett, (Ph. D.)	Mankato State College	Mankato
James Borman	WCCO	Minneapolis
The Reverend Denzil A. Carty	465 Mackubin St.	St. Paul 55103
Sander D. Genis	4001 Highwood Road	Minneapolis
Viola M. Kanatz	2901 O'Henry Road	Brooklyn Center
Mrs. Cecil J. Manahan		Madelia
Jess March	417 Sexton Building	Minneapolis
William L. Olmsted	503 Washington	Brainerd
Dr. Sidney A. Rand, (Ph. D.)	President, St. Olaf College	Northfield
Mrs. Ann Richter		Wadena
Harold B. Shapira	1832 Colvin Ave.	St. Paul 55116
Mrs. Loring M. Staples, Jr.	Route 2, Box 700	Wayzata 55391
John E. Tilton	6601 W. 78th St.	Minneapolis
Fred (Bucky) Weil, Jr.	1106 First Nat'l Bank Bldg.	Minneapolis

Second Minnesota Citizens' Conference on Courts
Thunderbird Motel, Bloomington, Minnesota 4/30 & 5/1/70

Each group has all Discussion Sessions in the same room.

Group 1	Cherokee Room
Group 2	Navajo Room
Group 3	Pawnee Room
Group 4	Cheyenne Suite
Group 5	Blackfoot Suite

1966 Conferees returning for their Second Conference.

Group 5

Blackfoot Suite for all five Discussion Sessions.

Dr. William G. Atmore, (M.D.)	636 Ridgewood Road	Duluth
Christopher O. Batchelder	Mayo Clinic	Rochester
Robert J. Brown	Faculty, College of St. Thomas	St. Paul 55103
William J. Cooper	5500 Mirror Lakes Drive	Edina 55436
Andrew R. Johnson, Jr.		Olivia
Eugene Lentsch	240 University Ave.	St. Paul
Mrs. Alfred Marblestone	4372 Cottage Park Road	White Bear
Harold J. Nelson	1723 W. 84th St.	Bloomington
John T. Pates	1607 Stanford	St. Paul 55101
Gerald A. Regnier	100 Minnesota Federal Bldg.	Minneapolis 55402
Rabbi Moses B. Sachs	3115 Ottawa Ave.	Minneapolis
Mrs. M. I. Smith	Box 65, Star Route 2	Hibbing 55746
Charles S. Stenvig	5604 - 35th Ave. So.	Minneapolis
Arnulf Ueland	2013 Roe Crest Dr.	Mankato 56001
Mrs. Wm. W. Whiting	622 E. School St.	Owatonna 55060

Second Minnesota Conference on Courts

April 30th, May 1st, 1970

THUNDERBIRD MOTOR HOTEL
HWY. 494 BLOOMINGTON

Address communications to:
William J. Cooper, Secretary
Minnesota Citizens for Court Reform, Inc.
725 Northwestern Bank Building
Minneapolis, Minn. 55402

April 6th, 1970.

To: Our friends who attended the 1966 Conference on Court Reform

Although you have received a prior invitation (January 23, 1970) to attend this Second Conference on April 30th and May 1st at the Thunderbird, we again extend this cordial invitation to you.

The enclosed letter and enclosures are being sent to those who will be attending their first conference. It will also be a brief review for you.

A number of you have already replied so that you need not do so again, of course. We would like to hear from those of you who have not yet responded.

The returning Conferees from 1966 will comprise a special discussion group which will go more deeply into the subject matter than our new attendees.

We think this Conference is going to be superb. The speakers are nationally known. The discussion groups will be lead by outstanding State and National figures.

The invitation list of Conferees is made up of very interesting people. We understand that if any progress is to be made on Court Reform - it will have to be through the efforts of those of us who are lay citizens.

Please let us have your RSVP by about April 13th.

Sincerely and cordially,

Christopher O Batchelder

Christopher O. Batchelder
Chairman

COBjec

enc.

Second Minnesota Conference on Courts

April 30th, May 1st, 1970

THUNDERBIRD MOTOR HOTEL
HWY. 494 BLOOMINGTON

Address communications to:
William J. Cooper, Secretary
Minnesota Citizens for Court Reform, Inc.
725 Northwestern Bank Building
Minneapolis, Minn. 55402

April 3rd, 1970.

We are inviting you to an important conference.

Professor Robert J. Martineau, Associate Professor of Law, University of Iowa, made these statements - in a speech he gave in Minnesota last fall:

"Let us focus on Minnesota. Here we find a judicial system created in 1857 to meet the demands of rural state with a population of approximately 150,000. Today, 113 years later, we find virtually the same judicial system serving over 3½ million people, most of whom live in an urban setting."

This conference, therefore, is about Court Reform in Minnesota. This second conference follows one held in 1966. Professor Martineau' full talk, which is enclosed, is helpful in understanding the full scope of needed reform in our Minnesota courts.

Just how "Court Reform" should be accomplished is somewhat controversial. It does, however, require CITIZEN involvement. Because you have been highly recommended you are invited to participate in this conference along with a number of other outstanding citizens of Minnesota. The nature of the conference and its unique rotating panel discussion will be of great interest to you.

Please read the detailed Information Memorandum enclosed.

Your early reply will be very much appreciated. A reply card is enclosed for this purpose. May we have your RSVP by April 13th?

A conference notebook will be mailed to those who accept this invitation to attend.

Sincerely,

Harold LeVander

Harold LeVander,
Governor of the State of Minnesota

Oscar Knutson

Oscar Knutson,
Chief Justice of the Supreme Court

enc.

INFORMATION MEMORANDUM

Place: Thunderbird Motel - by the Metropolitan Stadium - Highway 494, Bloomington, Minnesota.

Date: April 30th and May 1st, 1970.

Registration: Begins at 9:00 A.M. April 30th.

Program: Commences at 10:00 A.M. with welcomes from Governor LeVander and Chief Justice Knutson.

PURPOSE

The purpose of the Conference is to consider the adequacy of the present judicial system of the State of Minnesota, the need for modernization of the judicial process, and ways and means by which more effective administration of justice may be secured. Subjects to be considered include: the Minnesota courts and judges today; judicial selection, including compensation; judicial tenure, including discipline, removal and retirement; and court organization, including work load, administration, re-districting and organization.

THE AMERICAN JUDICATURE SOCIETY, founded in 1913, is a sponsor of this Conference.

The Society is the only national legal organization devoted exclusively to promoting the efficient administration of justice. The Society's president is Gerald C. Snyder.

Seventy similar citizens' conferences on court modernization have already been held in forty states since 1959. Many of these have been second conferences such as we are having here in Minnesota. Our first Conference was in 1966 and was attended by one hundred and twenty Minnesotans. Many of these 1966 conferees will be returning for this second Conference and will be delving more deeply into the subject matter covered at the 1966 meeting.

THE PARTICIPANTS

The Minnesota Citizens' Conference on Courts was organized to give an opportunity for study and expression by leading and interested Minnesota citizens for the solution of the vital problem of court modernization and organization, as well as improvement of the administration of justice in accordance with the need of a modern dynamic society.

Both the University of Minnesota Law School and the William Mitchell College of Law are assisting in the furthering of the aims and purposes of this Conference. Members of their faculties will actively participate.

Members of the Bar, working under the auspices of the Minnesota Citizens' Conference on Courts, together with the Young Lawyers Section, the Lawyers' Wives and the Judicial Council of the State of Minnesota, composed of represenatives of the various Minnesota courts, will be active in the function of this Conference.

However, the most effective contribution to the success of this Conference will undoubtedly be made by the lay citizens, the men and women drawn from across the State of Minnesota and selected because of their leadership in their communities, their interest in government affairs and in matters of vital public concern to the state as a whole. Included among these will be leaders in business, finance, labor, industry, the professions, the news media, education, religion and other civic and lay activities.

THE CONFERENCE FORMAT

This will be a study conference. It will proceed primarily through a series of intensive panel discussions of the topics selected for consideration. The conferees will be divided into small groups for this purpose; discussion teams will rotate among the various groups so that each conferee will have the opportunity of deliberating and expressing himself on all of the Conference subjects. The teams will include outstanding legal scholars, judges and lawyers who have given a great deal of thought and study to the objectives of the Conference.

To supplement the panel discussion, there will be general assembly sessions at which short addresses on each topic will be presented by authorities from within and without the state. Reading material, focused on the Conference topics, is being prepared and will be distributed to all conferees in advance of the Conference as an aid for understanding the issues and stimulating informed discussion.

WHAT THE CONFERENCE SEEKS TO ACCOMPLISH

The Conference will be, as its title suggests, an opportunity for outstanding men and women of the State of Minnesota, both lawyers and non-lawyers, to consider together the need for modernizing the judicial system of Minnesota and the best means by which to achieve this objective. What will be sought is a sound judgment on those important matters from a group of representative citizens of Minnesota; citizens who expect from their courts speedy, fair and needful justice, and, too, who expect that the judges of those courts have the knowledge and responsibility commensurate with their high office.

ATTENDANCE AND ACCOMMODATIONS

The attendance will be restricted to a limited number of outstanding citizens and leaders because of the requirements of the discussion group plan, which will shape the proceedings, and the limitation of facilities.

Because of budget limitations, it will not be possible for the Conference on Courts to pay the travel and lodging expenses of those invited to attend the Conference. However, there will be no registration fee or other cost. The accommodations at the Thunderbird Motel, Bloomington, Minnesota have been arranged for and will be reserved as requested by individual conferees. Admittedly, all conferees will incur some slight incidental expense, as well as loss of time from their business, profession or regular household responsibilities.

It is the hope of the Minnesota Citizens' Conference on Courts that the opportunity to study these important problems and to contribute to a discussion

of them, as well as to profit from an unparalleled exchange of information and ideas, will appear worth the investment of time and effort involved.

JUDICIAL REFORM — WHY SHOULD ANYONE CARE?

Mr. President, members of Minnesota Citizens for Court Reform.

Today I want to share a few thoughts with you on our mutual quest for improvement in the administration of justice, in judges and in the courts. To begin with I think the first fact that we have to recognize is that in seeking judicial reform we, at the same time, can never fail nor can we ever succeed. We can never fail in that our very effort on behalf of judicial reform is success. It is the success of citizen participation in the governmental process, of citizen awareness of his responsibility for self government. We cannot, on the other hand, ever succeed because no matter how many improvements we make in judicial administration, no matter how many improvements we make in our courts and judicial machinery there will always be problems that remain unsolved and new problems that arise out of new circumstances. We will never achieve the perfect judicial system. If we ever think we do, all it means is that we have joined the ranks of those who argue that everything is just fine with the courts.

To understand the necessity for judicial reform today we should look for a few minutes at the past. The need for judicial reform has always been with us. For example, among the tyrannical acts of King George complained of in the Declaration of Independence were that he "obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers," and "he made judges dependent on his will alone for the tenure of their offices, and the amount and payments of their salaries."In the 19th Century the people reacted against the government becoming the private domain of the privileged few and the Jacksonian remedies of short elective terms and no professional qualifications for judges were thought to be the cures for the evils of the day. They were not, and at the beginning of the 20th Century it fell to an obscure law professor from Nebraska, Roscoe Pound, to have the temerity to suggest that all was not well with our courts and judges. His speech, as I am sure most of you are aware, was given just across the river in St. Paul to the 1906 annual meeting of the American Bar Association. Pound shocked the bar by suggesting not only that there was dissatisfaction with the administration of justice, but that it was *popular* dissatisfaction, i.e., dissatisfaction by the average citizen—and even worse that the bench and bar should pay attention to this popular discontent. Pound pointed to the multiplicity of courts and political selection of judges as the principal faults of the system.

Since Pound's speech there have been innumerable efforts to reform the judiciary, the courts, and the procedure in the courts. There have been thousands of studies, commissions, committees, conferences, reports and recommendations. Some of these have resulted in improvements, many more have not. There are now professionals in the field of judicial reform, and organizations such as your citizens group and the American Judicature Society devoted to the cause. Millions of man hours, mostly unpaid, have been spent working for it. The question must be asked, what has been accomplished? Are we any better off today than we were in 1906? I think a fair appraisal is that much has been accomplished but even more remains to be done today than was the case in 1906. The problems are so great today that citizens conferences, such as the one you had in Minnesota in 1966, have been held in almost every state. The American Assembly devoted one of its annual conferences to "The Courts, The Public and The Law Explosion." The Christian Science Monitor assigned one of its reporters to do a book on "The Crisis in the Courts." And just this last week the President's Violence Commission called for the doubling of expenditures by local and state governments for the administration of justice. There have even been predictions that we will soon be faced with a complete breakdown in the judicial process, particularly in the area of criminal law enforcement.

Let us now focus on Minnesota. Here we find a judicial system created in 1857 to meet the demands of rural state with a population of approximately 150,000. Today, 112 years later, we find virtually the same judicial system serving over 3½ million people, most of whom live in an urban setting.

What are the defects of this system? The principal ones are those referred to in the consensus statement of your 1966 Citizens Conference. The statement mentions first the question of judicial selection and tenure. The judicial selection system you now have in Minnesota, with unrestricted gubernatorial filling of judicial vacancies and non-partisan election of judges for short 6 year terms, is, in my view, the worst of all possible methods of selecting judges. Under it no means is provided for a careful, impartial appraisal of a lawyer's qualifications to be a judge and no one can be held responsible for a poor judge. If there is one thing of which we can be certain is that the competitive election has no place in the judicial selection process. It, like prohibition, was an experiment that just does not accomplish what it is supposed to do.

Your citizens conference called for judicial appointments to be made by the governor from a list of nominees submitted by an independent nominating commission. This is what is known as the merit selection plan. This plan, which was incorporated into the proposed constitutional amendment which was introduced in your legislature last year, is consistent with the recommendations of virtually every person who has ever made a study of the judicial selection process. It is in accord with the experience in the states which have such a system.

The merit selection plan has lived up to its ex-

An address by Robert J. Martineau, Associate Professor of Law, University of Iowa, before the Minnesota Citizens for Court Reform, Minneapolis, Minnesota, November 7, 1969.

(over)

pectations. This is proven by the record. The plan was first adopted in Missouri in 1940. In varying degrees it has spread to Kansas, Alaska and Alabama in the 1950's, and to Colorado, Florida, Idaho, Iowa, Nebraska, Oklahoma, New York, Puerto Rico, Utah and Vermont in the 1960's. Thus we have progressed from a single state in the '40's to three additional states in the '50's to adding 9 states and one territory in the '60's. Only a judicial selection plan that works could have that kind of success.

In talking about merit selection we must not ignore however, merit retention. This is the other side of the merit selection coin. By merit retention I mean that a judge's continuance in office is subject to a periodic review, not by having him run against a competing candidate but by letting his performance on the bench determine whether he should be continued in office. Under your present system you can be faced with two situations. In one, the sitting judge is opposed by a lawyer who wants the judge's job. In the other no one chooses to run against the sitting judge. In the former the choice may be between Tweedledum and Tweedledee, and you really don't want either. In the latter all the judge has to do is make sure he gets to the polls to vote for himself and he is elected. I can state from experience that nothing is more frustrating than to vote in a judicial election in which what you really want to do is vote disapproval of the judge but it is impossible to do so because the alternative may be worse or the judge's name is the only one on the ballot.

But are merit selection and merit retention, by themselves, adequate to protect the public from the judge who for physical or other reasons acts in an improper manner? The experience over the country has proven that they are not. Also ineffective is vesting removal authority in the legislature or in the governor because they are reluctant to pass judgment on the conduct of a member of the judicial branch. The plan that appears to be the answer is to have an independent commission to which citizens can complain and which has the power to investigate and to recommend to the state supreme court the removal, retirement or some lesser penalty for improper judicial conduct. It is most important, I believe, to give to the judiciary the power to police its own members. Unless it has the power to police itself, the task just will not be done. There must also be, of course, a mandatory retirement age. Nothing is more dangerous to justice than a judge who no longer possesses the vigor and mental alertness necessary to preside in court. With the combination of merit selection, merit retention, mandatory retirement age and discipline and removal power in the state supreme court we *can* have the type of judiciary we *must* have.

But as the Citizens Conference pointed out, something in addition to good judges is needed. The judges must have a system of court organization which permits them to function to the best of their ability. Here again Minnesota suffers under the dead hand of the past. You have not only the Supreme Court and the District Court but the Probate Court (which in some counties is also the Juvenile Court), the Municipal Court (which in some counties is also the Conciliation Court) and, last — and least — the justices of the peace. Each of the courts is separate and independent with no central administrative authority. In short what you have is not a court system but a non-system. In the years that I have spent working for judicial reform I can honestly state that the only reason I have ever heard expressed for the continued existence of a non-system with a complex of courts such as you have here is that with so many persons holding office in these separate courts they are very difficult to eliminate. This may be an excuse, but it certainly is no justification.

Let me dwell for a moment on the justice of the Peace, and in doing so I do not mean to mark as unimportant the other changes which must be made in court organization. Of all of the features of our outdated court system the Justice of the Peace is the one that is most clearly a national disgrace. His impact is so great because he comes in contact with so many more people than the District Court or Supreme Court judge. For many people he is the only representative of the judicial system with whom they come in contact, and this contact almost always results in public distrust of the judicial system.

In Iowa we still have J.P.'s as you do here. A recent incident involving a J.P. in Iowa serves as just one more reason why they must be replaced with regular judges. Howard James, the Christian Science Monitor reporter who wrote *Crisis in the Courts* (who is incidentally a native of Iowa City) in a speech to the 1968 mid-year meeting of the American Judicature Society told of the Iowa case in which a justice of the peace was ordered to pay $2500 in damages to a man who had been charged falsely in the J.P.'s court with writing a bad check. The J.P. had been using the criminal process of his court to run a private check collection business for which he received 20% of all monies collected. The fact that the J.P. was acting improperly was shocking, but at least when James told the story it had a satisfactory ending—the J.P. had to pay the $2500 judgment. But it did not end there. The J.P. had the gall to appeal the judgment and this past June the Iowa Supreme Court held that even though the conduct of the J.P. was "a corrupt and flagrant misuse of the powers of the defendant's office" the J.P. did not have to pay the $2500 because he was protected by the doctrine of judicial immunity. The only solution to this problem is to abolish the J.P. system. Until we can assure every litigant in court a trial before a full time, salaried, legally trained judge we cannot in good conscience point with pride to our judicial system.

You in Minnesota have your work cut out for you. You are handicapped, I am told, by the fact that your bar is divided on the desirability of the proposals you advocate. This will not help, to be sure, but from my experience with state legislatures I am convinced that it is only citizen pressure on the legislature that can achieve judicial reform. There is no short cut, no easy way. There is only the old fashioned method of first convincing your fellow citizens that judicial reform is in their self interest and then having them put enough pressure on the legislature that it is forced to act. You can succeed, you must succeed, but only you can do it.

Why have a unified system?

By C. STANLEY McMAHON
Second of two articles

Why should we have a unified court system? Or, more exactly, why shouldn't we?

A look at our present court system (or as it has more aptly been called a non-system) should provide the answer. Strange as it may seem, no one knows how many courts there are in Minnesota.

- We know we have one Supreme Court which has appellate jurisdiction and ten District Courts, which have general jurisdiction.

Then we have a whole proliferation of so-called "minor" or "inferior" courts, which are more properly classified as courts of special or limited jurisdiction.

- There is a probate court in each county, so we have 87 of those.
- We have the same number of juvenile courts which, in most cases, are operated as a part of the probate court, but in other cases, as part of the District Court.
- Then we have a bunch of municipal courts, most of which operate on a part-time basis and whose jurisdiction varies widely. Salaries of municipal judges range from a low of $240 to a high of $12,500 per year. At last count, there were 146 of such courts, although they come and go like the will-o'-the-wisp depending on their ability to produce revenue.
- Some of the larger cities also have conciliation or small claims courts, in which lawyers are not permitted to practice.
- Then, last and least, are the justices of the peace courts and nobody knows or can find out how many of them there are. Some justices of the peace are elected but never qualify by filing a bond and make no reports. The justices are paid strictly on a fee basis and hold "court" wherever and whenever they feel like it, such as in their living room, kitchen or backyard. Admittedly, there are conscientious justices who try to do a good job with an antiquated system, and they would be the first to admit that the office should be abolished and has no place in the 20th Century. Yet, it is these so-called inferior courts with which most people come in contact. It is an anachronism that most of the judicial decisions in Minnesota today which affect the liberty and property of its citizens are being determined in part-time courts by part-time judges, most of whom had no legal training whatever.

A UNIFIED COURT system would simply abolish all of the courts except one, which would have general jurisdiction over everything. This court would sit in divisions as necessity would require, such as a traffic court division, a probate division, a family court division, and a trial division. It would also have appellate divisions. Our present Supreme Court is vastly overworked and an intermediate appellate court division would greatly lighten the lead. Thus, a judge who has a particular aptitude for some branch of the law, such as family law, could be assigned to such a division, and so instead of having specialized courts, we would have specialized judges who could handle cases that they are particularly qualified for and could be shifted when and where they are needed.

Under the present system each court operates completely independent of all of the others, as if each judge was sitting on his own little island in the judicial sea. The savings, both in time and money, by a unified court operation are incalculable. For instance, each court now has its own separate clerk and office personnel, and these offices would be combined. The number of judges would be greatly reduced, but they would work full-time and be adequately compensated. Admittedly, such a change would mean a lot of people would lose their jobs, which they now hold, due to the political system.

WHILE IT HAS BEEN said that if anyone proposed our present system for administering justice in the 20th Century, he would probably be immediately committed and carted off to the nearest institution, it should be remembered that when this system was adopted in 1856, it was quite a sensible approach to the needs of the public. At that time Minnesota had a population of about 150,000 and was mostly a rural economy. Travel was slow and difficult and the small size of our counties, particularly in Southern Minnesota, shows that they were designed so that people could reach the county seat in a day's travel, by team. There weren't many lawyers or judges and the courts only sat periodically in the rural areas and the part-time judge, who settled the relatively few disputes at the local level was quite workable.

Now, with a population of over 3½ million, mostly in urban areas, with rapid travel, and a complex economy, the 1856 court system that we have simply is out of date. Like every other civil institution, the law is changing rapidly and becoming increasingly complicated. There are problems such as urban blight, environment, pollution, electronic data processing, super jet noise, crime and delinquency, which were never even dreamed of a century ago, that are pushing new and difficult problems onto our courts. Yet, our present system has not even adapted itself to the invention of the automobile, and our courts throughout the nation are flooded with personal injury litigation that they are unable to handle. The sweeping changes in the criminal law field alone have put a burden on our present courts, threatening a complete breakdown.

IF WE DID HAVE a modern, up-to-date unified court system, it still will be no improvement unless it is operated by competent and dedicated men on the bench. That judges are elected in Minnesota is the result of an historical accident. It never occurred to our founding fathers that judges should be elected. There is no such parallel in the federal system and most of the original 13 colonies never did and do not now elect judges.

The idea originated in the Jackson administration in the 1830s. Jackson didn't like the courts telling him he was doing something unlawful or unconstitutional and he proposed popular election of judges for short terms so that they would be subject to political pressure. The first state to follow the lead was Mississippi, but when New York put it in its constitution, other states as they came into being across the Midwest, followed New York's lead. Most responsible voters will freely admit that they do not feel qualified to select the judiciary at the ballot box.

Many judges have been elected, not because of any particular qualification, but because they have a popular sounding name. In another state, a judicial candidate by the name of John F. Kennedy got a tremendous vote.

It has been argued that we have had and do have some distinguished jurists in Minnesota. This is true, but I submit that this is in spite of the method of judicial selection and not because of it. The recent trend throughout the country has been away from the popular election of the judiciary. For example, Iowa and Nebraska have the merit selection plan; North and South Dakota are working toward it; Wisconsin has practically unified its courts. If you looked at a map geared to improvements in the methods of administering justice, Minnesota would show up as a conspicuous island of inactivity. It is an interesting fact that in the entire civilized world judges are selected by popular vote only in a few backward states such as Minnesota, and in Switzerland and the Soviet Union.

ASK YOURSELF this question. Would you step into a jet aircraft on a cross country trip if you knew that the pilot was selected by popular vote? Of course, you wouldn't. Nor would any airline entrust the lives of its customers, to say nothing of a ten million dollar aircraft, to a crew selected in such a haphazard manner. Yet, in our courts every day we entrust our lives, property and even our liberty to personnel about whom we have little or no information concerning their qualifications.

In fact, the chief pilot of a jet aircraft is a very superior person. He is carefully selected and trained and his knowledge is kept up-to-date. His physical and emotional health is regularly and meticulously checked and if there should be even a possibility that he is unable to perform at top competence, he doesn't fly anymore. Yet, we have had judges on our benches who, being

human beings, are susceptible to the frailties of human nature, such as senility, alcoholism, irascibility and laziness.

Yet, we have no machinery for removing or suspending the nonqualified judge, except the unsatisfactory one of having someone run against him when his term expires (when it already may be too late to avoid the damage that he could do), or impeachment, which is practically impossible. There are a number of states, including California, where the idea originated, that have a nonpartisan judicial qualifications commission to which complaints against judges can be made. Their experience has been that the great majority of complaints have no foundation, as a lawyer or litigant who loses the case is inclined to blame the judge when it is not his fault at all.

On the other hand, the investigation of a number of complaints, which was done on a confidential basis, have resulted in the voluntary retirement of a number of judges who would not otherwise have done so. In the event that the commission feels the change is justified a hearing can be held and the Supreme Court of the state make a ruling either disciplining, suspending or removing the judge; but it is seldom necessary to carry the proceeding that far.

LEGISLATION CREATING such a nonpartisan commission on judicial discipline was introduced in the last session of the legislature but, as usual, didn't pass. To his credit Chief Justice Oscar Knutson has proposed that the judges themselves create such a commission to process complaints against the judiciary, but it would be better to have a legally constituted commision on which laymen would have a voice.

The analogy between the air transportation business and the business of administering justice is not a bad one. If you took a highly skilled jet pilot and gave him a DC-3 to fly you couldn't expect better performance then the machine was capable of. On the contrary, if you took a pilot with only propeller training and told him to fly a jet you could expect disaster. We must have both modern up-to-date judicial machinery, which is staffed by competent personnel, as one without the other doesn't accomplish much.

It has been stated, and perhaps not so facetiously, that what court reform needs in Minnesota is a juicy scandal. It would seem too bad if that is the case, such as what happened in Oklahoma, Illinois and New Jersey, where there was clear evidence of corruption on the bench. We have had situations which would have been scandalous if they were publicized and we have had some that were. We have had cases of senility, a kick-back case, an embezzlement case and instances where judges who, presumably working full-time, were operating private businesses.

THERE IS A natural reluctance on the part of the public, and especially on the part of the bar, — for obvious reasons—to criticize the judiciary, and this is natural and desirable. However, it has also been said that the business of judicial administration is too important to be left to the judges and lawyers and, in fact, justice is everybody's business.

In Winona, we have a new modern hospital facility and a new modern high school, which cost millions of dollars and which would not exist except for public support. I doubt if these matters were left to the doctors and nurses, or the teachers, that we would have these fine facilities. The people of Winona finally decided that they were entitled to something better than an antiquated health facility and an out - dated school and they went ahead and did something about it. On the other hand, two referenda to get a modern courthouse were defeated.

IT IS MY considered opinion that modernization of the process of judicial administration will never come from the bench and the bar, but only from an aroused public opinion. There are several reasons for this. A judge may well say to himself, "I was selected under the old system, I am a good judge, therefore, it must be a good system" and this is human nature. There are others who like the independence of the judiciary where no one can tell a judge what to do or when to do it and, therefore, resist change. Also, there are lawyers who are more interested in making money than in promoting justice and wnat to have a part of the political process when a judge is selected or contribute to his campaign, in exchange for future favors.

But, the big reason is apathy and indifference on the part of both the bar and the public and the natural resistance to change. The fact remains that the courts do not belong to the judges and the lawyers, but to the people, and if an informed public wants a better system for the administration of justice they can have it. If they do not want it or are indifferent to it, they will have the type of judicial administration they probably deserve.

Reprinted, with permission, from WINONA DAILY NEWS, Winona, Minnesota, Thursday, February 26, 1970

An exercise in frustration

★ ★ ★ ★ ★ ★

Court reform in Minnesota

★ ★ ★ ★ ★ ★

Court reform in Minnesota? What's that? Nothing much.

Although there is increasing public concern about our courts, there is a natural reluctance to criticize the judicial system. No one wants to believe that our courts are unfair, inefficient, politically controlled, and corrupt. But corruption on the bench of the highest courts of two of our states (Illinois and Oklahoma), publicity about the politics of judicial selection for the United States Supreme Court, and an awareness of the expense and delay involved in court proceedings have made the public critical of our present system and, in states other than Minnesota, successful in instituting or accomplishing major reforms for a modernized court system.

YET, THE SPARK that lit this movement was ignited in Minnesota. The year was 1906, and the American Bar Association was meeting in the House chambers in the state capitol in St. Paul, where a most unusual thing happened. A young law professor from Nebraska had the temerity to attack the "establishment." He made a speech to the delegates entiled, "Causes of Popular Dissatisfaction with the Administration of Justice."

He shocked this august gathering by stating bluntly that the court system as it existed was inefficient and was operated by politicians whose capabilities were less than should be expected by the public for judicial competence and the public was dissatisfied therewith. That young man's name was Roscoe Pound. When he retired a few years ago, at the age of 90, from the Harvard Law School, he was the leading scholar and authority in the law profession in the English speaking world.

Today, in the state capitol, is a plaque with a bust of Pound and the text of his historic speech for all to read — or to ignore. It is ironic that the state where it all began seems to be the last to heed the alarm that Pound so eloquently sounded. The late Chief Justice Vanderbilt of New Jersey, who had a national reputation in this field, once said, "Court reform is no sport for the short-winded." What has happened and has not happened in Minnesota since Pound's speech illustrates the wisdom of that remark.

FOR 30 YEARS, nothing happened. Then the legislature bestirred itself and created a judicial council and charged it with the duties of continuous study of the organization and rules of practice of the judicial system of the state. At first, the council attempted to do just that, and in 1941 a subcommittee, known as "The Loring Committee," from its chairman, the late Chief Justice Charles Loring, made a comprehensive study and report. This subcommittee was composed of a number of distinguished judges, lawyers and law professors.

Its recommendations were fairly simple: an amendment to the judiciary article of the state, combining all of the various courts that we have into one court of general jurisdiction, staffed by full-time judges, who are legally trained, and selected, not by popular election, but upon the nomination of a non-political commission, and appointment by the governor, and who, upon the expiration of their terms, would run against their record and not another individual.

This method of judicial selection and tenure had just then gone into effect in Missouri, and is sometimes referred to as the "Missouri Plan."

However, it is better known as "Merit Selection." It has been endorsed by the American Bar Association and the American Judicature Society as a desirable reform and is in effect presently in a number of states, where it is working well. Implicit in the Loring Committee's proposal was the elimination of the part-time courts, part-time judges, and the lay judge, particularly the justices of the peace.

To a young lawyer, who had the opportunity of working with Justice Loring, these proposals seemed so sensible that I assumed they would be welcomed by the bench and bar. Instead, they were received with a thud of silence and the justices of the peace descended upon the capitol like locusts. The report was put on the shelf to gather dust and subsequent legislatures have been so reluctant to appropriate money for the judicial council that it has done very little since.

ANOTHER 18 YEARS went by and in 1955 the committee on constitutional revision of the Minnesota State Bar Association took another look at the problem. As a member of that committee, I proposed resurrecting the Loring Committee's report, drafting a constitutional amendment to implement it, and getting the job done once and for all. The older and wiser heads of the committee said we couldn't move too fast too soon (our judicial system then was unchanged for a hundred years), and they rejected the argument that "it hurts less to cut off a dog's tail in one operation, instead of an inch at a time."

However, a constitutional amendment was proposed which provided that there must be at least two judges in each district, that in the future judges should be lawyers, that the jurisdiction of the probate court could be enlarged and that the justices of the peace courts be eliminated as constitutional courts. The amendment was easily adopted in 1956, perhaps, not because people understood it, (although they did think the J. P. court would go), but because it was an attempt at court reform, and they were all for that.

The results of the amendment are quite innocuous. The justice of the peace courts have not been eliminated because no legislation has been adopted to do so. In counties under

About the author of articles

C. Stanley McMahon, Winona attorney, has long been associated with efforts for court reform in Minnesota. These articles were written expressly for the Winona Daily News.

At one time McMahon was law clerk to the late Chief Justice Charles Loring. He was a member of the constitutional revision committee of the state bar that wrote the 1956 amendment to the judiciary article of the state constitution. He was chairman of the committee on lower courts of the state bar and chairman of the section on court organization and administrator during its existence.

Presently he is a member of the committee on judicial administration of the state bar and president of the 3rd Judicial District bar association.

In the past he has served on the board of governors of the state bar and as president of the Winona County bar.

30,000 the probate courts can have the same jurisdiction as municipal courts, but, admittedly, this has not worked out well. Requiring judges to be lawyers in some rural areas has resulted in vacancies because no one wants the part-time jobs, and the amendment respecting the District Courts has had no practical effect.

AFTER THE constitutional amendment was adopted, the legislature set up an interim commission to make a further study and appropriated $25,000 for its use. Although the members of the committee had not shown much interest in court reform previously, the bar association thought that it should be encouraged and a special "committee on the lower courts" was created. For over a year the interim commission did nothing and liaison between it and the bar committee was poor. It did make a report but advocated no specific legislation and this put the bar committee in the position of having nothing to recommend to the association.

As chairman of the committee on lower courts, I recommended that the committee be terminated - court reform in Minnesota seemed to be a hopeless task. However, a few members of the committee raised the question, "If we do not persevere in the effort to modernize our courts, who will?" As a result, the section of court organization and administration was formed. (A "section" is a part of the bar association, but has its own officers, dues and budget, and operates somewhat independently).

IT WAS NOW 1960. One thing the section did accomplish in the five years of its existence was the adoption of the court administrator act. We now have a functioning court administrator under the supervision of the Supreme Court, and some progress has been made in the assignment of cases and judges, and, of course, such an office is an absolute necessity to a unified court system, which would necessarily be administered at the state level.

As chairman of the section, I again advocated a constitutional amendment to provide for a unified court system and non-political selection and tenure of the judiciary. Again, it was decided that this was going too fast and the section devoted its time, energies and talent, to drafting what has come to be known as the "County Court Bill."

This bill went as far as you can go toward court unification without a constitutional amendment. It would combine the jurisdiction of the present municipal, probate, juvenile and justice courts into a county court, staffed by full-time legally trained judges. Justices of the peace and part - time municipal courts would be abolished. The bill did not touch the problem of judicial selection and tenure as, again, a constitutional amendment is needed to do that. Although the bill was introduced and the house committee held hearings, it never even had a hearing in the Senate Judiciary Committee. The bill simply died. Two years later the bill was redrafted in the legislature and met the same fate. The section was then dissolved and whatever fate court reorganization has in the state bar rests in the committee on judicial administration.

THE OTHER accomplishment of the section was persuading the bar association in cooperation with the American Judicature Society, to hold a citizens conference on the courts, which was held in Minneapolis in the fall of 1966. This conference was attended by about 100 lay persons from business, labor and professional fields. Although the conference lasted three days and attracted such national figures as speakers as then Associate Justice Tom Clark of the United States Supreme Court, it received little publicity or interest.

However, as a result of this conference, an organization known as Minnesota Citizens for Court Reform, Inc., was created. Its members are dedicated and capable people who are deeply concerned about the status of our Minnesota courts. They want to do something about it. Information concerning this organization can be obtained from its president, Christopher O. Batchelder, 415 16th Ave. SW, Rochester, or its secretary, William J. Cooper, 5500 Mirror Lake Dr., Edina. This citizens group, with the cooperation of the American Judicature Society, is now planning a second Minnesota conference on the courts, to be held in the Twin Cities area in May 1970. It deserves public support.

IN 1967 THE committee on judicial administration, again at the urging of the writer, drafted a proposed amendment to the judiciary article, including the substance of what was proposed by the judicial council more than a quarter of a century before. After the usual wrangling over verbiage, the committee submitted it to the board of governors for approval.

What followed resembled a comic opera, more than the proceedings of a professional organization. First, the board of governors took no position on it because it involved "controversy," so a full afternoon of the state bar convention was scheduled for hearing on this subject. For three hours the lawyers wrangled over procedural questions and the meeting was adjourned without ever discussing the merits.

However, it wasn't dropped there, but a full day was set aside for a special consideration of this subject matter, and all of the lawyers were invited to attend. An impressive panel, including out of state speakers, were present. The idea was that after hearing the arguments, the lawyers would vote to express their views of the association. Out of some 4,000 lawyers, about 200 attended, and the meeting was firmly and fully packed by the vocal, but well-organized minority, who opposed it. Again, the result was the same, and the 1969 legislature did not even consider the subject.

However, at the end of that session up popped two bills which were introduced. These would provide two new court systems called a District Probate Court and a District Municipal Court, which could be implemented only with the approval of the local county boards and city councils. The bills do have some merit. They combine the expense of the court clerks into one place, provide full-time legally trained judges and curtail the powers of the Justices of the Peace. The fundamental objection is that they add two new court systems where there are already too many and increase the complexity of a system already badly affected by that disease. When cancer surgery is needed an aspirin is little help. The adoption of legislation such as this would be a step backward and would set back the reasonable anticipation of the modern court system for another century.

Next: What's a unified court? Why should we have it?

Reprinted, with permission, from WINONA DAILY NEWS, Winona, Minnesota, Wednesday, February 25, 1970.