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Version 3
August 20, 2018

SELECTED READINGS ON THE ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT

EDITED BY

GLENN R. WINTERS
AND
R. STANLEY LOWE

AMERICAN JUDICATURE SOCIETY
1155 EAST SIXTIETH STREET
CHICAGO, ILLINOIS 60637

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Revised
1969

PREFACE

In November, 1959, more than 150 Americans, representing many areas of business, professional and public life, met in the Edgewater Beach Hotel, Chicago, at the invitation of the American Judicature Society, the American Bar Association and the Institute of Judicial Administration, Inc., for a three-day National Conference on Judicial Selection and Court Administration. In its final session the Conference approved a consensus statement calling for adoption of various specific judicial reform measures and recommending, among other things, that similar conferences be held at state and regional levels.

The first follow-up conference took place in Lincoln, Nebraska, just seven months later, in June, 1960. An Ohio conference followed, in Columbus, in March, 1961. In June, 1961, the Joint Committee for the Effective Administration of Justice was founded, with the Honorable Tom C. Clark, Associate Justice of the Supreme Court of the United States, as its chairman. The Joint Committee was founded by the same three organizations that had co-sponsored the National Conference, but the list of sponsors was enlarged to include a total of 17 national legal organizations. These were, in addition to the Society, the Institute and the ABA, the American Bar Foundation, the American Law Institute, the Conference of Bar Presidents, the Conference of Bar Executives, the Conference of Chief Justices, the National Conference of State Trial Judges, the National Conference of Judicial Councils, the National Conference of Court Administrative Officers, the American College of Trial Lawyers, the Association of American Law Schools, the Columbia Project for Effective Justice, the Junior Bar Conference, the National Council of Juvenile Court Judges, and the National Legal Aid and Defender Association.

A generous grant of funds was obtained from the Kellogg Foundation of Battle Creek, Michigan, to be expended over a three-year period, and the Joint Committee embarked upon an ambitious three-fold program of judicial training seminars for trial judges, court modernization conferences patterned after the 1959 National Conference, and some miscellaneous projects. After 1962 emphasis was centered on the seminars and conferences. During 1962, 1963 and 1964, the entire country was blanketed with trial judges' seminars and the National College for State Trial Judges was established, initially at Boulder, Colorado, and later at Reno, Nevada. By the end of 1964 a total of 17 citizens' conferences on court modernization had been held, as follows:

1. National Conference on Judicial Selection and Court Administration, Chicago, Illinois, November 22-24, 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 18, 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

On December 31, 1964, the Joint Committee for the Effective Administration of Justice came to an end in accordance with the original plan, and responsibility for its projects was assumed by the various sponsoring organizations. The citizens' conferences, which had been conducted for the Joint Committee by American Judicature Society staff, were carried on as a continuing project of the Society, with help from the Kellogg Foundation as a part of a renewal grant to the trial judges' college.

The Society assisted in planning and conducting the Twenty-Seventh American Assembly on "The Courts, the Public and the Law Explosion," at Arden House, Harriman, New York, April 29, 30 and May 1, 1965. It was the eighteenth in the citizens' conference series, and since then the following have been added:

19. Citizens' Advisory Conference on the Arkansas Judicial System, Hot Springs, September 23, 24, 1965

20. Citizens' Conference for Court Study, Pierre, South Dakota, October 8, 9, 1965

21. Citizens' Conference on Missouri Courts, Jefferson City, October 20-22, 1965

22. Second Annual Meeting, Citizens' Committee on Florida's Judicial System, Tampa, January 22, 1966

23. Tennessee Conference to Improve the Administration of Justice, Nashville, April 14-16, 1966

24. Citizens' Conference on Georgia's Judicial System, Atlanta, April 21-23, 1966

25. Citizens' Advisory Conference on Idaho Courts, Boise, June 2-4, 1966

26. Minnesota Citizens' Conference on Courts, Minneapolis, September 8-10, 1966

27. Second North Dakota Citizens' Conference, Minot, September 17, 1966

28. Citizens' Conference on Wyoming Courts, Laramie, September 22-24, 1966

29. Citizens' Conference on the Montana Judicial System, Great Falls, September 29, 30, October 1, 1966

30. Citizens' Conference on Washington Courts, Seattle, November 10-12, 1966

31. Citizens' Conference on Utah Courts, Salt Lake City, November 17-19, 1966

32. Georgia Citizens Judicial Study Commission, Atlanta, December 2, 1966

33. Citizens' Conference on Alabama State Courts, Montgomery, December 8-10, 1966

1967 was the last year, by the original terms of the Kellogg Foundation grant, that funds were available from that source. During that year seven more conferences were held. These were (numbered consecutively):

34. Citizens' Conference on the Administration of Justice, Honolulu, Hawaii, January 26-28, 1967

35. Citizens' Conference on Mississippi State Courts, Jackson, September 7-9, 1967

36. Michigan Citizens' Conference on Judicial Selection and Tenure, Grand Rapids, October 20, 1967

37. Citizens' Conference on the Administration of Justice, Montpelier, Vermont, November 2, 3, 1967

38. Citizens' Conference on Administration of Justice in West Virginia, Charleston, November 9-11, 1967

39. Second Tennessee Conference to Improve the Administration of Justice, Nashville, November 15, 1967

40. Citizens' Conference on Arizona Courts, Scottsdale, November 16-18, 1967

The second grant from the Kellogg Foundation expired at the end of 1967 and was not renewed. Since then, the American Judicature Society has supplied funds to carry on the conferences, the number of which had gone past 50 by the end of 1968, and reached a total of 58 at the time of this writing in 1969:

41. Citizens' Conference on Rhode Island Courts, Providence, January 8, 9, 1968

42. Constitutional Convention Conference, Honolulu, Hawaii, January 25-27, 1968

43. Citizens' Conference on the California Merit Plan for Judicial Selection, Sacramento, March 18, 1968

44. Citizens' Conference on Missouri Courts II, St. Louis, April 11, 1968

45. Citizens' Conference on Missouri Courts II, Kansas City, April 12, 1968

46. Conference on the Administration of Justice, Seattle, Washington, May 3, 4, 1968

47. Citizens' Conference on Kentucky State Courts, Louisville, June 13-15, 1968

48. Citizens' Conference on Nevada Courts, Reno, July 10, 11, 1968

49. Citizens' Conference on Nevada Courts, Las Vegas, July 12, 13, 1968

50. Second Citizens' Conference on Montana Judicial System, Billings, September 30, 1968

51. Citizens' Conference on Oregon Courts, Salem, October 17, 18, 1968

52. Second Citizens' Conference on Administration of Justice in West Virginia, Charleston, November 11, 1968

53. Third Georgia Judicial Conference, Atlanta, January 30, 31, 1969

54. Pennsylvania Citizens' Conference on Judicial Selection, Second Series, Harrisburg, April 28, 1969

55. Pennsylvania Citizens' Conference on Judicial Selection, Second Series, Allentown/Bethlehem/Easton, April 29, 1969

56. Pennsylvania Citizens' Conference on Judicial Selection, Second Series, Scranton/Wilkes-Barre, April 29, 1969

57. Pennsylvania Citizens' Conference on Judicial Selection, Second Series, Pittsburgh, May 1, 1969

58. Pennsylvania Citizens' Conference on Judicial Selection, Second Series, Erie, May 2, 1969

However, merely reporting the conferences that have been held does not tell the full story of the conference program. Over two-thirds of the states now have had at least one citizens' conference. Second conferences are being held with increasing frequency. Ohio had one as far back as 1963 and three more were held in the years of 1966 (Florida and North Dakota) and 1967 (Tennessee). In 1968 the tempo increased, and eight second conferences were held in six states: Hawaii, Washington, Montana, West Virginia (one each) and Missouri and Nevada (two each). In early 1969 Georgia was the first state to have a third conference, and during that spring Pennsylvania had a second conference series consisting of five conferences. At the time this is being written, a third conference series to consist of three conferences is being planned for Ohio. These repeat sessions are giving the program a new dimension for future planning.

Moreover, the Society is participating in other conference-related activities that are the natural result of conferences held in the past. These include citizens' court study organizations that evolved from steering committees selected at the conclusion of every conference held since Florida's in 1964. The Society maintains contact with these groups which are steadily increasing in number, and it furnishes them speakers and educational material and otherwise assists them in a consultation and advisory capacity.

Another conference-related activity in which the Society is now participating is to conduct seminars, or institutes, for those serving on commissions in states that have adopted the Society's judicial merit selection plan and judicial removal plans patterned after California's Judicial Qualifications Commission. Two seminars for members of merit selection commissions have been held, one in Colorado (July 15, 1967) and another in Nebraska (January 27, 1968), and plans are under study for similar meetings in other states. A national conference for members and staff personnel of judicial removal commissions is scheduled to be held at the University of Denver, August 29, 1969. It is anticipated that others will be held in following years.

All of the conferences and many follow-up sessions have followed the American Assembly format wherein the conferees are divided into a number of discussion groups. Teams of panelists and discussion leaders have moved from group to group leading discussions on various conference topics until each group has met each team and discussed each topic. Usually a consensus statement has been drafted by the reporters and presented at the closing assembly, and after correction and approval, by the citizen conferees, it has become the voice of the conference on the topics dealt with, and in most instances has formed the basis for citizen action to achieve the recommendations it made.

In addition to the discussion sessions, the conferences have included assemblies at which leading judicial administration authorities have given lectures presenting the best of modern thinking and the experience of other states regarding court organization and

administration, selection, tenure, compensation, retirement, discipline and removal of judges and problems of courts of limited and special jurisdiction. The lectures alone are not sufficient, however, to give the citizen conferees adequate background information to permit an intelligent discussion of these complex matters, and the Society has supplied all of the conferences, from the first, with notebooks similar to this one in which are contained selected background reading materials for study by the conferees in advance of the meeting.

Each conference has been co-sponsored by one or more local organizations, usually the state bar association, in addition to the American Judicature Society, and during the existence of the Joint Committee for the Effective Administration of Justice it, too, participated in sponsorship. Other cooperating organizations have included law schools, judicial organizations, and local citizens' and women's organizations.

The costs of the conferences have been divided several ways. The American Judicature Society contributed its staff time in planning and conducting the conferences, and while Kellogg Foundation funds were available, they were used for staff travel expenses in conference promotion and planning and follow-up activities, for reading materials, and for expenses of out-of-state speakers and panelists. These are items of expense that now have been assumed by the Society since the expiration of the grant. The local co-sponsors bear the costs of printing and mailing, conference luncheons and dinners, and other related expenses. Travel and hotel expenses of the conferees have constituted a very substantial contribution by the conferees themselves.

The reading materials presented in this book include a summary of the existing judicial system of a state having a conference and contain excerpts from various reports and writings by authorities in the field of judicial administration. These, and the brochures and miscellaneous reading materials in the book's pocket, have been chosen with a view of giving a non-lawyer reader a nontechnical understanding of what is being proposed and done in other states in the various problem areas of judicial administration. These materials have become fairly well standardized since the first ten or twelve conferences, and except for up-dating some statistical items and adding a few new items (and, of course, the special section on the judicial system in the state where the conference is being held) few changes have been made since 1963.

Suggestions from users of these books as to how they might be improved will be gratefully received and borne in mind in future revisions. It is our hope that the book will not only serve well its primary purpose of facilitating informed discussion in court modernization conferences of judicial administration topics by non-lawyer citizen conferees, but also may find a wider use in helping to create a better understanding of the courts and their problems on the part of many citizens who have not had an opportunity of participating in the conferences but who are equally willing to learn and to join in the nation-wide crusade for more effective justice.

Glenn R. Winters
Executive Director

Chicago, July, 1969

SIXTH ANNUAL REPORT

1969

MINNESOTA COURTS

THE SUPREME COURT OF MINNESOTA

OFFICE OF THE ADMINISTRATIVE ASSISTANT

THE SUPREME COURT OF MINNESOTA
ST. PAUL

RICHARD E. KLEIN
ADMINISTRATIVE ASSISTANT

February 1, 1970

To Chief Justice Oscar R. Knutson
To The Senate and House of Representatives
To The Judicial Council of Minnesota

Submitted herewith, as required by Minnesota Statutes Section 480.15, is the annual statistical report for the judicial business transacted by the courts of Minnesota during the year 1969.

The status of the district courts is just about the same as at the end of 1968. Delay in the courts is no longer a great problem. Calendars are relatively current. Filings increased during 1969 while terminations went down somewhat. In some districts concentration on civil jury calendars resulted in slightly increased delays in civil court and criminal calendars. The opposite was also true. Where the emphasis was on terminating civil court cases, more delay resulted in the civil jury calendar. The Sixth Judicial District judges have been given money to hire a court administrator who should be of great help to the judges and clerks of court in solving not only calendar problems, but also any other administrative problems. The First and Tenth Districts should give some thought to hiring an administrator to help them. These are the two fastest growing areas in the state and the increase in population will result in increased court business.

The Supreme Court caseload is continuing to increase. Fortunately, the court has been able to keep current by employing the assistance of a retired justice and one district judge at a time. An intermediate court of appeals is the ultimate solution to the problem and is strongly recommended to replace the present stop-gap method of solving the problem. Increased manpower has definite limitations and should not be considered as more than a temporary measure.

During 1970, the attention of the various courts will be called to those areas of concern where improvement can be made, especially in the age of pending cases.

Respectfully submitted,

Richard E. Klein

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THE SUPREME COURT

Chief Justice and Six Associate Justices elected for six year terms. General appellate jurisdiction. Original jurisdiction as prescribed by law.

DISTRICT COURT

Original jurisdiction in all civil actions; all cases of crime, special proceedings not exclusively cognizable by some other court; appellate jurisdiction as prescribed by law.*

FIRST DISTRICT	SECOND DISTRICT	THIRD DISTRICT	FOURTH DISTRICT	FIFTH DISTRICT	SIXTH DISTRICT	SEVENTH DISTRICT	EIGHTH DISTRICT	NINTH DISTRICT	TENTH DISTRICT
Five Judges	Eleven Judges	Six Judges	Eighteen Judges	Five Judges	Six Judges	Four Judges	Three Judges	Six Judges	Six Judges
Seven Counties	Ramsey County	Eleven Counties	Hennepin County	Fifteen Counties	Four Counties	Ten Counties	Thirteen Counties	Seventeen Counties	Eight Counties

PROBATE COURT

Original jurisdiction in law and equity for the administration of estates of deceased persons and all guardianship and incompetency proceedings and such further jurisdiction as the legislature may establish.

87 COURTS 86 JUDGES**

The Probate Court is also the Juvenile Court in St. Louis County and in counties under 100,000 population. Law enacted in 1965 provides for full time judges in counties with a population of over 25,000.

HENNEPIN COUNTY	RAMSEY COUNTY	ST. LOUIS COUNTY
One Judge	One Judge	One Judge

MUNICIPAL COURT

Civil jurisdiction to $1000 (except cases involving title to real estate); forcible entry and detainer; misdemeanors; ordinance violations; preliminary hearings in criminal

84 COURTS 80 JUDGES In 69 counties with population under 30,000 the Probate Court also has Municipal Court Jurisdiction.***	HENNEPIN COUNTY MUNICIPAL COURT	ST. PAUL MUNICIPAL COURT	DULUTH MUNICIPAL COURT	ANOKA COUNTY MUNICIPAL COURT	CARVER COUNTY MUNICIPAL COURT	WASHINGTON COUNTY MUNICIPAL COURT
	Sixteen Judges	Five Judges	Two Judges	Three Judges	One Judge	One Judge
	Criminal and Civil jurisdiction to $6000. Conciliation Court.	Criminal and Civil jurisdiction to $6000. Conciliation Court.	Criminal and Civil jurisdiction to $4000. Conciliation Court.	Criminal and Civil jurisdiction to $5000. Conciliation Court.	Criminal and Civil Jurisdiction to $5000. Conciliation Court.	Criminal and Civil Jurisdiction to $4000. Conciliation Court.

Also Juvenile Court jurisdiction in the Second and Fourth Districts

***Vacancies currently exist in one court.*

****Vacancies currently exist in four courts.*

JUSTICES OF THE PEACE

408 Active Estimated 300 Inactive.
Law provides for two justices of the peace in election district established by Section 203.07. Jurisdiction over misdemeanors and up to $100 in civil cases.

COURT	JURISDICTION	JUDICIAL QUALIFICATIONS	TERM OF OFFICE	METHOD OF SELECTION[1]	METHOD OF REMOVAL	SALARY	RETIREMENT
SUPREME COURT	Original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases.	Learned in the law	Six years	Statewide election	Impeachment	$26,000[2]	At age 70 after serving two full terms; at age 65 with minimum of 15 years service. Benefits equal to one-half salary plus 2½ percent for each year of service in excess of two terms. (The 2½ percent increment is limited to a maximum of 10 years.)
DISTRICT COURT	Original jurisdiction in all civil and criminal cases. Appellate jurisdiction as prescribed by law.	Learned in the law	Six years	Election within district	Impeachment; removal by governor after hearing on petition alleging mental or physical incapacity.	$22,000[3]	At age 70 with 15 years of service or at age 65 with 25 years as judge or a court of record. Benefits equal to one-half compensation allotted for the office.
PROBATE COURT	Unlimited original jurisdiction in law and equity for the administration of estates of deceased persons and all guardianship and incompetency proceedings and such further jurisdiction as the legislature may establish.	Learned in the law[4]	Six years	County election	Removal by governor for malfeasance or non-feasance in performance of official duties.	$ 6,500 to $22,000	At age 70 with 20 years of service in a court of record, or at age 65 with 24 years of service. Benefits equal to one-half compensation but subject to diminution by amount of other pension.
MUNICIPAL COURT	Civil jurisdiction to $1000 (except in cases involving title to real estate); forcible entry and detainer; misdemeanors; ordinance violations and preliminary hearings in criminal matters. (St. Paul, Duluth, Hennepin, Anoka, Carver and Washington County Courts have higher jurisdictional limits.)	Learned in the law[5]	Six years	Municipal election	Removal by governor for malfeasance or non-feasance in performance of official duties.	$240 to $23,000	No uniform retirement plan. Participation in PERA optional.

1 Vacancies filled by appointment by the governor.

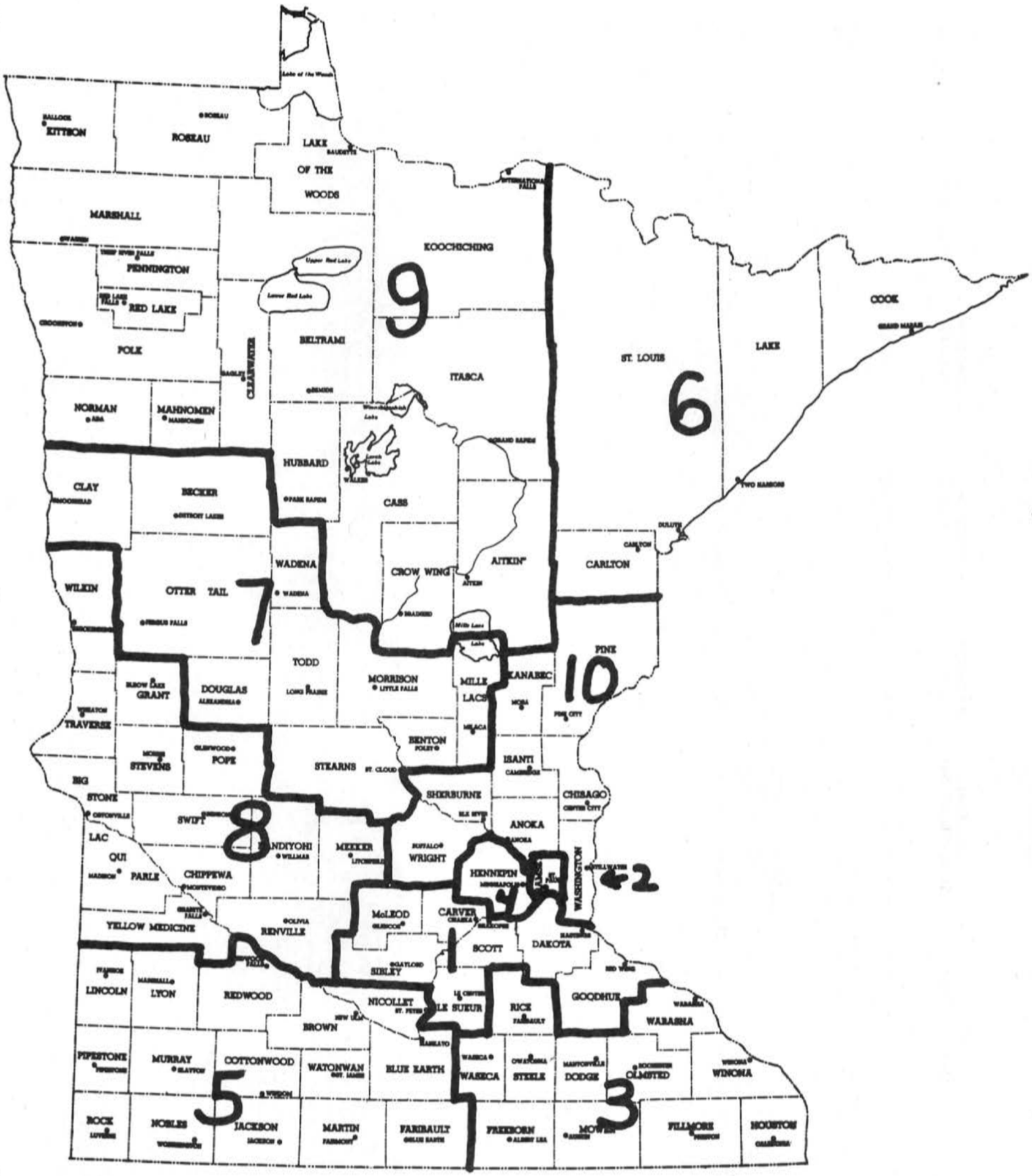
2 Chief Justice received $27,000.

3. Judges in counties with population of over 200,000 entitled to $1,500 supplement

4. See paragraph (b) of Schedule in Judicial Article. Incumbent none-lawyer judges deemed "learned in the law" for the purpose of continuing in and re-election to office.

5. Non-lawyer may be appointed if no qualified person available. Sec. 488.06 (5).

MINNESOTA JUDICIAL DISTRICTS



THE SUPREME COURT

During 1969 the volume of cases handled by the Supreme Court increased by 37 cases to a total of 437. The number of opinions written increased from 313 to 335.

Civil appeals increased from 172 cases in 1968 to 204 cases in 1969. Criminal appeals increased by 13 cases to a total of 81 in 1969. Habeas Corpus and other extroardinary writs dropped from 27 to 5 in 1969. Criminal matters account for slightly over 27 percent of the 316 cases heard on the regular calendars of the court.

The number of appeals, petitions for extraordinary writs, applications for special relief, and other matters filed with the Clerk of the Supreme Court in recent years indicate the extent of the growth in the caseload of the Supreme Court:

Year	Matters Filed
1964	419
1965	449
1966	470
1967	525
1968	578
1969	631

The above filings include appeals which are eventually dismissed prior to argument or opinion and petitions for extraordinary writs which are denied after preliminary conference under Rule 120.02, so that the total number of the matters filed are not placed on the calendar for oral argument and opinion. Nevertheless, these filings are further indicia of the expanding workload in the appellate court.

In spite of the increase in caseload, the average time for notice of appeal to release of opinion was reduced to 15.6 months. In 1969 the average time from notice of appeal to hearing was 12.9 months and from hearing to release of opinion 2.7 months or 80 days. The delay from appeal to hearing will be reduced in the future if the court adopts the policy of granting extensions of time for the filing of briefs only upon written application accompanied by affidavit showing good cause for the requested extension.

The services of a retired justice during the entire year and of a district judge during the months of November and December on cases heard by the court sitting in division reduced somewhat the caseload of the individual justices. The 335 cases requiring written opinions represent 48 for each of the seven justices (The Chief Justice sits with all divisions but does not write opinions in division cases). This is 10 more than is generally regarded as the optimum maximum for an appellate judge.

VOLUME OF CASES

SUPREME COURT

1957 - 1969

Year	Regular	Special	Total	Opinions
1957	165	48	182	178
1958	149	71	220	184
1959	163	57	230	182
1960	174	54	216	174
1961	171	83	254	179
1962	180	95	275	222
1963	173	100	273	194
1964	192	127	319	207
1965	214	87	301	215
1966	235	89	324	242
1967	277	95	372	280
1968	291	109	400	313
1969	316	121	437	335
Change from 1968	+8.6%	+11%	+9.25%	+7%
3 Year Average (1967-1969)	294.7	108.3	403	309.3

TYPES OF CASES

	1967	1968	1969
Civil Appeals	135	172	204
Criminal Appeals	90	68	81
Criminal Cases - Habeas Corpus & other extraordinary writs	27	27	5
Certiorari - Industrial Commission	17	14	19
Other Extraordinary Writs	2	3	2
Tax Court Appeals	3	--	2
Employment Security Department	--	3	1
Rehearings	2	4	2
Total Cases Heard	277	291	316
Special Matters - including Motions, Petitions for Extroardinary Writs, Disbarments, etc.	95	109	121
TOTAL	372	400	437

DISTRICT COURTS

COMMENT AND ANALYSIS

The accompanying tables and statistics illustrate that the District Courts of Minnesota managed to maintain their position of currency in spite of increased filings. It is interesting to note that some courts continued to reduce delay in civil jury cases while at the same time delay in court cases and criminal cases has increased. Conversely other courts have concentrated on court cases and criminal cases, thereby reducing delay in these areas while delay in civil jury cases has increased slightly. Dakota County remains the one county in the state with a serious delay factor.

DELAY TABLES

Jury Cases

County	1969 Terminations Per Month	Total Jury Cases Pending 12-31-69	Delay Months
Hennepin	280.4	3355	11.9
Ramsey	184	1371	7.5
Anoka	19.0	263	13.8
Washington	13.1	100	7.6
St. Louis (Duluth)	18.3	146	7.9
Dakota	23.3	378	16.2

Court Cases

Hennepin	137.5	1040	7.6
Ramsey	65.2	643	9.8
Anoka	21	145	6.9
Washington	13.7	94	6.8
St. Louis (Duluth)	34.4	81	2.3
Dakota	22.5	117	5.2

In prior reports, it has been explained that the above figures are the result of a purely statistical computation which is arrived at by dividing the number of cases pending on December 31, 1969 by the monthly average of cases terminated during the year. This is a reasonably accurate computation of the time delay before a court will reach for trial the next case to be filed in the particular court. As such, it is a true reflection of the efficiency of the system used in that court in administering its calendars. It should be borne in mind that the above tables do not represent the time delay between note of issue and trial of the cases presently being tried in those courts.

Overall improvement is shown in the age of pending cases tables. A greater percentage of pending cases are less than one year old. However, too many cases are still pending that are over two years of age.

During 1970 it is hoped that a concerted effort will be made by the district judges, the clerks of court and the attorneys to dispose of all cases which will be over two years of age at the end of the year.

DISTRICT COURT COMPARATIVE TABLES

TABLE I

New Jury Cases Filed

District	1967	1968	1969	Change From Prior Year
First	576	530	572	+222
Second	1356	1317	1655	+338
Third	911	714	876	+162
Fourth	2824	2740	2929	+189
Fifth	705	725	654	-71
Sixth	456	682	446	-236
Seventh	723	736	742	+ 6
Eighth	367	442	461	+19
Ninth	524	503	541	+38
Tenth	557	579	583	+ 4
TOTAL	8999	8968	9459	+491

TABLE II

New Court Cases Filed

District	1967	1968	1969	Change From Prior Year
First	434	489	568	+79
Second	798	818	917	+99
Third	358	364	378	+14
Fourth	1555	1633	1641	+ 8
Fifth	382	448	422	-26
Sixth	402	498	536	+38
Seventh	298	281	295	+14
Eighth	195	104	166	+62
Ninth	648	382	410	+28
Tenth	699	585	741	+156
TOTAL	5769	5602	6074	+472

TABLE III

New Criminal Cases Filed

District	1967	1968	1969	Change From Prior Year
First	197	223	210	-13
Second	479	703	667	-36
Third	248	271	264	- 7
Fourth	731	879	1084	+205
Fifth	205	233	231	- 2
Sixth	237	256	286	+30
Seventh	187	233	171	-62
Eighth	131	168	122	-46
Ninth	249	307	334	+27
Tenth	262	219	275	+56
TOTAL	2926	3492	3644	+152

TABLE IV

Jury Cases Terminated

District	1967	1968	1969	Change From Prior Year
First	572	609	563	-46
Second	2053	2112	2209	+97
Third	851	817	781	-36
Fourth	3644	4224	3365	-859
Fifth	696	643	594	-49
Sixth	468	605	432	-173
Seventh	666	746	732	-14
Eighth	363	371	490	+119
Ninth	563	491	523	+32
Tenth	788	569	568	- 1
TOTAL	10664	11187	10257	-930

DISTRICT COURT COMPARATIVE TABLES -

TABLE V

Court Cases Terminated

District	1967	1968	1969	Change From Prior Year
First	605	425	484	+59
Second	828	796	783	-13
Third	398	395	406	+11
Fourth	1910	1920	1651	-269
Fifth	379	447	429	-18
Sixth	526	646	646	--
Seventh	341	295	313	+18
Eighth	186	218	184	-34
Ninth	*848	402	423	+21
Tenth	881	988	717	-271
TOTAL	6902	6532	6036	-496

*In 1967, a large number of tax appeals were terminated in Cass and Hubbard Counties.

TABLE VI

Criminal Dispositions

District	1967	1968	1969	Change From Prior Year
First	200	217	218	- 1
Second	448	636	605	-31
Third	240	278	246	-32
Fourth	672	885	1059	+174
Fifth	199	216	217	+ 1
Sixth	206	226	287	+61
Seventh	189	236	167	-69
Eighth	123	168	130	-38
Ninth	264	279	315	+36
Tenth	238	221	237	+16
TOTAL	2779	3362	3481	+119

DISTRICT COURT COMPARATIVE TABLES -

TABLE VII

Court Trials

District	1967	1968	1969	Change From Prior Year
First	356	253	295	+42
Second	256	288	272	-16
Third	180	179	148	-31
Fourth	183	270	260	-10
Fifth	195	267	235	-32
Sixth	165	133	196	+63
Seventh	155	151	162	+11
Eighth	105	136	57	-79
Ninth	262	154	142	-12
Tenth	169	203	214	+11
TOTAL	2026	2034	1981	-53

TABLE VIII

Jury Trials

District	1967	1968	1969	Change From Prior Year
First	98	89	92	+ 3
Second	230	190	228	+38
Third	127	118	105	-13
Fourth	330	338	299	-39
Fifth	109	101	69	-32
Sixth	45	67	44	-23
Seventh	126	126	132	+ 6
Eighth	79	74	80	+ 6
Ninth	98	80	74	- 6
Tenth	93	76	71	- 5
TOTAL	1335	1259	1194	-65

DISTRICT COURT COMPARATIVE TABLES -

TABLE IX

Settlements of Jury Cases

District	1968 During Trial	1968 Before Trial	1969 During Trial	1969 Before Trial	Change From Prior Year During Trial	Change From Prior Year Before Trial
First	36	484	56	415	+20	-69
Second	138	1784	121	1860	-17	+76
Third	43	656	52	624	+ 9	-32
Fourth	570	3316	488	2578	-82	-738
Fifth	46	456	51	470	+ 5	+14
Sixth	90	448	31	332	-59	-116
Seventh	51	569	67	533	+16	-36
Eighth	35	262	67	332	+32	+70
Ninth	14	397	16	408	+ 2	+11
Tenth	25	468	25	472	--	+ 4
TOTAL	1048	8840	974	8024	-74	-816

TABLE X

Percent Of Jury Cases Settled

District	Total Terminated 1968	Total Terminated 1969	Jury Trials 1968	Jury Trials 1969	1968 Percent Settled	1969 Percent Settled
First	609	563	89	92	85.4%	83.7%
Second	2112	2209	190	228	91.0%	89.7%
Third	817	781	118	105	85.6%	86.6%
Fourth	4224	3365	338	299	92.0%	91.1%
Fifth	643	594	101	69	84.3%	87.9%
Sixth	605	432	67	44	89.0%	84.0%
Seventh	746	732	126	132	83.2%	82.0%
Eighth	371	490	74	80	80.1%	81.4%
Ninth	491	523	80	74	83.7%	81.1%
Tenth	569	568	76	71	86.7%	87.5%
TOTAL	11187	10257	1259	1194	88.8%	87.7%

AVERAGE CASES PENDING PER JUDGE - DECEMBER 31, 1969

District & Number of Counties in Each		No. of Judges	Court Cases	Ave. per Judge	Jury Cases	Ave. per Judge	Criml. Cases	Ave. per Judge	Total Cases	Ave. per Judge
First	(7)	5	275	55	563	113	73	15	911	182
Second	(1)	*10	643	64	1371	137	217	22	2231	223
Third	(11)	6	191	32	559	93	95	16	845	141
Fourth	(1)	*17	1040	61	3355	197	158	9	4553	268
Fifth	(15)	5	408	82	443	89	118	24	969	194
Sixth	(4)	6	133	19	256	43	75	13	464	77
Seventh	(10)	4	86	22	197	49	47	12	330	83
Eighth	(13)	3	26	9	91	30	17	6	134	45
Ninth	(17)	6	95	16	129	22	92	15	316	53
Tenth	(8)	6	358	60	509	85	121	20	988	165
State Total		*68	3255	48	7473	110	1013	15	11741	173
Total Excluding Districts 2,4 and 10		35	1214	35	2238	64	517	15	3969	113

*Does not include Juvenile Court Judge.

TABLE XI

TABLE XII

1969 Terminations per Judge

District	No. of Judges	Court, Jury & Criminal Terminations	Average Per Judge
First	5	1265	253
Second	*10	3597	331 (a)
Third	6	1433	232 (b)
Fourth	*17	6075	331 (c)
Fifth	5	1237	247
Sixth	6	1376	229
Seventh	4	1211	303
Eighth	3	804	268
Ninth	6	1267	211
Tenth	6	1522	254
TOTAL	68	19787	281 (d)

*Juvenile Judge not included.

(a) Average is computed for 10 judges plus services of assigned judges for 45 weeks.

(b) Average is computed for 6 judges plus services of assigned judges for 9 weeks.

(c) Average is computed for 17 judges plus services of assigned judges for 67 weeks.

(d) Statewide average is computed for 68 regular judges plus services of assigned judges equivalent to 2-1/3 judges.

TABLE XIII

ASSIGNMENT OF JUDGES

JUDGE	ASSIGNED TO	PERIOD
Carl W. Gustafson	Second District	14 days
Christ Holm	Second District	21 days
Clayton A. Parks	Second District	43 days
Arthur A. Stewart	Second District	147 days
		225 days
Leo F. Murphy	Third District	11 days
A. C. Richardson	Third District	35 days
		46 days
William C. Christianson	Fourth District	84 days
Arnold C. Forbes	Fourth District	31 days
Levi Hall	Fourth District	7 days
Christ Holm	Fourth District	28 days
Earl J. Lyons	Fourth District	146 days
J. K. Underhill	Fourth District	39 days
		335 days
	GRAND TOTAL	606 days

NOTE: All of the above are Retired Judges.

New Cases Filed Per Judge

District	No. of Judges	Court, Jury & Criminal Filings	Average Per Judge	Average Terminations Per Judge
First	5	1350	270	253
Second	*10	3239	324	360
Third	6	1518	253	239
Fourth	*17	5629	331	357
Fifth	5	1307	261	247
Sixth	6	1268	211	229
Seventh	4	1208	302	303
Eighth	3	749	250	268
Ninth	6	1285	214	228
Tenth	6	1599	267	254
TOTAL	68	19152	282	300

*Juvenile Judge not included.

Civil Cases

DISTRICT ()No. Counties	CASES PENDING Jan. 1, 1969 Court	Jury	CASES FILED Court	Jury	CASES TERMINATED Court	Jury	CASES PENDING Dec. 31, 1969 Court	Jury	NET GAIN OR LOSS Court	Jury
FIRST (7)	191*	554*	568	572	484	563	275	563	-84	- 9
SECOND (1)	509*	1925*	917	1655	783	2209	643	1371	-134	+554
THIRD (11)	219*	464*	378	876	406	781	191	559	+28	-95
FOURTH (1)	1050*	3791*	1641	2929	1651	3365	1040	3355	+10	+436
FIFTH (15)	415*	383*	422	654	429	594	408	443	+ 7	-60
SIXTH (7)	243*	242*	536	446	646	432	133	256	+110	-14
SEVENTH (10)	104*	187*	295	742	313	732	86	197	+18	-10
EIGHTH (13)	44*	120*	166	461	184	490	26	91	+18	+29
NINTH (17)	108*	111*	410	541	423	523	95	129	+13	-18
TENTH (8)	334*	494*	741	583	717	568	358	509	-24	-15
STATEWIDE TOTALS	3217*	8271*	6074	9459	6036	10257	3255	7473	-38	+798

* Adjusted to account for transfer of cases between court and jury calendars and to account for adjustments or corrections made by the Clerks of District Court.

CIVIL CASES

	CASES PENDING Jan. 1, 1969		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1969		NET GAIN OR LOSS	
	Court	Jury	Court	Jury	Court	Jury	Court	Jury	Court	Jury
Dakota	*102	*427	285	231	270	280	117	378	-15	+49
Goodhue	*11	*26	21	40	19	39	13	27	- 2	+ 1
McLeod	*32	*14	164	57	119	43	77	28	-45	-14
Scott	*26	*52	43	76	24	74	45	54	-19	- 2
Carver	* 4	*18	30	58	23	48	11	28	- 7	-10
Le Sueur	4	14	11	64	10	52	5	26	- 1	-12
Sibley	12	3	14	46	19	27	7	22	+ 5	-19
First District	*191	*554	568	572	484	563	275	563	-84	- 9
Ramsey	509	1925	917	1655	783	2209	643	1371	-134	*554
Olmsted	*84	*130	107	169	122	147	69	152	+15	-22
Mower	*49	*137	56	169	75	201	30	105	+19	+32
Winona	*17	*42	36	96	27	51	26	87	- 9	-45
Rice	*16	*42	39	102	43	116	12	28	+ 4	+ 4
Freeborn	*18	*61	28	123	29	110	17	74	+ 1	-13
Steele	* 9	*19	36	79	38	49	7	49	+ 2	-30
Fillmore	* 7	* 2	21	23	23	17	5	8	+ 2	- 6
Wabasha	* 5	*14	13	33	8	27	10	20	- 5	- 6
Houston	*12	* 1	17	23	21	16	8	8	+ 4	- 7
Waseca	*--	*13	11	34	9	34	2	13	- 2	--
Dodge	2	3	14	25	11	13	5	15	- 3	-12
Third District	*219	*464	378	876	406	781	191	559	+28	-95
Hennepin	*1050	*3791	1641	2929	1651	3365	1040	3355	+10	+436
Blue Earth	*50	*135	47	149	45	111	52	173	+ 2	-38
Brown	96	65	68	58	64	49	100	74	- 4	- 9
Martin	46	21	29	77	35	57	40	41	+ 6	-20
Faribault	*14	*11	14	45	21	50	7	6	+ 7	+ 5
Nobles	*22	*15	28	51	38	37	12	29	+10	-14
Nicollet	*46	*23	74	45	73	46	47	22	- 1	+ 1
Lyon	15	28	28	38	25	45	18	21	- 3	+ 7
Redwood	*12	* 7	9	39	12	33	9	13	+ 3	- 6
Cottonwood	* 7	* 6	11	25	14	26	4	5	+ 3	+ 1
Jackson	* 4	*12	17	58	15	62	6	8	- 2	- 4
Murray	7	6	28	21	26	19	9	8	- 2	- 2
Watonwan	76	47	46	18	33	25	89	40	-13	- 7
Pipestone	*11	* 7	6	19	7	26	10	--	+ 1	+ 7
Rock	6	--	7	7	9	5	4	2	+ 2	- 2
Lincoln	3	--	10	4	12	3	1	1	--	--
Fifth District	*415	*383	422	654	429	594	408	443	+ 7	-60
Saint Louis:										
Duluth	*183	*157	311	209	413	220	81	146	+102	+11
Ely	1	4	3	6	2	8	2	2	- 1	+ 2
Hibbing	*20	*17	39	83	45	48	14	52	+ 6	-35
Virginia	16	13	83	86	94	67	5	32	+11	-19
Carlton	8	18	34	43	31	49	11	12	- 3	+ 6
Lake	6	23	8	15	9	27	5	11	+ 1	+12
Cook	9	10	58	4	52	13	15	1	- 6	+ 9
Sixth District	*243	*242	536	446	646	432	133	256	+110	-14

*Adjustments

CIVIL CASES - Continued

	CASES PENDING Jan. 1, 1969		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1969		NET GAIN OR LOSS	
	Court	Jury	Court	Jury	Court	Jury	Court	Jury	Court	Jury
Stearns	*25	*47	71	230	59	221	37	56	-12	- 9
Otter Tail	20	12	45	98	53	93	12	17	+ 8	- 5
Clay	*29	*31	29	135	58	133	--	33	+29	- 2
Morrison	11	5	10	30	16	28	5	7	+ 6	- 2
Becker	3	18	25	40	19	39	9	19	- 6	- 1
Todd	--	13	9	42	8	45	1	10	- 1	+ 3
Douglas	--	4	14	43	9	41	5	6	- 5	- 2
Benton	* 7	*45	11	84	16	99	2	30	+ 5	+15
Mille Lacs	7	8	20	18	18	15	9	11	- 2	- 3
Wadena	2	4	61	22	57	18	6	8	- 4	- 4
Seventh District	*104	*187	295	742	313	732	86	197	+18	-10
Kandiyohi	7	20	39	111	38	90	8	41	- 1	-21
Renville	* 8	* 3	23	78	29	76	2	5	+ 6	- 2
Meeker	4	12	21	51	19	49	6	14	- 2	- 2
Chippewa	--	39	14	64	12	93	2	10	- 2	+29
Yellow Medicine	* 7	*--	5	24	9	20	3	4	+ 4	- 4
Swift	--	15	9	21	9	33	--	3	--	+12
Lac Qui Parle	* 1	* 1	13	5	14	6	--	--	--	+ 2
Pope	* 4	*10	5	16	8	25	1	1	+ 3	+ 9
Stevens	2	6	1	28	3	29	--	5	+ 2	+ 1
Wilkin	* 4	*--	8	7	11	5	1	2	+ 3	- 2
Big Stone	* 4	* 6	6	29	8	32	2	3	+ 2	+ 3
Grant	3	4	10	20	12	21	1	3	+ 2	+ 1
Traverse	--	4	12	7	12	11	--	--	--	+ 4
Eighth District	*44	*120	166	461	184	490	26	91	+18	+29
Itasca	7	11	30	86	28	72	9	25	- 2	-14
Polk	15	15	16	63	26	70	5	8	+10	+ 7
Crow Wing	*29	*33	80	125	91	107	18	51	+11	-18
Beltrami	*--	*10	34	46	32	56	2	--	+ 2	+10
Koochiching	* 5	*--	20	30	23	28	2	2	+ 3	- 2
Cass	6	5	27	25	19	18	14	12	- 8	- 7
Marshall	3	3	4	10	5	12	2	1	+ 1	+ 2
Pennington	*12	* 4	9	29	17	27	4	6	+ 8	- 2
Aitkin	* 7	*14	15	32	14	35	8	11	- 1	+ 3
Roseau	* 2	*--	1	17	3	16	--	1	+ 2	- 1
Norman	1	1	4	17	5	17	--	1	+ 1	--
Hubbard	* 1	* 6	65	14	62	18	4	2	- 3	+ 4
Clearwater	4	2	65	12	59	11	10	3	- 6	- 1
Kittson	* 3	* 6	7	13	1	18	9	1	- 6	+ 5
Mahnomen	* 2	* 1	6	7	4	7	4	1	- 2	--
Red Lake	6	--	5	10	11	9	--	1	+ 6	- 1
Lake of the Woods	5	--	22	5	23	2	4	3	+ 1	- 3
Ninth District	*108	*111	410	541	423	523	95	129	+13	-18
Anoka	*111	*244	288	247	254	228	145	263	-34	-19
Washington	*120	*131	139	127	165	158	94	100	+26	+31
Wright	*40	*45	51	58	48	63	43	40	- 3	+ 5
Pine	* 9	*15	78	12	66	15	21	12	-12	+ 3
Isanti	*22	*11	26	36	38	27	10	20	+12	- 9
Chisago	7	9	57	28	47	22	17	15	-10	- 6
Sherburne	21	34	73	48	70	28	24	54	- 3	-20
Kanabec	* 4	* 5	29	27	29	27	4	5	--	--
Tenth District	*334	*484	741	583	717	568	358	509	-24	-15
STATEWIDE	*3217	*8271	6074	9459	6036	10257	3255	7473	-38	+798

*Adjustments.

DISTRICT TOTALS

Court, Jury, and Criminal Cases Terminated

DISTRICT ()No. Counties	TRIAL Court	TRIAL Jury	SETTLED DURING TRIAL Court	SETTLED DURING TRIAL Jury	SETTLED, STRICKEN OR DISMISSED Court	SETTLED, STRICKEN OR DISMISSED Jury	CRIMINAL DISPOSI.	TOTAL DISPOSI.
FIRST (7)	295	92	8	56	181	415	218	1265
SECOND (1)	272	228	20	121	491	1860	605	3597
THIRD (11)	148	105	2	52	256	624	246	1433
FOURTH (1)	260	299	197	488	1194	2578	1059	6075
FIFTH (15)	235	69	2	51	196	470	217	1240
SIXTH (7)	196	44	31	31	418	332	287	1339
SEVENTH (10)	162	132	9	67	142	533	167	1212
EIGHTH (13)	57	80	28	67	110	332	130	804
NINTH (17)	142	74	13	16	199	408	315	1167
TENTH (8)	214	71	12	25	490	472	237	1521
STATEWIDE TOTALS	1981	1194	322	974	3677	8024	3481	19653

COURT, JURY, AND CRIMINAL CASES TERMINATED JANUARY 1 TO DECEMBER 31, 1969
SHOWING METHOD OF DISPOSITION

	Trial		Settled During Trial		Settled, Stricken or Dismissed		Criminal	Total
	Court	Jury	Court	Jury	Court	Jury	Dispositions	Disposition
Dakota	153	44	2	19	115	217	91	641
Goodhue	9	9	4	10	6	20	28	86
McLeod	102	5	--	9	17	29	22	184
Scott	9	5	--	6	15	63	42	140
Carver	11	17	2	2	10	29	18	89
Le Sueur	5	7	--	8	5	37	12	74
Sibley	6	5	--	2	13	20	5	51
First District	295	92	8	56	181	415	218	1265
Ramsey	272	228	20	121	491	1860	605	3597
Olmsted	29	25	2	8	91	114	69	338
Mower	46	23	--	10	29	168	19	295
Winona	20	7	--	--	7	44	22	100
Rice	7	10	--	5	36	101	22	181
Freeborn	15	15	--	20	14	75	43	182
Steele	7	9	--	2	31	38	11	98
Fillmore	3	3	--	3	20	11	13	53
Wabasha	2	4	--	--	6	23	7	42
Houston	11	1	--	--	10	15	12	49
Waseca	3	4	--	2	6	28	20	63
Dodge	5	4	--	2	6	7	8	32
Third District	148	105	2	52	256	624	246	1433
Hennepin	260	299	197	488	1194	2578	1059	6075
Blue Earth	27	13	--	11	18	87	50	206
Brown	37	4	--	2	27	43	34	147
Martin	8	8	1	4	26	45	14	106
Faribault	9	4	1	6	11	40	34	105
Nobles	17	8	--	4	21	25	27	102
Nicollet	53	1	--	5	20	40	5	124
Lyon	12	7	--	4	13	34	7	77
Redwood	4	4	--	2	8	27	10	55
Cottonwood	8	6	--	1	10	15	5	45
Jackson	8	9	--	4	7	49	--	77
Murray	20	--	--	1	6	18	5	50
Watonwan	25	2	--	2	8	21	11	69
Pipestone	--	3	--	5	7	18	9	42
Rock	1	--	--	--	8	5	2	16
Lincoln	6	--	--	--	6	3	4	19
Fifth District	235	69	2	51	196	470	217	1240
Saint Louis:								
Duluth	66	20	1	14	346	186	176	809
Ely	1	--	--	--	1	8	--	10
Hibbing	24	5	1	9	20	34	51	144
Virginia	60	6	3	8	31	53	22	183
Carlton	16	10	1	--	14	39	25	105
Lake	8	--	--	--	--	2	1	11
Cook	21	3	25	--	6	10	12	77
Sixth District	196	44	31	31	418	332	287	1339

TERMINATIONS - Continued

	Trial		Settled During Trial		Settled, Stricken or Dismissed		Criminal	Total
	Court	Jury	Court	Jury	Court	Jury	Dispositions	Dispositions
Stearns	24	33	--	26	35	162	32	413
Otter Tail	11	10	2	3	40	80	29	175
Clay	19	29	--	6	39	98	14	205
Morrison	9	4	2	3	5	21	9	53
Becker	15	17	4	6	--	16	32	90
Todd	5	4	--	5	3	36	5	58
Douglas	6	12	1	8	2	21	20	70
Benton	9	13	--	6	7	80	9	124
Mille Lacs	7	1	--	--	11	14	9	42
Wadena	57	9	--	4	--	5	8	83
Seventh District	162	132	9	67	142	533	167	1212
Kandiyohi	10	20	6	7	22	63	62	190
Renville	11	6	4	5	14	65	3	108
Meeker	7	6	--	6	12	37	10	78
Chippewa	4	19	4	35	4	39	3	108
Yellow Medicine	2	3	--	--	7	17	8	37
Swift	6	5	--	--	3	28	7	49
Lac Qui Parle	--	1	11	--	3	5	3	23
Pope	2	4	2	1	15	9	7	40
Stevens	1	6	1	4	1	19	3	35
Wilkin	--	2	--	1	11	2	9	25
Big Stone	1	1	--	5	7	26	10	50
Grant	2	5	--	2	10	14	3	36
Traverse	11	2	--	1	1	8	2	25
Eighth District	57	80	28	67	110	332	130	804
Itasca	16	7	--	--	12	65	57	157
Polk	11	13	--	1	15	56	33	129
Crow Wing	32	19	2	7	57	81	66	264
Beltrami	10	7	--	6	22	43	41	129
Koochiching	13	5	--	--	10	23	15	66
Cass	6	1	1	--	12	17	43	80
Marshall	1	4	--	--	4	8	5	22
Pennington	7	5	--	--	10	22	7	51
Aitkin	6	1	--	--	8	34	18	67
Roseau	1	1	--	1	2	14	8	27
Norman	2	2	--	1	3	14	10	32
Hubbard	--	--	--	--	--	--	--	--
Clearwater	14	1	9	--	31	10	4	69
Kittson	1	4	--	--	--	11	1	17
Mahnomen	3	1	--	--	1	6	2	13
Red Lake	4	1	1	--	4	4	3	17
Lake of the Woods	15	2	--	--	8	--	2	27
Ninth District	142	74	13	16	199	408	315	1167
Anoka	19	25	--	6	235	197	73	555
Washington	25	16	5	6	135	136	58	381
Wright	10	9	--	3	37	51	20	130
Pine	33	1	--	2	33	12	23	104
Isanti	14	7	--	--	24	20	8	73
Chisago	42	4	--	2	5	16	11	80
Sherburne	55	3	--	5	15	20	31	129
Kanabec	16	6	7	1	6	20	13	69
Tenth District	214	71	12	25	490	472	237	1521
STATEWIDE	1981	1194	322	974	3677	8024	3481	19653

DISTRICT TOTALS

Criminal Cases

DISTRICT ()No. Counties	PENDING Jan. 1, 1969	FILED	TERMIN-ATED	PENDING Dec. 31, 1969	COURT TRIAL	JURY TRIAL	DIS-MISSED	PLEA OF "GUILTY"
FIRST (7)	81	210	218	73	11	12	44	151
SECOND (1)	155	667	605	217	14	62	110	419
THIRD (11)	77	264	246	95	18	15	37	176
FOURTH (1)	133	1084	1059	158	39	171	30	819
FIFTH (15)	101	231	214	118	24	27	36	127
SIXTH (7)	87	286	298	75	11	27	49	211
SEVENTH (10)	42	171	166	47	3	17	41	105
EIGHTH (13)	25	122	130	17	18	18	22	72
NINTH (17)	79	334	321	92	9	26	64	222
TENTH (8)	83	275	237	121	19	11	42	165
STATEWIDE TOTALS	863	3644	3494	1013	166	386	475	2467

CRIMINAL CASES

	Pending Jan. 1, 1969	Filed	Terminated	Pending Dec. 31, 1969	DISPOSITIONS	Court Trial	Jury Trial	Dismissed	Plea of "Guilty"
Dakota	45	83	91	38		2	6	18	65
Goodhue	10	21	28	3		1	2	7	18
McLeod	2	30	22	10		5	--	7	10
Scott	21	36	42	15		3	--	8	31
Carver	1	21	18	4		--	2	2	14
Le Sueur	2	12	12	2		--	2	1	9
Sibley	--	6	5	1		--	--	1	4
First District	81	210	218	73		11	12	44	151
Ramsey	155	667	605	217		14	62	110	419
Olmsted	23	71	69	25		10	4	11	44
Mower	6	20	19	7		2	2	1	14
Winona	7	22	22	7		2	1	3	16
Rice	12	17	22	7		2	1	4	15
Freeborn	12	40	43	9		1	5	6	31
Steele	3	18	11	10		1	--	--	10
Fillmore	2	15	13	4		--	--	2	11
Wabasha	--	12	7	5		--	--	2	5
Houston	9	13	12	10		--	--	2	10
Waseca	1	21	20	2		--	--	5	15
Dodge	2	15	8	9		--	2	1	5
Third District	77	264	246	95		18	15	37	176
Hennepin	133	1084	1059	158		39	171	30	819
Blue Earth	27	59	50	36		9	3	2	36
Brown	21	30	34	17		8	11	7	8
Martin	--	18	14	4		--	3	1	10
Faribault	1	37	34	4		1	2	4	27
Nobles	16	13	27	2		--	2	5	20
Nicollet	2	14	5	11		--	1	2	2
Lyon	1	6	4	3		--	2	1	1
Redwood	4	8	10	2		2	--	4	4
Cottonwood	14	7	5	16		--	--	2	3
Jackson	--	2	--	2		--	--	--	--
Murray	2	5	5	2		2	--	2	1
Watonwan	11	17	11	17		1	2	2	6
Pipestone	2	9	9	2		1	1	2	5
Rock	--	2	2	--		--	--	2	--
Lincoln	--	4	4	--		--	--	--	4
Fifth District	101	231	214	118		24	27	36	127
Saint Louis:									
Duluth	36	174	176	34		3	11	35	127
Ely	--	--	--	--		--	--	--	--
Hibbing	26	53	51	28		1	8	--	42
Virginia	5	17	22	--		5	2	--	15
Carlton	6	26	25	7		1	2	8	14
Lake	7	9	12	4		--	4	1	7
Cook	7	7	12	2		1	--	5	6
Sixth District	87	286	298	75		11	27	49	211

	Pending Jan. 1, 1969	Filed	Terminated	Pending Dec. 31, 1969	DISPOSITIONS	Court Trial	Jury Trial	Dismissed	Plea of "Guilty"
Stearns	11	36	32	15		--	3	9	20
Otter Tail	6	29	29	6		1	3	8	17
Clay	4	13	14	3		--	--	5	9
Morrison	3	5	8	--		--	1	--	7
Becker	8	28	32	4		--	2	6	24
Todd	--	5	5	--		1	--	2	2
Douglas	5	18	20	3		--	5	5	10
Benton	1	16	9	8		--	--	4	5
Mille Lacs	--	12	9	3		1	--	1	7
Wadena	4	9	8	5		--	3	1	4
Seventh District	42	171	166	47		3	17	41	105
Kandiyohi	18	54	62	10		12	10	12	28
Renville	1	2	3	--		--	1	--	2
Meeker	--	11	10	1		--	1	2	7
Chippewa	--	3	3	--		1	--	--	2
Yellow Medicine	1	8	8	1		--	2	1	5
Swift	--	8	7	1		1	2	--	4
Lac Qui Parle	--	4	3	1		--	--	1	2
Pope	2	8	7	3		2	--	1	4
Stevens	1	2	3	--		--	--	--	3
Wilkin	--	9	9	--		--	2	--	7
Big Stone	2	8	10	--		2	--	2	6
Grant	--	3	3	--		--	--	3	--
Traverse	--	2	2	--		--	--	--	2
Eighth District	25	122	130	17		18	18	22	72
Itasca	18	61	57	22		2	5	8	42
Polk	7	31	33	5		--	3	6	24
Crow Wing	10	67	66	11		3	4	13	46
Beltrami	11	45	41	15		--	6	2	33
Koochiching	1	26	15	12		--	1	2	12
Cass	19	33	44	8		--	5	21	18
Marshall	--	5	5	--		--	1	1	3
Pennington	2	9	7	4		--	--	1	6
Aitkin	6	21	18	9		--	--	8	10
Roseau	4	5	8	1		--	1	--	7
Norman	--	13	13	--		--	--	2	11
Hubbard	1	1	--	2		--	--	--	--
Clearwater	--	5	4	1		2	--	--	2
Kittson	--	1	1	--		--	--	--	1
Mahnomen	--	4	2	2		--	--	--	2
Red Lake	--	5	5	--		--	--	--	5
Lake of the Woods	--	2	2	--		2	--	--	--
Ninth District	79	334	321	92		9	26	64	222
Anoka	31	72	73	30		8	3	15	47
Washington	23	64	58	29		2	3	14	39
Wright	7	35	20	22		3	1	5	11
Pine	1	30	23	8		--	--	--	23
Isanti	4	6	8	2		1	1	1	5
Chisago	8	13	11	10		--	--	3	8
Sherburne	6	43	31	18		1	2	--	28
Kanabec	3	12	13	2		4	1	4	4
Tenth District	83	275	237	121		19	11	42	165
STATEWIDE	863	3644	3494	1013		166	386	475	2467

NUMBER AND AGE OF COURT CASES PENDING DECEMBER 31, 1969

DISTRICT	CASES PENDING	ONE YEAR OR LESS	ONE TO TWO YEARS	TWO TO THREE YEARS	THREE TO FOUR YEARS	OVER FOUR YEARS
1	275	90.2%	6.5%	2.3%	.4%	.6%
2	643	98.9%	1.1%			
3	191	86.9%	9.4%	3.1%	0%	.6%
4	1040	83.2%	13.3%	2%	1.4%	.1%
5	408	62.5%	14.5%	8.1%	8.1%	7.8%
6	133	90.2%	9.0%	.8%		
7	112	83.9%	12.5%	0%	1.8%	1.8%
8	30	93.3%	6.7%			
9	111	80.2%	14.4%	3.6%	0%	1.8%
10	358	86.3%	12.3%	1.1%	.3%	
TOTAL	3301	85.1%	9.9%	2.3%	1.5%	1.2%

NUMBER AND AGE OF JURY CASES PENDING DECEMBER 31, 1969

DISTRICT	CASES PENDING	ONE YEAR OR LESS	ONE TO TWO YEARS	TWO TO THREE YEARS	THREE TO FOUR YEARS	OVER FOUR YEARS
1	563	67.1%	27.5%	3.6%	1.1%	.7%
2	1371	88.8%	11.1%	.1%		
3	555	86.8%	11.0%	2.0%	.2%	
4	3355	67.1%	22.7%	7.4%	2.0%	.8%
5	443	79.0%	13.8%	6.1%	.7%	.4%
6	256	91.8%	5.9%	2.3%		
7	196	94.4%	5.6%			
8	89	93.3%	2.2%	0%	0%	4.5%
9	126	94.4%	4.8%	.8%		
10	509	81.9%	15.5%	1.4%	.8%	.4%
TOTAL	7463	76.6%	17.5%	4.3%	1.1%	.5%

NUMBER AND AGE OF CRIMINAL CASES PENDING DECEMBER 31, 1969

DISTRICT	CASES PENDING	ONE YEAR OR LESS	ONE TO TWO YEARS	TWO TO THREE YEARS	THREE TO FOUR YEARS	OVER FOUR YEARS
1	73	90.4%	5.5%	4.1%		
2	217	100.0%				
3	96	88.5%	9.3%	1.1%	1.1%	
4	158	88.0%	12.0%			
5	102	83.3%	13.7%	2.0%	1.0%	
6	75	84.0%	13.4%	1.3%	0%	1.3%
7	47	93.6%	6.4%			
8	17	100.0%				
9	91	89.0%	5.5%	2.2%	2.2%	1.1%
10	121	81.8%	10.7%	4.1%	3.4%	
TOTAL	997	89.9%	7.7%	1.4%	.8%	.2%

MUNICIPAL COURTS

This report reflects the first twelve month compilation of statistics on a calendar year basis for the Municipal Courts and those Probate Courts exercising Municipal Court jurisdiction. Previously the Municipal Court statistics were kept on a fiscal year basis ending on June 30. In order to make this annual report more meaningful it was determined that all court statistics should be for the same period. The 1970 annual report will contain comparative statistics for the years 1969 and 1970. This report contains statistics from 137 courts, three of which are in cities of the first class. Two Municipal Courts have not furnished any reports. These are the Municipal Courts in Perham and Long Prairie.

Municipal Courts vary so much that there are only a few common denominators upon which they can be compared. An attempt has been made in the tables that follow to make some comparisions based on caseloads and also on types of cases handled. Of the 134 courts outside of the three cities of first class, 99 did not handle any civil jury cases and only 6 handled more than an average of one per month, 35 handled no civil court cases and 81 handled less than an average of 1 per month.

The calendars of these courts are all very current except for the civil jury calendar in the City of St. Paul which, on December 31, 1969, had an 18.1 month backog of cases. Increases in preliminary hearings, so-called Rasmussen hearings and other time consuming duties which have arisen as a result of recent changes in the criminal law have kept the judges from trying civil jury cases. It appears that St. Paul now needs at least one additional judge and if the volume of business continues to increase, may need two by the next legislative session.

CITIES OF FIRST CLASS
DELAY IN TRIAL OF CIVIL CASES

Court Cases

		Average Terminations Per Month	Cases Pending 12-31-69	Backlog Months
Duluth	(2)	95	130	1.4 months
Hennepin	(16)	267	417	1.6 months
Saint Paul	(5)	27	155	5.7 months

Jury Cases

Duluth	7.2	76	10.5 months
Hennepin	69	660	9.6 months
Saint Paul	39	706	18.1 months

MUNICIPAL COURT
COMPARATIVE TABLES

TABLE I
Top Ten - Total Dispositions

St. Cloud	7068	Roseville	2813
Maplewood	5321	Austin	2751
Mankato	4217	Willmar	2486
Winona	3403	East Grand Forks	2257
Albert Lea	2982	West St. Paul	2253

TABLE II
Low Ten - Total Dispositions

Two Harbors*	3	Keewatin	50
Warren*	12	Glencoe*	53
Pipestone*	19	Buhl	74
Wheaton*	38	Chaska*	74
Long Prairie*	48	St. James*	62

* Probate Court exercising Municipal Court Jurisdiction.

TABLE III
Top Ten Probate Courts - Total Dispositions

Shakopee*	2097	Redwood Falls*	640
Preston*	890	Bagley*	532
Aitkin*	708	Ada*	523
Owatonna*	702	Baudette*	447
Glenwood*	667	Wabasha*	438

TABLE IV
Low Ten Probate Courts - Total Dispositions

Two Harbors*	3	Glencoe*	53
Warren*	12	St. James*	62
Pipestone*	19	Chaska*	74
Wheaton*	38	Cambridge*	79
Long Prairie*	48	Milaca*	82

TABLE V
Low Ten Municipal Courts - Total Dispositions

Keewatin	50	LeSueur	102
Buhl	74	Moose Lake	113
Slayton	81	Detroit Lakes	127
Tower	84	Waterville	135
Adrian	86	St. Peter	136

TABLE VI
Recapitulation of Total Dispositions

0 - 120 cases per year	20 courts
121 - 240 cases per year	26 courts
241 - 360 cases per year	16 courts
361 - 480 cases per year	13 courts
481 - 600 cases per year	7 courts
601 - 900 cases per year	14 courts
901 - 1200 cases per year	4 courts
1201 - 1800 cases per year	19 courts
1801 - 2400 cases per year	5 courts
over 2400 cases per year	10 courts
Total excluding cities of first class	134 courts

TABLE VII
Civil Court Cases Terminated Per Year - Recapitulation

No Cases	35 courts
1 court case per year	14 courts
2 court cases per year	4 courts
3 court cases per year	1 court
4 - 12 court cases per year	27 courts
13 - 48 court cases per year	21 courts
49 - 99 court cases per year	5 courts
100 - 200 court cases per year	7 courts
201 - 300 court cases per year	13 courts
301 - 400 court cases per year	3 courts
401 - 500 court cases per year	0 courts
501 - 600 court cases per year	1 court
601 - 700 court cases per year	2 courts
701 - 800 court cases per year	1 court
Total excluding cities of first class	134 courts

TABLE VIII
Civil Jury Cases Terminated Per Year - Recapitulation

No civil jury cases	99 courts
1 civil jury case per year	13 courts
2 civil jury cases per year	6 courts
3 civil jury cases per year	5 courts
4 - 12 civil jury cases per year	5 courts
13 - 48 civil jury cases per year	2 courts
Over 48 civil jury cases per year	4 courts
Total excluding cities of first class	134 courts

TABLE IX
Top Ten Traffic Violations Caseloads*

St. Cloud	5843	Albert Lea	2210
Maplewood	4293	Shakopee*	1619
Mankato	2589	West St. Paul	1619
Roseville	2424	North Mankato	1421
Winona	2329	Austin	1412

*Time and staff limitations prevented any verification of these figures to insure that they excluded traffic matters handled in a traffic violations bureau.

TABLE X
Top Ten Ordinance Violations Caseloads

Mankato	1399	Austin	763
Maplewood	1025	Bemidji	742
East Grand Forks	984	Albert Lea	660
St. Cloud	946	Brainerd	592
Willmar	799	Fergus Falls	570

TABLE XI
Low Ten Traffic Violations Caseloads

Two Harbors*	1	Chaska*	31
Pipestone*	3	Walker*	31
Warren*	5	St. James*	32
Wheaton*	11	Glencoe*	35
Detroit Lakes	17	Tower	35

TABLE XII
Low Ten Ordinance Violations Caseloads

Dawson	1	Cambridge*	5
Kasson	1	Keewatin	5
Pipestone*	1	Warren*	7
Two Harbors*	2	Long Prairie*	8
New Prague	3	Detroit Lakes*	11

The total volume of cases reported as terminations by these 134 courts was 238,191 with a breakdown as follows:

	Total	Tried		Dismissed or Settled
Civil Court	13,369	3612		9757
Civil Jury	1,737	419		1318
Traffic	145,757	Court	9287	
		Jury	609	19218
Other Violations	59,973	Court	3980	
		Jury	182	11129
Conciliation Court - Hennepin and Saint Paul	17,355	10245		7110
TOTAL	238,191			

However, it should be noted that when Anoka, Carver and Washington Counties, Duluth, Hennepin and Saint Paul courts are excluded, the statistics on terminations breakdown as follows:

	Total	Tried		Dismissed or Settled
Civil Court	8,315	1607		6708
Civil Jury	274	84		190
Traffic	71,052	Court	2948	
		Jury	274	7440
Other Violations	22,999	Court	1344	
		Jury	109	3296
TOTAL	102,640			

* * * *

MUNICIPAL COURTS

(INCLUDES MUNICIPAL AND CERTAIN PROBATE COURTS)
January 1, 1969 - December 31, 1969

MUNICIPALITY	CIVIL CASES									
	CASES PENDING Jan. 1, 1969		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1969		NET GAIN OR LOSS	
	Court	Jury	Court	Jury	Court	Jury	Court	Jury	Court	Jury
Ada*	--	--	1	--	1	--	--	--	--	--
Adrian	--	--	--	--	--	--	--	--	--	--
Aitkin*	3	--	9	1	11	--	1	1	+ 2	- 1
Albert Lea	--	--	112	2	110	2	2	--	- 2	--
Alexandria	--	--	45	5	45	5	--	--	--	--
Alexandria*(a)	--	--	--	--	--	--	--	--	--	--
Appleton	--	--	1	--	1	--	--	--	--	--
Aurora	--	--	--	--	--	--	--	--	--	--
**Austin	15	--	566	--	576	--	5	--	+10	--
Bagley*	--	--	2	--	2	--	--	--	--	--
Baudette*	--	--	--	--	--	--	--	--	--	--
Bemidji	--	1	213	6	211	2	2	5	- 2	- 4
Benson*	--	--	1	--	1	--	--	--	--	--
Blue Earth*	--	--	8	2	7	1	1	1	- 1	- 1
Brainerd	35	--	33	--	68	--	--	--	+35	--
Breckenridge*	--	--	2	--	2	--	--	--	--	--
**Buhl	--	--	--	--	--	--	--	--	--	--
Burnsville	1	1	25	2	17	2	9	1	- 8	--
Caledonia*	--	--	--	--	--	--	--	--	--	--
Cambridge*	--	--	21	--	21	--	--	--	--	--
Canby	--	--	--	--	--	--	--	--	--	--
**Cass Lake	--	--	19	--	19	--	--	--	--	--
Center City*	--	1	21	--	17	1	4	--	- 3	+ 1
Chaska*	7	--	12	--	16	--	3	--	+ 4	--
Chisholm	--	--	--	--	--	--	--	--	--	--
Cloquet	--	--	44	2	36	2	8	--	- 8	--
Crookston	--	--	--	--	--	--	--	--	--	--
Crosby	--	--	--	--	--	--	--	--	--	--
Dawson	--	--	1	--	1	--	--	--	--	--
Detroit Lakes	--	--	7	--	7	--	--	--	--	--
Detroit Lakes*	--	--	--	--	--	--	--	--	--	--
East Grand Forks	1	--	10	--	10	--	1	--	--	--
Elbow Lake	--	--	1	--	1	--	--	--	--	--
**Ely	1	1	7	--	8	1	--	--	+ 1	+ 1
Eveleth	--	--	5	--	5	--	--	--	--	--
Faribault	27	5	304	5	284	8	47	2	-20	+ 3
Fergus Falls	--	--	7	--	7	--	--	--	--	--
Gaylord*	1	--	18	--	19	--	--	--	+ 1	--
Glencoe	--	--	10	--	10	--	--	--	--	--
Glencoe*	--	--	--	--	--	--	--	--	--	--
Glenwood*	1	--	2	--	2	--	1	--	--	--
**Grand Marais *	--	--	--	1	--	1	--	--	--	--
Grand Rapids	9	--	232	1	228	1	13	--	-4	--
Granite Falls*	--	--	10	1	10	1	--	--	--	--
Hallock*	V A C A N C Y									
**Hastings	17	2	323	5	305	1	35	6	-18	- 4
Hibbing	15	--	73	--	37	--	51	--	-36	--
Hutchinson	--	--	1	--	1	--	--	--	--	--
International Falls	--	--	791	--	791	--	--	--	--	--
Ivanhoe*	--	--	5	--	5	--	--	--	--	--

*Probate Courts exercising Municipal Court Jurisdiction.

(a) Reports for five months only. Organized 8-1-69.

** Reports Missing: Austin (1), Buhl (3), Cass Lake (3), Ely (1), Grand Marais*(1) Hastings (1)

MUNICIPAL COURTS - Civil Cases, continued - Jan. 1, 1969 - December 31, 1969

MUNICIPALITY	CASES PENDING Jan. 1, 1969		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1969		NET GAIN OR LOSS	
	Court	Jury	Court	Jury	Court	Jury	Court	Jury	Court	Jury
Jackson*	--	--	8	--	8	--	--	--	--	--
Jordan	V A C A N C Y - SEE SHAKOPEE*									
Kasson	--	--	1	--	1	--	--	--	--	--
Keewatin	--	--	--	--	--	--	--	--	--	--
Lake City	--	--	187	--	179	--	8	--	- 8	--
Le Center*	1	--	5	--	6	--	--	--	--	--
Le Sueur	--	--	4	--	4	--	--	--	--	--
Litchfield*(b)	--	--	20	--	19	--	1	--	- 1	--
Little Falls	--	--	38	1	38	1	--	--	--	--
Long Prairie	NO REPORTS RECEIVED									
Long Prairie*	--	--	--	--	--	--	--	--	--	--
Luverne	--	--	124	--	124	--	--	--	--	--
Madison	--	--	--	--	--	--	--	--	--	--
Mahnomen (c)	--	--	--	--	--	--	--	--	--	--
Mahnomen*	--	--	1	--	1	--	--	--	--	--
Mankato	85	8	164	21	218	11	31	18	+54	- 3
Mantorville*	--	--	10	--	10	--	--	--	--	--
Maplewood	--	1	2	1	2	2	--	--	--	+ 1
**Marshall	--	--	342	--	336	--	6	--	- 6	--
Milaca*	--	--	1	--	1	--	--	--	--	--
Montevideo	--	--	--	--	--	--	--	--	--	--
Montgomery	--	--	--	--	--	--	--	--	--	--
Moose Lake	--	--	--	--	--	--	--	--	--	--
Morris	--	--	--	--	--	--	--	--	--	--
Nashwauk	--	--	61	--	61	--	--	--	--	--
New Brighton	1	2	13	1	13	3	1	--	--	+ 2
New Prague	--	--	--	--	--	--	--	--	--	--
New Ulm	--	--	287	1	287	1	--	--	--	--
Northfield	4	--	170	--	169	--	5	--	- 1	--
North Mankato	--	--	11	--	11	--	--	--	--	--
**North Oaks	--	--	--	--	--	--	--	--	--	--
**North St. Paul	--	1	5	1	4	--	1	2	- 1	- 1
Olivia*	1	--	31	--	27	--	5	--	- 4	--
Ortonville	--	--	--	--	--	--	--	--	--	--
Owatonna	4	--	624	4	622	3	6	1	- 2	- 1
Owatonna*	--	--	2	--	1	--	1	--	- 1	--
Park Rapids*	1	--	6	1	5	1	2	--	- 1	--
Perham	NO REPORTS RECEIVED									
Pine City*	2	--	27	3	28	2	1	1	+ 1	- 1
Pine Island	1	--	68	--	68	--	1	--	--	--
Pipestone	--	14	5	110	5	91	--	33	--	-19
Pipestone*	--	--	15	--	15	--	--	--	--	--
Preston*	1	--	10	--	11	--	--	--	--	--
Proctor	2	--	13	--	13	--	2	--	--	--
Red Lake Falls*	--	--	--	--	--	--	--	--	--	--
Red Wing	13	--	378	--	380	--	11	--	+ 2	--
Redwood Falls*	3	--	18	--	8	--	13	--	-10	--
**Rochester	2	--	76	2	72	--	6	2	- 4	- 2
**Roseau	--	--	--	--	--	--	--	--	--	--

*Probate Courts exercising Municipal Court jurisdiction.

(b) Organized 2-1-69.

(c) Reports for three months only. Organized 10-1-69.

**Reports Missing: Marshall (1), North Oaks (1), North St. Paul (1), Rochester (9), Roseau (4)

MUNICIPAL COURTS - Civil Cases, continued - January 1, 1969 - December 31, 1969

MUNICIPALITY	CASES PENDING Jan. 1, 1969		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1969		NET GAIN OR LOSS	
	Court	Jury	Court	Jury	Court	Jury	Court	Jury	Court	Jury
Roseville	--	--	2	--	2	--	--	--	--	--
**St. Charles	--	--	--	--	--	--	--	--	--	--
**St. Cloud	4	--	279	--	279	--	4	--	--	--
St. James*	--	--	18	--	18	--	--	--	--	--
St. Peter	--	--	5	1	5	1	--	--	--	--
Sauk Centre	--	--	3	--	3	--	--	--	--	--
**Shakopee	14	--	12	6	22	6	4	--	+10	--
Shakopee*	--	--	--	--	--	--	--	--	--	--
Slayton	4	--	2	--	1	--	5	--	- 1	--
Sleepy Eye	--	--	1	--	1	--	--	--	--	--
South St. Paul	62	14	273	13	290	20	45	7	-17	- 7
Springfield	--	--	88	1	88	1	--	--	--	--
Staples	--	--	--	--	--	--	--	--	--	--
Thief River Falls	--	--	10	--	8	--	2	--	- 2	--
Thief River Falls*	--	--	--	--	--	--	--	--	--	--
Tower	--	--	--	--	--	--	--	--	--	--
Tracy	4	--	105	--	105	--	4	--	--	--
Two Harbors	1	--	1	--	1	--	1	--	--	--
Two Harbors*	--	--	--	--	--	--	--	--	--	--
Virginia	1	--	100	2	98	2	3	--	- 2	--
Wabasha*	--	--	5	--	5	--	--	--	--	--
Wadena*	--	--	--	--	--	--	--	--	--	--
Walker*	1	--	8	--	9	--	--	--	+ 1	--
**Warren*	--	--	--	--	--	--	--	--	--	--
Waseca	14	--	242	--	242	--	14	--	--	--
Waseca*	--	--	--	--	--	--	--	--	--	--
Waterville	--	--	--	--	--	--	--	--	--	--
West St. Paul	8	6	275	9	263	6	20	9	-12	- 3
Wheaton*	1	--	3	--	2	--	2	--	- 1	--
White Bear Lake	6	2	307	2	294	2	19	2	-13	--
Willmar	15	--	323	64	327	62	11	2	+ 4	- 2
Windom*	13	--	11	--	5	--	19	--	- 6	--
Winona	3	3	682	--	685	3	--	--	+ 3	+ 3
Worthington	--	--	100	--	100	--	--	--	--	--
Worthington*	--	--	6	--	5	--	1	--	- 1	--
SUB-TOTAL	405	62	8530	277	8497	246	438	93	-33	-31
**ANOKA COUNTY	15	23	124	54	127	53	12	24	+ 3	- 1
CARVER (d)	--	--	5	--	5	--	--	--	--	--
DULUTH	213	100	1051	73	1134	97	130	76	+83	+24
	(Duluth Conciliation Court included in court cases.)									
WASHINGTON	12	32	286	19	266	20	32	31	-20	+ 1
HENNEPIN	722	705	2884	790	3189	835	417	660	+305	+45
ST. PAUL	107	579	370	596	322	469	155	706	-48	-127
STATEWIDE TOTALS	1474	1501	13250	1809	13540	1720	1184	1590	+290	-89

Conciliation Court Statistics

	CASES PENDING	CASES FILED	CASES TERMINATED	CASES PENDING	NET GAIN OR LOSS
HENNEPIN	1302	14236	13679	1859	-557
SAINT PAUL	268	3920	3676	512	-244
TOTALS	1570	18156	17355	2371	-801

*Probate Courts exercising Municipal Court jurisdiction.
(d) Reports for six months only. Organized 7-1-69.
**Reports Missing: St. Charles (5), St. Cloud (2), Shakopee (1), Warren*(1), Anoka (1)

MUNICIPAL COURTS

(Includes Municipal and certain Probate Courts)
Jan. 1, 1969 - December 31, 1969

CRIMINAL CASES

MUNICIPALITY	CASES PENDING Jan. 1, 1969		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1969		NET GAIN OR LOSS	
	Traf	Other Viola	Traf	Other Viola	Traf	Other Viola	Traf	Other Viola	Traf	Oth Viola
Ada*	28	35	368	154	376	146	20	43	+ 8	- 8
Adrian	--	--	56	30	56	30	--	--	--	--
Aitkin*	61	148	438	179	486	211	13	116	+48	+32
Albert Lea	2	7	2215	658	2210	660	7	5	- 5	+ 2
Alexandria	10	9	1414	318	1410	317	14	10	- 4	- 1
Alexandria* (a)	--	--	186	74	182	67	4	7	- 4	- 7
Appleton	--	--	174	14	172	12	2	2	- 2	- 2
Aurora	--	--	151	40	151	40	--	--	--	--
**Austin	4	5	1415	770	1412	763	7	12	- 3	- 7
Bagley*	--	--	437	93	437	93	--	--	--	--
Baudette*	--	3	371	75	371	76	--	2	--	+ 1
Bemidji	4	6	1047	742	1058	742	3	6	+ 1	--
Benson*	4	--	200	52	201	48	3	4	+ 1	- 4
Blue Earth	2	6	41	75	40	74	3	7	- 1	- 1
Brainerd	57	83	1169	571	1151	550	75	104	-18	-21
Breckenridge*	1	1	142	79	142	79	1	1	--	--
**Buhl	--	1	54	19	54	20	--	--	--	+ 1
Burnsville	35	13	779	96	756	99	58	10	-23	+ 3
Caledonia*	--	--	105	42	105	40	--	2	--	- 2
Cambridge*	--	--	62	5	53	5	9	--	- 9	--
Canby	4	--	261	32	255	31	10	1	- 6	- 1
**Cass Lake	11	5	137	91	152	96	6	--	+ 5	+ 5
Center City*	15	19	73	116	62	116	26	19	-11	[illegible]
Chaska*	13	26	20	22	31	27	2	21	+11	[illegible]
Chisholm	--	--	350	133	350	133	--	--	--	--
Cloquet	--	--	413	206	396	186	17	20	-17	-20
Crookston	--	3	507	229	502	223	5	9	- 5	- 6
Crosby	10	6	246	99	244	88	12	17	- 2	-11
Dawson	10	--	180	1	188	1	2	--	+ 8	--
Detroit Lakes	--	--	17	103	17	103	--	--	--	--
Detroit Lakes*	1	4	132	8	142	11	2	1	- 1	+ 3
East Grand Forks	50	19	1265	975	1263	984	52	10	- 2	+ 9
Elbow Lake	2	8	92	65	90	62	4	11	- 2	- 3
**Ely	3	2	119	115	122	115	--	2	+ 3	--
Eveleth	3	1	380	106	370	106	13	1	-10	--
Faribault	18	24	1406	320	1390	291	34	53	-16	-29
Fergus Falls	9	6	800	550	780	516	29	40	-20	-34
Gaylord*	9	26	237	53	237	59	9	20	--	+ 6
Glencoe	18	13	275	61	268	53	25	21	- 7	- 8
Glencoe*	--	--	35	18	35	18	--	--	--	--
Glenwood*	5	5	478	198	465	200	18	3	-13	+ 2
**Grand Marais*	4	6	121	36	117	31	8	11	- 4	- 5
Grand Rapids	14	29	927	362	917	361	24	30	-10	- 1
Granite Falls*	1	3	122	120	120	121	3	2	- 2	+ 1
Hallock*			V A C A N C Y							
**Hastings	40	35	622	433	643	441	19	27	+21	+ 8
Hibbing	15	29	913	473	893	434	35	68	-20	-39
Hutchinson	--	--	955	168	955	168	--	--	--	--
International Falls	23	69	541	308	555	352	9	25	+14	[illegible]
Ivanhoe*	1	--	296	95	297	95	--	--	+ 1	--

*Probate Courts exercising Municipal Court Jurisdiction.

(a) Reports for five months only. Organized 8-1-69.

**Reports Missing: Austin (1), Buhl (3), Cass Lake (3), Ely (1), Graind Marais* (1), Hastings (1)

MUNICIPAL COURTS - Criminal Cases, continued Jan. 1, 1969 - December 31, 1969

MUNICIPALITY	CASES PENDING Jan. 1, 1969		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1969		NET GAIN OR LOSS	
	Traf	Other Viola	Traf	Other Viola	Traf.	Other Viola	Traf	Other Viola	Traf	Other Viola
Jackson*	3	3	87	26	89	28	1	1	+ 2	+ 2
Jordan	V A C A N C Y - SEE SHAKOPEE*									
Kasson	2	--	422	1	424	1	--	--	+ 2	--
Keewatin	1	2	44	3	45	5	--	--	--	--
Lake City	2	3	355	29	349	26	8	6	- 6	- 3
Le Center*	6	13	133	227	130	217	9	23	- 3	+10
Le Sueur	3	2	65	33	67	31	1	4	+ 2	- 2
**Litchfield*(b)	3	9	262	80	253	71	12	18	- 9	- 9
Little Falls	62	37	1276	388	1276	374	62	51	--	-14
Long Prairie	NO REPORTS RECEIVED									
Long Prairie*	--	--	40	8	40	88	--	--	--	--
Luverne	--	--	314	103	314	103	--	--	--	--
Madison	5	3	88	73	88	77	5	--	--	+ 3
Mahnomen (c)	--	--	23	4	23	4	--	--	--	--
Mahnomen*	--	1	215	99	215	100	--	--	--	--
Mankato	72	83	2628	1435	2589	1399	111	119	-39	-36
Mantorville*	7	21	107	87	88	57	26	51	-19	-30
Maplewood	83	21	4367	1038	4293	1024	157	35	-74	-14
**Marshall	--	--	1101	199	1074	195	27	4	-27	- 4
Milaca*	3	4	34	29	37	27	--	6	+ 3	- 2
Montevideo	3	--	569	242	570	239	2	3	+ 1	- 3
Montgomery	--	3	142	25	142	28	--	--	--	--
Moose Lake	1	14	108	24	96	17	13	21	-12	- 7
Morris	4	1	282	124	266	120	20	5	-16	- 4
Nashwauk	4	--	213	21	214	21	3	--	+ 1	--
New Brighton	24	2	1224	187	1228	157	20	32	+ 4	-30
New Prague	9	--	209	3	205	3	13	--	- 4	--
New Ulm	--	--	582	209	582	209	--	--	--	--
Northfield	16	2	530	104	527	100	19	6	- 3	- 4
North Mankato	14	8	1452	176	1421	178	45	6	-31	+ 2
**North Oaks	9	8	198	41	202	45	5	4	+ 4	+ 4
**North St. Paul	11	--	594	143	583	139	22	4	-11	- 4
Olivia*	8	51	330	103	309	86	29	68	-21	-17
Ortonville	14	2	366	60	368	61	12	1	+ 2	+ 1
Owatonna	6	--	717	83	719	83	4	--	+ 2	--
Owatonna*	5	16	662	80	625	76	42	20	-37	- 4
Park Rapids*	1	7	146	181	134	150	13	38	-12	-31
Perham	NO REPORTS RECEIVED									
Pine City*	9	19	228	142	227	140	10	21	- 1	- 2
Pine Island	9	37	310	84	312	82	7	39	--	+16
Pipestone	35	14	732	305	724	299	43	20	- 8	- 6
Pipestone*	--	--	3	1	3	1	--	--	--	--
Preston*	8	11	730	170	721	158	17	23	- 9	-12
Proctor	7	1	136	17	133	12	10	6	- 3	- 5
Red Lake Falls*	10	9	197	70	200	76	7	3	+ 3	+ 6
Red Wing	18	29	1136	253	1122	255	32	27	-14	+ 2
Redwood Falls*	5	41	539	122	530	102	14	61	- 9	-20
**Rochester	44	13	631	103	642	113	33	3	+11	+10
**Roseau	21	66	349	109	360	89	10	86	+11	-20

*Probate Courts exercising Municipal Court jurisdiction.

(b) Organized 2-1-69.

(c) Reports for three months only. Organized 10-1-69.

**Reports Missing: Marshall (1), North Oaks (1), North St. Paul (1), Rochester (9), Roseau (4)

MUNICIPAL COURTS - Criminal Cases, continued January 1, 1969 - December 31, 1969

MUNICIPALITY	CASES PENDING Jan. 1, 1969		CASES FILED		CASES TERMINATED		CASES PENDING Dec. 31, 1969		NET GAIN OR LOSS	
	Traf	Other Viola	Traf	Other Viola	Traf.	Other Viola	Traf	Other Viola	Traf	Other Viola
Roseville	98	19	2369	378	2424	387	43	10	+55	+ 9
**St. Charles	4	1	33	11	37	11	1	1	+ 3	--
**St. Cloud	17	12	5846	939	5843	946	20	5	- 3	+ 7
St. James*	4	--	39	12	32	12	11	--	- 7	--
St. Peter*	2	2	95	54	83	47	14	9	-12	- 7
Sauk Centre	--	--	421	27	414	27	7	--	- 7	--
**Shakopee	30	40	1287	179	1199	203	118	16	-88	+24
Shakopee*	38	33	1595	512	1619	478	14	67	+24	-34
Slayton	4	9	37	54	36	44	5	19	--	+10
Sleepy Eye	--	2	155	26	155	26	--	2	--	--
South St. Paul	28	45	693	280	680	291	41	34	-13	-11
Springfield	--	1	265	65	265	66	--	--	--	+ 1
Staples	2	--	202	--	202	--	2	--	--	--
Thief River Falls	14	16	1013	385	1003	363	24	38	-10	-22
Thief River Falls*	--	--	112	97	112	97	--	--	--	--
Tower	--	--	35	49	35	49	--	--	--	--
Tracy	3	--	392	59	392	59	3	--	--	--
Two Harbors	24	18	616	125	624	123	16	20	+ 8	- 2
Two Harbors*	1	--	--	2	1	2	--	--	--	--
Virginia	9	9	764	568	750	564	23	13	-14	- 4
Wabasha*	7	39	300	124	293	140	14	23	- 7	+16
Wadena*	4	--	51	31	54	31	1	--	+ 3	--
Walker*	1	8	35	99	31	88	5	19	- 4	-11
**Warren*	--	--	5	8	5	7	--	1	--	- 1
Waseca	4	11	149	38	151	38	2	11	+ 2	--
Waseca*	--	--	110	121	110	121	--	--	--	--
Waterville	7	--	90	44	93	42	4	2	+ 3	- 2
West St. Paul	48	15	1853	452	1619	365	282	102	-234	-87
Wheaton*	4	15	10	31	11	25	3	21	+ 1	- 6
White Bear Lake	31	35	885	226	888	252	28	9	+ 3	+26
Willmar	62	125	1255	746	1298	799	19	72	+43	+53
Windom*	--	29	50	84	46	85	4	28	- 4	+ 1
Winona	6	4	2331	395	2329	386	8	13	- 2	- 9
Worthington	3	5	899	262	902	260	--	7	+ 3	- 2
Worthington*	4	7	108	87	105	77	7	17	- 3	-10
SUB-TOTAL	1493	1714	71762	23194	71089	22791	2166	2117	-673	-403
**ANOKA COUNTY	131	47	3152	2052	3052	1885	231	214	-100	-167
CARVER (d)	--	--	787	161	724	143	63	18	-63	-18
DULUTH	60	782	5787	3791	5745	4290	102	283	-42	+499
	(Duluth Conciliation Court included in court cases.)									
WASHINGTON	132	117	1416	1144	1360	1021	188	240	-56	-123
HENNEPIN	1198	511	49898	24212	48708	23888	2388	835	-1190	-324
ST. PAUL	341	229	15479	5747	15116	5747	704	229	-363	--
STATEWIDE TOTALS	3355	3400	148281	60301	145794	59765	5842	3936	-2487	-536

*Probate courts exercising Municipal Court jurisdiction.

(d) Reports for six months only. Organized 7-1-69.

**Reports Missing. St. Charles (5), St. Cloud (2), Shakopee (1), Warren*(1), Anoka (1).

MUNICIPAL COURTS
(Includes Municipal and certain Probate Courts)
CIVIL DISPOSITIONS
(January 1, 1969 - December 31, 1969

MUNICIPALITY	COURT TRIAL	JURY TRIAL	DISMISSED, SETTLED STRICKEN, OR DEFAULT		TOTAL DISPOSITIONS	
			Court	Jury	Court	Jury
Ada*	--	--	1	--	1	--
Adrian	--	--	--	--	--	--
Aitkin*	1	--	10	--	11	--
Albert Lea	15	1	95	1	110	2
Alexandria	27	4	18	1	45	5
Alexandria* (a)	--	--	--	--	--	--
Appleton	1	--	--	--	1	--
Aurora	--	--	--	--	--	--
**Austin	360	--	216	--	576	--
Bagley*	1	--	--	--	1	--
Baudette*	--	--	--	--	--	--
Bemidji	--	--	211	2	211	2
Benson*	--	--	1	--	1	--
Blue Earth*	2	1	5	--	7	1
Brainerd	5	--	21	--	26	--
Breckenridge*	--	--	2	--	2	--
**Buhl	--	--	--	--	--	--
Burnsville	6	2	11	--	17	2
Caledonia*	--	--	--	--	--	--
Cambridge*	1	--	20	--	21	--
Canby	--	--	--	--	--	--
**Cass Lake	--	--	19	--	19	--
Center City*	8	1	11	2	19	3
Chaska*	2	--	14	--	16	--
Chisholm	--	--	--	--	--	--
Cloquet	2	3	33	--	35	3
Crookston	--	--	--	--	--	--
Crosby	--	--	--	--	--	--
Dawson	--	--	1	--	1	--
Detroit Lakes	6	--	1	--	7	--
Detroit Lakes*	--	--	--	--	--	--
East Grand Forks	6	--	4	--	10	--
Elbow Lake*	--	--	1	--	1	--
**Ely	1	--	6	1	7	1
Eveleth	1	--	4	--	5	--
Faribault	3	6	281	2	284	8
Fergus Falls	3	--	4	--	7	--
Gaylord*	--	--	19	--	19	--
Glencoe	--	--	10	--	10	--
Glencoe*	--	--	--	--	--	--
Glenwood*	1	--	1	--	2	--
**Grand Marais*	--	--	--	1	--	1
Grand Rapids	54	1	174	--	228	1
Granite Falls*	5	1	5	--	10	1
Hallock*			V A C A N C Y			
**Hastings	5	--	300	1	305	1
Hibbing	9	--	28	--	37	--
Hutchinson	1	--	--	--	1	--
International Falls	28	--	720	--	748	--
Ivanhoe*	1	--	4	--	5	--

*Probate Courts exercising Municipal Court jurisdiction.
(a) Reports for five months only. Organized 8-1-69.
**Reports Missing: Austin (1), Buhl (3), Cass Lake (3), Ely (1), Grand Marais* (1) Hastings (1)

MUNICIPAL COURTS - Civil Dispositions, continued January 1, 1969 - December 31, 1969

MUNICIPALITY	COURT TRIAL	JURY TRIAL	DISMISSED, SETTLED STRICKEN, OR DEFAULT		TOTAL DISPOSITIONS	
			Court	Jury	Court	Jury
Jackson*	1	--	7	--	8	--
Jordan		V A C A N C Y - SEE SHAKOPEE*				
Kasson	1	--	--	--	1	--
Keewatin	--	--	--	--	--	--
Lake City	--	--	179	--	179	--
Le Center*	1	--	5	--	6	--
Le Sueur	1	--	3	--	4	--
Litchfield* (b)	5	--	14	--	19	--
Little Falls	28	--	10	1	38	1
Long Prairie		NO REPORTS RECEIVED				
Lone Prairie*	--	--	--	--	--	--
Luverne	3	--	101	--	104	--
Madison	--	--	--	--	--	--
Mahnomen (c)	--	--	--	--	--	--
Mahnomen*	1	--	--	--	1	--
Mankato	6	3	212	8	218	11
Mantorville*	--	1	10	--	10	1
Maplewood	1	1	--	1	1	2
**Marshall	12	--	268	--	280	--
Milaca*	2	--	16	--	18	--
Montevideo	--	--	--	--	--	--
Montgomery	--	--	--	--	--	--
Moose Lake	--	--	--	--	--	--
Morris	--	--	--	--	--	--
Nashwauk	--	--	61	--	61	--
New Brighton	11	1	2	2	13	3
New Prague	--	--	--	--	--	--
New Ulm	91	1	196	--	287	1
Northfield	24	--	145	--	169	--
North Mankato	--	--	11	--	11	--
**North Oaks	--	--	--	--	--	--
**North St. Paul	--	--	4	--	4	--
Olivia*	--	--	27	--	27	--
Ortonville	--	--	--	--	--	--
Owatonna	74	2	548	1	622	3
Owatonna*	--	--	1	--	1	--
Park Rapids*	--	--	5	1	5	1
Perham		NO REPORTS RECEIVED				
Pine City*	--	--	28	2	28	2
Pine Island	15	--	53	--	68	--
Pipestone	--	--	5	84	5	84
Pipestone*	--	--	15	--	15	--
Preston	2	--	10	--	12	--
Proctor	2	--	11	--	13	--
Red Lake Falls*	--	--	--	--	--	--
Red Wing	148	1	231	--	379	1
Redwood Falls*	2	--	6	--	8	--
**Rochester	41	--	31	--	72	--
**Roseau	--	--	--	--	--	--

*Probate Courts exercising Municipal Court jurisdiction.

(b) Organized 2-1-69.

(c) Reports for three months only. Organized 10-1-69.

**Reports Missing: Marshall (1), North Oaks (1), North St. Paul (1), Rochester (9), Roseau (4)

MUNICIPAL COURTS - Civil Dispositions, continued January 1, 1969 - December 31, 1969

MUNICIPALITY	COURT TRIAL	JURY TRIAL	DISMISSED, SETTLED STRICKEN, OR DEFAULT		TOTAL DISPOSITIONS	
			Court	Jury	Court	Jury
Roseville	--	--	1	--	2	--
**St. Charles	--	--	--	--	--	--
**St. Cloud	59	--	220	--	279	--
St. James*	--	--	18	--	18	--
St. Peter	--	1	5	--	5	1
Sauk Centre	3	--	--	--	3	--
**Shakopee	9	2	9	4	18	6
Shakopee*	--	--	--	--	--	--
Slayton	1	--	--	--	1	--
Sleepy Eye	1	--	--	--	1	--
South St. Paul	62	14	228	6	290	20
Springfield	14	--	74	1	88	1
Staples	--	--	--	--	--	--
Thief River Falls	5	--	3	--	8	--
Thief River Falls*	--	--	--	--	--	--
Tower	--	--	--	--	--	--
Tracy	--	--	105	--	105	--
Two Harbors	--	--	1	--	1	--
Two Harbors*	--	--	--	--	--	--
Virginia	69	--	27	2	96	2
Wabasha*	5	--	--	--	5	--
Wadena*	--	--	--	--	--	--
Walker*	5	--	4	--	9	--
**Warren*	--	--	--	--	--	--
Waseca	--	--	242	--	242	--
Waseca*	--	--	--	--	--	--
Waterville	--	--	--	--	--	--
West St. Paul	129	6	134	--	263	6
Wheaton*	2	--	--	--	2	--
White Bear Lake	70	31	193	2	263	33
Willmar	27	--	301	61	328	61
Windom*	--	--	5	--	5	--
Winona	97	--	588	3	685	3
Worthington	18	--	82	--	100	--
Worthington*	4	--	1	--	5	--
SUB-TOTAL	1607	84	6708	190	8315	274
**ANOKA COUNTY	108	28	19	25	127	53
CARVER (d)	2	--	3	--	5	--
DULUTH	428	17	706	80	1134	97
	(Duluth Conciliation Court included in court cases.)					
WASHINGTON	175	9	93	9	268	18
HENNEPIN	1215	213	1983	613	3198	826
ST. PAUL	77	68	245	401	322	469
STATEWIDE TOTALS	3612	419	9757	1318	13369	1737

Conciliation Court Statistics

MUNICIPALITY	GUILTY PLEA	PRELIM. HEARING	COURT TRIAL	JURY TRIAL	DISMISSED, SETTLED STRICKEN, OR DEFAULT	TOTAL DISPO.
HENNEPIN	--	--	8938	--	4741	13679
SAINT PAUL	--	--	1307	--	2369	3676
TOTALS	--	--	10245	--	7110	17355

*Probate Courts exercising Municipal Court jurisdiction.
(d) Reports for six months only. Organized 7-1-69.
**Reports Missing: St. Charles (5), St. Cloud (2), Shakopee (1), Warren*(1), Anoka (1).

MUNICIPAL COURTS
(Includes Municipal and certain Probate Courts)
CRIMINAL DISPOSITIONS
(January 1, 1969 - December 31, 1969)

MUNICIPALITY	GUILTY PLEA T	GUILTY PLEA OV	PRELIM. HEARING T	PRELIM. HEARING OV	COURT TRIAL T	COURT TRIAL OV	JURY TRIAL T	JURY TRIAL OV	DISMISSED, SETTLED STRICKEN, OR DEFAULT T	DISMISSED, SETTLED STRICKEN, OR DEFAULT OV	TOTAL DISPOSITIONS T	TOTAL DISPOSITIONS OV
Ada*	367	125	--	14	5	--	--	--	4	7	376	146
Adrian	56	24	--	--	--	--	--	--	--	6	56	30
Aitkin*	430	125	--	13	23	8	3	1	30	64	486	211
Albert Lea	2136	526	--	35	25	23	1	--	48	76	2210	660
Alexandria	1365	273	--	10	27	11	3	--	15	23	1410	317
Alexandria*(a)	178	67	--	--	1	--	--	--	3	--	182	67
Appleton	139	11	--	--	--	--	--	--	33	1	172	12
Aurora	65	24	--	3	86	10	--	--	--	3	151	40
**Austin	1201	543	--	31	82	66	1	--	128	123	1412	763
Bagley*	433	90	1	2	--	--	--	--	4	1	438	93
Baudette*	361	71	--	3	7	1	2	--	1	1	371	76
Bemidji	1041	669	1	33	6	4	2	3	8	33	1058	742
Benson*	182	41	--	2	13	3	2	--	4	2	201	48
Blue Earth*	23	24	--	36	10	2	--	3	7	9	40	74
Brainerd	1069	432	43	106	28	36	--	4	11	14	1151	592
Breckenridge*	121	59	--	5	17	8	--	2	5	4	143	78
**Buhl	51	16	--	--	--	--	1	--	2	4	54	20
Burnsville	653	71	--	4	23	4	11	4	69	16	756	99
Caledonia*	88	36	3	1	17	--	--	--	--	--	108	37
Cambridge*	43	4	--	--	7	1	1	--	2	--	53	5
Canby	236	29	--	--	14	--	--	--	5	2	255	31
**Cass Lake	88	73	1	3	1	--	--	--	62	20	152	96
Center City*	36	32	--	19	13	22	6	1	7	38	62	112
Chaska*	17	6	5	18	5	1	4	--	--	2	31	27
Chisholm	349	130	1	1	--	--	--	2	--	--	350	133
Cloquet	386	142	2	27	2	2	4	2	2	13	396	186
Crookston	455	154	--	33	26	16	3	--	18	20	502	223
Crosby	201	61	8	5	30	19	2	1	3	2	244	88
Dawson	182	--	--	1	--	--	--	--	6	--	188	1
Detroit Lakes	9	11	--	29	7	45	--	3	1	15	17	103
Detroit Lakes*	140	--	--	10	2	--	--	1	--	--	142	11
East Grand Forks	269	587	--	5	34	24	5	5	955	363	1263	984
Elbow Lake	84	55	4	4	2	--	--	--	--	3	90	62
**Ely	113	111	1	--	3	--	--	--	8	2	125	113
Eveleth	366	89	--	--	1	4	--	--	3	13	370	106
Faribault	1345	247	--	10	14	5	5	2	26	27	1390	291
Fergus Falls	710	487	1	16	8	5	--	--	7	62	726	570
Gaylord*	207	31	--	5	21	9	1	--	8	14	237	59
Glencoe	234	26	15	12	6	--	--	--	13	15	268	53
Glencoe*	32	16	1	--	--	--	--	--	2	2	35	18
Glenwood*	439	187	--	4	16	4	--	--	10	5	465	200
**Grand Marais*	115	9	--	5	1	14	--	--	1	3	117	31
Grand Rapids	817	194	2	59	61	50	2	00	35	58	917	361
Granite Falls*	115	105	1	10	2	5	--	--	2	1	120	121
Hallock*	V A C A N C Y											
**Hastings	575	311	7	52	38	34	4	--	19	44	643	441
Hibbing	436	169	--	52	12	9	--	--	445	204	893	434
Hutchinson	521	86	1	9	411	57	--	--	22	16	955	168
International Falls	537	267	--	21	11	7	--	--	9	98	557	393
Ivanhoe*	294	86	--	4	2	4	--	--	1	1	297	95

*Probate Courts exercising Municipal Court Jurisdiction.
(a) Reports for five months only. Organized 8-1-69.
**Reports Missing: Austin (1), Buhl (3), Cass Lake (3), Ely (1), Grand Marais* (1) Hastings (1)

MUNICIPAL COURTS - Criminal Dispositions, continued January 1, 1969 - December 31, 1969

MUNICIPALITY	GUILTY PLEA		PRELIM. HEARING		COURT TRIAL		JURY TRIAL		DISMISSED, SETTLED STRICKEN, OR DEFAULT		TOTAL DISPOSITIONS	
	T	OV	T	OV	T	OV	T	OV	T	OV	T	OV
Jackson*	79	--	1	2	6	25	--	--	3	1	89	28
Jordan	VACANCY - SEE SHAKOPEE*											
Kasson	430	--	1	--	3	--	--	--	--	1	424	1
Keewatin	45	3	--	--	--	--	--	--	--	2	45	5
Lake City	337	21	--	--	10	1	--	--	2	4	349	26
Le Center*	118	182	2	13	5	6	1	--	4	16	130	217
Le Sueur	62	27	--	1	--	1	--	--	5	2	67	31
Litchfield*(b)	228	45	6	14	13	2	--	--	6	10	253	71
Little Falls	1195	321	--	7	27	13	3	--	51	33	1276	374
Long Prairie	NO REPORTS RECEIVED											
Long Prairie*	40	4	--	2	--	1	--	--	--	1	40	8
Luverne	304	100	2	1	6	--	--	--	3	21	315	122
Madison	84	74	--	1	4	2	--	--	--	--	88	77
Mahnomen (c)	18	2	--	--	3	--	--	--	2	2	23	4
Mahnomen*	213	86	--	4	--	9	--	--	2	1	215	100
Mankato	2461	1220	1	27	69	58	10	4	48	90	2589	1399
Mantorville*	78	39	--	16	5	2	2	--	2	--	87	57
Maplewood	3838	801	--	47	256	81	48	5	151	91	4293	1025
**Marshall	990	158	--	21	46	6	1	--	37	66	1074	251
Milaca*	21	13	--	2	4	--	2	1	10	11	37	27
Montevideo	429	78	2	7	127	143	--	--	12	11	570	239
Montgomery	129	26	--	--	--	--	--	--	13	2	142	28
Moose Lake	87	14	--	--	1	--	--	--	8	3	96	17
Morris	255	106	1	6	8	3	--	--	2	5	266	120
Nashwauk	206	21	2	--	--	--	--	--	6	--	214	21
New Brighton	1092	94	--	--	55	24	11	--	70	39	1228	157
New Prague	159	1	24	--	5	1	12	1	5	--	205	3
New Ulm	514	131	2	21	37	19	2	--	27	38	582	209
Northfield	505	94	--	--	17	4	1	1	4	1	527	100
North Mankato	1281	155	2	--	16	3	--	--	122	20	1421	178
**North Oaks	124	11	--	1	66	18	1	--	11	14	202	45
**North St. Paul	516	117	1	3	32	2	2	--	32	17	583	139
Olivia*	277	69	--	3	--	1	--	--	32	13	309	86
Ortonville	354	49	6	8	2	1	--	1	6	2	368	61
Owatonna	641	76	1	2	17	2	4	--	46	3	719	83
Owatonna*	606	49	--	14	3	--	2	--	14	13	625	76
Park Rapids*	53	62	--	5	4	9	--	--	77	74	134	150
Perham	NO REPORTS RECEIVED											
Pine City*	217	79	--	56	4	3	3	1	3	1	227	140
Pine Island	263	58	2	2	15	11	--	--	32	11	312	82
Pipestone	707	263	--	8	3	4	1	--	13	31	724	306
Pipestone*	1	--	--	--	--	--	--	--	2	1	3	1
Preston*	674	93	1	21	23	13	--	--	21	31	720	158
Proctor	112	6	1	--	2	--	--	1	18	5	133	12
Red Lake Falls*	120	21	--	27	6	2	--	--	74	26	200	76
Red Wing	1008	169	--	22	95	50	2	--	17	14	1122	255
Redwood Falls*	510	81	2	8	9	1	--	3	9	9	530	102
**Rochester	525	77	--	25	68	3	6	--	43	8	642	113
**Roseau	345	75	--	8	2	3	3	--	10	3	360	89

*Probate Courts exercising Municipal Court jurisdiction.
(b) Organized 2-1-69.
(c) Reports for three months only. Organized 10-1-69.
**Reports Missing: Marshall (1), North Oaks (1), North St. Paul (1), Rochester (9), Roseau (4)

MUNICIPAL COURTS - Criminal Dispositions, continued January 1, 1969 - December 31, 1969

	GUILTY PLEA		PRELIM. HEARING		COURT TRIAL		JURY TRIAL		DISMISSED, STRICKEN, OR DEFAULT	SETTLED	TOTAL DISPOSITIONS	
	T	OV	T	OV	T	OV	T	OV	T	OV	T	OV
Roseville	1966	236	--	18	87	32	12	2	359	99	2424	387
**St. Charles	12	3	--	--	1	--	--	--	34	8	47	11
**St. Cloud	5519	729	--	105	212	64	--	--	112	48	5843	946
St. James*	18	4	1	1	7	--	--	--	6	7	32	12
St. Peter*	69	29	3	11	7	6	4	--	--	1	83	47
Sauk Centre	413	20	--	--	1	--	--	--	--	7	414	27
**Shakopee	1159	149	--	--	17	16	4	3	19	39	1199	207
Shakopee*	1486	360	--	27	37	11	--	--	96	80	1619	478
Slayton	32	29	3	7	--	3	--	--	1	5	36	44
Sleepy Eye	149	21	--	4	1	1	--	--	5	--	155	26
South St. Paul	499	123	1	12	33	26	47	30	100	100	680	291
Springfield	247	55	--	5	10	3	--	--	8	3	265	66
Staples	168	--	1	--	33	--	--	--	--	--	202	--
Thief River Falls	953	333	--	9	28	7	2	--	20	14	1003	363
Thief River Falls*	111	97	--	--	--	--	--	--	1	--	112	97
Tower	35	49	--	--	--	--	--	--	--	--	35	49
Tracy	360	55	5	2	11	2	--	--	16	--	392	59
Two Harbors	140	75	2	18	--	--	2	--	480	30	624	123
Two Harbors*	--	2	--	--	1	--	--	--	--	--	1	2
Virginia	703	483	2	18	26	14	1	1	26	42	758	558
Wabasha*	272	81	7	46	14	1	--	--	--	12	293	140
Wadena*	27	12	--	7	25	6	--	--	2	6	54	31
Walker*	28	27	--	24	1	2	--	--	2	35	31	88
**Warren*	4	5	--	--	1	1	--	--	--	1	5	7
Waseca	141	34	--	1	6	2	--	--	4	1	151	38
Waseca*	48	52	--	23	1	--	14	14	47	32	110	121
Waterville	93	39	--	3	--	--	--	--	--	--	93	42
West St. Paul	807	271	--	17	71	18	2	1	739	58	1619	365
Wheaton*	9	14	--	4	--	1	--	--	2	6	11	25
White Bear Lake	710	139	2	2	64	40	1	1	111	70	888	252
Willmar	1182	574	1	44	26	32	2	3	87	146	1298	799
Windom*	44	52	--	9	--	2	--	--	2	22	46	85
Winona	284	166	--	15	12	2	3	2	2030	201	2329	386
Worthington	852	198	--	12	21	8	--	--	29	42	902	260
Worthington*	102	67	--	3	--	4	--	--	3	3	105	77
SUB-TOTAL	60204	16686	186	1564	2948	1344	274	109	7440	3296	71052	22999
**ANOKA COUNTY	2231	1366	9	37	478	269	68	6	266	207	3052	1885
CARVER (d)	676	101	4	9	23	12	3	3	18	18	724	143
DULUTH	5454	3092	--	127	107	147	16	9	168	915	5745	4290
	(Duluth Conciliation Court included in court cases.)											
WASHINGTON	1106	825	3	41	97	42	23	8	131	105	1360	1021
HENNEPIN	35321	15971	--	1537	4837	1662	129	26	8421	4692	48708	23888
ST. PAUL	11449	2923	--	403	797	504	96	21	2774	1896	15116	5747
STATEWIDE TOTALS	116441	40964	202	3718	9287	3980	609	182	19218	11129	145757	59973

*Probate Courts exercising Municipal Court jurisdiction.

(d) Reports for six months only. Organized 7-1-69.

**Reports Missing: St. Charles (5), St. Cloud (2), Shakopee (1), Warren*(1), Anoka (1).

RECAPITULATION TOTAL DISPOSITIONS

(January 1, 1969 - December 31, 1969)

MUNICIPALITY	CIVIL DISPOSITIONS		CRIMINAL DISPOSITIONS		TOTAL DISPOSITIONS
	Court	Jury	Traffic	Violations	
Ada*	1	--	376	146	523
Adrian	--	--	56	30	86
Aitkin*	11	--	486	211	708
Albert Lea	110	2	2210	660	2982
Alexandria	45	5	1410	317	1777
Alexandria*(a)	--	--	182	67	249
Appleton	1	--	172	12	185
Aurora	--	--	151	40	191
**Austin	576	--	1412	763	2751
Bagley*	1	--	438	93	532
Baudette*	--	--	371	76	447
Bemidji	211	2	1058	742	2013
Benson*	1	--	101	48	250
Blue Earth*	7	1	40	74	122
Brainerd	26	--	1151	592	1769
Breckenridge*	2	--	143	78	223
**Buhl	--	--	54	20	74
Burnsville	17	2	756	99	874
Caledonia*	--	--	108	37	145
Cambridge*	21	--	53	5	79
Canby	--	--	255	31	286
**Cass Lake	19	--	152	96	267
Center City*	19	3	62	112	196
Chaska*	16	--	31	27	74
Chisholm	--	--	350	133	483
Cloquet	35	3	396	186	620
Crookston	--	--	502	223	725
Crosby	--	--	244	88	332
Dawson	1	--	188	1	190
Detroit Lakes	7	--	17	103	127
Detroit Lakes*	--	--	142	11	153
East Grand Forks	10	--	1263	983	2257
Elbow Lake*	1	--	90	62	153
**Ely	7	1	125	113	246
Eveleth	5	--	370	106	481
Faribault	284	8	1390	291	1973
Fergus Falls	7	--	726	570	1303
Gaylord*	19	--	237	59	315
Glencoe	10	--	268	53	331
Glencoe*	--	--	35	18	53
Glenwood*	2	--	465	200	667
**Grand Marais*	--	1	117	31	149
Grand Rapids	228	1	917	361	1507
Granite Falls*	10	1	120	121	252
Hallock*		VACANCY			
**Hastings	305	1	643	441	1390
Hibbing	37	--	893	434	1364
Hutchinson	1	--	955	168	1124
International Falls	748	--	557	393	1698
Ivanhoe*	5	--	297	95	397

*Probate Courts exercising Municipal Court jurisdiction.

(a) Reports for five months only. Organized 8-1-69.

**Reports Missing: Austin (1), Buhl (3), Cass Lake (3), Ely (1), Grand Marais* (1) Hastings (1)

RECAPITULATION TOTAL DISPOSITIONS - continued January 1, 1969 - December 31, 1969

MUNICIPALITY	CIVIL DISPOSITIONS Court	Jury	CRIMINAL DISPOSITIONS Traffic	Violations	TOTAL DISPOSITIONS
Jackson*	8	--	89	28	125
Jordan	VACANCY - SEE SHAKOPEE*				
Kasson	1	--	424	1	426
Keewatin	--	--	45	5	50
Lake City	179	--	349	26	554
Le Center*	6	--	130	217	353
Le Sueur	4	--	67	31	102
Litchfield* (b)	19	--	253	71	343
Little Falls	38	1	1276	374	1689
Long Prairie	NO REPORTS RECEIVED				
Long Prairie*	--	--	40	8	48
Luverne	104	--	315	122	541
Madison	--	--	88	77	165
Mahnomen (c)	--	--	23	4	27
Mahnomen*	1	--	215	100	316
Mankato	218	11	2589	1399	4217
Mantorville*	10	1	87	57	155
Maplewood	1	2	4293	1025	5321
**Marshall	280	--	1074	251	1605
Milaca*	18	--	37	27	82
Montevideo	--	--	570	239	809
Montgomery	--	--	142	28	170
Moose Lake	--	--	96	17	113
Morris	--	--	266	120	386
Nashwauk	61	--	214	21	296
New Brighton	13	3	1228	157	1401
New Prague	--	--	205	3	208
New Ulm	287	1	582	209	1079
Northfield	169	--	527	100	796
North Mankato	11	--	1421	178	1610
**North Oaks	--	--	202	45	247
**North St. Paul	4	--	583	139	726
Olivia*	27	--	309	86	422
Ortonville	--	--	368	61	429
Owatonna	622	3	719	83	1427
Owatonna*	1	--	625	76	702
Park Rapids*	5	1	134	150	290
Perham	NO REPORTS RECEIVED				
Pine City*	28	2	227	140	397
Pine Island	68	--	312	82	462
Pipestone	5	84	713	306	1119
Pipestone*	15	--	3	1	19
Preston*	12	--	720	158	890
Proctor	13	--	133	12	158
Red Lake Falls*	--	--	200	76	276
Red Wing	379	1	1122	255	1757
Redwood Falls*	8	--	530	102	640
**Rochester	72	--	642	113	827
**Roseau	--	--	360	89	449

*Probate Courts exercising Municipal Court jurisdiction.

(b) Organized 2-1-69.

(c) Reports for three months only. Organized 10-1-69.

**Reports Missing: Marshall (1), North Oaks (1), North St. Paul (1), Rochester (9), Roseau (4)

RECAPITULATION TOTAL DISPOSITIONS - continued January 1, 1969 - December 31, 1969

MUNICIPALITY	CIVIL DISPOSITIONS Court	Jury	CRIMINAL DISPOSITIONS Traffic	Violations	TOTAL DISPOSITIONS
Roseville	2	--	2424	387	2813
**St. Charles	--	--	47	11	58
**St. Cloud	279	--	5843	946	7068
St. James*	18	--	32	12	62
St. Peter*	5	1	83	47	136
Sauk Centre	3	--	414	27	444
**Shakopee	18	6	1199	207	1430
Shakopee*	--	--	1619	478	2097
Slayton	1	--	36	44	81
Sleepy Eye	1	--	155	26	182
South St. Paul	290	20	680	291	1281
Springfield	88	1	265	66	420
Staples	--	--	202	--	202
Thief River Falls	8	--	1003	363	1374
Thief River Falls*	--	--	112	97	209
Tower	--	--	35	49	84
Tracy	105	--	393	59	557
Two Harbors	1	--	624	123	748
Two Harbors*	--	--	1	2	3
Virginia	96	2	758	558	1414
Wabasha*	5	--	293	140	438
Wadena*	--	--	54	31	85
Walker*	9	--	31	88	128
**Warren*	--	--	5	7	12
Waseca	242	--	151	38	431
Waseca*	--	--	110	121	231
Waterville	--	--	93	42	135
West St. Paul	263	6	1619	365	2253
Wheaton*	2	--	11	25	38
White Bear Lake	263	33	888	252	1436
Willmar	328	61	1298	799	2486
Windom*	5	--	46	85	136
Winona	685	3	2329	386	3403
Worthington	100	--	902	260	1262
Worthington*	5	--	105	77	187
SUB-TOTAL	12828	1622	137855	55341	207646
**ANOKA COUNTY	127	53	3052	1885	5117
CARVER (d)	5	--	724	143	872
WASHINGTON	268	18	1360	1021	2667
DULUTH	1134	97	5745	4290	11266
	(Duluth Conciliation Court included in court cases.)				
HENNEPIN	3198	826	48708	23888	76620
SAINT PAUL	322	469	15116	5747	21654
STATEWIDE TOTALS	17882	3085	212560	92315	325842

*Probate Courts exercising Municipal Court jurisdiction.

(d) Reports for six months only. Organized 7-1-69.

**Reports Missing: St. Charles (5), St. Cloud (2), Shakopee (1), Warren*(1), Anoka (1).

MEMBERS OF THE JUDICIARY

SUPREME COURT

Chief Justice
Oscar R. Knutson

Associate Justices

Martin A. Nelson
William P. Murphy
James C. Otis
W. F. Rogosheske
Robert J. Sheran
C. Donald Peterson
Frank T. Gallagher (Retired)

DISTRICT COURT

District	Name	Chambers	Term Expires
1	Robert J. Breunig	Hastings	1973
1	John M. Fitzgerald	Le Center	1971
1	Harold E. Flynn	Shakopee	1975
1	John B. Friedrich	Red Wing	1971
1	*Arlo E. Haering	Glencoe	1973
2	Archie L. Gingold	St. Paul	1975
2	Otis H. Godfrey, Jr.	St. Paul	1971
2	*John W. Graff	St. Paul	1973
2	Ronald E. Hachey	St. Paul	1975
2	Hyam Segell	St. Paul	1973
2	David E. Marsden	St. Paul	1973
2	Stephen L. Maxwell	St. Paul	1971
2	Edward D. Mulally	St. Paul	1975
2	J. Jerome Plunkett	St. Paul	1975
2	Robert V. Rensch	St. Paul	1975
2	Harold W. Schultz	St. Paul	1971
3	*Daniel F. Foley	Albert Lea	1975
3	Donald T. Franke	Rochester	1971
3	Glenn E. Kelley	Winona	1971
3	O. Russell Olson	Rochester	1971
3	Warren F. Plunkett	Austin	1975
3	Urban J. Steimann	Owatonna	1971
4	Douglas K. Amdahl	Minneapolis	1971
4	Elmer R. Anderson	Minneapolis	1973
4	Leslie L. Anderson	Minneapolis	1971
4	Lindsay G. Arthur	Minneapolis	1971
4	Donald T. Barbeau	Minneapolis	1971
4	Tom L. Bergin	Minneapolis	1975
4	*Rolf Fosseen	Minneapolis	1975
4	William D. Gunn	Minneapolis	1973
4	Irving C. Iverson	Minneapolis	1975
4	Stanley D. Kane	Minneapolis	1971
4	Theodore B. Knudson	Minneapolis	1975

*Chief Judges in each District.

DISTRICT COURT JUDGES -

District	Name	Chambers	Term Expires
4	Eugene Minenko	Minneapolis	1975
4	Dana Nicholson	Minneapolis	1973
4	Edward J. Parker	Minneapolis	1975
4	Luther Sletten	Minneapolis	1973
4	Bruce C. Stone	Minneapolis	1971
4	Thomas Tallakson	Minneapolis	1971
4	Crane Winton	Minneapolis	1975
5	Harvey A. Holtan	Windom	1975
5	L. J. Irvine	Fairmont	1975
5	Walter H. Mann	Marshall	1975
5	*Milton D. Mason	Mankato	1975
5	Noah S. Rosenbloom	New Ulm	1971
6	Donald E. Anderson	Duluth	1973
6	Nicholas S. Chanak	Hibbing	1971
6	*Mitchell A. Dubow	Virginia	1975
6	Carl L. Eckman	Duluth	1975
6	Patrick O'Brien	Duluth	1975
6	Donald C. Odden	Duluth	1975
7	Paul G. Hoffman	St. Cloud	1971
7	Charles W. Kennedy	Little Falls	1971
7	*Chester G. Rosengren	Fergus Falls	1971
7	Gaylord A. Saetre	Moorhead	1971
8	Sam Gandrud	Litchfield	1971
8	*Clarence A. Rolloff	Montevideo	1971
8	Thomas J. Stahler	Morris	1973
9	Ben F. Grussendorf	Brainerd	1971
9	Gordon L. McRae	International Falls	1971
9	*James F. Murphy	Grand Rapids	1973
9	James E. Preece	Bemidji	1975
9	Warren A. Saetre	Thief River Falls	1971
9	Harley G. Swenson	Crookston	1973
10	Robert Bakke	Stillwater	1975
10	*Robert B. Gillespie	Cambridge	1975
10	William T. Johnson	Stillwater	1971
10	Leonard Keyes	Anoka	1971
10	Carroll E. Larson	Buffalo	1975
10	John F. Thoreen	Stillwater	1975

*Chief Judges in each District.

PROBATE COURT

Name	County	County Seat	Term Expires
*Robert S. Graff	Aitkin	Aitkin	1974
Lawrence J. Green	Anoka	Anoka	1974
*Sigwel Wood	Becker	Detroit Lakes	1974
*Marcus A. Reed	Beltrami	Bemidji	1970
Willard P. Lorette	Benton	Foley	1970
Hiram W. Hewitt	Big Stone	Ortonville	1971
Carl W. Peterson	Blue Earth	Mankato	1970
William B. Mather, Jr.	Brown	New Ulm	1974
Ladean A. Overlie	Carlton	Carlton	1971
*Edward H. Luedloff	Carver	Chaska	1971
*Arthur M. Daniels	Cass	Walker	1974
*Douglas P. Hunt	Chippewa	Montevideo	1974
*James B. Gunderson	Chisago	Center City	1973
Goodwin L. Dosland	Clay	Moorhead	1970
*Melvin T. Anderson	Clearwater	Bagley	1974
*Elmer E. Harvey	Cook	Grand Marais	1971
*Lucille Stahl	Cottonwood	Windom	1974
Henry W. Longfellow	Crow Wing	Brainerd	1974
Gerald E. Carlson	Dakota	Hastings	1971
*Robert A. Neseth	Dodge	Mantorville	1970
*Paul L. Ballard	Douglas	Alexandria	1974
*J. W. Schindler	Faribault	Blue Earth	1974
*George O. Murray	Fillmore	Preston	1970
William F. Sturtz	Freeborn	Albert Lea	1971
Elmer J. Tomfohr	Goodhue	Red Wing	1974
*Arthur H. Ackerson	Grant	Elbow Lake	1974
Melvin J. Peterson	Hennepin	Minneapolis	1973
*Elmer M. Anderson	Houston	Caledonia	1974
*Keith L. Kraft	Hubbard	Park Rapids	1974
*Raymond T. Olsen	Isanti	Cambridge	1974
John J. Benton	Itasca	Grand Rapids	1974
*William G. Kreger	Jackson	Jackson	1974
*Frank M. Ziegler	Kanabec	Mora	1974
M. A. Wahlstrand	Kandiyohi	Willmar	1974
*VACANCY	Kittson	Hallock	
George Hnatiuk	Koochiching	International Falls	1970
*Theodor S. Slen	Lac qui Parle	Madison	1970
*Walter A. Egeland	Lake	Two Harbors	1974
*John R. Krouss	Lake of the Woods	Baudette	1972
*Ruth Brown	Le Sueur	Le Center	1974
*Clinton C. Crumlett	Lincoln	Ivanhoe	1974
*Bruce V. Pierard	Lyon	Marshall	1974
*J. A. Morrison	McLeod	Glencoe	1971
*Jerome L. Kersting	Mahnomen	Mahnomen	1970
*J. A. Harren	Marshall	Warren	1973
Conrad F. Gaarenstroom	Martin	Fairmont	1974
*Cedric F. Williams	Meeker	Litchfield	1974
*Leonard M. Paulson	Mille Lacs	Milaca	1974

*Probate Courts exercising Municipal Court Jurisdiction.

PROBATE COURT -

Name	County	County Seat	Term Expires
Charles A. Fortier	Morrison	Little Falls	1972
Paul Kimball, Jr.	Mower	Austin	1971
*John D. Holt	Murray	Slayton	1973
*Henry N. Benson, Jr.	Nicollet	St. Peter	1974
*Vincent Hollaren	Nobles	Worthington	1974
*Milton A. Kludt	Norman	Ada	1971
Thomas J. Scanlan	Olmsted	Rochester	1974
Henry Polkinghorn	Otter Tail	Fergus Falls	1970
*Stanley M. Mortenson	Pennington	Thief River Falls	1973
*George E. Sausen	Pine	Pine City	1974
*James Manion	Pipestone	Pipestone	1974
Philip A. Anderson	Polk	Crookston	1971
*Gilman P. Gandrud	Pope	Glenwood	1974
Andrew A. Glenn	Ramsey	St. Paul	1974
*Joseph A. Harren	Red Lake	Red Lake Falls	1971
*Donald L. Crooks	Redwood	Redwood Falls	1974
*George H. Jacobson	Renville	Olivia	1974
Robert W. Martin	Rice	Faribault	1974
Helga Skyberg	Rock	Luverne	1971
*E. A. Dubore	Roseau	Roseau	1973
Edmund J. Belanger	St. Louis	Duluth	1974
*F. J. Connolly	Scott	Shakopee	1974
Lloyd O. Stein	Sherburne	Elk River	1972
*Kenneth W. Bull	Sibley	Gaylord	1974
John Lang	Stearns	St. Cloud	1974
*Charles E. Cashman	Steele	Owatonna	1974
O. K. Alger	Stevens	Morris	1974
*Richard A. Bodger	Swift	Benson	1974
*J. Norman Peterson	Todd	Long Prairie	1974
*Lowell C. Bigelow	Traverse	Wheaton	1974
*Ken Kalbrenner	Wabasha	Wabasha	1974
*Hugh G. Parker	Wadena	Wadena	1973
*John H. McLoone	Waseca	Waseca	1972
John T. McDonough	Washington	Stillwater	1974
*William R. Weiss	Watonwan	St. James	1974
*Leo A. Reuther	Wilkin	Breckenridge	1970
Sewell A. Sawyer	Winona	Winona	1971
Clifford E. Olson	Wright	Buffalo	1974
*Fred M. Ostensoe	Yellow Medicine	Granite Falls	1974

*Probate Courts exercising Municipal Court Jurisdiction.

MUNICIPAL COURT

Name	Municipality	Term Expires
George E. Becker	Adrian	1974
Anthony K. Grinley	Albert Lea	1970
J. G. Thornton	Alexandria	1971

MUNICIPAL COURT -

Name	Municipality	Term Expires
James T. Knutson	Anoka County	1971
Thomas Forsberg	Anoka County	1971
Joseph E. Wargo	Anoka County	1971
Kenneth Kivley	Appleton	1971
Paul R. Sanvik	Aurora	
Fred R. Kraft	Austin	1972
Edward E. Dessert	Bemidji	1970
Darrell M. Sears	Brainerd	1972
Thomas J. Guidarelli	Buhl	1972
John J. Daly	Burnsville	
Oliver J. Ostensoe	Canby	1973
John A. Fahey	Carver County	
VACANCY	Cass Lake	
Sam S. Nenadich, Jr.	Chisholm	1971
Hugo A. Laine	Cloquet	1973
Kenneth F. Johannson	Crookston	1973
Gene Foote	Crosby	1971
H. R. Battershell	Dawson	1974
F. C. Schroeder	Detroit Lakes	1974
Thomas J. Bujold	Duluth	1973
Harry T. Lathrop	Duluth	1970
Theodore F. Giese	East Grand Forks	1974
John W. Somrock	Ely	1974
VACANCY	Eveleth	1971
Everett Malluege	Faribault	1970
Elliott O. Boe	Fergus Falls	1972
Harald F. Hendricksen	Glencoe	1970
Warren H. Anderson	Grand Rapids	
Charles F. Gegen	Hastings	1974
Arvid M. Nasi, Jr.	Hibbing	1972
Ronald J. McGraw	Hutchinson	1974
Marvin W. Mitchell, Jr.	International Falls	1972
VACANCY	Jordan	
Rosemary Beaver	Kasson	1971
Steve Grcevich	Keewatin	1974
Philip Gartner	Lake City	1974
William E. Hottinger	LeSueur	1971
Harold M. Braggans	Little Falls	1970
Logan O. Scow	Long Prairie	1974
Albert Christensen	Luverne	1970
Harold S. Nelson	Madison	1971
Charles Vondra	Mahnomen	1974
Leslie H. Morse	Mankato	1974
John J. Kirby	Maplewood-Little Canada-Vadnais Heights	1974
Irving J. Wiltrout	Marshall	1970
Donald S. Burris	Minneapolis	1970
*Edwin P. Chapman	Minneapolis	1971
William B. Christianson	Minneapolis	1972

*Chief Judge

MUNICIPAL COURT -

Name	Municipality	Term Expires
Chester Durda	Minneapolis	1974
Herbert W. Estrem	Minneapolis	1970
Eugene J. Farrell	Minneapolis	1974
James H. Johnston	Minneapolis	1974
Richard J. Kantorowicz	Minneapolis	1974
David R. Leslie	Minneapolis	1973
A. Paul Lommen	Minneapolis	1970
O. Harold Odland	Minneapolis	1970
Neil A. Riley	Minneapolis	1970
James D. Rogers	Minneapolis	1973
John W. Hanson	Minneapolis	1970
C. William Sykora	Minneapolis	1973
Herbert Wolner	Minneapolis	1974
B. J. Oyen	Montevideo	1971
Frank M. Turek	Montgomery	1972
Richard T. Hart, Jr.	Moose Lake	1974
Terrance P. Collins	Morris	
Frank Dergantz	Nashwauk	1971
Donald E. Gross	New Brighton	1974
Donald B. Nold	New Prague	1971
Edward A. Nierengarten	New Ulm	1971
Osmund H. Ause	Northfield	1974
A. J. Berndt	North Mankato	1971
Frank A. Steldt	North Oaks	1974
Robert F. Johnson	North St. Paul	1973
Fred B. Wickland	Ortonville	1974
David M. Leach	Owatonna	1970
John Kukowske, Jr.	Perham	1970
Clarence H. Schlehuber	Pine Island	
T. E. Fellows	Pipestone	1972
Andrew R. Larson	Proctor	1974
Gilbert W. Terwilliger	Red Wing	1972
William S. LaPlante	Rochester	1972
A. E. Hildahl	Roseau	1970
Jerome E. Franke	Roseville	1974
Dennis A. Challeen	St. Charles	1972
Wendell Y. Henning	St. Cloud	1972
Edward K. Delaney	St. Paul	1974
Roland J. Faricy, Jr.	St. Paul	1970
*J.Clifford Janes	St. Paul	1974
James M. Lynch	St. Paul	1972
Allan R. Markert	St. Paul	1970
Louis T. Lovik	Sauk Centre	1972
Kermit J. Lindmeyer	Shakopee	1970
Elmer A. Hauser	Sleepy Eye	1974
Irving W. Beaudoin	South St. Paul	1974
Leo A. Berg	Springfield	1972

*Chief Judge

MUNICIPAL COURT -

Name	Municipality	Term Expires
L. S. Hand	Staples	1970
VACANCY	Thief River Falls	
J. A. Johnson	Tower	1974
Russell W. Brewster	Tracy	1972
Thomas W. Dwan	Two Harbors	1971
Ralph E. Harvey	Virginia	1971
Lawrence T. Gallagher	Waseca	1972
Searle R. Sandeen	Washington	1974
Joseph G. Poehler	Waterville	1972
Martin J. Mansur	West St. Paul	
William J. Fleming	White Bear Lake	1972
Allan D. Buchanan	Willmar	1970
John D. McGill	Winona	1971
Henry M. Fauskee	Worthington	1971

CLERKS OF THE DISTRICT COURT

Name	County	County Seat	Term Expires
Robert E. Haas	Aitkin	Aitkin	1970
Raymond Nilsson	Anoka	Anoka	1974
Charles C. Greenlaw	Becker	Detroit Lakes	1974
C. Buiford Qualle	Beltrami	Bemidji	1974
S. J. Tomporowski	Benton	Foley	1971
Shirley Mathison Krueger	Big Stone	Ortonville	1974
Miss Audrey Handahl	Blue Earth	Mankato	1974
Carl A. Witt	Brown	New Ulm	1970
Stuart A. Beck	Carlton	Carlton	1971
Albert A. Vojtisek	Carver	Chaska	1971
Miss Anona Riviere	Cass	Walker	1974
A. Milton Johnson	Chippewa	Montevideo	1971
Mrs. Violet Zeien	Chisago	Center City	1971
D. G. Rusness	Clay	Moorhead	1974
John O. Hanson	Clearwater	Bagley	1974
Carl A. Noyes	Cook	Grand Marais	
David W. Flatgard	Cottonwood	Windom	1974
Miss Leone Bouck	Crow Wing	Brainerd	1970
Eugene Casserly	Dakota	Hastings	1971
William P. Peterson	Dodge	Mantorville	1970
Ed Ormseth	Douglas	Alexandria	1971
Paul Belau	Faribault	Blue Earth	1974
Kenneth J. Hall	Fillmore	Preston	1974
Evan K. Wulff	Freeborn	Albert Lea	1974
Mrs. Grace Marie Scharpen	Goodhue	Red Wing	1971
Harold Bartness	Grant	Elbow Lake	1974
Gerald R. Nelson	Hennepin	Minneapolis	1971
Mrs. Merle H. Schultz	Houston	Caledonia	1971
E. W. Andrews	Hubbard	Park Rapids	1970
Henry C. Howard	Isanti	Cambridge	1974
Tyrus L. Bischoff	Itasca	Grand Rapids	1974

DISTRICT COURT CLERKS -

Name	County	County Seat	Term Expires
John Seim	Jackson	Jackson	1970
Swan Stromberg	Kanabec	Mora	1972
Leonard Blom	Kandiyohi	Willmar	1974
Jean Pemberton	Kittson	Hallock	1970
Terrance Carew	Koochiching	International Falls	1974
E. C. (Ned) Hull	Lac qui Parle	Madison	1971
J. R. Lindgren	Lake	Two Harbors	1974
Evelyn Slick	Lake of the Woods	Baudette	1970
Edsel J. Janovsky	Le Sueur	Le Center	1970
James Gilronan	Lincoln	Ivanhoe	1971
Harris E. Persons	Lyon	Marshall	1970
Lloyd E. Lipke	McLeod	Glencoe	1971
Miss Isabel Withrow	Mahnomen	Mahnomen	1974
Hubert L. Charboneau	Marshall	Warren	1971
Kenneth W. Koenecke	Martin	Fairmont	1971
Hardy D. Silverberg	Meeker	Litchfield	1970
Waldo A. Allen	Mille Lacs	Milaca	1971
Edward L. Ciminski	Morrison	Little Falls	1971
William D. Sucha	Mower	Austin	1971
Douglas E. Johnson	Murray	Slayton	1970
Miss Olive Peterson	Nicollet	St. Peter	1970
Mrs. Vivian E. Erbes	Nobles	Worthington	1970
Milton Lien	Norman	Ada	1971
Miss Rosemary Forbes	Olmsted	Rochester	1974
Miss Myrtle E. Logas	Otter Tail	Fergus Falls	1974
Miss Ardith Johnson	Pennington	Thief River Falls	1974
Cornelius Nieboer	Pine	Pine City	1974
Mrs. Arlene B. Mosley Rogers	Pipestone	Pipestone	1971
Raymond H. Espe	Polk	Crookston	1970
Hartvig Pederson	Pope	Glenwood	1970
Joseph P. LaNasa	Ramsey	St. Paul	1974
Marion O. Keifenheim	Red Lake	Red Lake Falls	1971
Keith H. Baldwin	Redwood	Redwood Falls	1974
Glen Agre	Renville	Olivia	1971
Ray L. Sanders	Rice	Faribault	1974
Mrs. Eleanor Boysen	Rock	Luverne	1970
Clarence A. Corneliusen	Roseau	Roseau	1974
Henry Sandstrom	St. Louis	Duluth	1974
Hugo P. Hentges	Scott	Shakopee	1971
Loretta Moos	Sherburne	Elk River	1970
Robert Busse	Sibley	Gaylord	1974
Miss Genevieve M. Sand	Stearns	St. Cloud	1971
C. Jess Lee	Steele	Owatonna	1974
Elmer T. Jacobson	Stevens	Morris	1974
Earl H. Prall	Swift	Benson	1970
Adeline R. Hengemuhle	Todd	Long Prairie	1974
Walter H. Klugman	Traverse	Wheaton	1974

DISTRICT COURT CLERKS -

Name	County	County Seat	Term Expires
David E. Meyer	Wabasha	Wabasha	1971
Miss Florence Claydon	Wadena	Wadena	1970
Lawrence P. Krause	Waseca	Waseca	1974
James B. Bancroft	Washington	Stillwater	1974
Mrs. Ruth Steel Eppeland	Watonwan	St. James	1971
A. W. Gruenberg	Wilkin	Breckenridge	1970
Joseph C. Page	Winona	Winona	1971
Carl Nordberg	Wright	Buffalo	1974
Mrs. Joyce I. Blindt	Yellow Medicine	Granite Falls	1970

EFFECTIVE JUSTICE STANDARDS

Shortly after the founding of the Joint Committee for the Effective Administration of Justice, it was suggested that "effective administration of justice" was a desirable but vague objective and that the committee's efforts should be directed toward achievement of more specific and clearly-defined goals. A subcommittee consisting of Louis H. Burke, Albert E. Jenner, Jr., and Glenn R. Winters was appointed by Chairman Clark to prepare a draft of what was to become known as the "Effective Justice Standards." The subcommittee's draft, as revised and approved by the full Joint Committee, has had wide publication and acceptance as a concise statement of the goals of the court modernization movement in the country. Its text follows:

JUSTICE IS EFFECTIVE WHEN --

1. Fairly Administered Without Delay

   With all litigants, indigent and otherwise, and especially those charged with crime, represented by competent counsel,

2. By Competent Judges

   Selected through non-political methods based on merit,

   In sufficient numbers to carry the load,

   Adequately compensated, with fair retirement benefits,

   With security of tenure, subject to an expeditious method of removal for cause,

3. Operating in a Modern Court System

   Simple in structure, without overlapping jurisdictions or multiple appeals,

   Businesslike in management with non-judicial duties performed by a competent administrative staff,

   With practical methods for equalizing the judicial work load,

   With an annual conference of the judges for the purpose of appraising and improving judicial techniques and administration,

4. Under simple and Efficient Rules of Procedure

   Designed to encourage advance trial preparation,

   Eliminate the element of surprise,

   Facilitate the ascertainment of truth,

   Reduce the expense of litigation,

   And expedite the administration of justice.

TABLE OF CONTENTS

SELECTED READINGS ON
THE ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT

* Excerpt

Chapter I

SELECTION AND TENURE OF JUDGES

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

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

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

TABLE OF CONTENTS

SELECTED READINGS ON
THE ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT

* Excerpt

A Topical Outline for Guided Reading and Discussion

SELECTION AND TENURE OF JUDGES

I. Qualifications for Judicial Office
   A. Does the judicial branch have the same obligations as the executive and legislative branches of government? If not, how are they different?
   B. What are the functions of a judge?
      1. What professional training does a judge need? By analogy, is a judge more like a general medical practitioner or a specialist?
      2. What is meant by independence of the judiciary and how important is it?
         a. What duty does a judge have to the parties in a particular case?
         b. What duty does a judge have to uphold the law?
   C. Are the personal and professional qualifications for judicial office the same as those required for other governmental offices? If not, how are they different? If not, what is the best method of securing qualified judges?

II. How can we assure the continuation of a bench of this quality?
   A. Judicial Selection
      1. Election
         a. How many and which states elect judges?
            1) How many states elect judges on partisan ballots?
               - How do candidates in partisan states get on the ballot?
            2) How many states elect judges on non-partisan ballots?
               a) How do candidates in non-partisan states get on the ballot?
               b) How are candidates elected in non-partisan states?
            3) How many judges in elective states are actually elected the first time they go on the bench?
         b. How well informed are voters about candidates and their respective qualifications for judicial office? In metropolitan areas? In rural areas?
         c. How much does it cost to run a judicial campaign?
            1) Is this more or less than the annual salary for the judicial office?
            2) Who contributes to judicial campaign funds?
            3) How much do judges contribute to party campaign funds?
         d. What roles are played in judicial election campaigns by political parties, bar associations, newspapers and other media, civic organizations and individuals?
         e. What are the strengths and weaknesses of elective systems? In partisan election states? In non-partisan election states?
      2. Appointment
         a. In how many and in which states are judges appointed?
            1) What are the typical terms of judicial office in appointive states?
            2) How are judges reappointed to office?
               a) Who has the power of appointment?
               b) Are there any limitations on the appointing power?
               c) Must appointments be confirmed and by whom?
            3) What roles are played by political parties, bar associations, newspapers and other media, civic organizations, and individual citizens in determining who shall be appointed to judicial office?
            4) What are the strengths and weaknesses of appointive systems?

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

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

THE MERIT PLAN FOR JUDICIAL SELECTION AND TENURE -- ITS HISTORICAL DEVELOPMENT

by Glenn R. Winters

The Merit Plan for judicial selection and tenure calls for appointment of certain judges by the governor of the state from lists of names submitted to him by judicial nominating commissions. Judges so appointed hold office for a minimum number of years and until the next election, at which time their names are submitted to the voters for approval without competing candidates, the sole question for the voters being whether or not the named judge shall be retained in office. If the vote is affirmative, the judge remains for a term of years, after which a similar vote is again taken; if it is negative, the office is vacant and the vacancy is filled by the process of nomination and appointment.

There are three distinguishing features of this plan:

1. Nomination by a commission.
2. Selection by appointment.
3. Tenure by vote of the people in a non-competitive election.

These three features together comprise what has come to be known as the Merit Plan. They are found in just that pattern in eight states - Alaska, Colorado, Florida, Iowa, Kansas, Missouri, Nebraska and Oklahoma. They also occur in other combinations - nomination and appointment without the non-competitive election in five states - Alabama, Idaho, New York, Utah and Vermont and in the Commonwealth of Puerto Rico; the non-competitive election without the nominating commission in California and Illinois. Adding together these three groups makes possible the statement that some of all of the Merit Plan is in use with respect to some or all of the judges of fifteen states and the Commonwealth of Puerto Rico.

An indication of the present-day surge in popularity of the Merit Plan as a reform measure may be found in the fact that of the 15 states mentioned, 10, or two-thirds of them, adopted it in the decade of the 60's. At this time the legislatures of two more states, North Dakota and Indiana, have acted to submit the Merit Plan to their voters, and the list of other states that are moving in the same direction is nearly as long as the list of those that are not.

The plan which I have spoken of as the Merit Plan has several other names as well. It is called the Missouri Plan after the first state to use it, the American Bar Association Plan, after ABA endorsement of it in 1937, the American Judicature Society Plan and the Kales Plan.

At this time when prospects seem good that by the end of the next decade the Merit Plan will have supplanted popular election as the dominant mode of judicial selection in this country, it seems not inappropriate to pause to examine the origins of this thing and trace its development, not only in the constitutions and statute books but in the thinking and writings of men like Kales, Roscoe Pound, Herbert Harley, John Perry Wood and others.

Excerpts from the Annual Coif Lecture, delivered December 15, 1967, at Villanova University, Villanova, Pennsylvania which was published in 15 Duquesne Law Review 176 (Fall, 1968)

We have noted that this train was already moving when Albert Kales climbed aboard. The elective judiciary got its start in the 1840's, nearly three-quarters of a century after 1776. It swept the country, except for certain Atlantic seaboard states, during the next 50 years, but by the close of the 19th century disenchantment had begun to set in. Listings under the heading "Judges" in the Index to Legal Periodicals for the years around the turn of the century and the first decade of this century reveal a growing awareness of the judicial selection problem and some groping for answers. Articles in the American Lawyer in 1903 and 1905 on "An Elective Judiciary - Its Defects", and "Influence of the Bar in the Selection of Judges Throughout the United States", are a clue. The most widely quoted sentence in Roscoe Pound's famous 1906 address on "The Causes of Popular Dissatisfaction with the Administration of Justice" was this one: "Putting courts into politics, and compelling judges to become politicians, in many jurisdictions has almost destroyed the traditional respect for the bench."

In 1913 the American Bar Association met in Montreal, and William Howard Taft, then a former president and future chief justice of the United States, addressed it on the subject of selection of judges. He severely criticized both partisan and non-partisan election and he urged a return to the appointive system.

It was in this climate that the American Judicature Society was founded and Albert M. Kales entered upon his work as its director of drafting. It is important to look carefully at what Kales both did and did not propose at that time. Our main sources are his Unpopular Government book, and the selection and tenure features of the Model State-Wide Judicature Act, and the Model Court for a Metropolitan District, which he drafted.

Kales proposed first that vacancies in the judiciary should be filled by appointment by the chief justice who should himself be chosen by the electorate at fairly frequent intervals. This is strongly reminiscent of the Georgia proposal for nomination of trial judges by an elected supreme court. Kales offered much the same reasons as Hall did, and he cited the successful experience in New Jersey of vice chancellors appointed by the chancellor.

The second element of the original Kales plan was a device to avoid the arbitrariness often thought (both then and now) to be associated with life tenure. Kales mentioned several possible ways of limiting the judges' tenure, and then he offered this suggestion:

"The appointment might be for a probationary period - say three years - at the end of which time the judge must submit at a popular election to a vote on the question as to whether the place which he holds shall be declared vacant. This is not a vote which puts anyone else in the judge's place, but a vote which can at most only leave the place to be filled by the appointing power. Such a plan must necessarily promote the security of the judge's tenure if at the popular election his office be not declared vacant. After surviving such a probationary period his appointment should continue for - let us say - six or nine years. At the end of that time the question might again be submitted as to whether his place should be declared vacant."

This constitutes a very clear enunciation of the principle of tenure by non-competitive election, and as far as I have been able to determine it was entirely original with Kales, no hint of such a device having been found in any prior writings that have come to my attention. This device remains a feature of the Merit Plan in substantially the same form today and it is in actual operation in ten states.

The judicial selection provisions of the state-wide and metropolitan court acts which Kales drafted during the next year or two were simply legislative embodiments of the Kales proposals advanced in the Unpopular Government book. Herbert Harley, founder and first secretary of the American Judicature Society, took the next step in a 1916 article, proposing mandatory appointment from the Council's nominations in all instances, rather than just every other one.

In 1920 Amos C. Miller of Chicago proposed a plan subsequently approved by the Illinois Constitutional Convention of 1922, requiring the governor to appoint judges in Cook County not from a standing eligible list but from an ad hoc list of four names submitted to him by the state supreme court. At the same time the Louisiana State Bar Association was proposing in another constitutional convention gubernatorial appointment from nominations submitted by the Supreme Judicial Council, a body such as Kales had proposed, consisting of twelve judges. These proposed Illinois and Louisiana commissions differed from present-day commissions only in the composition of the nominating body.

All nominating proposals so far mentioned have involved judges only. Harold J. Laski, a brilliant American lawyer who made a name for himself in the English legal world and is well remembered for his voluminous published correspondence with Oliver Wendell Holmes, contributed a very scholarly article to the Michigan Law Review in 1926 on "Techniques of Judicial Appointment." Laski proposed gubernatorial appointment with the aid of an advisory committee consisting of a judge of the supreme court, the attorney general and the president of the state bar association. Here, for the first time, we find a lawyer as well as judges participating in the nominating function. In the same year, Charles E. Matson proposed to the Nebraska State County Attorneys Association an elected "State Commission for Selection and Appointment of Judges." This body would have had the full appointing power, and it is noteworthy in that it is the first proposal in which laymen might have had a part, since it was not specifically restricted either to judges or to lawyers and judges. A strong proposal for a commission like Matson's, with actual appointing power, has been advanced very recently by Jason L. Honigman, Detroit attorney, for consideration as an amendment to the Michigan judicial article.

It is perhaps well to pause and remind ourselves that these are not actualities that we have been describing so far, but, only the thoughts and ideas of men in whose minds important frontiers of judicial administration were being pushed back.

In 1928, two years after the Laski article, Herbert Harley wrote a thoughtful editorial proposing that the governor, not the chief justice, pick from an eligible list and that the list be compiled through use of a bar plebiscite. From this time on, nothing more is heard about appointment by an elected chief justice, but more and more is heard about bar participation in both judicial appointments and judicial elections, reaching its zenith, no doubt, in the truly tremendous contribution in recent years by the American Bar Association through its Committee on Federal Judiciary in screening candidates and advising the U.S. Justice Department in regard to federal judicial appointments.

1931 was an important year in the evolution of the Merit Plan, for it is then that we find the first suggestion of the final element in the present-day nominating commission - the lay citizen member. The occasion was an editorial discussion of a proposal in The Panel, a publication of the Grand Jury Association in New York, for a non-partisan commission to make recommendations for judicial elections in New York. Herbert Harley said of this proposal:

"The article quoted does not disclose the nature or source of the proposed commission, which is the keystone of the project. But we assume it is to be an unofficial and unsalaried commission composed of delegates from the bar and various citizen organizations."

It remained for Mr. Walker B. Spencer of New Orleans to put together for the first time all of the various elements of which we have been speaking --

1. A commission
2. composed of judges
3. and lawyers
4. and laymen
5. to submit nominations
6. to the governor
7. for appointment
8. subject to tenure by non-competitive election.

Mr. Spencer spoke at the 1931 annual meeting of the American Judicature Society, and he included all of those elements in his description of the plan which I have previously mentioned as having been introduced in the Louisiana Constitutional Convention of 1921. It is very clear that this is not an accurate description of the plan that was actually introduced, which, as I have said, called for an all-judge council, such as Albert Kales had proposed, to do the nominating. However the record is clear that the Spencer plan suffered many revisions between its original drafting and its actual introduction into the convention, and it is an unsupported but not unreasonable conjecture that in 1931 Mr. Spencer was remembering an actual version of the plan as drafted by him prior to its being amended to bow to political expediency. Ben R. Miller of Baton Rouge, author of an authoritative book on the history of the Louisiana judiciary, has confirmed that Spencer was indeed a brilliant and original thinker and it appears that he deserves more credit for it than has yet been given him.

The decade of the 30's witnessed a rapid increase in professional discussion of judicial selection problems, and new ideas came thick and fast. In Georgia and Utah there appeared proposals for appointment by the governor from lists of nominees submitted by the bar. At the 1933 American Bar Association convention in Grand Rapids, the Conference of Bar Association Delegates, forerunner of today's ABA House of Delegates, conducted a symposium on judicial selection at which numerous proposals were advanced and discussed, most of them calling for some form of bar association participation or lawyer-layman nominating commissions, with appointment by the governor.

California came close to being the first state to bring merit selection from fantasy to fact. In 1933 the legislature approved a bar association plan for Los Angeles County under which the governor would appoint from nominations submitted by the state chief justice, the presiding justice of the court of appeals and a state senator. It was defeated at the polls in 1934. Much more widely known is the plan that was approved at that same election and has been in force ever since in that state, whereby the governor appoints supreme and appellate court judges with subsequent confirmation by chief justice, presiding justice of the court of appeals and the attorney general. Now, 33 years later, the State Bar, the Judicial Council and Governor Ronald Reagan have joined forces to procure adoption of a California Merit Plan, with commission nomination, for all California judges.

In 1937 the ABA House of Delegates formally endorsed adoption of the Merit Plan as an Association objective, and John Perry Wood, leader of the California movement in the 1930's, became chairman of the American Bar Association committee to lead the ABA campaign. In that capacity he came to St. Louis in 1938 to advocate a merit selection plan for Missouri. It was an historic occasion at which I had the good fortune to be present, and partly as a result of the events of that evening Missouri became the first state two years later actually to put a nominative-appointive-elective plan into operation and make "Missouri Plan" along with "Kales Plan" one of the synonyms for merit selection and tenure. "Spencer Plan" really should be added to that list.

The Missouri appellate courts' commissions are comprised of three lawyers elected by the bar, three laymen appointed by the governor, and the chief justice as chairman. For circuit judges it is two and two with the presiding judge of the appellate court as chairman. It would be foolish to suppose, however, that the Missouri Plan could not be improved upon. A number of states have followed along and have devised some interesting and promising variations.

In 1963 the voters of the City and County of Denver adopted a merit plan for the Denver Municipal Court, now the County Court, with a seven man nominating commission consisting of the Denver Bar Association president, two lawyers, and four non-lawyers, with the presiding judge as a non-voting ex officio member. Both lawyers and non-lawyers are appointed by the mayor, who also makes the judicial appointments. It is noteworthy that in this commission the laymen have a 4-3 voting majority, and also it is important to notice that both lawyers and laymen are to be selected on a bi-partisan basis.

The Missouri Plan is called the Non-Partisan Court Plan, but its nonpartisanship consists only of a prohibition of political activity on the part of both commission members and judges. The Denver plan affirmatively requires political balance between the two major parties within the commission. The Colorado state plan adopted in 1966 follows the Denver example both as to lay majority and as to bi-partisanship.

The Kansas commission has a lawyer elected by the bar and a non-lawyer appointed by the governor from each congressional district, plus a lawyer elected from the state at large, who is chairman. This commission has no judge at all. The Oklahoma commission has a lawyer and a layman from each congressional district plus a thirteenth member who is a non-lawyer, chosen by the other commission members. Thus, in Oklahoma, too, the laymen have a majority.

The most ingenious nominating commission to be adopted in recent years is that for the Utah juvenile courts. It is a five-member commission which is entirely ex officio, consisting of the chief justice of the supreme court, the state bar president, the chairman of the public welfare commission, the state superintendent of public instruction and the state director of public health. The first three may if they wish designate another member of their respective organizations, and the supreme court member is chairman of the commission.

A final variation is the Vermont commission designated to aid the legislature in exercise of its legislative appointment power. Not suprisingly, members of the legislature are in the majority, three of each house with at least one each from the minority party, plus two laymen appointed by the governor and three lawyers elected by the bar association.

THE EXTENT OF ADOPTION OF THE NON-PARTISAN APPOINTIVE-ELECTIVE PLAN FOR THE SELECTION OF JUDGES

Non-partisan judicial selection through an appointive-elective system is based on a pattern first advanced by the American Judicature Society in 1913. The plan embodies three basic elements:

(1) Nomination of slates of judicial candidates by non-partisan lay-professional nominating commissions;

(2) Appointment of judges by the governor or other appointing authority from the panel submitted by the nominating commission; and

(3) Review of appointments by voters in succeeding elections in which judges who have been appointed run unopposed on the sole question of whether their records merit retention in office.

A SUMMARY CHART

States	Nom. Com.	Gub. or Other Appt.	Non-Comp. Elect.	High Ct.	Inter. App. Ct.	Trial Ct.	Cts. of Lim. & Spec. Jur.	Discip. Removal *
Alabama (Jefferson Co.)	X	X				X		
Alabama								X
Alaska	X	X	X	X		X		X
California		X	X	X	X			X
Colorado (Denver Co.)	X	X				X	X	X
Colorado	X	X	X	X	X	X	X	X
Florida (Dade Co.)	X	X	X				X	X
Florida								X
Idaho	X	X		X		X	X	X
Illinois			X	X	X	X		X
Iowa	X	X	X	X		X		
Kansas	X	X	X	X				
Missouri (Kansas City)	X	X	X				X	X
Missouri	X	X	X	X	X	X	X	
Nebraska	X	X	X	X		X	X	X
New York (City)	X	X					X	
New York								X
Oklahoma	X	X	X	X				X
Pennsylvania			X	X	X	X		X
Puerto Rico	X	X				X	X	
Utah	X	X	X	X		X	X	X
Vermont	X	X	X	X		X	X	X

* Discipline and removal provisions are listed for only those states with merit selection plans. Other states that have only discipline and removal plans are: Louisiana, Maryland, Michigan, Ohio, Oregon, and Texas; see A.J.S. Report No. 5.

Excerpt from A.J.S. Report No. 18 (revised July, 1969)

EXCERPTS FROM

A MISSOURI JUDGE VIEWS JUDICIAL SELECTION AND TENURE

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

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

Missouri Plan in Action

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

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

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

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

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

Reprinted from 48 Journal of the American Judicature Society 126 (December, 1964)

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

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

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

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

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

Value of Lay Commissioners

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

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

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

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

SELECTION AND TENURE OF JUDGES

By Glenn R. Winters

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

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

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

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

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

Excerpts from the article as published in 54 Michigan Alumnus Quarterly Review 231 (Spring, 1948)

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

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

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

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

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

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

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

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

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

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

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

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

the "priesthood of justice."

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

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

To Professor Albert M. Kales, brilliant and original thinker in the Northwestern University Law School and one of the founders of the American Judicature Society, belongs the credit for leading the way toward such a solution. At the time of the founding of the American Judicature Society, in July, 1913, a committee of which Kales was a member designated selection of judges as one of the first topics for the new organization's research. Within a few months thereafter Kales published in his book *Unpopular Government in the United States*, and just prior thereto in the *Annals of the American Academy of Political and Social Science*, his proposals for a method of selecting judges that would combine the advantages and eliminate the faults of both the appointive and elective methods.

After many years of debate and discussion, the Kales plan in 1937 was given the powerful support of the American Bar Association. Here is the text of the plan as endorsed by that organization:

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?"

The Selection of Judges—

DOES IT SERVE THE ENDS OF JUSTICE?

John V. Lindsay

Justice Botein, now in his 25th year on the bench, is perhaps the best-known and most admired member of the New York State's Judiciary. Among his attributes is a willingness to pioneer; to pursue the revisions and adaptations that are constantly necessary if all men are to retain their equality under the law. "Our society is so resistant to change," he has observed, "that people who are privileged to be in positions such as I occupy are duty-bound to initiate changes."

It seems to me that those of us who hold political office share in that responsibility for achieving progressive change in the administration of justice. I should like, accordingly, to describe to you a change I have proposed as Mayor of New York City; a change I have asked fellow members of the bar to support. It deals with the selection of judges:

Everyone agrees that members of our Judiciary should be chosen for their intelligence, their impartiality, and their rectitude. Jefferson defined their qualifications almost two centuries ago: "Judges," he said, "should always be men of learning and attention; they should not be dependent upon any man or body of men."

I believe the existing system for selecting judges in New York State—which is largely by election—fails to produce many jurists who fulfill Jefferson's exacting ideals. It fails because idealism does not govern the designation of our judges; it has been subordinated to the earthy practicalities of partisan politics.

This is not to say that the great majority of our judges are not qualified, conscientious, and independent. The question is whether elections and appointments controlled by factionalism result in the *most* qualified, *most* conscientious, and *most* independent judges.

Few lawyers in New York would answer that question with an unqualified yes. As for myself, I believe the answer is no. I have proposed, consequently, that this year's State Constitutional Convention expel the entrapments of politics from the judicial process by adopting a solely appointive system for selecting judges. The history of the judicial structure in New York State provides solid precedent for reform.

When New York State was a colony, the Governor appointed all judges.

The Constitutional Convention of 1777 modified the Governor's authority by creating a Council of Appointment to pass on his nominees. The Council gradually turned its power of ratification into a vehicle for awarding party patronage, and in reaction the Convention of 1821 re-invested judicial appointment in the Governor. The appointive process finally fell during the ascendancy of Jacksonian democracy in New York State when, in 1847, a Constitutional Amendment mandating direct election of all judges was approved by the voters.

The deficiencies of the elective system were made manifest later in the century, particularly in New York City, where the corruption of the Tweed regime tainted almost every office holder. In response, the Constitutional Convention of 1894 framed two exceptions to the direct election rule:

It empowered the governor to appoint justices of the newly created Appellate Division of the Supreme Court. Secondly, it authorized the appointment of local court judges, an authorization under which the mayor of New York City was given the right to appoint criminal and, later, family court judges.

The Constitutional Conventions of 1915 and 1921 were asked by various legal and civic organizations to revise the elective system but did not act. The debate over the process continued, however, and in 1932 the Association of the Bar of New York City recommended

Excerpts from 50 Judicature 223 (March, 1967)

that judges of the Court of Appeals and the Supreme Court be appointed, saying:

The elective system . . . has merely permitted the electorate to vote for candidates selected by leaders or bosses of the various political parties, with no control by the electorate over the choice of candidates so selected, with the result that the elective system usually has resulted in the dominant party in every locality merely ratifying by election the candidate of such party so selected.

These words state the issue succinctly and perceptively; what is wrong with the elected judiciary in this city is not the fault of the voters. It is the fault of the partisan machinery by which candidates for judgeships are presented to the voters.

The advantages of judicial appointment have been contrasted by a committee of the State Bar Association:

It cannot be denied that the appointive system offers a superior opportunity for ascertaining the merits of a candidate and deliberation upon his qualifications. The appointment can be considered apart from the excitement and bias of a campaign. . . . Candidates are relieved of the expense of conventions and elections. The legitimate expense of a candidacy under the elective method is very considerable and this expense presents an opportunity for political leaders to impose high assessments upon candidates for judicial office . . . men will accept appointment who would not go through the political servitude now necessary.

As lawyers, I think all of us, have experienced pronounced discomfort when we have observed the comportment of a judge or candidate for judge who is obliged to act out the rituals of an election campaign. The candidate must acquire a campaign manager, print up self-serving poster and pamphlets, and send sound trucks roaming the streets to blare his virtues into the households. He must shake the hands of uninterested strangers, most of whom will not remember his name either before or after they cast their ballots. And he must give upright but usually shopworn speeches describing his qualifications or his record, the likely theme being his integrity and impartiality.

Yet all this is done under the auspices of a stridently partial political organization which assigns him a place on the ticket, may direct his activities throughout the campaign, and may finance his electioneering.

The exercise demeans both the man and the court of justice he serves. The spectacle might be defensible if it contributed to the democratic process; if it resulted in the selection by the people of the persons best qualified to dispense justice.

But it does not. For the voters do not select their judges, except in the most restrictive sense; in New York and many large cities their choice is restricted to the candidates agreed upon in the backrooms and in the clubhouses, where politicians preside over the competition.

Trading and dealing by party leaders not only vitiates the basis for direct election of judges but virtually ensures that any outstanding judges who appear on the bench will be survivors, not products, of the elective system.

Perhaps the most deplorable consequence of the process I have described is its irresponsibility. If it produces judges who are incompetent, no one man or identifiable group of men can be held responsible.

If the governor or a mayor makes a disastrous appointment to a court, he presently can be held accountable. But under the elective system, the blame can be assessed only against such amorphous entities as the legislature, the party, or—the traditional scapegoat—the voters.

This is not as it should be. The quality of our judiciary is far too important to be dependent on the faceless designators in party organizations.

The democratic process is further subverted when new judgeships are subject to similar political maneuverings. Only last year, on omnibus judgeship bill before the New York Legislature was caught up in fierce haggling about the apportionment of new judgeships. Apparently they were never divided amicably, for the bill failed to come to a vote.

For all these reasons, I intend to urge the Constitutional Convention to allow New York City to break the pattern of judicial politics by adopting a merit selection system under which all our judges will be appointed. The appointments should be limited to the recommendations of a non-partisan judicial selection commission.

The system I envision would be similar to the procedure I established earlier this year to

govern my appointments of judges in New York City. The keystone of the procedure is the Mayor's Committee on the Judiciary, most of the members of which were selected by presiding Justices of the Supreme Court's Appellate Division in New York City. A former president of the Association of the Bar of the City of New York, Louis Loeb, serves as chairman. The 15-member committee screens all judicial candidates and none of my appointments has been made without the concurrence of the committee members.

The forthcoming Constitutional Convention, I hope, will grant this voluntary system what it lacks, which is legal status. Appointment from the recommendations of a permanent, constitutionally mandated selection committee is vital to the principle that a judge should be selected solely on merit.

Only when that principle is written into law will we be able to induce the most highly qualified lawyers to place their names before a selection panel. When aspirants for judgeships know that quality is the only test of their candidacy, we can begin to build a tradition of naming only the finest men as our judges—a tradition that has given the English courts world-wide esteem.

I should make it immediately clear that I support adoption of the merit system of appointment not only for the judges the mayor currently appoints to the criminal and family courts but for all the judges of all the courts in New York City—appointive or elective.

To effect that change, the state's constitution should be amended to create an independent judicial selection commission representing the courts, the bar, the public, and the appointing authority, which would be either the mayor or the governor. Appointments to all courts below the Appellate Division would be restricted by law to the names approved by the commission.

I base my belief in this selection system not only upon its theoretical value but upon more than a year of practical experience with the system on a voluntary basis in New York City —an innovation which will continue in effect until it receives statutory permanence.

OKLAHOMA POLL SHOWS COURT VOTERS IN THE DARK

Court reform in Oklahoma was a hot topic when Tulsa radio station KRMG sampled voters to see if they knew who was who in their judicial setup. Civic leaders, candidates, the man on the street, and the housewife were asked if they knew who was running for the four Oklahoma Supreme Court posts, three of which would be decided at the polls.

The initial results indicated that not only was the general public unaware of the Supreme Court race and its contestants, but the politically active Oklahomans and civic leaders were almost equally uninformed.

The poll, taken only thirty days prior to the November 8 general elections in co-operation with other state radio stations, was not a spur-of-the-moment thing. Editorials are a regular part of KRMG's programing, and many of them were exclusively concerned with judicial reform. Station manager Ken Greenwood prepared and reported 27 editorials dealing with court reform with two primary goals in mind. One was the hope of educating people to the need for a better court system. The second, equally important goal was the effort to show the evils of the past court system and future possibilities.

The editorials were supported by news stories containing interviews with political candidates and Bar Association leaders. One of these news stories drew statewide attention and was developed around a poll of 456 voters. Interviews were conducted in political headquarters, over the telephone, in personal meetings, and by co-operating stations in Bartlesville, Claremore, Muskogee, and Durant. Voters were asked the same question: "Can you give us the name of the men running for Supreme Court Judge in the upcoming election?" Results were tabulated and were broadcast in special reports beginning October 10, 1966.

A total of 456 people were contacted. Of these, 338, or 74 per cent, could not name a single candidate. Fifty-two persons could name one, and 37 were able to name three of the candidates. Out of the 456 interviews, only one person could name all seven candidates.

These were not "busy" people who "hadn't got around to it yet." In interviews with Tulsans prominent in civic, legal, and political fields, the same question was asked. Of twenty men questioned, only one knew six candidates. These leaders averaged two out of six.

Results of polls taken in other communities and with candidates for office were equally disappointing. The reporter who popped the question on gubernatorial candidate Preston Moore in his headquarters was not very popular when Moore, himself an attorney, could not name all six men.

The revelation of the results of the poll met with shocked reaction from state and county officials. The president of the Oklahoma Bar Association, Leroy Blackstock, said the lack of knowledge pointed to the importance of a needed change in the judicial election system.

The Republican candidate for Oklahoma governor, Dewey Bartlett, said, after looking at the poll: "Selecting judges blindly for our high courts is ridiculous, and in our recent Supreme Court scandals we have seen what can result from this type of election."

The station management felt that the poll promoted public awareness, sparked news media interest, and possibly contributed to the popularity of the judicial reform proposal.

Commenting on the results of the station effort, manager Ken Greenwood said: "If KRMG Radio has contributed in some small way to these changes in the wind, then the words we put out into the air have been worth the time and effort involved."

Ed Brocksmith
Radio Station KRMG—Tulsa, Oklahoma

Reprinted from 50 Judicature 134 (December, 1966)

SELECTION OF JUDGES -- THE FICTION OF MAJORITY ELECTION*

by

George E. Brand**

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

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

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

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

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

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

CONVENTION METHOD OF NOMINATION

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

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

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

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

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* Excerpts from a speech before the Nebraska State Bar Association as published in 34 Journal of the American Judicature Society 136 (February, 1951)

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

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

DIRECT PRIMARIES

Next, as to direct primaries:

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

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

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

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

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

at both primary and general elections as to county judges.

THE NON-PARTISAN BALLOT

Next, as to nonpartisan elections:

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

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

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

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

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

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

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

rumbled a veiled request or an unspoken order."

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

WHY VOTERS SHOULD GIVE IT UP

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

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

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

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

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

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

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

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

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

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

EXCERPTS FROM

A BETTER WAY TO SELECT JUDGES

By SAMUEL I. ROSENMAN

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

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

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

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

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

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

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

Reprinted from 48 Journal of the American Judicature Society 86 (October, 1964)

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

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

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

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

The Plan Has Worked Well

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

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

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

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

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

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

One-Man Judicial Selection

by Glenn R. Winters

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

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

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

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

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

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

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

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

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

Reprinted from 45 Journal of the American Judicature Society 198 (February, 1962)

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

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

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

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

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

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

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

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

Judicial Recruitment: What Ought to Be and What Is

*Charles H. Sheldon**

Perhaps one of the most crucial problems facing judicial systems today is the recruitment of highly qualified personnel to the bench. The problem presents a serious challenge to legal scholars and social scientists. Students of the judicial process must empirically determine which of the various selection schemes used in the states are most likely to lead to better judges in those states. The level of competency of those who sit on the bench is generally known. The nature of the legal profession from which these judges come can be described. But little is known about the process which selects the latter from the former. For example, it cannot be predicted with any reliability that non-partisan elections will result in better judges than a system involving gubernatorial appointment.

The Merit Plan seems to combine the virtues, if not the drawbacks, of all the major selection schemes. One might observe that perhaps the greatest value of the merit system is that it is most difficult to criticize. This invulnerability results from the system's representing a synthesis of appointment, election and nomination by experts, politicians and laymen. However, there is no doubt as to the Merit Plan's virtue of removing the onus of political campaigning from the shoulders of judicial candidates and eliminating the dubious political reward process many times utilized in appointments.

The states of Utah and Nevada employ non-partisan election systems to select trial and appellate judges. Both lawyers and judges in the two states condemn the non-partisan election system when compared with the Merit Plan. In a recent survey,[1] the lawyers and judges were asked to rate selection systems on a scale of "excellent," "good," "fair" or "poor." The following figures indicate the percentage of respondents from both states who felt that the various selection systems were "excellent."

TABLE I

	Lawyers ($n = 875$)	*Judges* ($n = 33$)
Merit Plan (Missouri Plan or modifications)	35.5%	69.6%
Non-partisan election	12.2	18.1
Partisan election	2.8	0.0
Gubernatorial appointment (with legislative approval)	2.6	0.0
Legislative appointment (with gubernatorial approval)	.5	0.0
Any process in which the bar nominates	20.1	9.0

However, the important questions to be asked if one is attempting to determine the impact of various means of selection upon the level of individuals filling judicial positions are: (1) what characteristics ought the "good" judge to possess; (2) what characteristics do they actually possess; (3) what is the nature of the legal profession from which judges are recruited; and (4) how are the judges selected?

What sorts of prerequisites must judges have in order to serve the Utah and Nevada system more than adequately? In the parlance of political science, what is the "role potential" in these two states?[2] All the judges and lawyers in Utah and Nevada were asked to rate a series of prerequisites on an "absolutely necessary," "necessary," "hardly necessary" and "not necessary" scale. Those who thought that the

* I am indebted to the Desert Research Institute of the University of Nevada for two grants supporting the research on Nevada and Utah legal systems. Most of the research was conducted at Nevada Southern University with able assistance from Mr. Fred Williams and Miss Tracey Goetel, who acted as my student assistants.

1. Of the 824 advocates in Utah 543 returned questionnaires. Three hundred and forty-one of the 518 Nevada lawyers responded. Thus, the data are based upon 65.8 per cent of the legal profession in the two states. Thirty-four of the 48 district and supreme court judges returned surveys constituting 70.8 per cent of the judiciary in Nevada and Utah.

2. For a detailed explanation of "role potential" see Wahlke, Eulau, Ferguson, and Buchanan, *The Legislative System* (1962).

Reprinted from 51 Judicature 386 (May, 1968)

various categories were "absolutely necessary" constituted the following percentages:

TABLE II

	Lawyers ($n = 875$)	*Judges* ($n = 33$)
Some experience in partisan politics (party leadership, public office)	1.0%	0.0%
Extensive law practice (at least ten years prior to selection to bench)	56.1	54.5
Prior judicial experience (Justice Court, Municipal Court or District Court)	11.5	21.2
Legal training at major law school	48.5	56.0
Prosecuting experience (city or district attorney's office)	1.6	3.0
Extensive and varied community service (church, fraternal, etc.)	3.4	0.0
Extensive trial experience as a lawyer (10 years at least)	34.9	39.3

The data indicate that both judges and lawyers expect their judicial candidates to be trained at major law schools, have a long legal experience and be practiced in the trial situation. Prior judicial experience, partisan political activity, prosecuting experience, and extensive and varied community service seem relatively unimportant prerequisites for the bench.

A compilation of socio-economic and political data about judges will indicate the actual nature of the judiciary in Nevada and Utah. It is necessary to view such background information from two directions. First, a comparison of the prerequisites (Table II) with the judges' actual qualities will assist in defining more sharply the problem of judicial recruitment. This is especially the case if great discrepancies exist between what is and what ought to be. Second, a collation of characteristics of the judges with the legal profession from which they are drawn should result in some understanding about which lawyers actually have a higher role potential.

TABLE III

SOCIO-ECONOMIC AND POLITICAL BACKGROUNDS OF JUDGES AND LAWYERS IN NEVADA AND UTAH

	Judges ($n = 33$)	*Lawyers* ($n = 875$)
Major law school training	27.2%	18.6%
Full-time law school attendance	81.8	85.9
Active in politics (before selection to the bench for judges)	51.5	66.2*
11 or more years of direct courtroom experience	81.8	38.0
Family active in politics	42.4	28.4
Legal experience primarily as:		
Defense attorney	15.1	14.9
Prosecuting attorney	27.2	10.7
Both defense and prosecuting	36.3	29.7
Political affiliation (voting registration):		
Democrat	54.5	41.8
Republican	36.3	50.8
Independent or other	6.0	6.0
Father's occupation:		
High status	21.2	26.2
Medium status	54.5	45.3
Low status	9.0	20.1
Political attitudes†		
Liberal	18.1	13.1
Conservative	3.0	8.0
Moderate	69.6	70.6
Religious affiliation:		
Catholic	3.0	9.6
Jewish	3.0	3.3
Mormon	42.4	50.5
Protestant	30.3	22.1
Other or none	18.1	12.6

* Utah only.

† For an explanation of the Conservative-Liberal scale see Wahlke *et al.*, *The Legislative System* (1962) and Eulau and Sprague, *Lawyers in Politics* (1964).

Both lawyers and judges dismiss political activity as a prerequisite for the bench. Nonetheless, judges admit that they were active in politics before they donned their judicial robes. Even though judges appear to have been less political than their lawyer colleagues, the judiciary is drawn from families which were much more active in politics than the families of the

legal profession at large. There seems to be little doubt that political activity is important to role potential even though lawyers and judges apparently hope it would be disregarded as a factor. If extensive and varied community service can be directly related to participation in politics and politically active family backgrounds, a further discrepancy appears between what ought to be and what is. Such community service should not be necessary but, in fact, may be an important aspect of role potential. Although prosecuting experience seems not to be desirable, more judges than lawyers have had either prosecuting or both prosecuting and defending experiences. It should be noted that prosecutors are political figures owing their position to election after sometimes vigorous campaigning.

The remaining contrasts between the judges and the lawyers seem not to be striking. Questions might be generated by the slight variance between a greater percentage of Democrats on the bench than in the profession itself and the greater percentage of liberal judges as opposed to lawyers. However, one would be hard pressed to hypothesize on the basis of the data now available.

Full-time legal training at a major law school, identified as a desirable prerequisite for the bench, is a background characteristic that judges in Nevada and Utah possess to a more significant degree than the total legal profession. And the judges have had many more years of direct courtroom experience than the profession. Now, within the limits of the data available, the question becomes: what is the relationship between the selection process and the desired or actual characteristics of the judges?

The vast majority of the judges in Nevada and Utah were initially appointed to the bench by the governor even though in subsequent terms they were elected by the people.

Initially appointed to the bench	72.7%
Initially elected to the bench	27.2

The political vs. non-political contrast between what is and what ought to be, noted above, might be related to the fact that most of the judges were appointed to their initial term on the bench. Significant clues may manifest themselves by contrasting the attitudes and experiences of those judges who were appointed with those who were elected. Thus, the hypothesis is that appointed judges are more political than their elected colleagues. If so, the difference between what is and what ought to be can be partially explained. Politics and appointment should thus be closely related.

TABLE IV

	Elected ($n = 9$)	*Appointed* ($n = 24$)
Political experience:		
Family active in politics	55.5%	45.8%
Active in politics before selection to bench	88.8	75.0
Attitude toward selection systems:		
Merit Plan (excellent systems)	77.7	62.5
Non-partisan (excellent system)	0.0	25.0

How does one explain this surprising combination of percentages? Contrary to what was expected, those judges who were initially elected to their judicial post were from families who were more active than judges who were appointed. Also, the elected judges were substantially more active themselves in politics. Equally as surprising; the elected judges feel the Merit Plan of selecting judges is by far the best system and the non-partisan election (the means by which they had initially achieved their judgeship) was not regarded as "excellent" by any of these jurists. In contrast, the appointed judges rate the Merit Plan lower and give some value to the non-partisan election.

At best several untested hypotheses could be posited. First, because of the ease of being reelected as the incumbent after an initial appointment, these appointed judges might give greater weight to non-partisan elections. Their colleagues, having experienced a campaign where they more than likely had to struggle against an incumbent, wish not to have others go through the expense, efforts, and somewhat dubious campaigning without issues for a judicial post. The Merit Plan provides the solution for them.

Looking at the figures from another direction, apparently appointment is not the political reward that is often assumed. Although active in politics the appointed judge is substantially less active and his family was less active than the jurist elected to the bench. One must ask whether the political activity was at the state or local level and what kind of politics was involved. Local judges from locally active families who have participated in politics may stand a fine chance of being elected to a district or trial court bench. Their chances for gubernatorial appointment may be less. One must also not ignore the possibility that governors in Utah and Nevada have attempted to take judicial selection out of politics and to rely upon nominations from the bar and other knowledgeable people. Thus, a form of merit system may, in fact, be in practice.

More questions are asked than answered in this brief summary of data collected on the Nevada and Utah legal systems. However, this is the excitement of social research. Before answers can be provided the right questions must be asked. Certainly more empirical research must be done before solutions to the problem of judicial selection present themselves.

EXCERPTS FROM

Judicial Selection and Tenure --the Model Article Provisions

By W. ST. JOHN GARWOOD

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

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

My thesis is:

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

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

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

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

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

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

A Viewpoint Based on Experience

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

Reprinted from 47 Journal of the American Judicature Society 21 (June, 1963)

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

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

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

"Any Opponent Is a Dangerous Opponent"

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

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

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

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

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

Political and Economic Hazards

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

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

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

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

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

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

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

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

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

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

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

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

STRUCTURE AND FUNCTIONS OF JUDICIAL NOMINATING COMMISSIONS *

Statutes providing for the nomination of slates of judicial candidates by some form of nominating commission have been adopted in all but two of the 13 states using provisions of the merit plan.[1] The chart that follows summarizes the membership of the commissions, the methods of selecting commissioners, their term of office, qualifications and restrictions, and provisions for remuneration or reimbursement for expenses as provided. Measurement of the extent to which provisions outlined in the chart maximize the potential contribution judicial nominating commissions can make, may be aided by examining them in light of the criteria discussed in "The Judicial Nominating Commission," by Glenn R. Winters (Sui Juris, January, 1966) and in "The Changing Politics of Judicial Selection: A Merit Plan for New York," by Russell D. Niles, cited earlier, and reviewed here.

1. Non partisanship (Commission's avoid the tendency of governors to base their appointments on political considerations while the administration of justice should be non-political).

2. Utilization of the judgment of the legal profession in the selection process (only lawyers and judges are able to pass intelligently on how well a potential nominee would handle the technical aspects of judging).

3. Utilization of the layman's judgment in the selection process (lay members of a commission can make sure important non-legal qualifications are not neglected).

4. Active search for judicial talent (at best the confirmative system operates only negatively to reject the bad, in contrast to an affirmative opportunity of finding good judicial talent for appointments the nominating system provides).

5. Confidential deliberations (good lawyers would not consent to be considered if their rejection and the reason for it were publicized).

6. Obliging of the governor not to go outside of the panel of nominations in making appointments (with this restriction the governor still has a fair chance of placing the

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[1] In California although no nomination or appointment by the governor to trial or appellate court is effectuated unless confirmed by a majority of the 3-member Commission on Judicial Appointments, the commission (consisting of the chief justice of the Supreme Court, the presiding judge of the district court of appeals and the attorney general) has no power to nominate candidates. In Illinois, nomination is by party convention or primary.

* Excerpt from American Judicature Society Report #3 (Revised June, 1968)

man he really wants if he is qualified, and at the same time the perfect excuse to the importunate office seeker).

In the second article, nine criteria essential to an ideal selection process and fulfilled by a nominating commission are listed :

1. Know what abilities and qualities are essential to a good judge.

2. Have the means of finding the facts about candidates.

3. Exercise comparative judgment - not merely determine whether or not candidates meet an acceptable standard, but decide who among many acceptable candidates are the best qualified.

4. Have the ability and the opportunity to encourage the ablest lawyers to become candidates.

5. Be independent of the appointing authority.

6. Be free of the reward system of politics.

7. Be free of domination by the organized bar, but able to make the best use of the organized bar in the selection process.

8. Have no continuing relationship with a judge after he is on the bench.

9. Recognize the importance of having a judiciary that is representative of the various elements in the society that it serves.

STRUCTURE AND FUNCTIONS OF JUDICIAL NOMINATING COMMISSIONS

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications and Restrictions on Members	Function	Remuneration or Expense Allowance
ALABAMA Circuit Court of Birmingham Jefferson County Judicial Commission	5	1 Judge of the Birmingham Circuit Court 2 members of the Alabama state bar 2 persons not members of the Alabama state bar	Elected by judges of the circuit court Elected by members of the state bar who reside in the territorial jurisdiction of the court Elected by senator and representatives in Alabama legislature from Jefferson Co.	6 years may not succeed self	All commission members must reside in territorial jurisdiction of court. No commission member (other than the circuit court judge) shall be a public office holder nor be eligible for nomination to the governor for appointment as a circuit judge. No commissioner shall hold any official position in any political party.	Nominate 3 candidates for each judicial vacancy on the circuit court of Birmingham.	None
ALASKA Supreme and Superior Courts Judicial Council	7	Chief justice, chairman, ex officio member 3 lawyers 3 non-lawyers	By virtue of office Appointed by governing body of the organized bar Appointed by the governor; confirmed by the legislature in joint session	6 years	Appointments shall be made with due consideration to area representation and without regard to political affiliation. No member (except the chief justice) may hold any other office or position of profit under the United States or state government.	(1) Nominate 2 or more candidates for each judicial vacancy on the supreme and superior courts; (2) conduct studies to improve the administration of justice and make reports and recommendations to the supreme court and the legislature at least every two years; (3) other duties as assigned by law.	None

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications and Restrictions on Members	Function	Remuneration or Expense Allowance
COLORADO Supreme and any Intermediate Appellate Courts Supreme Court Nominating Commission	9	Chief justice, man, ex officio 1 lawyer from each congressional district 1 non-lawyer from each congressional district	By virtue of office Appointed by majority action of the governor, attorney general, and chief justice Appointed by governor.	6 years	Chief justice shall have no vote. Commissioners may not be appointed to appellate judicial posts during tenure or 3 years thereafter. No more than half of the commissioners plus one (exclusive of the chief justice) shall be a member of one political party and all must be citizens. They may not hold salaried or elective U. S. or state office or any elective political party office.	Submit list to the governor of 3 nominees for vacancies not more than 30 days after they occur; and in the case of more than one vacancy, a list containing at least 2 more nominees than there are vacancies	None
Other Courts of Record except the County Court of the City and County of Denver. Judicial District Nominating Commissions	8	1 Justice of the Supreme Court In districts where population is over 35,000: 3 lawyers 4 non-lawyers Where population is less than 35,00: 4 non-lawyers 3 lawyers or non-lawyers depending upon majority vote of governor, attorney general and chief justice.	Appointed by chief justice Appointed by majority action of the governor, attorney general, and chief justice Appointed by the governor Appointed by the governor Appointed by majority action of governor, attorney general, and chief justice	To serve at will of chief justice 6 years may not succeed self.	The justice will have no vote. Commissioners must be residents of the judicial district. No more than four commissioners shall be members of the same political party, and there must be at least one from each county in the distict. They may not hold salaried or elective U. S. or state offices or any elective office in a political party. Commissioners may not be appointed to judicial office in his district while commissioner for 1 year thereafter.	Submit list of 3 nominees as above for each vacany in courts in their respective districts, and in cases of more than 1 vacancy a list containing at least 2 more nominees than there are vacancies	None

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications and Restrictions on Members	Function	Remuneration or Expense Allowance
COLORADO (Continued) County Court of the City and County of Denver Denver County Court Judicial Commission	8	Presiding judge of the County Court, ex officio President of the Denver Bar Assoc. (and if he is not a qualified elector the first or second vice-president) 2 lawyers 4 non-lawyers	By virtue of office By virtue of office Appointed by the mayor Appointed by the mayor	1 year concurrent with his holding said bar association office 4 years 4 years	Presiding judge serves in a nonvoting advisory capacity. Qualified electors of the city and county of Denver who are not members of the same political party Electors of city and county of Denver of high civic esteem and repute, no more than two of whom are from the same political party.	(1) Submit to the mayor a list of 3 or more nominees for each judicial vacancy. whose selection shall be based solely on merit, legal experience, ability and integrity. (2) Make recommendations to the mayor for suspension and removal from office of any judge of the court for reasons deemed in the interest of the administration of justice.	None
FLORIDA Metropolitan Court of Dade County Metropolitan Court Nominating Commission	9	Presiding judge of the 11th Judicial Circuit (or another judge of the 11th circuit if he cannot serve), chairman 3 lawyers 3 non-lawyers	By virtue of office Elected by active members of the Florida Bar under procedures established by the County Board. Appointed by the Board of County Commissioners.	 6 years	 Active members of the Florida Bar in good standing who reside in Dade County and No commissioner may hold any other public office or office in a political party and shall not be eligible for appointment to the court while a commissioner or for 5 years thereafter Resident of Dade County	(1) Within 60 days after vacancy occurs, submit list of 3 nominees for vacancy on Metropolitan Court to Board of County Commissioners. (2) In the event Board fails to act within 60 days, chairman of the commission makes judicial appointment from the same list. (3) Initiate removal proceed-	Reimbursement for necessary expenses incurred in official duties.

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications and Restrictions on Members	Function	Remuneration or Expense Allowance
FLORIDA (Continued)						ings against court judge for nonfeasance, malfeasance of misfeasance in office. (4) Conduct studies for the improvement of the administration of justice and make recommendations to the Board of County Commissioners at least every two years. (5) Such other duties as may be assigned by law.	
IDAHO Supreme Court District Court Judicial Council	7	Chief Justice 3 attorney members, one of whom is to be a district judge 3 non-attorney members	by virtue of office. Appointed by the Board of Commissioners of the Idaho State Bar with the consent of the Senate Appointed by the governor with consent of Senate	6 years First appointments to be staggered in terms of 2, 4 and 6 years with all appointments thereafter 6 year terms	Not more than 3 appointed members are to be of the same political party. No members, except judges or justices, can hold any other office or position of profit under the United States or state	To conduct studies for improving the administration of justice To submit to the governor names of not less than two (2) or more than four (4) qualified people for each vacancy. To recommend the discipline and retirement of judges	Honorarium of $25 a day, except for judges and justices, for each day spent in judicial council meetings. re-imbursement for expenses incurred

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications and Restrictions on Members	Function	Remuneration or Expense Allowance
IOWA	7 to 17 (const. prov.) 15 (enab. leg.) (7) (7)	Supreme Court justice who is senior in length of service (but not the chief justice), chairman From 3 to 8 members From 3 to 8 members	By virtue of office Appointed by governor, confirmed by senate Elected by resident members of the bar	6 years; may not serve 2nd term on the same commission	Commissioners may not hold any office of profit of the United States or state; are to be chosen without reference to political affiliation, and with due consideration to area representation, and shall have other qualifications prescribed by law; Gubernatorial appointees must be electors of the district	Submit 3 nominees for each supreme court vacancy within 60 days after receiving notice of vacancy	
District Courts District Judicial Nominating Commission (In each judicial district - Presently there are 21 judicial districts.)	7 to 13 (const. prov.) 11 (enab. leg.) (5) (5)	District court judge senior in length of service, chairman From 3 to 6 members From 3 to 6 members	By virtue of office Appointed by the governor Elected by resident members of the bar of the district			Submit 2 nominees for each district court vacancy within 60 days after receiving notice of vacancy	
KANSAS Supreme Court Supreme Court Nominating Commission	11 (1)	Member of the bar, chairman	Elected by bar from nominees named by bar, except in case vacancy occurs chief justice appoints chairman to serve until 1st of July after he serves 4 months.	Except in cases where vacancies are filled, terms are number of years equal to number of congressional districts	No commission member shall hold any other public office by appointment or any official position in a political party or for 6 months after his term ends be eligible for nomination as a justice of the supreme court. Gubernatorial appointments are to be made without re-	Submit names of 3 nominees to the governor for each supreme court vacancy, acting only in concurrence of a majority of its members	The clerk of the supreme court is paid $500 in addition to his regular compensations and authorized to procure such supplies and equipment

State Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications and Restrictions on Members	Function	Remuneration or Expense Allowance
	(5)	1 member of the bar from each congressional district	Elected by resident members of the bar in the district		gard to political affiliation		and to employ clerical and other assistance as may be necessary to carry out the act
	(5)	1 non-lawyer from each congressional district	Appointed by the governor from residents of the district				
MISSOURI Supreme Court and Courts of Appeals The Appellate Judicial Commission	7	Chief justice, chairman 3 members of the bar	By virtue of office 1 elected by members of the bar in each court of appeals district	Fixed by Supreme court	Commissioners may not hold public office or any official position in a political party	Nominate and submit names of 3 candidates for each vacancy	Reimbursement for travel and other expenses incurred while engaged in discharging duties
		3 non-lawyer citizens	1 appointed by governor from each court of appeals district				
Circuit and Probate Courts within City of St. Louis and Jackson County, and the St. Louis Court of Criminal Correction Circuit Judicial Commission (one in each circuit)	5	Presiding judge of Court of Appeals in which circuit is situated 2 members of bar of the circuit	By virtue of office Elected by members of the bar residing in the judicial circuit	Fixed by Supreme court	Commissioners may not hold public office or an official position in a political party and must be residents of the circuit of the judicial commission	Nominate and submit to the governor the names of 3 candidates for each judicial vacancy in the courts of the circuit they serve	Reimbursement for travel and other expenses incurred while discharging duties
		2 non-lawyer residents of the circuit	Appointed by the governor				
Kansas City Municipal Court Municipal Judicial Nominating Commission	5	Presiding judge of Circuit Court of Jackson County, Missouri, chairman	By virtue of office			(1) Submit list of names (which may be changed until the council takes	

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications & Restrictions on Members	Function	Remuneration or Expense Allowance
MISSOURI (Continued)		2 non-lawyers 2 lawyers	Appointed by the mayor Elected by members of the Missouri bar who reside within city limits	4 years	Commissioners must be residents of the city and no more than one lawyer shall belong to the same political party	action) of 3 nominees to city council for vacancies on the court. (2) Commission may publicize the names of those under consideration for nomination as it sees fit except they may not be described as applicants	
NEBRASKA Supreme and District Courts (1) Judicial Nominating Commission for Chief Justice for the Supreme Court (2) Judicial Nominating Commission for each judicial district of the Supreme Court and of the District Court (3) A Judicial Nominating Commission for each area of district served by any other court which may be made subject to this law (4) A Judicial Nominating Commission for the Workmen's Compensation Court (5) A Judicial Nominating Commission for municipal courts of all cities of metropolitan size	7 in each	Each commission shall consist of: judge of the Supreme Court, chairman, 3 members of state bar residing in area from which nominees are to be selected, 3 non-lawyer residents of area from which nominees are selected	Appointed by the Governor Elected by bar members in area from at least 2 nominees named by bar members or in the event of their inaction by the judicial council Appointed by the Governor Appointed by the Governor	6 year term with maximum of 12 consecutive years	Judge member may not be the chief justice when commission nominates chief justice. Commissioner is ineligible for reappointment if he has served more than 6 years. Except for judge members, commissioners must be residents of area from which nominees are chosen. Commissioners are not eligible for nomination for judicial vacancies while in office or for 2 years thereafter and except for judge members they may not serve on more than one commission. Communications among commis-	Submit names to governor of 2 nominees for each judicial vacancy following at least one public hearing and other meetings, and make independent inquiries as necessary to determine qualifications of candidates	None

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications & Restrictions on Members	Function	Remuneration or Expense Allowance
NEBRASKA (Continued) (6) A Judicial Nominating Commission for juvenile courts of cities of 50,000 or more					sioners or between judicial candidates and commissioners are to be kept confidential		
OKLAHOMA Supreme Court and Court of Criminal Appeals Judicial Nominating Commission	13	6 non-lawyer, 1 from each congressional district 6 lawyers, 1 from each congressional district 1 non-lawyer, member at large	Appointed by the Governor Elected by bar association Selected by 8 other members of commission; if no agreement, appointed by the governor	6 year term except member at large who has 2 year term. No member permitted to succeed himself	Of 6 members named by governor not more than 3 shall belong to any one political party. Commissioner shall, while a member hold no political office or official position in a political party. Commissioners not eligible for nomination for judicial vacancies while in office or for five years thereafter	Submit names to governor and chief justice of 3 nominees for each judicial vacancy. The commission determines existence of nominees	Travel and lodging expenses while performing duties as commissioner
UTAH Supreme and District Courts (1) Supreme Court Nominating Commission (2) District Court Nominating Commission for each judicial district	7 in each	Chief Justice 1 commissioner 1 commissioner 2 commissioners 2 commissioners	By virtue of office Chosen by the Senate Chosen by the House of Representatives Chosen by the Governor Chosen by the Utah Bar Association	4 year term, member cannot succeed himself	The member selected by the House must be a different political party than one chosen by Senate. Two members appointed by governor must be of different political parties. Members appointed to district court nominating commission must be residents of judicial district to be served by	Within 45 days of being notified of a judicial vacancy commission must certify to the Governor the names of 3 persons who have the legal qualifications, who are willing to serve and who possess ability, temper-	

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications and Restrictions on Members	Function	Remuneration or Expense Allowance
UTAH (Continued)					commission. Commissioners are not eligible for nomination for judicial vacancies while serving or six months thereafter. Commissioners to be U.S. citizens and residents of state	ament, training and experience to fill the vacancy.	
Juvenile Court Juvenile Court Commission	5	Chief Justice, chairman	By virtue of office		None	(1) Submit to governor names of 2 candidates for juvenile court vacancies or upon expiration of term of any judge.	Actual and necessary expenses
		Chairman of Public Welfare Commission (or another member of the commission)	By virtue of office (or by appointment of commission chairman				
		President of the Utah State Bar (or a member of state bar commission)	By virtue of office (or by appointment in designee of the president			(2) Submit to governor names of 2 candidates for appointment on temporary basis when a judge is disabled or otherwise incapacitated, or emergency basis when an increased caseload required additional judge	
		State Superintendent of Public Instruction	By virtue of office				
		State Director of Public Health	By virtue of office				

State, Court Commission Serves, Name of Commission	No. of Members	Membership	Selection of Commission Members	Term of Comm. Service	Qualifications & Restrictions on Members	Function	Remuneration or Expense Allowance
VERMONT **Supreme, Superior and District Courts** **Judicial Selection Board**	11	2 non-lawyers 3 senators 3 members of House 3 lawyers	Appointed by the governor Elected by Senate Elected by House Elected by lawyers admitted to practice before supreme court	2 years	At least one senator must be member of minority party, and only one may be an attorney One House member must be of the minority party, no more than one can be a lawyer Resident and admitted to practice before supreme court The names of candidates disapproved by the Supreme Court are to be kept confidential	Submit at least 3 names to governor or general assembly of nominees for judicial vacancies from among those approved by the supreme court	All expenses of board paid by finance director upon receipt of voucher approved by supreme court

COMPARATIVE CHART -- NUMBER AND TENURE
OF MAJOR TRIAL AND APPELLATE JUDGES[1]

State	State Population	Number[a] of Lawyers	Number of Judges			Judicial Tenure[b]		
			Highest Court	Intermediate Appellate Court	Major* Trial Court	Highest Court	Intermediate Appellate Court	Major* Trial Court
Alabama	3,517,000	3,041	7	3	76	6	6	6
Alaska	272,000	308	3		11	10		6
Arizona	1,618,000	2,233	5	6	41	6	6	4
Arkansas	1,955,000	1,927	7		43	8		4
California	18,918,000	28,414	7	39	368	12	12	6
Colorado	1,977,000	4,002	7		69	10		6
Connecticut	2,875,000	4,828	6		35	8		8
Delaware	512,000	621	3		10	12		12
District of Columbia	808,000	14,455	9		15	Good Behavior		
Florida	5,941,000	9,549	7	20	123	6	6	6
Georgia	4,459,000	5,464	7	9	52	6	6	4-8
Hawaii	718,000	663	5		17	7		6
Idaho	694,000	769	5		24	6		4
Illinois	10,722,000	20,310	7	24	560[c]	10	10	6
Indiana	4,918,000	5,206	5	8	135	6	4	4-6
Iowa	2,747,000	3,810	9		76	8		6
Kansas	2,250,000	3,114	7		60	6		4
Kentucky	3,183,000	3,555	7		68	8		6
Louisiana	3,603,000	4,825	7	22	81	14	12	6-12
Maine	983,000	1,020	6		10	7		7
Maryland	3,613,000	6,464	7	5	70	15	15	15
Massachusetts	5,383,000	11,354	7		46	Good Behavior		
Michigan	8,374,000	10,221	8	9	123	8	6	6

[a] Figures for the number of lawyers were taken from forthcoming compilations by the American Bar Foundation and reflect the total lawyers accounted for in each jurisdiction.

[b] Figures for judicial tenure were taken from the Council of State Government's forthcoming 1968-69 Book of the States.

[c] Including approximately 200 magistrates.

*Signifies trial courts of general jurisdiction only.

1. American Judicature Society Report No. 9 (May, 1968)

State	State Population	Number[a] of Lawyers	Number of Judges			Judicial Tenure		
			Highest Court	Intermediate Appellate Court	Major* Trial Court	Highest Court	Intermediate Appellate Court	Major* Trial Court
Minnesota	3,576,000	5,188	7		70	6		6
Mississippi	2,327,000	2,505	9		42	8		4
Missouri	4,508,000	7,692	7	9	95	12	12	6
Montana	702,000	970	5		28	6		4
Nebraska	1,456,000	2,525	7		36	6		6
Nevada	454,000	608	5		18	6		4
New Hampshire	681,000	700	5		8	All to Age 70		
New Jersey	6,898,000	10,498	7	12	151	7 years. Then Life		
New Mexico	1,002,000	1,152	5	4	21	8	8	6
New York	18,258,000	52,195	7	26	173	14	5	14
North Carolina	5,000,000	4,279	7	9	48	8	8	8
North Dakota	650,000	745	5		19	10		6
Ohio	10,305,000	15,705	7	34	185	6	6	6
Oklahoma	2,458,000	4,855	12		128	6		4
Oregon	1,955,000	2,845	7		55	6		6
Pennsylvania	11,582,000	12,914	7	7	164	21	10	10
Rhode Island	898,000	1,211	5		11	Good Behavior		
South Carolina	2,586,000	2,094	5		16	10		4
South Dakota	682,000	794	5		21	6		4
Tennessee	3,883,000	4,771	5	12	89	8	8	8
Texas	10,752,000	16,333	14	42	173	6	6	4
Utah	1,008,000	1,261	5		19	10		6
Vermont	405,000	513	5		6	2		6
Virginia	4,507,000	5,799	7		87	12		8
Washington	2,980,000	4,084	9		80	6		4
West Virginia	1,794,000	1,766	5		32	12		8
Wisconsin	4,161,000	6,237	7		165	10		6
Wyoming	329,000	462	4		11	8		6
Puerto Rico	2,668,000	2,245	9		55	To Age 70		12
United States	195,857,000	316,856	9	88	336	Good Behavior		
Totals:			351	388	5,138			

§5. SELECTION OF JUSTICES, JUDGES AND MAGISTRATES

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

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

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

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

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

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

§6. TENURE OF JUSTICES AND JUDGES.

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

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

§8. THE CHIEF JUSTICE.

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

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

§10. JUDICIAL NOMINATING COMMISSIONS.

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

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

Chapter II

JUDICIAL COMPENSATION, RETIREMENT, DISCIPLINE AND REMOVAL

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

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

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

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

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

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

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

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

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SELECTED READINGS ON
THE ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT

* Excerpt

A Topical Outline for Guided Reading and Discussion

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5. Who should make the investigation?
   a. Supreme Court b. Bar Association c. Special Commission

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

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

EDITORIAL

Judicial Compensation—Keeping in Step

In 1952, eleven of the states were paying the justices of their highest appellate courts less than $10,000 a year. In 1968, only nine states are paying less than $20,000. National averages have nearly doubled in the past 15 years from $13,545 to $24,615 for courts of last resort and from $11,200 to $20,620 for general trial courts. Two years ago there were thirteen states that failed to pay all of their general trial court judges at least $16,500 (the minimum standard then urged by the American Judicature Society) and nine others in which some of the judges were paid less than the minimum. Today only eight states fail to meet that standard for all and six more for some.

These statistics are drawn from the tabulations and summaries contained in the American Judicature Society's 1968 biennial judicial salary and retirement compensation survey. They clearly depict progress, but just how much actual progress is dependent upon fluctuations in the value of the dollar itself.

According to the U.S. Bureau of Labor Statistics, the purchasing power of the dollar declined from 1.06 in 1952 to .85 in 1967 on a scale on which 1957–59 is 100. This means that the Christmas shopper in 1967 needed $125 to purchase gifts that would have cost him only $116 in 1959 and only $100 in 1952.

In 1961 the American Judicature Society launched a campaign to bring judicial salaries up to minimum levels deemed necessary to procure adequate legal talent for judicial posts. At that time this minimum, on a nationwide basis, for judges of trial courts of general jurisdiction was determined to be $15,000 (much more, of course, in many areas). By 1966 rising price levels prompted a boost to $16,500. Today, with a consumer price index of 117.5 on the 1959 scale, a 1961 salary of $15,000 comes out to be worth exactly $17,000—the new suggested minimum.

Lewis Carroll's delightful fantasy, from *Alice in Wonderland*, of having to run as fast as you can just to stay where you are, portrays all too vividly the problem of keeping wages in step with rising prices. Thanks, however, to a growing realization on the part of lawyers, civic leaders and legislators that adequate judicial salaries are not just a favor to judges but a necessary investment for quality judicial service, judicial compensation has not only held its own against inflationary pressures, but has gone on to make some headway toward the larger objective.

Innovations like the 1962 decision of the Court of Appeals of Kentucky to permit increases to keep pace with declining purchasing power (Matthews v. Allen, 360 S.W. 2d. 135) even under constitutional limitations, and California legislation (Cal. Ann. Gov. Code Sec. 68203) providing for automatic increases based on the per capita income of the state, have made an important contribution to progress in this area.

Excerpt from 51 Judicature 236 (February, 1968)

The foregoing emphasis on appellate and general trial court judges highlights the greatest current weakness in the judicial compensation picture—the deplorable neglect of the courts of limited and special jurisdiction. One judge in a letter to the Society recently complained that all attention and efforts of bar committees in his state are centered on the higher court judges, and county level courts are ignored as if they were not in fact a part of the judicial system.

This is the more regrettable because it coincides with a growing nationwide movement to do away with the evils and inequities of judicial compensation based on fees in individual cases and substitute adequate regular salaries in their place. Wherever this needed reform is accomplished, there arises a concomitant obligation to see to it that these salaries are maintained at proper levels—not fixed and forgotten.

Salaries are only one element of three that make up the total compensation picture. The other two are retirement compensation and that vague but increasingly important package which has come to be known as "fringe benefits." It is in recognition of this three-fold character of judicial compensation that the Society's survey has been expanded to include as much information as has been obtainable about all three.

A significant development with respect to federal judicial salaries recently occurred as a result of the enactment of the federal pay raise bill. It provides for a tripartite commission, with members designated by the President, the Chief Justice and Congress, to make recommendations to the President for adjustments in salaries in all three branches of government, legislative, executive and judicial, for the purpose of making sure that a high level of talent will continue to be attracted to government service.

This idea might well commend itself to the states, and one state has indeed done something of that character. Florida established in 1965 its judicial Administrative Commission as a central state agency for the administration of all fiscal affairs of the judicial system, including salaries, retirement benefits and travel and expense allowances. Its members are a justice of the state supreme court, a judge of the District Court of Appeals, a circuit judge, a state's attorney and a public defender. Centralized budget administration by this agency should provide Florida with an excellent opportunity for a coordinated program of total judicial compensation.

Judicial Salaries—
Summary Results of the Society's Biennial Survey

Rae N. Selig

APPELLATE JUDGES

In 1952 eleven states were paying justices of their highest appellate courts less than $10,000. In 1968 only 9 states are paying these justices less than $20,000. The national average has risen from approximately $13,600 to $24,640, an increase of 81 per cent. The lowest supreme court salary was $7,200 in 1952 and now it is $16,500. Raises adopted in every jurisdiction in the last 15 years have been as large as $17,500. Even in Oklahoma where the smallest gain of $4,000 brought supreme court salaries to $16,500, substantial improvement is anticipated this year with the implementation of the 1967 constitutional revision of that state's judicial system. In the last two years alone, changes in 27 states have raised the average salary by $2,000 or 8.8 per cent. The present maximums and minimums are as follows:

Highest Salaries	
New York	$39,500
Pennsylvania	37,500
Illinois	37,500
Lowest Salaries	
Wyoming, Utah, Oklahoma	$16,500
Montana	17,000
South Dakota	17,500

Salaries of supreme court justices also appear to be keeping pace with gubernatorial salaries, except with respect to other perquisites (expense allowances, housing and transportation). In 1962 the average salary for supreme court justices was $19,000 and the median was $18,000, while governors were paid an average of $20,000 and a median of $18,000. Today the average justice's salary is $24,615 and the median, $23,500. Governors receive an average of $22,900 and a median of $25,000.

At the intermediate appellate level, national averages have been increasing steadily too. In 1962 the average was $21,000; now it is $27,118. This is $3,033 above that in the last survey and represents a 12 per cent gain. The highest salary is paid to the judges of the Appellate division of the First and Second Departments in New York, who receive $40,000. The lowest salary at this level is $18,500, paid to judges of the Courts of Appeals in Arizona and New Mexico. Nine of the 16 states with courts at this level increased salaries since the 1966 survey; and Maryland, New Mexico and North Carolina have established new intermediate appellate courts with salaries of $27,500, $18,500 and $24,000 respectively.

TRIAL COURT JUDGES

The same positive trend toward increasing salaries prevails at the general trial court level. Since 1952 the average salary has increased approximately 82 per cent and every jurisdiction has enacted some raises. While some trial judges were paid less than $10,000 in 32 states, today none are paid less and 21 states pay more than $20,000 to all their trial judges. The average dollar increase has been $9,300, and the percentage increase has ranged from 29 to 128. The current average salary of $20,620 paid to the 4,059 judges of these courts represents a 7.4 per cent increase over the average salary reported in the Society's last biennial survey. Thirty states and Puerto Rico enacted raises for all their trial court judges and an additional four states increased the maximum or minimum salaries. The average salary for judges in courts in the nation's 40 largest cities is $24,912. The highest and lowest statewide salaries at the trial court levels are:

Highest Salaries	
New York	$31,500*
Pennsylvania	26,500*
Connecticut	27,500
New Jersey	27,000
Massachusetts	26,400
California	25,000

Reprinted from 51 Judicature 238 (February, 1968)

LOWEST SALARIES

Utah	$14,000
Kentucky	14,900
Wyoming, Oklahoma, Montana	15,000
South Dakota, Ohio, North Dakota, and Mississippi	16,000
Idaho	16,500

* Up to $37,000 in New York and $32,500 in Pennsylvania for some judges.

MINOR COURT JUDGES

The average maximum salary in the courts of limited jurisdiction in excess of $1,000 in 43 states and Puerto Rico is $17,036. Also indicative of the upper bound of salaries on courts at this level is the average salary paid to the judges in the 40 largest cities, $19,242, $3,584 less than the average paid to trial court judges. The highest and lowest maximum salaries in these courts are as follows:

HIGHEST SALARIES

New York	
Civil & Criminal Cts. of New York City	25,000
County Court	$25,000 to 30,000
Pennsylvania	
County Cts. of Phila. & Allegheny Counties	27,500
New Jersey	
County District Cts.	25,000
Michigan	
Common Pleas Court (Detroit)	25,000
California	
Municipal Courts	23,000
Connecticut	
Common Pleas Court	22,500

LOWEST SALARIES

Arkansas	
Common Pleas Courts	$3,100 to 5,900
Maryland	
Magistrates	300 to 6,500
New Mexico	
Small Claims Court	8,000
Kansas	
County Court	1,000 to 9,250
Mun. & Comm. Pleas	3,000 to 12,000
Alabama	
Inferior Courts	6,000 to 10,000
Rhode Island	
District Court	4,797 to 10,933
Tennessee	
General Sessions	1,800 to 11,800

In 1962 this group of courts included only three courts in which the maximum salary was more than $20,000, and in 30 of the states the maximum was less than $15,000. Now 11 of the 44 states pay at least $20,000, and the raises in the six highest courts listed above ranged from $4,100 to $7,000 since 1942. The courts with the highest salaries in this group tend to be the well organized metropolitan or statewide minor court systems. Their salaries generally are only $2,000 to $5,000 less than those of general trial courts in their jurisdiction.

At the low end of this category and among the courts with minimum jurisdiction are the courts of less well integrated and structured court systems. It is here that the gross inadequacies in judicial salaries occur. A Wall Street law firm recently announced it will pay newly graduated law students a starting salary of $15,000. There are more than 400 judges in fourteen courts of limited jurisdiction who are paid less than $15,000, and countless more who serve in courts with minimum jurisdiction receive nominal salaries. The Society's recommended minimum trial court salary of $17,000 is yet to be reached for all judges in 9 states at the general trial court level, but 37 of the 54 courts of limited jurisdiction did not meet this minimum for any of their judges. Constant surveillance and action to improve judicial salaries is important at all levels. If, however, judicial salaries are to make a contribution towards ending what the National Crime Commission has recently called the "inequity, indignity and ineffectiveness in lower courts around the nation," the need for progress in this area is the most urgent.

JUDICIAL SALARIES IN MAJOR TRIAL AND APPELLATE COURTS

General Note: This chart sets forth prevailing judicial salary rates for judges of supreme courts, intermediate appellate courts and trial courts of general jurisdiction in all 50 states, the federal judicial system and Puerto Rico, and the number of judges at each level. In utilization, the following should be noted: (i) Salaries are stated in annual amounts and do not reflect additional compensation frequently authorized for chief or presiding judges of particular courts nor payments for expenses or in lieu of expenses. Chief judge increments usually range from $500 to $2,500. (ii) In jurisdictions which have constitutional restrictions against increasing compensation during a judge's term of office all judges of a particular court may not as yet be entitled to the salary indicated, which is the current rate authorized for newly appointed or elected judges. (iii) Where a salary range rather than a single rate is shown on the chart, this reflects variations in compensation resulting from payment of local supplements or authorized variations based on population, property formulas or length of service. (iv) The number of judges in the general trial courts should be taken as approximations due to retirements, deaths and vacancies that are always occurring.

State	*Highest Court*	*Number of Judges*	*Intermediate Appellate Court*	*Number of Judges*	*General Trial Court*	*Number of Judges*
Alabama	$19,500	7	$19,000	3	$15,000 to $19,000	63
Alaska	26,000	3	none		23,000	11
Arizona	19,500	5	18,500	6	17,500	47
Arkansas	20,000	7	none		18,000	45
California	32,000(N)	7	30,000(N)	39	25,000(N)	368
Colorado	22,000	7	none		18,000	69
Connecticut	29,000	6	none		27,500	35
Delaware	24,500	3	none		23,500	12
Florida	34,000	7	28,000	20	24,000	120
Georgia	26,500	7	26,500	9	18,000 to 32,000	65
Hawaii	27,000	5	none		25,000	13
Idaho	20,000	5	none		16,500	24
Illinois	37,500	7	35,000	24	17,500 to 34,500	347
Indiana	22,500	5	22,500	8	12,000 to 26,000	132
Iowa	22,000	9	none		19,000	76
Kansas	21,500(N)	7	none		17,500(N)	58
Kentucky	20,000	7	none		14,900	70
Louisiana	25,000	7	24,000	22	13,200 to 22,700	78
Maine	20,000	6	none		19,500	10
Maryland	32,500	7	27,500	5	20,000 to 30,000	70
Massachusetts	29,700	7	none		26,400	42
Michigan	35,000	8	32,500	9	20,000 to 30,000	109
Minnesota	26,000	7	none		22,000 to 23,500	70
Mississippi	19,000	9	none		16,000	21
Missouri	26,500(N)	7	25,000(N)	9	20,000 to 23,000(N)	98
Montana	17,000	5	none		15,000	28
Nebraska	20,500(N)	7	none		18,000(N)	36
Nevada	22,000	5	none		19,500	18
New Hampshire	22,880	5	none		20,800	8
New Jersey	31,000	7	27,000	12	27,000	144
New Mexico	20,000	5	18,500	4	17,500	21
New York	39,500	7	33,500 to 40,000	26	31,500 to 37,000	172

State	Highest Court	Number of Judges	Intermediate Appellate Court	Number of Judges	General Trial Court	Number of Judges
North Carolina	27,000	7	24,000	9	20,000	48
North Dakota	18,000	5	none		16,000	19
Ohio	24,000(N)	7	21,000(N)	34	11,500 to 20,500(N)	186
Oklahoma	16,500	12	authorized		14,500 to 15,500	128
Oregon	23,500	7	none		21,000	55
Pennsylvania	37,500	7	35,500	7	26,500 to 32,500	166
Rhode Island	25,000	5	none		23,000	11
South Carolina	24,500	5	none		24,500	16
South Dakota	17,500	5	none		16,000	21
Tennessee	24,000(N)	5	20,000(N)	12	17,500(N)	89
Texas	27,000	14	24,000	42	18,000 to 26,000	182
Utah	16,500	5	none		14,000	19
Vermont	21,000	5	none		19,000	6
Virginia	22,500	7	none		17,500	87
Washington	27,500(N)	9	none		22,500(N)	80
West Virginia	22,500	5	none		14,000 to 21,500	32
Wisconsin	24,000	7	none		20,000 to 25,000	47
Wyoming	16,500	4	none		15,000	11
Dist. of Columbia	33,000	9	none		30,000	15
Puerto Rico	22,000	9	none		18,000	55
United States	39,500	9	33,000	88	30,000	336
1968 National Average[1]	24,615		27,118		20,620	
1966 National Average[2]	22,634		24,078		19,192	
1963 National Average[2]	20,312		22,157		17,049	
1962 National Average[2]	19,100		21,000		15,885	
1952 National Average	13,545				11,200	
1968 National Median[1]	23,500		25,000		19,500	
1966 National Median[2]	22,500		22,500		18,000	
1963 National Median[2]	18,500		21,500		16,000	
1962 National Median[2]	18,000		21,000		15,000	
1952 National Median	12,500				10,000	

Notes—

CALIFORNIA—In addition on September 1, 1968 and every four years thereafter judicial salaries will be increased by the percentage of increase in California's per capita income during the previous four years.

KANSAS—Salaries shown become effective January 13, 1969.

MISSOURI—Salaries shown become effective January 1, 1969.

NEBRASKA—Salaries shown become effective January 1, 1969.

OHIO—Salaries apply to judges taking office after December 18, 1964.

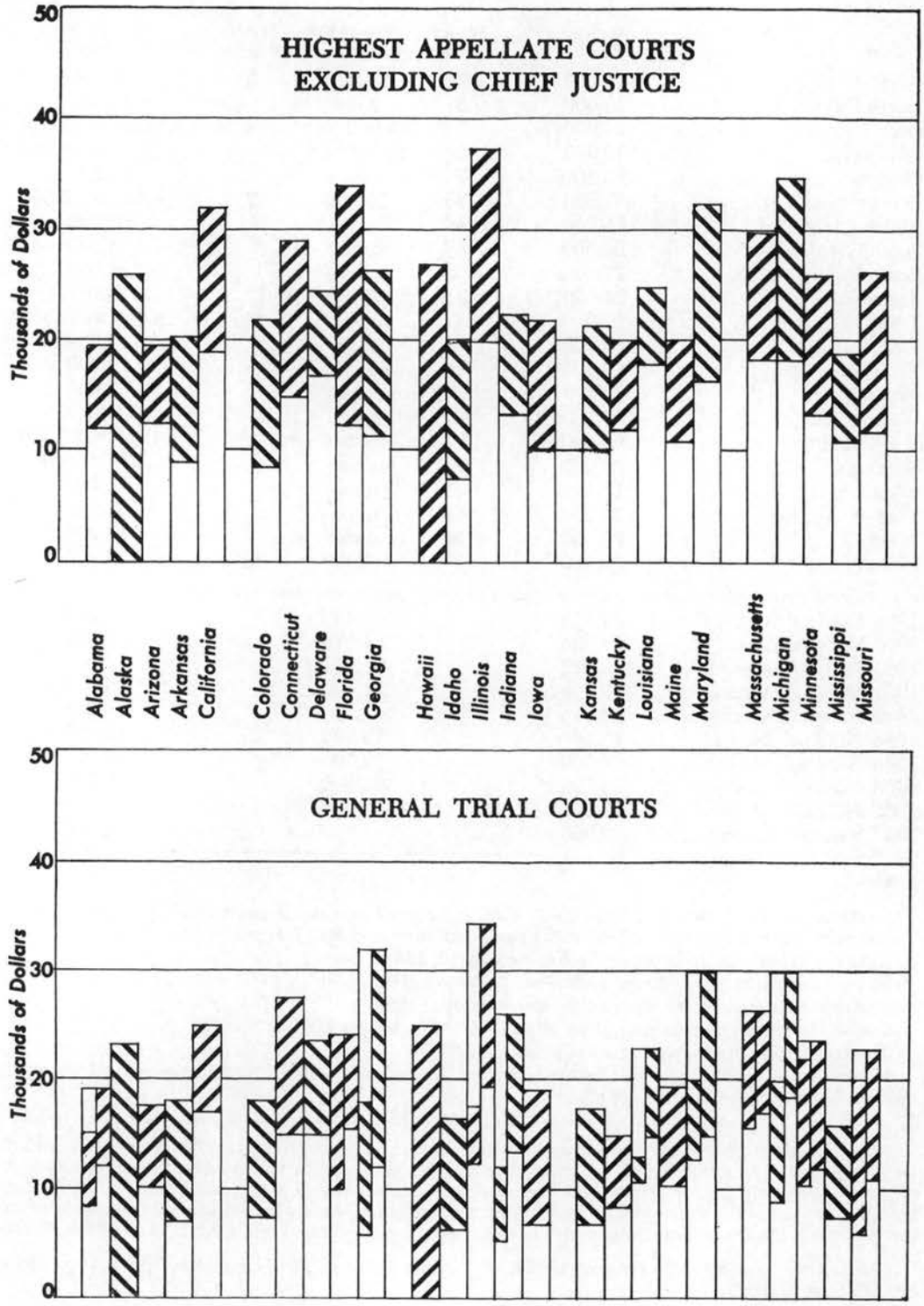
TENNESSEE—Salaries shown become effective in 1970.

WASHINGTON—Salaries become effective as judges are reelected (1969, 1971 in the case of the supreme court; 1969 in the case of the superior court).

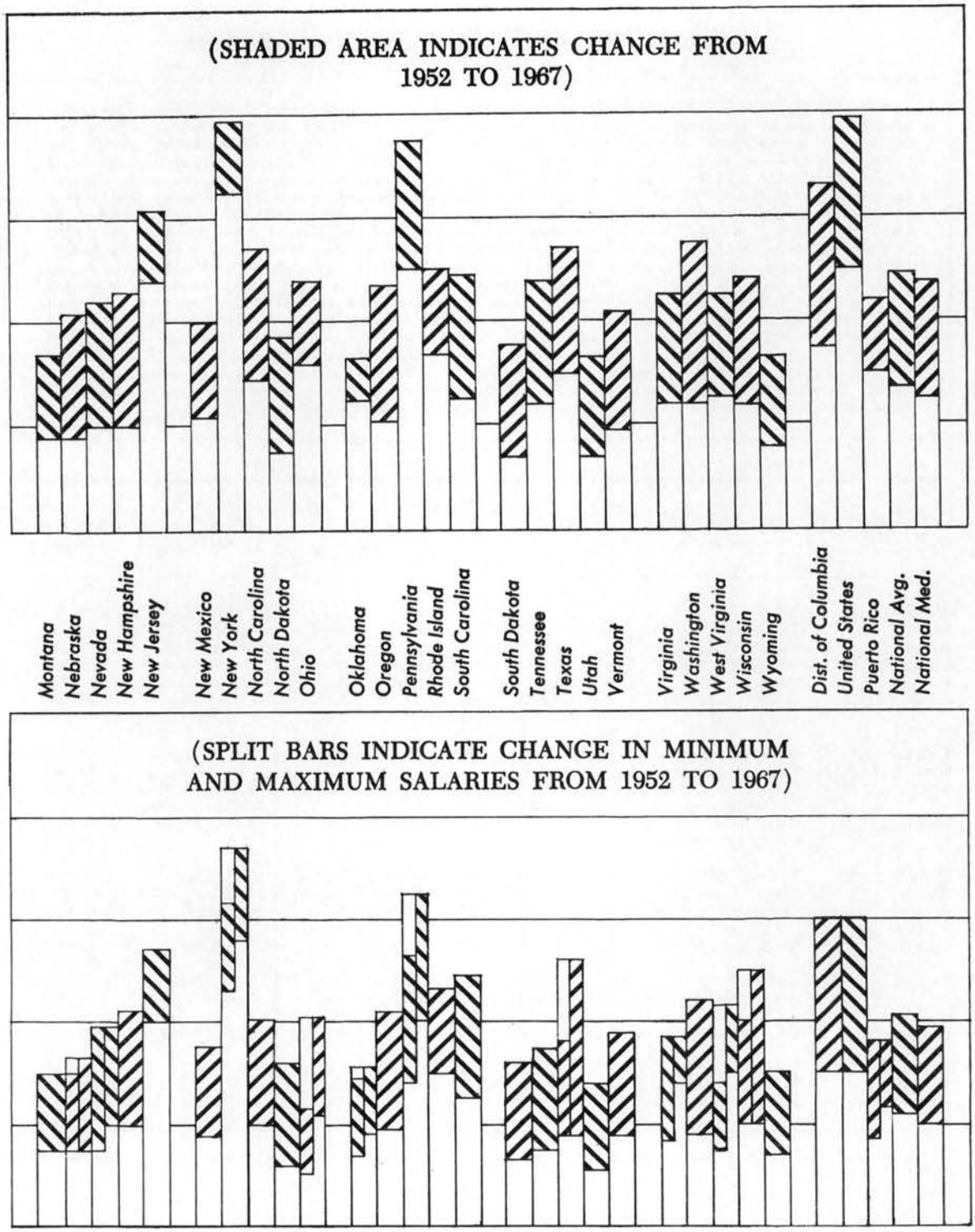
[1] In computing the National Average and National Median figures, (i) federal salaries are excluded (except those for the District of Columbia), (ii) all states have been weighed equally without adjustment for variations in the size of the judiciary, and (iii) for courts where a salary range rather than a single rate is shown, the figures used have been the average of the upper and lower limits of this range. (iv) Puerto Rico is included. Average and median salaries for supreme courts in those states which have intermediate appellate courts are $28,447 and $26,500 respectively.

[2] 45 J. Amer. Jud. Soc. 253 (March, 1962); 47 J. Amer. Jud. Soc. 149 (December, 1963); 49 J. Amer. Jud. Soc. 161 (February, 1966).

GRAPH OF PROGRESS OF JUDICIAL SALARIES FROM 1952 TO 1967



Continued


(SHADED AREA INDICATES CHANGE FROM 1952 TO 1967)
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming
Dist. of Columbia
United States
Puerto Rico
National Avg.
National Med.
(SPLIT BARS INDICATE CHANGE IN MINIMUM AND MAXIMUM SALARIES FROM 1952 TO 1967)

JUDICIAL SALARIES IN COURTS OF LIMITED JURISDICTION

GENERAL NOTE: This chart records compensation paid to judges of courts of limited jurisdiction in minor courts or court systems which exercise civil jurisdiction with monetary limits of $1,000 or more (either as to all or, in a few cases, some courts within the listed classification). The following should be noted: (i) In addition to civil jurisdiction some indication of the criminal and probate jurisdiction is given to facilitate comparison. With respect to criminal jurisdiction, the term "limited" denotes some jurisdiction beyond misdemeanors (i.e. over minor felonies), the term "general" denotes jurisdiction over all or some major felonies, and if criminal jurisdiction is listed it may be assumed city ordinance and traffic violations are encompassed. (ii) Parenthetically following the name of the court the number of judges in each is given when this data was available. Most of the courts listed are staffed by full-time legally qualified judges and the basis for selection has eliminated all but a few courts of the justice, justice of the peace or magistrate variety as well as courts in which remuneration is based on fees. However, it may be assumed that judges of courts with an indicated salary level (or minimum salary range) of less than $6,000 are not required to render full time service. (iii) In several instances courts are listed which exist only in metropolitan areas of the state (e.g. Denver, Colorado, Detroit, Michigan, and Philadelphia and Pittsburgh, Pennsylvania) and in others, a variety of minor courts has been established for different areas by special acts (e.g., Alabama and Georgia). (iv) Salaries of judges of courts of general jurisdiction are included for comparison. (v) Chief judge increments and special expense allowances are not included in compensation rates. Varying jurisdiction, varying qualifications for office and other points of dissimilarity between minor courts and minor court systems make comparisons of salaries difficult and to some extent this chart is subject to these difficulties.

STATE	COURT AND NUMBER OF JUDGES	JURISDICTION			MINOR COURT SALARY	MAJOR COURT SALARY
		Civil	Criminal	Probate		
Alabama	Inferior	Varies	Limited	No	$ 6,000–10,000	$15,000–$19,000
Alaska	District (16)	$ 3,000	General	No	15,500–17,000	23,000
Arkansas*	Comm. Pleas (13)	1,000	None	No	3,100–5,900 (N)	18,000
California	Municipal (289)	5,000	Misdemeanors	No	23,000	25,000
Colorado	County (83)	500	Misdemeanors	No	1,500–16,000	18,000
Connecticut	Comm. Pleas (16)	15,000	None	No	22,500	27,500
	Circuit (45)	7,500	None	No	17,500	27,500
Delaware	Comm. Pleas (4)	1,000	Misdemeanors	No	9,500–21,000	23,500
Dist. of Columbia	Ct. of General Sessions	10,000	Limited	No	23,500	30,000
Florida	Civil Ct. of Record (6)	1,000, 5,000,	Varies	No	20,000–21,000	24,000
	Cts. of Record (11)	10,000			13,500–19,800	
Georgia	City, Municipal Civil and Criminal (13)	Varies	Misdemeanors	No	4,600–22,500	8,000–32,000
Hawaii	District (26)	2,000	Misdemeanors	No	15,000	25,000
Illinois	Magistrates (235)	10,000	Misdemeanors	Yes	12,000–19,000	17,500–34,500
Indiana	Municipal (Marion Co.) (8)	10,000	Misdemeanors	No	16,500	12,000–26,000
Iowa	Municipal (23)	2,000	Misdemeanors	No	15,200	19,000
Kansas	County	1,000	Misdemeanors	Yes	1,000–9,250	17,500 (N)
	Mun. and Comm. Pleas	2,500	Misdemeanors	No	3,000–12,000	17,500
Louisiana	City (28)	100–1,000	None	No	3,600+fees–22,700	13,200–22,700
Maine	District (18)	10,000	Limited	Yes	15,000	19,500
Maryland	Magistrates (92)	Varies	Limited	No	300–6,500	20,000–30,000
	People's (Baltimore) (5)	3,000	No	No	18,500	30,000

* Arkansas—Common Pleas Courts are presided over by county judges. Supplements of from $100 to $900 for these duties are included in the salaries shown.

Continued

State	Court and Number of Judges	Jurisdiction			Minor Court Salary	Major Court Salary
		Civil	Criminal	Probate		
Massachusetts*..	District and Municipal (70)	Unlimited	Limited	No	22,000 (N)	26,400
Michigan.....	Municipal	1,500	Limited	No	5,000–20,000	20,000–30,000
	Com. Pleas (Detroit) (9)	5,000	None	No	25,000	20,000–30,000
Minnesota.....	Municipal (112)	5,000	None	No	420–20,000	22,000–23,500
Mississippi.....	County (16)	10,000	Misdemeanors	No	5,400–13,000	16,000
Missouri.....	Magistrate	2,500	Misdemeanors	No	10,600–13,800	20,000–23,000
Nebraska.....	Municipal (10)	2,000	Limited	No	15,000–19,500	18,000
	County (93)	1,000	Limited	Yes	4,000–19,500	18,000
New Hampshire..	District (37)	1,500	Limited	No	600–15,200	20,800
New Jersey†.....	County–District (32)	1,000 (N)	Misdemeanors	No	25,000	27,000
New Mexico.....	Small Claims (Albuquerque) (1)	2,000	Limited	No	8,000	17,500
New York.....	County Courts (69)	6,000 and 10,000	General	No	25,000–30,000	31,500–37,000
	Civil Ct. of N.Y.C. (95)	10,000	None	No	25,000	37,000
	Criminal Court of N.Y.C. (78)	None	General	No	25,000	37,000
North Carolina‡..	District (17)	5,000	Limited	No	15,000	20,000
	County	3,000	Misdemeanors	Yes	7,500–10,000	20,000
	Recorder	1,000	Misdemeanors	No	6,500–10,000	20,000
North Dakota....	County (94)	1,000	Misdemeanors	Yes	4,800–12,000	16,000
Ohio.....	Municipal (156)	5,000	Misdemeanors	No	9,000–18,000	11,500–20,500
Oklahoma§.....	Common Pleas (N)	10,000	Limited	No	5,000–13,240	14,500–15,500
	County (N)	1,000	Limited	Yes	5,000–15,540	14,500–15,500
Oregon.....	District (29)	1,000	Limited	Yes	16,500	21,000
Pennsylvania....	County (Phila. and Pittsburgh) (26)	5,000	General	No	27,500	32,500
Rhode Island....	District (13)	1,000	Limited	Yes	4,797–10,933	23,000
South Carolina...	County	7,500–25,000	Limited	No	Varies	24,500
South Dakota....	County (51)	1,000	None	Yes	3,000–15,000	16,000
	Municipal (11)	1,000	Limited	No	6,000–15,000	16,000
Tennessee‖.....	General Sessions	2,500	Misdemeanors	No	1,800–11,800 (N)	17,500
Texas.....	County	1,000	Misdemeanors	No	12,000–19,500	18,000–26,000
Utah	City	1,000	Misdemeanors	No	1,800–11,800	14,000
Vermont.....	District (16)	2,500	None	No	16,000	19,500
Virginia.....	Municipal (35)	2,000	Misdemeanors	No	14,000	17,500
	County (96)	2,000	Misdemeanors	Varies	2,500–13,500	17,500
Washington.....	Justice (187)	1,000	None	No	2,400–13,333	22,500 (N)
Wisconsin.....	County (118)	100,000	Limited	Yes	17,500–24,000	20,000–25,000
Puerto Rico.....	District (87)	2,500	Misdemeanors	No	13,600	18,000

* Massachusetts—Salary given is for full-time judges. Part-time judges are paid from $7,290 to $8,940.

† New Jersey—County District Courts have $3,000 limit on negligence actions.

‡ North Carolina—County and Recorder's courts are gradually being replaced by a uniform system of District Courts. The transition will be complete in 1971.

§ Oklahoma—Only Tulsa and Oklahoma Counties have Common Pleas Courts. Under the reorganization adopted in 1967 judges of the Common Pleas and County Courts will become Associate District Judges on January 13, 1969. Much enabling legislation remains to be enacted and existing statutes will remain in force until changed by the legislature.

‖ Tennessee—Figure will take effect in 1970. Current maximum is $10,000.

JUDICIAL SALARIES IN THE 40 LARGEST CITIES

GENERAL NOTE: This chart records compensation paid to judges of trial courts of general jurisdiction and courts of limited jurisdiction in the largest metropolitan areas of the United States. Population figures are based on the 1960 United States Decennial Census and reflect city population rather than broader metropolitan area configurations. Salary rates do not include increments paid to chief judges. An asterisk (*) follows compensation in cities where the salary does not exceed that paid other judges of that court in the state. In the remaining cities differentials are based on local supplements, or state-established formulas keyed to population.

City	Population	Trial Court of General Jurisdiction	Salary	Courts of Limited Jurisdiction	Salary
New York, N.Y.	7,781,984	Supreme Court	$37,000	Civil and Criminal Courts	$25,000
Chicago, Ill.	3,550,404	Circuit Court	34,000	Magistrates of Circuit Court	19,000
Los Angeles, Calif.	2,479,015	Superior Court	25,000*	Municipal Court	23,000*
Philadelphia, Pa.	2,002,512	Ct. Comm. Pleas	32,500	County Court	27,500
Detroit, Mich.	1,670,144	Circuit Court	30,000	Common Pleas Court	25,000
Baltimore, Md.	939,024	Circuit Court	30,000	People's Court	18,500
Houston, Tex.	938,219	District Court	26,000	County Civil Court at Law	21,000
Cleveland, Ohio	876,050	Ct. Comm. Pleas	20,500	Municipal Court	18,000
Washington, D.C.	763,956	U.S. District Court	30,000*	Court of General Sessions	23,500
St. Louis, Mo.	750,026	Circuit Court	23,000	Magistrate Court	13,800
Milwaukee, Wis.	741,324	Circuit Court	25,000	County Court	24,000
San Francisco, Calif.	740,316	Superior Court	25,000*	Municipal Court	23,000*
Boston, Mass.	697,197	Superior Court	26,400*	Municipal Court	22,000
Dallas, Tex.	679,684	District Court	26,000	County Court at Law	18,050
New Orleans, La.	627,525	District Court	22,700	City Court	22,700
Pittsburgh, Pa.	604,332	Ct. Comm. Pleas	32,500	County Court of Allegheny Co.	27,500
San Antonio, Tex.	587,718	District Court	26,000	County Court of Law	18,500
San Diego, Calif.	573,224	Superior Court	25,000*	Municipal Court	23,000*
Seattle, Wash.	557,087	Superior Court	22,500*	Municipal Court	18,000
Buffalo, N.Y.	532,759	Supreme Court	34,500	Buffalo City Court	18,500
Cincinnati, Ohio	502,550	Ct. Comm. Pleas	20,500	Municipal Court	18,000
Memphis, Tenn.	497,524	Circuit Court	17,500*	Court of General Sessions	11,800
Denver, Colo.	493,887	District Court	18,000*	County Court	16,000
Atlanta, Ga.	487,455	Superior Court	32,000	Civil Court of Fulton County	22,500
Minneapolis, Minn.	482,872	District Court	23,500	Municipal Court	20,000
Indianapolis, Ind.	476,258	Circuit and Superior Cts.	26,000	Municipal Court	16,500
Kansas City, Mo.	475,539	Circuit Court	23,000	Magistrate Court	9,500
Columbus, Ohio	471,316	Ct. Comm. Pleas	20,500	Municipal Court	18,000
Phoenix, Ariz.	439,170	Superior Court	17,500*	Justice of the Peace	10,000
San Juan, P.R.	432,377	Superior Court	18,000*	District Court	13,600
Newark, N.J.	405,220	Superior Court	27,000*	Municipal Court	20,000
Louisville, Ky.	390,639	Circuit Court	14,900*	Magisterial Court	7,000
Portland, Ore.	372,676	Circuit Court	21,000*	District Court	16,500*
Oakland, Calif.	367,548	Superior Court	25,000*	Municipal Court	23,000*
Fort Worth, Tex.	356,268	District Court	24,000	County Court at Law	16,000
Long Beach, Calif.	344,168	Superior Court	25,000*	Municipal Court	23,000*
Birmingham, Ala.	340,887	Circuit Court	19,000	Recorder's Court	15,000
Oklahoma City, Okla.	324,253	District Court	15,500	Cty. Court of Oklahoma Cty.	15,540
Rochester, N.Y.	318,611	Supreme Court	34,500	Rochester City Court	25,000
Toledo, Ohio	318,003	Ct. Comm. Pleas	20,500	Municipal Court	18,000

JUDICIAL SALARY SURVEY SUPPLEMENT

STATE	OLD SALARY	NEW SALARY
CALIFORNIA		
Highest Court		
Supreme Court		
Chief Justice	$34,000	$41,578
Associates	32,000	39,132
Intermediate Appellate Court		
Court of Appeal	30,000	36,687
General Trial Court		
Superior Court	25,000	30,572
Limited and Special Courts		
Municipal Courts	23,000	28,126
Judicial Aides		
Court Clerks		
Supreme Court	22,000	23,100

MICHIGAN

Municipal Courts and justices of the peace are replaced by District Courts, judges of which will receive salaries of $18,000 to $27,500 annually. The state pays $18,000 and local legislative bodies may supplement that amount up to $9,500.

NEW JERSEY		
Highest Court		
Supreme Court		
Chief Justice	$32,000	$37,000
Associates	31,000	36,000
Intermediate Appellate Court		
Superior Court, Appellate Division	27,000	32,000
General Trial Court		
Superior Court	27,000	32,000
County Court	27,000	32,000
Limited and Special Courts		
County District Court	25,000	30,000
Juvenile and Domestic Relations Court	25,000	30,000
NEW YORK		
Highest Court		
Court of Appeals		
Chief Judge	$42,000	$44,500
Associates	39,500	42,000
Intermediate Appellate Court		
Appellate Division, Supreme Court		
First and Second Departments		
Presiding Justice	41,500	43,600
Associates	40,000	42,100
Third and Fourth Departments		
Presiding Justice	34,000	41,100
Associates	33,500	40,100
General Trial Court		
Supreme Court		
1, 2, 9, 10, 11 Judicial Districts	37,000	39,100
3, 4, 5, 6, 7, 8 Judicial Districts	34,500	36,600
Limited and Special Courts		
Court of Claims	31,500	34,000

CORRECTIONS

FLORIDA

Some county judges are still on a fee system. The judge of the County Judges Court is ex-officio judge of the County Court and receives additional compensation for this service. In addition to probate, the County Judges Court has varied civil jurisdiction and in many counties is also the court of original trial jurisdiction in misdemeanor crimes. Compensation paid to County Court judges for their service as Juvenile Court judges is the same as their County Court pay, though not necessarily paid by the county.

Hospitalization premiums are paid half by the county and half by the individual judge. Expense allowances are available to County judges as well as to Supreme, District and Circuit judges. While County judges may be called to serve on the bench following retirement, Circuit and appellate judges and justices may not. Retirement pension for judges is 1½ per cent of average final compensation for each year of service plus social security.

OHIO

Judges of the Court of Common Pleas receive salaries of $14,500 to $26,000, not $24,500 to $26,000.

PENNSYLVANIA

Expense allowances for Supreme Court justices are $7,000 and for Superior Court judges, $6,500. An allowance of $7,258 for clerical and stenographic assistance is provided by the state for Common Pleas judges of Dauphin County only, the seat of the state government. Judges in all other counties can employ only such staff as their respective county salary boards allow.

A supplement and addendum to *1968 Survey of Judicial Salaries and Retirement Plans in the United States*, compiled by Rae N. Selig, American Judicature Society, April 1968.

Reprinted from 52 Judicature 257 (January, 1969)

JUDICIAL SALARY SURVEY SUPPLEMENT

(June, 1969)

STATE	OLD SALARY	NEW SALARY
ALABAMA		
General Trial Court:		
Circuit Court		
State Pay	$15,000	$15,000
Local Supplements	up to $4,000	up to $6,000
COLORADO		
Highest Court:		
Supreme Court		
Chief Justice	$22,500	$25,000
Associates	$22,000	$24,500
Intermediate Appellate Court:		
Court of Appeals		
Chief Judge	*	$22,750
Associates	*	$22,250
General Trial Court:		
District Court	$18,000	$20,000
Limited and Special Courts:		
County Court	$16,000	$17,500
JUDICIAL AIDES		
State Court Administrator	$18,144	$20,000
Court Clerk:		
Supreme Court	$13,536	$16,464
Reporter		
Supreme Court	$13,536	$15,672
GEORGIA		
General Trial Court:		
Superior Court	$18,000	$24,800
IOWA		
Highest Court:		
Supreme Court	$22,000	$24,000
General Trial Court:		
District Court	$19,000	$21,000
Limited and Special Courts:		
Municipal Court	$15,200	$16,800
MARYLAND		
Highest Court:		
Court of Appeals		
Chief Judge	$33,000	$36,000
Associates	$32,500	$35,000
Intermediate Appellate Court:		
Court of Special Appeals		
Chief Judge	$28,000	$33,500
Associates	$27,500	$32,500

*The Court of Appeals was created by the 1969 legislature and will go into effect, along with the salaries listed here, on January 1, 1970.

MARYLAND (cont'd)		
General Trial Court		
Circuit Court	$20,000*	$30,500*

*Before July 1, 1969, local supplements to the state salary of $20,000 were allowed, up to $30,000. After that date, local supplements to the state salary of $30,500 are prohibited.

NEVADA		
Highest Court:		
Supreme Court	$22,000	$28,000*
General Trial Court:		
District Court	$19,500	$24,000†

*Effective the first Monday in January, 1973.
†Effective the first Monday in January, 1971.

NEW YORK		
Limited and Special Courts:		
District Court (Nassau County)		
Presiding Judge	$27,500	$32,500
Associates	$25,000	$30,000
Family Court		
New York City	$25,000	$30,000
Erie County	$28,500	$31,500
New York City Criminal Court	$25,000	$30,000
County Court (Erie County)	$28,500	$31,500

NORTH DAKOTA		
Highest Court:		
Supreme Court		
Chief Justice	$18,500	$20,500
Associates	$18,000	$20,000
Limited and Special Courts:		
County Court of		
Increased Jurisdiction	$9,000-$12,000*	$11,000-$15,000*
Other County Courts		
(Probate)	$4,800-$7,000*	$5,600-$8,500*
County Justice Courts	up to $3,600	up to $5,000

*Depending on population.

OREGON		
Highest Court:		
Supreme Court	$23,500	$26,000
General Trial Court:		
Circuit Court	$21,000	$23,000*
Limited and Special Courts:		
District Court	$16,500	$18,000

*After June 30, 1970, this salary will be $24,000.

PENNSYLVANIA		
Limited and Special Courts:		
Municipal (Philadelphia County)	$12,500	$16,500; $20,000*

*Nonlawyers receive the lower figure, lawyers the higher figure, in the remodelled court which replaces the Magistrates Court.

RHODE ISLAND				
Limited and Special Courts:				
District Court				
Chief Judge		$4,797-$10,933		$22,000
Associates		$4,797-$10,933		$20,000
UTAH				
Highest Court:				
Supreme Court				
Chief Justice		$17,000		$20,000
Associates		$16,500		$20,000
General Trial Court:				
District Court		$14,000		$17,500
Limited and Special Courts:				
Juvenile Court		$14,000		$17,500
VIRGINIA				
Highest Court:				
Supreme Court of Appeals				
Chief Justice		$24,200		$27,500
Associates		$22,500		$25,000
General Trial Court:				
Trial Courts of Record (Circuit, Corporation, or Hustings Courts)	first year	$16,900	first year	$19,000
	thereafter	$17,500	thereafter	$20,000
WASHINGTON				
Intermediate Appellate Court:				
Court of Appeals		*		$25,000
WISCONSIN				
General Trial Court:				
Circuit Court				
State Pay		$20,000		$20,000
Local Supplements				
Milwaukee County		up to $5,000		$8,000
Elsewhere		up to $3,000		up to $6,000
Limited and Special Courts:				
County Court				
State Pay		$17,500		$17,500
Local Supplements				
Milwaukee County		$6,500		$9,500
Elsewhere		up to $5,500		up to $8,500
FEDERAL SYSTEM				
Highest Court:				
Supreme Court				
Chief Justice		$40,000		$62,500
Associates		$39,500		$60,000
Intermediate Appellate Court:				
U.S. Court of Appeals		$33,000		$42,500
General Trial Court:				
U.S. District Court		$30,000		$40,000

*The Court of Appeals was created by the 1969 legislature and implemented immediately.

Judicial Retirement and Other Benefits

Rae N. Selig

Since the Society's last biennial survey of judicial compensation in 1966, major changes in judicial retirement legislation have been enacted in four states—Alaska, Illinois, Montana, and New Hampshire—and seven others—Alabama, Connecticut, Florida, Idaho, North Carolina, Texas, and Vermont—have made some modifications in their retirement plans. In addition to these recent changes, well over half of the states have reported changes since *Judicial Retirement and Pension Plans,*[1] by Alice Ann Winters, was published in 1961.

Continuing the trend in retirement legislation, Alaska and Montana enacted separate judicial retirement provisions to substitute for coverage under the public employees system. The Alaska plan covers all judges and is non-contributory. The Montana plan includes only appellate and general trial court judges, who contribute 6 per cent of their salaries. Illinois and New Hampshire liberalized eligibility requirements and benefits. In Illinois, coverage for magistrates was added, so the plan now includes all state judges. Contributions were set at 7½ per cent plus 2½ per cent for widows' benefits, the highest rate of contribution reported. No New Hampshire judges have elected to join the public plan heretofore, and it remains to be seen if the changes are favorable enough to invite their participation.

Eligibility requirements for retirement were reduced in Connecticut and North Carolina. Four states changed their benefit provisions. Alabama increased trial court benefits by $2,000. An actuarially reduced benefit was established with excess to a beneficiary for Florida judges who choose not to retire after their maximum service requirements are met. In Idaho, benefits were changed from a maximum of 50 per cent of salary to a service-based formula with a maximum of approximately 60 per cent of salary, and the reverse was done in Texas where a service-based formula was replaced by a benefit of 50 per cent of salary plus 10 per cent for those who retire before 70. In Vermont, retirement allowances are now supplemented by 3⅓ per cent of pay for each year of service over 12. Last, Connecticut judges appointed after 1967 are now required to contribute 5 per cent of their salaries toward their retirement program. The plan remains non-contributory for others.

MINIMUM STANDARDS

Three minimum standards recommended in the Society's last survey and included in the Model Judicial Article with respect to judicial retirement provide a partial guide for evaluating current provisions. The standards call for a pension of 50 per cent of salary for judges who have served at least ten years, and for disability and widows' benefits in every plan.

While it is beyond the scope of this survey to provide dollar values of the retirement allowances under all the plans and their options, a hypothetical case can give a typical dollar value and highlight inadequacies.[2] The case chosen is that of a judge who retires under current salary levels at age 65 after 15 years of service. At the highest appellate court level, minimum eligibility requirements are met in all but nine jurisdictions: California, Delaware, Louisiana, Maine, Massachusetts, Oregon, Rhode Island, South Carolina, and West Virginia.

The average retirement benefit is approximately $11,800. If the allowances the judge would receive if minimum requirements were

1. Chicago: American Judicature Society. The introduction to this book, while outdated in some details, provides a helpful analysis of judicial retirement provisions.

2. While most states provided the amount of the retirement benefits for this sample case, benefits for some were submitted as estimates and others were calculated on the basis of survey summaries of retirement provisions without benefit of official tables. They should, therefore, be regarded as approximations.

Reprinted from 51 Judicature 306 (March, 1968)

reached in the nine other jurisdictions, the average would be $12,700, or slightly more than half the national average of $24,615 for salaries in the highest appellate courts. The differences between the highest and lowest salaries ($39,500 in New York and $16,500 in Wyoming and Utah) is $23,000 and the difference between the highest and lowest retirement allowances under a state plan in this case is $22,400.

A sampling of the high and low benefits for this hypothetical case follows:

SUPREME COURT RETIREMENT ALLOWANCE FOR JUSTICE, AGE 65, WHO RETIRES AFTER 15 YEARS

Highs*	
District of Columbia	$33,000
Florida	25,500
New Jersey	23,500
Pennsylvania	20,625
Alaska	19,500
Connecticut	19,334
Lows	
Mississippi	$ 3,105
Indiana	4,800
Wyoming	5,500
Ohio	5,670
Wisconsin	5,886
Utah	6,000

* Allowances higher than some listed here are given, where minimum requirements were not reached in the case of a judge retiring at 65 after 15 years service. These are: $25,000 in Louisiana, $22,275 in Massachusetts, and $20,800 in California.

At the intermediate appellate level judges may retire at 65 after 15 years' service in 17 of the 19 courts. The average retirement allowance is $12,020, and if allowances judges would get if all eligibility requirements were met are included, the average would be $13,044. The average salary at this intermediate court level is $21,500.

TRIAL JUDGE BENEFITS

At the general trial court level judges of the same 9 states as at the supreme court level fail to qualify under the sample case, and the average allowance among those that do qualify is about $10,400.

Listings of the highs and lows follow:

GENERAL TRIAL COURT RETIREMENT ALLOWANCE FOR JUDGE, AGE 65 WHO RETIRES AFTER 15 YEARS

Highs*	
District of Columbia	$30,000
New Jersey	20,250
Connecticut	18,334
Alaska	17,250
Pennsylvania	14,575
North Carolina	13,333
Lows	
Mississippi	$ 3,105
North Dakota	4,500
Indiana and New Hampshire	4,800
Wyoming	5,000
Ohio	5,118
Utah	6,000

* Other highs of those that did not meet minimum eligibility requirements are: $19,800 in Massachusetts, $17,250 in Rhode Island, and $16,250 in California.

If eligibility requirements are assumed to have been met in all cases, the average would be about $10,500, slightly more than half the average salary of $20,620 paid to judges of the general trial courts.

Although the average allowances in this hypothetical case approximate or slightly exceed the recommended minimum of 50 per cent of current salary of the office, an agenda for improvements quickly becomes apparent in the following list of retirement allowances in courts of 29 states.

RETIREMENT ALLOWANCES BELOW 50 PER CENT OF SALARY IN A HYPOTHETICAL CASE OF A JUDGE, AGE 65, WHO RETIRES AFTER 15 YEARS OF SERVICE

State	Highest Court		Intermediate Court		General Trial Court	
	Retirement	Salary	Retirement	Salary	Retirement	Salary
Alabama	$ 7,200	$19,500	$ 7,200	$19,000	$ 7,200	$15,000–19,000
Arkansas	.....	.....	.....	.....	7,500	18,000
Colorado	8,600	22,000	.....	.....	7,200	18,000
Delaware	7,500	24,500	.....	.....	7,200	23,500
Florida	.....	.....	13,860	28,000	11,880	24,000
Georgia	12,000	26,500	12,000	26,500	12,000	18,000–32,000
Hawaii	.....	.....	.....	.....	11,165	25,000
Idaho	7,500	20,000	.....	.....	6,202	16,500
Illinois	17,500	37,500	.....	.....	8,750–17,000	17,500–34,000
Indiana	4,800	22,500	4,800	22,500	4,800	12,000–26,000
Iowa	8,850	22,000	.....	.....	7,875	19,000
Maryland	13,500	32,500	12,750	27,500	.....	.....
Minnesota	.....	.....	.....	.....	9,250–10,000	22,000–23,500
Mississippi	3,105	19,000	.....	.....	3,105	16,000
Missouri	8,833	26,500	8,333	25,000	6,666–7,666	20,000–23,000
Nebraska	9,281	20,500	.....	.....	8,167	18,000
Nevada	7,333	22,000	.....	.....	6,500	19,500
New Hampshire	5,280	22,880	.....	.....	4,800	20,800
New York	10,000	39,500	9,000–10,000	33,500–40,000	31,500–37,000	8,000–9,000
North Dakota	6,750	18,000	.....	.....	4,500	16,000
Ohio	5,670	24,000	5,197	21,000	5,118	11,500–20,000
Oregon	9,500	23,500	.....	.....	8,250	21,000
Pennsylvania	.....	.....	.....	.....	15,125	up to 32,500
Tennessee	11,250	24,000	9,387	20,000	8,203	17,500
Utah	6,000	16,500	.....	.....	6,000	14,000
Washington	7,200	27,500	.....	.....	4,800	22,500
Wisconsin	5,886	24,000	.....	.....	5,400	20,000–25,000
Wyoming	5,500	16,500	.....	.....	5,000	15,000
Puerto Rico	9,298	22,000	.....	.....	7,035	18,000

DISABILITY AND DEATH BENEFITS

With respect to the second recommendation of the Model Article, there is also a pending agenda. Disability provisions are included in the retirement plans in all states except in the laws of Maryland, Oklahoma, Rhode Island and Wyoming, and in Georgia and Nevada they are available only in public employee systems. Although age requirements were eliminated from federal social security in 1960 and this has encouraged their elimination from private plans in industry and business, the limits on applicability as described in *Judicial Retirment and Pension Plans* substantially remain. For example, minimum age of 50 and 15 years of service in the Alabama Supreme Court are a prerequisite to receiving a disability retirement allowance. Such restrictions, not to speak of the total absence of disability provisions, continue to point up the observations of Professor Burke Shartel quoted in Winters' study, that failure to retire a judge for disability provides the disabled judge with an indirect pension, "but unfortunately the state does not obtain benefits of a pension system in this case. The disabled man continues to occupy the place which should be occupied by an effective man. The state has the burden but not the benefit of a real pension."

Plans in five states (Alabama, Missouri, North Carolina, Rhode Island, and Wyoming) have no provisions for death or widow benefits and there are no provisions for the widows of appellate judges under judicial retirement plans in Georgia. Some states still provide only a refund of the judge's contributions, or a lump sum payment.

SOCIAL SECURITY COVERAGE

Federal social security can provide a substantial supplement to retirement income. For example, in responding to this survey, Mississippi reported social security benefits would be $1,654.80 for the retired judge and $827 for his wife representing about a 70 per cent supplement to the retirement income from the state plan of $3,105, and under any circumstances, $2,400 is a sizeable increase in retirement income. Nonetheless in Arizona only judges of the new Court of Appeals are covered and California, Colorado, Connecticut, Illinois, Louisiana, Maine, Minnesota, Nevada, Ohio, and Tennessee report that judges in these states are generally not covered by social security. Although there is coverage in Kansas, a limitation exists prohibiting the combined state and federal benefits from exceeding 65 per cent of salary.

While Alaska's new plan replaces a contributory plan with a non-contributory plan, increases in contributions are more typical of the changes since 1961. Connecticut, New Jersey, South Carolina and Utah have made their judicial retirement plans contributory and Arkansas, California, Florida, Idaho, Kansas, and Michigan raised the rate of contribution. Contributions range from 2 to 10 per cent of salary.

With respect to post-retirement judicial service, provisions have been added in Illinois, Kansas, Michigan, Montana, and Utah since 1961.

OTHER BENEFITS

All reporting jurisdictions except 9 states have hospitalization and medical-surgical insurance to which appellate and trial court judges have access, but the kind of plans and the courts to which they apply vary considerably. In 19 states, the judge pays the entire cost; in 15 states the premiums are shared by the judge and government and in 6 states the state pays the judge's premium and he pays the extra cost of family coverage.

The number of official holidays varies from 3 to 18 days. Sixteen states reported that vacations of one month were typical. The shortest was two weeks and the longest 10 weeks.

Appellate and trial court judges are generally reimbursed for actual travel expenses. This is the case in 32 states. Ten states reported expense allowances of specific amounts for one or more courts, and the most generous of these were given in New York, e.g., $6,500 to some Appellate Division judges.

Additional special benefits were reported by several jurisdictions and these are listed in the footnotes to the summary chart of benefits on the following pages. Survey responses suggest, however, that systematic attention to this area of compensating is a pending matter for most states.

The 1968 Judicial Compensation Survey from which the conclusions above were drawn is available from the American Judicature Society. In addition to summaries of retirement provisions and other fringe benefits discussed here, the survey includes salaries of judges in the courts of the states, the federal system and Puerto Rico and of selected court employees, court clerks, law clerks, court reporters and secretaries.

Copies may be ordered from the Society's offices at 1155 East 60th Street, Chicago, Illinois 60637. The single copy price is $3.00.

BENEFITS FOR JUDGES OF APPELLATE AND GENERAL TRIAL COURTS

State	Hospitalization, Medical and Surgical Insurance Coverage	Holidays	Vacation	Expense Reimbursement	
				General Allowance—Per Diem	Mileage
Alabama (N)	×	5	discretionary	actual expenses, up to $11 in state $21	10¢
Alaska	× shared	11	discretionary	$21	12¢
Arizona	× judge	12	1 month	up to $12	10¢
Arkansas	× judge	2, 1 discretionary (N)	1 month	actual expenses; actual or $2,400 (N)	10¢
California (N)	× shared	11+election days	21 judicial days	actual expenses	
Colorado	× state pays $5.00	9	1 month	actual expenses, supreme court; others up to $20	8¢
Connecticut (N)	× state	11	1 month	actual expenses	8¢
Delaware	× judge	9	1 month		10¢
Florida	× judge	7	discretionary	$20 or $25	10¢
Georgia	× shared	11	2 to 4 weeks	none; varies in trial courts	
Hawaii	× shared (N)	10+elections	21 judicial days	$500 to chief justice $20	12¢ (N)
Idaho	× state	8	2 to 4 weeks	actual expenses	9¢
Illinois	× state (N)	11	3 to 5 weeks	actual expenses (N)	12¢
Indiana	none	13	8 weeks app. cts., others 4 to 6	$2,400 for appellate judges	
Iowa	× state pays $6.00	discretionary	1 to 4 weeks (N)	actual expenses up to $15	10¢
Kansas	none	not reported	not reported	actual expenses	
Kentucky	none	13	9 weeks	actual expenses	8¢
Louisiana	× shared	7 to 12 (N)	1 month	actual expenses; up to $2,500 (N)	
Maine (N)	× shared	9+election days	3 to 4 weeks	actual expenses	9¢
Maryland	× shared	13+election days	discretionary	actual expenses; up to $2,500 (N)	
Massachusetts	× shared	10 (N)	10 weeks	actual expenses	8¢
Michigan	× judge	10+election days	discretionary up to 1 month	actual expenses	9¢
Minnesota	× state (N)	11	1 month	actual expenses for trial courts (N)	9¢
Mississippi	× judge	10	8 weeks	$500 for trial judges	9¢
Missouri	none	11+election days	discretionary	actual expenses	
Montana	× state pays ½ up to $7.50	10+election days	1 month	actual expenses	10¢
Nebraska	none	11	discretionary	$6,500 for sup. ct., others actual in state $20, out $25	10¢
Nevada	× judge	8	2 to 4 weeks	actual expenses	8¢
New Hampshire	× state pays $3.00	11+election days	discretionary	actual expenses up to $25 (N)	
New Jersey (N)	× state (N)	11	7 weeks (N)	actual expenses (N)	10¢
New Mexico	× judge	10	discretionary up to 1 month		
New York	× shared	state holidays	about 7 weeks	$3,000 to $7,500 or actual (N)	
North Carolina	none	discretionary	4 to 6 weeks	actual expenses; $3,500 (N)	8¢
North Dakota	× judge	8	discretionary		8.5¢
Ohio	× judge	9	1 month	$20 or $30 (N)	10¢
Oklahoma	none	7	2 weeks	actual expenses up to $10 or $20	9¢
Oregon	× judge	7	up to 1 month	actual expenses	8¢
Pennsylvania	× judge	5	up to 1 month	$4,000, $3,000 (N)	8¢
Rhode Island	× state (N)	10	discretionary (N)	actual expenses (N)	8¢
South Carolina	× judge (N)	13	discretionary	$600 for supreme court $15	9¢
South Dakota	× judge	9+election days	discretionary	$15,150 for operation of entire supreme court $11 or $20 (N)	
Tennessee	× shared	14	discretionary	actual expenses	8¢
Texas	× judge	12	6 weeks (N)	actual expenses (trial court only)	7¢

Continued

State	Hospitalization, Medical and Surgical Insurance Coverage	Holidays	Vacation	Expense Reimbursement	
				General Allowance—Per Diem	Mileage
Utah	× judge	12	discretionary	actual expenses (trial court only)	7¢
Vermont	× shared	11	discretionary	actual expenses	8¢
Virginia	× judge	4+discretionary days	discretionary	$1,500; $1,650; actual (N)	
Washington	× judge	8	discretionary	actual expenses (trial court only)	
West Virginia	none	5			10¢
Wisconsin	× shared			actual expenses	7¢
Wyoming	none	10+election days	discretionary up to 1 month	$13 in-state; out $16	10¢
Dist. of Columbia	× shared	discretionary	discretionary	actual expenses up to $30, or $16 (N)	10¢
Puerto Rico (N)	× commonwealth	18	1 month	actual expenses	9¢
United States (N)	× shared	discretionary	discretionary	actual expenses up to $30 $16	

Alabama—In addition, up to $600 is allowed for each judge attending the National College of State Trial Judges.

Arkansas—Judges of the courts of general jurisdiction have the choice of reimbursement for actual expenses, or an allowance of $2,400 each.

California—Other reported benefits were an education plan; and life insurance coverage in some counties.

Connecticut—Life insurance in amounts from $6,000 to $25,000 is available to judges. Bi-weekly premium payments are 20 cents per thousand dollars of coverage.

Judge pays additional cost of family coverage for medical insurance.

Hawaii—Mileage reimbursement is 10 cents per mile over 400 miles.

Judge pays additional cost of family coverage for medical insurance.

Illinois—Judge pays additional cost of family coverage.

Except circuit travel by trial judges is reimbursed at $10 per day in Cook County (Chicago) and $7.50 elsewhere.

Iowa—Vacations are taken according to the following schedule: 1 week after 1 year of service; 2 after 2 years, 3 after 10 and 4 weeks after 15 years.

Louisiana—7 days are regular holidays. The additional 5 are declared holidays by the governor when business is not pressing.

Appellate court judges are reimbursed for their actual expenses; trial court judges are reimbursed to a maximum of $2,500.

Maine—Life insurance up to the amount of annual salary is available to all judges.

Maryland—Prince George County has a local law providing a travel allowance of $2,500 for each of its resident judges, and Ann Arundel County also provides a liberal travel allowance for resident trial judges.

Massachusetts—Suffolk County has 12 holidays.

Minnesota—Judges pay extra cost of family coverage for hospital and medical-surgical insurance.

There is no allowance for appellate judges, except chief justice is reimbursed for actual expenses.

New Jersey—Free railroad passes for travel between home and court are given to all New Jersey judges.

Judges pay the extra cost of family coverage for hospital and medical-surgical insurance.

Vacations are taken as follows: 5 weeks in the summer, 1 week at Christmas and 1 at Easter.

The per diem of $25 is for judicial functions and not more than $17.50 of this may be for lodging. $16 is the per diem for official travel other than a conference or convention.

New Mexico—If the presiding judge of a court chooses to establish a per diem, it may not exceed that established for other state departments.

New York—Expense allowances in lieu of expense reimbursement for each judge of the following courts are: $6,000 for the Court of Appeals; $7,500 ($6,500 for associate judges) Third and Fourth Departments, Appellate Division; $3,000 for the Supreme Court; and $7,000 ($4,500 for associates) for the Court of Claims.

North Carolina—Superior Court (general trial) judges receive the annual allowance of $3,500.

Ohio—Court of Appeals judges receive $20 when they sit outside county of residence; trial judges receive $30 plus other actual expenses while out of county of residence. When Court of Appeals judges sit on the Supreme Court, they receive actual expenses.

Pennsylvania—Supreme Court judges each may spend up to $7,000 for research and clerical expenses; and they have a $4,000 expense allowance. Superior Court judges have a $3,000 allowance. Common Pleas judges may spend up to $7,258 for clerical and stenographic assistance.

Rhode Island—Judge pays extra cost of family coverage for hospital and medical-surgical insurance. Actual expenses are provided only as authorized for out-of-state conferences.

Supreme Court vacations are taken after opinions are completed and before court opens in October. In 1966, for example, the court recessed in August. The trial courts recess from July to September, but one judge is always in attendance in bi-weekly rotation.

This reimbursement is for out-of-state travel; in-state travel is reimbursed at 8 cents per mile.

South Carolina—Medical insurance includes hospitalization but not medical-surgical coverage.

South Dakota—Per diems apply to trial judges. $11 is for in-state travel; $20 for out-of-state travel. Total travel allowance for the Supreme Court is $3,450.

Texas—Applies to the Supreme Court. Vacations are taken at the discretion of the Court of Civil Appeals and District Courts.

Virginia—The judges of the Supreme Court may have a $1,500 allowance in lieu of mileage. Trial judges (county court judges) have expense allowance of $1,650. Circuit judges receive reimbursement of actual expenses within circuit. Expenses of attending the Judicial Conferences by judges of courts not of record are reimbursable.

United States—Supreme Court is not included.

Puerto Rico—Other benefits available to judges are loans and prizes. The loans may be personal to a limit based on salary or home loans up to three times annual salary. The mortgage loans are insured and repayment can be by salary deductions for up to 30 years. Loans for cultural trips can also be made including the price of the ticket plus $20 per day. Prizes are given to judges for outstanding services and accepted ideas given to advance public administration in the Commonwealth.

INTRODUCTION
from
Judicial Retirement and Pension Plans
by Alice Ann Winters, Chicago: American Judicature Society, 1961 (revised 1968)

[The following essay introduced compilation of retirement legislation published by the Society in 1961. It remains the most comprehensive discussion of this topic available, and can provide anyone revising or preparing retirement legislation with an informative overview of the subject. Hence it is reprinted here. Revisions have been made by the compiler of the 1968 survey on the basis of available information about changes from 1961 to April, 1968, but statutes should be checked with respect to specifics.]

Seventeen years ago only 23 states provided pensions for retired judges. Today no jurisdiction within the United States does not have some provision for judicial retirement. Many of the plans are minimal or rudimentary, but comparison between the judicial retirement pictures in 1943 and 1968 points up the quiet but definite movement toward general judicial retirement legislation.

Among the 50 states, 60 per cent now have specific judicial retirement programs, another 25 per cent have scattered sections or paragraphs within the statutes applying to the judiciary or to a certain court, and the rest include judges within the provisions of the public employees' retirement system.

The current trend of retirement legislation is away from the public employees' system toward a specific judges' plan. Two states—Alaska and Montana—enacted separate judicial retirement plans in the 1965–67 legislative biennium, and in New Hampshire, where judges are again eligible to participate in the public employees' system, no Supreme Court justice or Superior Court judges are members. One judge has explained that most of them would rather "take a chance" on the statutory disability provisions while waiting for some kind of legislation more favorable to judges.

Most of the retirement plans are applicable to judges of courts down to the trial court of general jurisdiction. But of the 22 states which break off at that level, many are western states, such as Wyoming and Arizona, with small judiciaries and few minor courts. Also included in that number are states with two or three concurrent plans, such as Florida, where simple statutory provisions or public employees' plans cover judges of inferior courts. A few plans, notably the public employees' systems of Mississippi, New York, Ohio, Pennsylvania, and Vermont, apply to all judges whose salaries are paid by the state. Most others cover major courts of record and in many cases, as above, permit separate provision for judges of inferior and minor courts.

ELIGIBILITY REQUIREMENTS

The Age Qualification.—Minimum age restrictions are difficult to analyze constructively without taking into account corresponding minimum service requirements.

Nevertheless, the absolute minimum age in any state, assuming all service requirements are fulfilled, is not below 55. Pension plans in eight states permit benefits at that age; another 17, at age 60. The most usual minimum age is 65 (in 33 plans); but in seven states judges are not permitted to receive pensions before age 70. The highest extreme is Delaware which requires a minimum age of 72. In a number of plans there is an additional provision that retirement may be at any age after a certain number of years of service—from five in Alaska to 36 in Ohio, and in Mississippi it is specified that if a judge retires before age 65 (minimum age), his pension is reduced three per cent for each year of age he lacks.

Compulsory Retirement.—The question of compulsory retirement has always provoked controversy. Professor James G. Holbrook's survey of the courts of the Los Angeles metropolitan area included as its fifth recommendation that each judge be required to retire at the end of the year in which he reaches age 70. The basic issue seems to lie between the problem of somehow getting off the bench that aged and inefficient judge who has outlived his usefulness to the court and the danger of losing the services of a Holmes or Brandeis, whose productive years may continue long after he has attained the age of 70. It was recently pointed out that of all United States District Court judges, 97 had served beyond age 64 and 41 had served beyond age 70, and the Holbrook survey of the Los Angeles area showed that nearly 18 per cent of the judges sitting on the Superior and Municipal trial benches were above age 65 (and that approximately 10 per cent were age 70 or over).

At present 22 states have provision for compulsory retirement, generally at the age of 70. In Idaho, Nebraska, Michigan, Kansas, and Vermont that limit is extended to the end of the judicial term in which age 70 is attained, in Massachusetts a judge must retire t 70 or after 10 years of continuous service, whichever is later, and in Maine retirement may be at any time during the year before the 71st birthday; in effect, at age 71. Iowa and South Carolina place the retirement deadline at 72, and Missouri, Oregon, Vermont, and Washington at 75. In New York retirement is compulsory at 70, but may be extended in individual cases as high as 80, thus providing the public with assurance of the continued service of the occasional judge who is not ready to be retired at 70. In North Carolina 70 is compulsory retirement age if judge has fulfilled other requirements, and in Minnesota Supreme Court justices forfeit part of their allowance if they do not retire before 73.

Minimum Service Limit.—In 12 states there is no

Reprinted from 1968 Survey of Judicial Salaries and Retirement Plans in the United States (American Judicature Society, 1968)

minimum length of service required to qualify for retirement benefits. But few other plans permit benefits to a judge who has been on the bench less than 10 years. Of the nine that do, New York's two public employees' plans are the most generous, permitting retirement regardless of length of service. (However, pensions under that plan, and in most of the following, are computed on the basis of the number of years the retiring judge has served, and an individual retiring early is at a decided disadvantage.) The Georgia plan for ordinaries requires four years of service; Ohio nd Montana, five; Iowa and Michigan, six; Maine, seven; and Kentucky (Court of Appeals plan) and Idaho, eight.

In nearly 40 per cent of the plans a judge must have served at least ten years to receive a pension, and 12 years (two terms in most cases) is called for in seven plans. Higher minimum service requirements range from 15 years in seven plans to a 30-year requirement for certain minor court judges in Arkansas.

It has already been noted that discussion of minimum service requirements has relatively little meaning except in its relation to minimum ages. In North Dakota, for example, to receive benefits the service requirement is ten years, provided the judge retires at 70. If he decided to retire at 69 he must have been in office 12 years; at 68, 14 years; and so on until at 65, the minimum age, he must have completed 20 years of judicial service. A similar scale is found in California, and in most of the plans minimum service requirements increase as the minimum age limit is decreased.

Kinds of Credited Service.—It is a generally accepted practice to offer credit for service on all courts of record or all state courts. Nevada, in certain cases, credits federal judicial service, and Delaware goes so far as to recognize out of state service. But in addition, more and more states are extending credit to certain areas of non-judicial service, particularly active military service and public legal office. Eight plans, all public employees' systems, give credit for all state service, and 12 in addition to these accept military service during a war or national emergency (although some stipulate particular wars which are accepted and others allow for such service only during the judge's term of office).

The most commonly recognized public legal offices are those of members of the state legislature and attorney general. Others include county commissioner or city councilman (Nevada), solicitor general (Georgia Superior Court plan), legislative employee services (Florida), and "all constitutional or public legal offices" (California).

Reemployment After Retirement.—Pension plan restrictions against reemployment after retirement are occasionally confused with provisions for judicial service after retirement, but the two are very different. The one has to do with the judge who thinks his pension is not high enough and decided to run for some public office or to open up his old law practice. The other is a special program (to be discussed below) which is being adopted in more and more states of placing retired judges on call to help relieve congested court dockets or to hold court for other judges in emergencies.

Plans in half the states have restrictions against the practice or law or public employment for compensation while drawing a pension, and a number offer varied restrictions against additional income of any kind. Fourteen prohibit the practice of law, although in California only for judges under 70 who are retired for disability. Virginia and Wyoming provide that a retired judge engaged in the practice of law may not participate in the program of judicial service after retirement, and in Montana his pension is suspended while he is in practice.

Under several plans the pension of a retired judge is suspended if he returns to public office, and in a few he must again join and contribute to the retirement system. (In Delaware and Illinois, however, these restrictions concern only state or federal judicial office.) Although Mississippi generally has the same restrictions, the plan also provides a number of unusual exceptions, including in particular election to public office, employment as an attorney on a fee basis, and employment because of special knowledge and ability.

RETIREMENT BENEFITS

Amount of Retirement Allowance. Pensions in six of the plans are paid as statutory retirement compensation, the annual figure ranging from Oregon's $9,500 or $8,250 annual retirement allowance to $5,000 for some Colorado justices. However, in most other plans pensions are computed either as a fraction of the judge's salary or by a formula based on his years of service. Maryland, for example, varies the single statutory amount formula by providing an annual retirement compensation of $750 multiplied by the judge's years of service.

In 19 plans the judge is given an annuity of a stated fraction of his salary at the time of retirement—generally one-half, two-thirds, or three-fourths, although some Rhode Island judges and Tennessee, Louisiana, and most federal judges receive the full amount.

In Louisiana, where retirement provisions are part of the constitution and cannot be changed except by general election, an amendment was recently passed granting the full-salary pension to most judges.

Pension benefits equal to a fraction of the judge's average salary during his time in office are provided in five plans. One of these in addition provides a supplementary amount equal to a percentage of the judge's salary times his years of service.

None of the above plans permits increases in the pension once the judge has retired. Nine plans, however, do permit the pension to represent a fraction of the current salary of the office from which the judge retired. Michigan (general plan), New Jersey (Public Employees plan for County Court), and North Dakota offer annuities of one-half the current salary of the judge's former office; Connecticut, Georgia (Supreme, Appeals, and Superior Courts), and North Carolina, two-thirds. In California the judge receives either one-half or 65–75 per cent, depending on his age and years of service at retirement. Only two states offer fractions of less than one-half: Missouri (one-third) and Wyoming (40 per cent).

A more complex pension formula is followed in the 21 plans which compute the annuity as a percentage of the judge's average or last salary times his years of

service, occasionally computed by actuarial procedures. Among these range of percentages varies from 1.5 per cent in Nevada to a full 5 per cent in Florida, with Pennsylvania following a two-part formula of 4 per cent and 3 per cent. In such plans it is common to place a maximum limit on the amount of pension a beneficiary of the system may receive—in Kentucky 100 per cent of his salary; in Iowa only 50 (public employees' plan), $7,200; and in Maryland, per cent. Other limits are 75 per cent, 65 per cent, 60 per cent, and one-half. Maximum pension in Indiana is $4,800 a year; in Michigan, $7,200; in Nevada $13,600 or $12,800.

A few states specifically guarantee the judge a minimum pension, in amounts as low as Wisconsin's $10 a month or as high as Montana and New Hampshire's 50 per cent of the judge's last salary.

Provision for Widows.—When the widow of the late United States Chief Justice Fred M. Vinson was left without income at his death in 1953, nationwide concern began for a previously neglected area of retirement legislation. Today only 17 out of the total of 68 separate retirement plans in state jurisdictions have no provision for death benefits or provide only a return of the judge's contributions to the pension fund. Thirty-one plans have pensions or grants to widows equal to a fraction of the judge's salary or of the pension to which he was or would have been entitled at his death, and 16 offer the judge a choice of optional modifications of his retirement allowance designed to provide reduced or actuarially reduced benefits for his widow and heirs.

Ten states distinguish between the widow of a judge who died in office and of a judge who died after retirement, six of them providing benefits only to the widow of an active judge. In the Maine and Kentucky (Court of Appeals) plans all widows receive benefits, but different amounts accrue to widows of either group. In Minnesota widows of Supreme Court and District Court judges are given benefits only if the judge had already retired at the time of his death. Another distinction is made in four public employees' systems between ordinary death and death which arose out of the judge's occupation. Again, each widow receives a benefit, but a more generous amount is given in the latter instance.

Six plans set a minimum age for a widow to receive benefits: 62 in Arizona, 65 in Colorado (Supreme Court plan), 60 in Maine, 62 in North Dakota, and 55 in Illinois and Michigan (both plans). However, in either Michigan plan the age requirement may be waived if the widow has custody of a minor child. In Connecticut and New Mexico the husband must have continued in service until age 70, and several plans require a minimum number of years. To receive benefits, a widow of a Colorado Supreme Court must have been married at least 20 years. Washington and Michigan (both plans) require that she have been married at least 10 years; and Maryland, only three. A New Jersey variation of this requirement provides pensions only to widows who were married before their husbands attained the age of 50.

The husband of an Oregon widow must have served at least six years for her to receive a pension, and the annuity she receives is based on a scale increasing in accordance with the number of years he served. An unusual restriction on granting widow's benefits was found in the Canadian plan prior to the 1960 amendments, under which the widow received nothing unless the Governor in Council deemed that she was in "necessitous circumstances."

A few states provide the widow with nothing more than a lump-sum benefit. Included in these are the non-occupational benefits of Hawaii and New York State (one-half the judge's last salary). The widow of a Nevada Supreme Court justice receives an annuity of $350 a month, and of an Ohio judge, $50 to $100 a month. In Wisconsin the widow receives a lump sum of at least $500 or, if the judge had accumulated enough service credits according to the Wisconsin system, a pension of at least $10 a month.

A number of other plans provide the widow with a pension equal to a stated fraction of the annuity to which the judge was or would have been entitled at his death. If he was not eligible by age or by service at the time of his death ot receive a pension, a few states have provisions for assuming the lowest minimum of either for the purposes of figuring the pension to which he would have been entitled. The fraction in 15 plans is one-half the judge's pension, one-third in South Carolina. A Louisiana widow receives the greater of one-third of the salary or one-half of the pension of her husband. The widow of a Supreme Court justice in Colorado receives the full amount of the pension her husband was or would have been receiving (up to $5,000).

The occupational death benefit in Hawaii, New Jersey, and New York State is a pension equal to one-half of the judge's average final compensation (average salary during a specified number of years). In the New York City plan it is one-half of the salary he was receiving at the time of retirement, and New Hampshire, 30 per cent of his average final compensaiton below $4,200, and 50 per cent above. Other plans based on the judge's salary in office provide pensions of at most one-half of his average final compensation down ot one-fourth of that amount. In Connecticut the annuity is one-fourth of the current salary of the judge's former office.

Of the many plans that provide choices of options, few have no other provisions for widows. In Florida a judge is automatically construed to have selected the option providing the greatest benefit to his widow, and in Pennsylvania a judge who died without having made a choice is deemed to have selected the option providing a return of his contributions or the balance of his contributions to his widow or heirs. In many plans, a return of contributions such as this is common—the only provision is six.

DISABILITY RETIREMENT

Amount of the Pension.—A few years ago in California it was revealed that an inactive judge suffering a heart ailment had drawn $32,000 in two years, holding court sessions on only nine mornings during that time. Such a situation points up Professor Shartel's observation that failure to retire a judge for disability amounts to paying him an indirect pension, "but unfortunately the state does not obtain full benefits of a pension system in this case. The disabled judge continue to occupy the place which should be occupied by an effective man. The state has the burden but not the benefit of a real disability person."

At present, plans in only three states still have no provisions for disability retirement, and in three more states disability provisions are lacking for judges of one or more courts. For the rest, three plans have set a minimum age requirement for a disability pension: 50 for appellate and 60 for trial court judges in Alabama, 60 for Alabama Superior Court judges, 62 for Georgia Superior Court judges, and 65 for any Virginia judge. If the judge is younger than 60 in Florida and 50 in Hawaii he receives less than maximum benefit. A much more common qualification requirement is a minimum service limit in 23 plans. Again, as in the requirements for the regular service retirement pension, ten years is the most widely used limit. Other plans ask as many as 15 years of service to qualify for disability benefits (Alabama Superior Court) or as few as five (Alaska, Wisconsin and Pennsylvania).

As in the provisions for death benefits, many of the plans distinguish between occupational and non-occupational causes of disability. A participant in the Illinois judges' retirement system is considered permanently disabled only if the "disability occurs while in the employment of an employer as a judge." As a rule, occupational disability pensions are the more generous, although it is not uncommon to offer the regular service retirement benefit for non-occupational disability if the judge has attained the minimum age (as in New Hampshire).

Under many plans a disabled judge receives all regular benefits. In some cases additional or special computation may be required to achieve this end, particularly if the judge had not filled the minimum service qualification at the time of his disability. Several states set various forms of minimum pension for disability retrement, figured by establishing complicated provisions for assumed service to minimum retirement age for use in figuring the pension, either by the regular procedure or by actuarial computation; or by providing several separate annuities which together will give the retiring judge at least a specific minimum fraction of his last salary.

One New Hampshire non-occupational disability pension formula is equal to 90 per cent of the regular retirement allowance, computed on the basis of the judge's actual years of service. This state has one of the few plans which offer a reduced pension for disability retirement. New Hampshire, Mississippi and Kentucky (Court of Appeals plan) provide for fractions of the regular retirement allowance; South Dakota sets a statutory pension of $200 a month for disbled judges with fewer than the minimum years of service; and Georgia (Superior Court plan) and Virginia (in the case of voluntary retirement) set lower fractions of the judge's salary at retirement.

Missouri does provide an apparently higher pension for disability than regular service retirement, but the allowance is continued only until the end of the judge's term of office, as in North Dakota.

An unusual stipulation on the disability pension is found in Florida, where a disabled judge who retires voluntarily is denied a choice of optional forms of pension. Minnesota (Supreme Court justices) and West Virginia continue the judge's full salary until the end of his interrupted term of office and then provide the regular retirement benefits.

Procedure.—Few plans are willing to bestow a pension on a judge whose disability is nothing more than a sore throat or the sniffles, and although some do have provision for reentry into service upon recovery from the disability, most plans refuse to grant a disability pension until some responsible authority is reasonably assured of a permanent physical or mental incapacity to perform the duties of the judicial office.

Procedure for determining the extent of the disability may be nothing more than certification of incapacity by two or three physicians (21 plans) or approval by the governor (16 plans). Five plans require determination by the other judges of the disabled man's court, and another eight by the justices of the state Supreme Court. Many of these also require approval of the system's retirement board; a total of 18 plans involve the retirement board or board of trustees, alone or in combination with other methods of determination.

California, Colorado, Connecticut, Florida, Maryland, Missouri, Nebraska, North Carolina and Texas have established separate standing bodies which exist particularly for the purpose of deciding questions of disability retirement. In California, retirement is ordered by the governor with the consent of a majority of the members of the Commission on Qualifications, a constitutional commission originally created in accordance with the non-political California Plan for the selection judges. Constitutional commissions generally composed of judges representing various courts of the state, lawyers, and laymen are likewise established in Colorado, Florida, Missouri, Nebraska and Texas, and in Illinois, Iowa and Oklahoma judges may be retired for disability by courts on the judiciary. North Carolina provides for a hearing before the governor and the council of the state, and Connecticut has a special committee consisting of the governor, chief justice of the Supreme Court, attorney general, commissioner of health, president pro tempore of the senate, and speaker of the house of representatives.

The disability of a Virginia trial justice is determined by the judge who appointed him or his successor. Utah, Oregon, and Michigan plans involve action by the state bar associaiton, and in Wisconsin, disability is determined by the state or municipality which employs the judge.

Several states have enacted precautionary measures against the judge who insists he is "just as good as ever" and refuses to resign. One of the most elaborate is found in the Minnesota statutes, providing that if a disabled District Court judge continues in office "and the public service is suffering and will continue to suffer by reasons thereof," any 25 or more freeholders and electors of his judicial district may petition the governor to have the question of his incapacity judicially determined. Exact and detailed instructions are laid out for procedures in filing the petition, suspension of the judge, conduct of the hearing, and appeal by the disabled judge to the Supreme Court.

Along this same line, a recent addition to the federal judges' retirement plan is of particular significance as a tool against court congestion: if a disabled judge fails to resign, a certificate of his incapacity is presented to the President by the authorized person or persons. The President may then appoint an additional judge to that court, and the vacancy subsequently

caused by the death or retirement of the disabled judge is deemed to have been already filled.

FINANCES AND ADMINISTRATION

Source of Funds.—The customary source of funds in a judicial retirement plan or public employees' system is some form of contributory pension fund. A number of the 21 plans financed by other means are barely rudimentary statutory sections or paragraphs; one is the supernumerary judgeship plans of Alabama, a state with constitutional restrictions against public retirement funds.

Twenty-one pension plans are financed solely by appropriations from the state treasury, but another six plans obtain funds either in whole or in part from portions of court litigation and filing fees. The Kansas and Nebraska plans receive $1.00 from each civil litigation fee; Arizona receives 25 per cent of all fees paid to clerks of both courts included under the plan; and in New Mexico $5.00 is subtracted from every $11.25 docket fee.

Salary assessments for contributory pension funds range from 10 per cent (including 2½ for widows fund) of the judge's salary in Illinois to a 2 to 3 per cent in the Virginia plans.

Most common is a 5 or 6 per cent salary deduction. Under several plans, all public employees' systems, salary assessments are actuarially determined, usually computed on the basis of the participant's sex, occupation, and nearest birthday at the time of entering the system.

Delaware assessments are made only on the portion of the judge's salary which is less than $7,500 a year, and Ohio assessments, on that portion below $25,000 a year. North Dakota exempts judges who have completed more than 20 years of service from further contributions to the retirement fund.

Maximum contributions to the fund in Indiana may not exceed $500 a year, and Iowa likewise sets certain stated maximum amounts of salary deductions. A minimum contribution of $1.00 is required, on the other hand, of every participant in the Mississippi public employees' system.

The state government in 27 states assumes partial obligation for funding of the pension plan, even in systems which provide for contributory pension funds. Generally, these state contributions are actuarially determined or are equal to a fraction of all judges' salaries, although many states guarantee provision of funds "as necessary." Several states contribute to their public employees' retirement systems on the basis of complex systems of "rates." Virginia contributes an amount equal to judges' contributions during the preceding biennium.

A common practice in states with large judiciaries or in public employees' systems is to divide the pension fund into five or six individual funds, such as in Hawaii, where the six separate funds are the "annuity savings fund," "annuity reserve fund," "pension accumulation fund," "pension reserve fund," "expense fund," and "minimum pension fund." Another common fund, not included in the Hawaii system, is the death benefit fund, holding a reserve for widows' benefits.

Administration. A retirement board or board of trustees holds administrative responsibility for the retirement system under 28 plans. Membership in these boards is often specified by law only as specifically as Indiana's provision, "to be appointed by the governor." Other plans, however, list the specific state officials who are to hold office on the board, most generally from among a group including the governor, treasurer, auditor general, attorney general, secretary of state, and the judges of various courts. An unsual provision is found for the Delware board, where the members are chief justice of the Supreme Court, governor, and the president of the Farmers Bank of the State of Delaware.

The New York City system is administered by the City Board of Estimate; Idaho's plan, by the Department of Public Instruction; and Nebraska's plan, by the Board of Educational Lands and Funds. While many systems specifically provide for representation of members on the board, a number consist of only state or municipal officials. The Wisconsin board is composed of nine trustees, each from a different county in the state, and the Arkansas plan for minor court judges provides for individual boards in each of the cities, consisting of municipal officials.

Plans which are not administered by some form of retirement board, most generally call upon the state treasurer or the state comptroller. West Virginia's system is headed by the state auditor.

Investment authority is most often in the administrative agency of the system, although in six plans it lies in an outside agency: in Alaska, the Commissioner of Revenue; Colorado (Supreme Court plan), the state treasurer; Florida (public employees' system), a special investment board; Montana (public employees' plan), the State Board of Land Commissioners; Washington, the state finance committee; and West Virginia, the State Board of Public Works.

JUDICIAL SERVICE AFTER RETIREMENT

An 82-year old judge was recently quoted in a newspaper interview as saying, "I have always enjoyed my work, and I don't see any reason to quit what you like. I certainly don't want to sit around and twiddle my thumbs." His was a candid appraisal of the reactions of many judges to the abrupt halt of what has often been a lifetime of service. The solution of this problem which has been incorporated into 35 states' (eight states have added provisions for some or all judges since 1961) retirement programs is significant not only insofar as it provides an alternative to judges' "twiddling their thumbs" after retirement, but as a potent and not yet fully tapped means of relieving court congestion.

One of the most conspicuous examples of the value of a program of judicial service after retirement in this connection occurred in the one-judge United States District Court in Anchorage, Alaska, in the two or three years preceding statehood. The docket was swamped and litigation could move only at a snail's pace, simply because the court lacked judges; yet in anticiption of coming statehood nothing was done about adding more men to the bench. It was only through the services of a number of retired judges from other parts of the country that the court was kept from being completely inundated.

Under several of the plans, the rest of the retirement benefits are built around the program of judicial service after retirement. Alabama has enacted super-

numerary judgeship plans to avoid a constitutional restriction against state retirement for public officers. Georgia has a similar judgeship emeritus program, and Maine's "retired active judges," North Carolina's program for "emergency judges," and Kentucky's "special circuit justices" are other examples. On the other hand, some states have enacted retirement service provisions entirely separate from the regular retirement plan and applicable to all state judges whether or not they are included under the same retirement plan.

The duties of retirement service, compulsory in eighteen states, vary from responsibilities and authority equal to that of regular active judges of the court while under assignment (14 states) to service in an advisory capacity only, as in Georgia. Retired judges have limited powers in Arizona and Wyoming, where they may carry out duties preliminary to the final disposiiton of cases, and in Idaho, where they have authority only in civil actions and proceedings.

Other common responsibilities are those of court commissioner and official state referee. Retired judges in Georgia (Superior Court) and North Dakota are on the judical council, and in West Virginia a retired judge may run for "special judge," an elected office. In most cases, assignment of retired judges is by the Supreme Court, although Alabama supernumerary judges and Maine retired active judges are appointed by the governor. Service in civil litigation in Idaho may be assigned by any District judge with the consent of the parties.

In 13 states the judges receive no additional compensation for judicial service after retirement. Another eleven, however, reimburse the judge for his actual expenses during service. And in Arkansas, California, Florida, Illinois, Iowa, Louisiana, Michigan, Texas, and Utah, the judge's retirement allowance is increased to be equal to the salaries of regular active judges on the court to which the retired judge is assigned. New York state referees receive an allowance equal to two-thirds the salaries of regular active judges, and in Colorado the judges receive one-half the salaries of the regular active judges.

RETIREMENT LEGISLATION

Who is to sponsor the drafting of and lobbying for changes in judicial retirement legislation? There can be only two alternatives: responsibility is in the hands of either the bar or the judges themselves.

It is almost impossible, however, for the bench to do an adequate job of promoting legislation in its own interest, for the sound reason that "none of the lobbyists' poses is really consistent with the dignity of the judicial office. Furthermore, a judge who has so appeared may later find himself embarrassed when a lawyer-legislator stands in court before him."

When, in 1951, the bench was finally included in the Wisconsin public employees' retirement system, with special judicial retirement concessions, the new plan was recognized as a great victory. In the past pension plans had been defeated no less than 16 or 17 times. In that campaign a state committee on judicial administration for the American Bar Association and a committee on judicial administration for the Wisconsin Bar Assocation played active roles in drafting, introducing, and getting the pension bill passed.

Adequate judicial retirement legislation, with resultant benefits ot the public of speeder, more efficient courts and a sounder, more competent judiciary, has always come about when state and local bar associations and leaders of the legal profession have recognized the vital relationship between judicial administration and security after retirement for judges, and when they recognized also that it is a job the judges cannot do for themselves—that it must be done by the bar or not be done at all.

JUDICIAL SELECTION AND TENURE IN THE UNITED STATES

by
Glenn R. Winters
and
Robert E. Allard

Judicial Compensation. For substantially the same reason that it is important to provide means of judicial selection and retention which do not place unnecessarily high demands on the financial resources of a would-be or incumbent judge, it is also important that judicial office carry with it financial rewards equal to those of comparable positions in the practice of law. One of the common measures of success of the practitioner is his income during his active years, and the financial provisions for his retirement.

The state, as an employer of judges, is only one of several buyers in the legal job market. To attract to the bench the high quality of personnel required, it must be able to compete on a financial basis with corporate employers and private-law practice. Unfortunately, since World War II, judicial salaries have lagged behind compensation for comparable positions in the practice of law.

Judicial Salaries. Figures on the comparative incomes of experienced lawyers and trial judges in three representative states reflect the present situation. According to a State Bar of Michigan survey of lawyer income in 1962, private practitioners with five or more years of experience received an average income substantially higher than the lowest paid ($12,500) trial judge. A 1964 survey showed that lawyers in the city of Boston with ten or more years' experience earned $1,000 to $10,000 more than trial-court judges. Boston suburban lawyers' incomes exceeded the income of trial judges by even greater amounts. A survey by the Oklahoma Bar Association indicated that the 1959 average gross income of self-employed lawyers with ten or more years of experience exceeded the salary of the highest paid trial judge by amounts ranging from $1,000 to $13,000.

It would be a mistake to try to pay judges as much as the highest-paid lawyers earn. The state could not afford it, the salaries would be out of line with the compensation of other public officials, and there would be unseemly political scrambling for judicial posts. But salaries no higher than the earnings of lower-level practitioners cannot be expected to bring high-level talent to the bench. The judicial salary range should be somewhere well above the average or median of lawyer earnings.

Excerpt from The Courts, the Public and the Law Explosion (pp. 165-166), edited by Harry W. Jones, Prentice-Hall, Inc. (1961)

A Model Plan
for
JUDICIAL DISABILITY AND RETIREMENT COMPENSATION
by the
Junior Bar Conference
of the American Bar Association
1962

RETIREMENT

I. ELIGIBILITY REQUIREMENTS

(A) Age Qualification. A judge should qualify for retirement whenever his age and total number of his years of service added together total 75. There should be no further minimum service requirement than this. Service by a judge in all courts of record in any state, together with his service in the military during time of war or national emergency should be given credit in determining his eligibility for retirement.

(B) Compulsory Retirement. A judge should be required to retire at the age of 70, subject to provisions for judicial service after retirement hereinafter contained.

(C) Re-employment After Retirement. A retirement plan should provide that the pension or retirement benefits would continue even though the retired judge was re-employed except if he was re-employed in some form of public employment, for compensation.

II. BENEFITS

(A) Amount of Retirement Allowance or Death Benefits. Upon retirement or death after meeting the qualifications, a judge or his survivors, as hereinafter specified, should be paid at the rate of the full amount of his monthly salary in the month preceding his retirement or death, as the case may be, subject to adjustment on the cost of living index prevailing thereafter.

Upon retirement or death before meeting the qualifications for retirement, a judge or his survivors, as hereinafter specified, should be paid at the rate of a percentage of the retirement or death benefit, computed as set forth in the preceding paragraph, said percentage to equal the percentage of the eligibility requirement completed by the judge prior to his retirement or his death.

(B) To Whom Payable. The retirement benefits set forth in the preceding paragraph should be paid to the judge himself after retirement to the date of his death. Those same benefits, after the judge's death, should be paid to his surviving widow for the remainder of her lifetime. There should be no minimum age requirement for a widow to receive benefits, but it should be required that the deceased judge and his widow were married for a period of at least (10) years prior to his death. If at the time of the death of the judge leaving no surviving widow, or at the date of the death of a surviving widow thereafter, there are surviving children, those children should receive the same retirement benefits as hereinbefore specified, in aggregate, to be prorated between them and to be paid as to each child until he or she attained his or her majority or was emancipated, whichever occurred first.

DISABILITY

I. AMOUNT OF PENSION

If a judge becomes disabled prior to his retirement, but after he has met the minimum requirements of age and service therefor, he should receive his full retirement benefit. If a judge becomes disabled before he meets the minimum requirements of age and service for retirement, then he should be paid a percentage of his retirement benefit which is equal to the percentage of the minimum age and service requirement he has met before his disability.

II. DETERMINATION OF DISABILITY

A disability pension should not be granted until a responsible authority is reasonably assured of a permanent physical or mental incapacity on the part of a judge to perform the duties of his judicial office. This matter should be determined by the governing board of the Retirement and Disability System. This board should act only after proper certification of incapacity by two or more physicians. If a disabled judge fails to resign and a suggestion of incapacity is presented to the governing board of the system, that board should be empowered to determine incapacity and force the resignation of the judge in question.

ADMINISTRATION

A separate retirement and disability board should be established for the administration of a separate system for the judges in each state.

JUDICIAL SERVICE AFTER RETIREMENT

Any judicial disability and retirement plan should make provision for the use of a judge after his retirement, to permit the utilization of the services of a capable judge when necessary and desirable to avoid court congestion.

IMPEACHMENT SYSTEM GOES ON TRIAL*

by
Hampton Dunn [1]

Florida's system of impeaching judges appears due for a drastic overhaul soon. Experts have cast a critical eye at the "outmoded concept" and found impeachment proceedings to be quaint, creaky, unwieldy, expensive, and in some respects, crazy.

Many lawyers, lawmakers and laymen are demanding reform after two recent experiences of the State Senate sitting as a Court of Impeachment in lengthy, costly and confusing trials of accused circuit judges.

Impeachment originated as a criminal proceeding about the time of William the Conqueror (1027-1087 A.D.) and in Florida has been included in our concepts of government since the Constitutional Convention. The only trials which have been held under the ancient system are the two recent cases of Circuit Judge George E. Holt of Miami in 1957 and of Circuit Judge Richard Kelly of Zephyrhills last year. Both trials resulted in acquittal.

One of the most articulate spokesmen crying for reform is the distinguished judge who presided over the Kelly impeachment trial -- Chief Justice E. Harris Drew of the Florida Supreme Court. A colleague on the high bench, Justice Stephen C. O'Connell, also sees the need for a new plan not only of removing judges, but in selecting them as well.

Perry Nichols, the Miami lawyer who headed Judge Kelly's defense, thinks the impeachment system should be changed. "It's 50 years behind times," he says.

House Speaker Mallory Horne, a lawyer, declares "There has got to be a better way."

Scholarly Chief Justice Drew, whose fair and efficient handling of the Kelly trial brought praise from many sources, has dug deeply into the problem of what's wrong with the impeachment system and how best to cope with jurists accused of being errant. His observations are astute and interesting.

Justice Drew believes "The problems and intricacies of investigation and trial of impeachment have no place in the modern legislative process. My recent experience in the Kelly impeachment trial convinces me that it would simply be impossible to find time to conduct impeachments during sessions of the legislature."

He pointed out that the business of law-making bodies has rapidly become almost a full-time occupation, especially in the case of Congress and becoming more

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*Excerpts from an article in the Tampa (Florida) Tribune, January 19, 1964.

1. Mr. Dunn, a non-lawyer, wrote this article while on the staff of the Tampa Tribune as a political editorial writer. In 1966 Florida adopted the commission plan for the discipline and removal of unfit judges.

and more so in the legislature. Speaker Horne likewise bemoans that impeachment proceedings are "cumbersome and time-consuming during a regular session already far too short."

It therefore becomes necessary for the legislative bodies to convene especially for the impeachments. In the case of Judge Kelly, the House conducted the probe hastily during the regular session, but his trial was held in a special session of the Senate, lasting 12 days and taking 2,600 pages of testimony.

The Chief Justice learned from the State Controller's office that expenditures attributed to the Holt impeachment trial were $121,869.77, plus many other charges which for various reasons of accounting did not appear in these figures.

The expenditures in the Kelly trial as of early December amounted to $79,742.39, but this does not include the cost of printing the proceedings, expected to amount to more than $35,000, and some other expenses.

Justice Drew observes then that costs of the Holt and Kelly trials total approximately a quarter of a million dollars, which is more than half the cost of operating the Supreme Court itself for one year!

"Such tremendous costs," declares Justice Drew, "are not justified under any circumstances, particularly where the same results could be accomplished much more expeditiously and much better at a fraction of the cost by a simple amendment to the constitution."

(Justice Drew's comments and recommendations apply only to impeachment of judges and not to the other officers subject to impeachment by the constitution, which includes the governor. He has no opinion regarding impeachment of officers other than judges. In the five impeachments in history, three involved circuit judges, one was a governor, Harrison Reed, and the other was state treasurer. Only Holt and Kelly actually came to trial).

Continuing his look at what's wrong with the system, Justice Drew went on:

> "It is said that impeachments are governed by the laws governing judicial proceedings generally. My research indicates, however, some doubt as to this concept. In the trial of these cases the senate is judge and jury. It is a judge composed of men who are not judges and a jury composed of men who are judges. Moreover, it passes upon the correctness of its own conclusions because there is no appeal from its judgments except where plain constitutional provisions are violated."

Although Justice Drew could make rulings during the trial, these could be overridden by a vote of the Senate. The Florida Senate has 15 lawyer-members, comprising one-third of the membership, but other occupations represented include that of housewife, cattlemen, insurance brokers, bankers, oil distributors and others. In the Senate are four ex-judges, a prosecutor and an ex-sheriff.

In a speech in Pensacola, Justice Drew likened his role in the trial to that of a

platoon sergeant who issues an order only to have his order counteracted by some private in the rear.

In an interview with this writer, he cited other shortcomings in the system and came to "the inescapable conclusion that, while impeachment proceedings have been designated as judicial, they embrace few, if any, of the aspects of the traditional American concept of a judicial proceeding."

Justice Drew finds it almost an impossibility to conduct an impeachment trial as a judicial proceeding, because there are too many people involved.

"In the Kelly trial 44 senators participated," he noted. "Many had to be excused from time to time and, therefore, all did not hear nor would vitiate any verdict. A wholly unwieldy situation would become a chaotic one if the Senate were composed of, say, a hundred or more members instead of 44, a possibility not too remote."

All those who have given thought to this important subject are alarmed about the severe penalty attached to impeachment.

Said Justice Drew: "Perhaps the most serious fault with the present system is that the charges must be either sustained and the accused found guilty and thereby stripped of his office and disqualified to hold any office of honor, trust or profit under the state or he must be acquitted. There is no middle ground. Impeachment does not embrace the concept of intermediate punishment such as suspension, fine or reprimand. I am convinced that most trials of impeachment could have been prevented had there been an authority with the power to reprimand, fine or suspend a judge for misconduct in office. I am confident that if there were a commission vested with such power, most cases could be finished before they ever reach a point of requiring severe action."

Justice O'Connell has much the same criticism. In a recent St. Petersburg speech, he noted that Judges Holt and Kelly were acquitted "although observers, and many senators participating, have stated that in both cases the judges were guilty of conduct that merited censure or discipline, but not the harsh remedy of removal from office accompanied by disqualification to hold any other office." He urged a method for dealing with misconduct of a judge that does not warrant or require removal.

Attorney Nichols also thinks the section of the constitution forever barring impeached judges from holding offices of trust is "too severe" and should be erased. "We treat our felons better than that," he told this reporter. "We restore their civil rights and they can run for office."

The Miami lawyer stressed that while procedural changes should be made, "Impeachment of judges by political bodies should be difficult." He felt the end result came out correctly in the Kelly case.

"I was extremely proud of the Senate of Florida," said the deep-voiced Nichols, "because as the case unfolded the senators rose above the political issue

and decided it on its merits."

The Bar Association has struggled for years to come up with some sort of alternative method for spanking naughty judges, but have not developed it.

But Justice Drew has a specific recommendation.

He proposes for the disciplining of judges that a commission be created by constitutional amendment, consisting of the governor, the president of the Senate, the speaker of the House, the chief justice of the Supreme Court, a judge of the district court of appeal, a circuit judge and a county judge, with power to remove, suspend, fine or reprimand any judicial officer of Florida for designated misconduct in office.

The Chief Justice also suggested that there be a sub-committee of the main commission, consisting of the chief justice, the district judge and the circuit judge who would have power to investigate the conduct of any judge and administer punishment by reprimand, fine or suspension for not more than 30 days. Any greater punishment, Justice Drew suggested, would require the affirmative action of a majority of the full commission.

"I believe such a commission would be a greater step forward in the effective administration of justice in our state," said the Chief Justice. "It would serve to restrain non-judicial conduct and, at the same time, provide protection for honest and fearless judges against political persecution. I am confident the time is right for such action and I believe that such a proposal will receive favorable consideration by the next legislature.

"My experience in conducting the second impeachment trial ever conducted in this state, as well as my experience as a justice of the Supreme Court for the past 12 years and a member of the Bar of this state for more than 40 years convinces me that such reforms are essential and in the interest of the general welfare of the state."

Justice O'Connell sees the need for a method for dealing with that misconduct of a judge that does not warrant or require removal, as well as a less cumbersome and more efficient method of removing judges than at present.

He suggests both could be done by the same type constitutional commission in Florida that now tries the question of disability of a judge. Since 1957, any judge may be removed from office for permanent disability, mental or physical, which prevents performance of his duties. The Constitutional Commission is composed of judges operating under rules promulgated by the Supreme Court.

JUDICIAL DISCIPLINE AND REMOVAL[1]

PART I
INTRODUCTION

The American Judicature Society has since its inception stressed the need for improved means of judicial selection. No method of selection can, however, guarantee that all the judges selected thereunder will remain competent over their entire term. It is necessary, therefore, to have an adequate means of disciplining and, if necessary, removing incompetent or misbehaving judges. This report attempts to set out the major methods used in the fifty states for disciplining and removing judges.

Part II of the report is a brief summary of the major methods of discipline and removal used in several states. Part III is more detailed description of an effective system currently in use in California. Part IV contains charts showing for each state what methods are available, the major features of the method, and the relevant constitutional or statutory citations. Finally, Part V is an annotated Bibliography of articles on Judicial Discipline and Removal.

It should be emphasized that this report has not covered all methods for disciplining or removing judges. In addition to the informal methods such as appellate reversal or reassignment, there are scattered formalized procedures which may be used to remove judges. For instance, in some states disbarment of an individual may lead to the loss of his judicial office. Those wishing to consider these other methods for removing or disciplining judges should consult "Remedies for Judicial Misconduct and Disability: Removal and Discipline of Judges." 41 New York University Law Review 149-197 (1966).

PART II
SUMMARY OF METHODS CURRENTLY USED

A. Impeachment

Impeachment is the traditional means for removing unsatisfactory judges. The United States Constitution and the Constitutions of forty-six states provide for impeachment. The only states not so providing are Delaware, Hawaii, Indiana and Oregon.

Generally, in impeachment, the lower house of the legislature draws up the articles of impeachment which serve as the charges against the accused. A trial on those charges is held before the upper house of the legislature. After hearing the

1. American Judicature Society Report No. 5 (April, 1968)

evidence, the upper house votes in open session on the charges. Generally, affirmative votes of two-thirds of those present or elected to the upper house are needed for a conviction. A conviction means that the accused has been found guilty of that charged in the articles of impeachment. However, the only punishment is removal from office, but the individual may still have to face criminal charges.

B. Address

Address of some form is available in the following twenty-eight states: Arkansas, Connecticut, Delaware, Hawaii, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin.

Address is usually a formal request by both houses of the legislature asking the governor to remove a judge. A two-thirds vote of the members of the legislature is normally required for an address. The governor is then required to carry out the request and remove the judge. In some states, however, the governor does not participate in the removal. Instead the two-thirds vote of the legislature is sufficient by itself to accomplish the removal.

C. Recall

Recall is provided for in Arizona, California, Kansas, Nevada, North Dakota, Oregon and Wisconsin.

Recall originates with the electorate. If a specified percentage of voters sign a petition for recall, the judge must face a special election.

In some states, the judge runs unopposed and must win a majority of the votes to remain in office. In the other states, opposition candidates may run and the individual who receives the highest total of votes serves the remainder of the term.

D. Courts on the Judiciary

Courts on the Judiciary are provided for in Alabama, Hawaii, Illinois, Indiana, Iowa, Louisiana, New Jersey, New York, North Carolina, Oklahoma, Texas and Virginia.

In certain states the court is a specially constituted court comprised of selected judges from the appellate and trial court levels. In other states, the charges are heard before an existing court such as the Supreme Court. In general, the court is convened upon the filing of a complaint against a judge. Usually only certain specified individuals may file complaints. The matter is then handled before the court in the manner of a bench trial. The court may either order dismissal of the complaint or removal or retirement of the judge.

E. Judicial Qualifications Commissions

Judicial Qualifications Commissions are normally composed of judges, lawyers and lay persons. The commission's primary function is to receive and investigate complaints about judicial officers. In contrast to the Courts on the Judiciary, complaints usually may be filed by any individual. The commission has a great deal of flexibility in that it may evaluate the complaints, rejecting those that are unfounded, or cautioning the judge about those that are not very serious.

If the commission believes the complaint is of a serious nature and supported by factual evidence, it may order formal hearing before itself or before a panel of masters or referees. At these hearings the charges are presented and the judge is given an opportunity to defend himself. Based on the findings at the formal hearings, the commission may recommend retirement, removal or some other form of disciplinary action. The commission may also dismiss the charges. If the commission has recommended removal, discipline or retirement, the proceedings are reviewed by the Supreme Court which makes the final disposition of the matter. Most states also provide that the proceedings, prior to filing the recommendation with the Supreme Court, are to be confidential. It is also provided that the filing of charges and giving of testimony shall be privileged against any defamation charges.

Commissions of the above type exist in Alaska, California, Colorado, Florida, Idaho, Louisiana, Maryland, Michigan, Nebraska, New Mexico, Ohio, Oregon, Pennsylvania, Texas and Utah. A variation of this commission plan exists in Vermont.

It should be noted that proposals for commissions of the above type are at various stages of consideration in Georgia, Indiana, Iowa, Missouri, Montana, Nevada, North Dakota, West Virginia, and a measure is pending final approval in Maryland which will effect changes in that state's existing system.

In Hawaii, Missouri, New Jersey and Oregon there are special boards dealing solely with the involuntary retirement of disabled judges. These commissions have characteristics of both the courts on the judiciary and the judicial qualifications commission.

An Oklahoma View

THE DISCIPLINE AND REMOVAL OF JUDGES

Jack N. Hays

In the last two years Oklahoma has suffered from a series of events involving judicial misconduct. Most of you know that two former justices of our Supreme Court have been convicted of income tax evasion and a third justice of the same court was removed from office through impeachment on charges of bribery. We have not enjoyed the nation-wide publicity from these exposures.

I am happy to report progress—real progress—toward judicial reform in Oklahoma. On May 3, 1966, Oklahoma voters wrote into the state constitution provisions for a Court on the Judiciary which provides modern and adequate machinery for the discipline and removal of judges who are unfit either because of misconduct or because of mental or physical disability. The vote was 328,012 in favor to 128,207 against. The voters left no doubt as to their feelings on this subject.

Although our judicial scandals gave impetus to its adoption, the amendment was actually worked out and proposed by the Oklahoma Bar Association before any of the serious trouble in our courts was known to the bar or the public. Prior to the adoption of this measure the only means of removal of a justice of the Oklahoma Supreme Court was by impeachment or defeat at the next election. There were some provisions for trial and removal of lower court judges, but the law was cumbersome, unsatisfactory, and seldom used. We had no means of dealing with problems of senility, mental illness, and other forms of judicial incapacity or incompetence.

In these respects we were not different from most other states. Few states have satisfactory judicial removal methods.

Defeat at the next election is certainly a poor method of removal. Sometimes unfit judges are removed by defeat at the polls, but this is a most unreliable method of dealing with the problem. First, it may be a long time until the next election, and the administration of justice demands prompt action. Second, the voters are not very good judges of judicial qualities anyway. This is the reason for the great drive toward the merit selection plan. Voters are not likely to act unless a judge is notoriously unfit.

Impeachment is a method of removal of judges in almost every state. In some states it may be called "address," but in either event it involves legislative action. Usually the lower house brings charges, and the upper house sits as a court to try the case.

OKLAHOMA'S IMPEACHMENT TRIAL

As I mentioned, Oklahoma has had a recent experience with the impeachment and removal of a Supreme Court justice. We learned first hand of the weaknesses of this method. When the matter first came up in our House of Representatives and the justice was accused of having accepted bribes, many days were devoted to the investigation of the charges. Then there was debate. The publicity was tremendous. Charges were voted by the House.

A few weeks later the impeachment trial was held in the state Senate. Our senators, to their very great credit, took the matter very seriously, but, really, a jury of 48 is too large for the kind of deliberation which would be satisfactory due process. Ten days were consumed in the trial, and bench and bar suffered intensely from daily headlines. Imagine the reaction of lawyers and laymen alike when a former justice of years of service testified concerning the bribes he had personally delivered to two other members of the court. After extensive testimony the justice was convicted and removed from office by a single deciding vote.

What is wrong with impeachment?

1. It is cumbersome. The legislature must either be in session or be called into session.

Excerpt from 50 Judicature 64 (August-September, 1966)

Much time of all legislators is required which takes them from other duties.

2. It is expensive. In the Oklahoma case, legislative time alone amounted to more than $50,000 in expense in addition to the cost of investigation. Florida impeachment trials a short while ago were estimated to cost $250,000.

3. It is essentially political rather than judicial in nature. Widespread publicity and editorial comment put many senators under pressure to vote the sentiment of their constituents rather than their own.

4. If there is a miscarriage of justice, there is no appeal.

5. The excessive publicity is damaging to the entire judicial system.

After this trial, our legislators voted almost unanimously to submit the constitutional amendment for the Court on the Judiciary. They had had their fill of impeachment as a method of dealing with judicial misconduct.

Only a few states have any procedure for discipline and removal of judges through judicial action. The number is growing, however, and we are glad that Oklahoma is now one of them.

Such judicial procedure for the discipline of judges usually involves one of two methods. One is the utilization of some method of investigation and hearing with recommendations made to the Supreme Court or highest appellate court in the state. The high court actually orders the removal or discipline. California, with its Commission on Judicial Qualification, established in 1960, is typical of this plan. The procedure is entirely confidential until the report is filed with the Supreme Court.

The other type of system is one which involves a completely separate tribunal which is not subordinate to any other court. Typical of this method is the one used in New York and now Oklahoma.

COURT ON THE JUDICIARY

Our Oklahoma Court on the Judiciary is divided into a Trial Division and an Appellate Division. The Trial Division consists of nine members, eight of whom are the district judges, senior in service, but under sixty years of age. The ninth member is an active member of the Oklahoma Bar Association, chosen by its Executive Council.

The Appellate Division consists of two members of the Supreme Court, chosen by that court; one member of our Court of Criminal Appeals, chosen by that court; one member of the Bar Association chosen by its council; and five district judges senior in service but under sixty-five years of age.

Complaints before the Court may be filed only by the Supreme Court, its Chief Justice, the Governor, the Attorney General, the Executive Secretary of the Oklahoma Bar Association upon vote of the executive council, or by resolution of the State House of Representatives or the House of Delegates of the Oklahoma Bar Association. The Bar Association has the obligation to furnish a panel of prosecutors.

Grounds for removal of a judge are gross neglect of duty, corruption in office, habitual drunkenness, commission of an offense involving moral turpitude, gross partiality in office, oppression in office or other grounds as may be specified by the legislature. Grounds for compulsory retirement are mental or physical disability preventing the proper performance of official duty or incompetence to perform the duties of the office.

Many persons favor the California system with its confidential investigation. Results there have been most impressive. Through 1964, the California Commission had received 344 complaints, and had conducted 118 investigations. The investigations led to resignation or retirement of 26 judges. Only one formal hearing has been required. In fact, the universal experience throughout California is that the very existence of a satisfactory method of dealing with unfit judges causes the erring judge to retire or resign rather than face a hearing.

I must say that for Oklahoma, where our most serious trouble was in the Supreme Court, the California plan might not have been effective. For our situation the independent Court on the Judiciary is preferable. There is much to be said for confidential investigation, and presumably those in Oklahoma who have authority to file complaints would conduct such an investigation before filing.

Whether the California plan or the independent tribunal is used, there should be a modern and effective system of discipline and removal in every state.

EXCERPT FROM

Removal of Judges: California Tackles an Old Problem

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

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

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

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

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

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

Phillips and McCoy have written:

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

Albert Kales wrote in 1914:

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

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

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

Reprinted from 49 American Bar Association Journal 166 (February, 1963)

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

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

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

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

The Difficulties of Various Solutions

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

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

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

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

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

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

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

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

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

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

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

The Treatment in the Model Judiciary Article

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Background of the Problem in California

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

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

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

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

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

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

Failure to perform duties turned up in varying situations.

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

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

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

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

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

A few judges had developed a financially profitable sideline of performing

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

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

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

The Arguments Against the Plan

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

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

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

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

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

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

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

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

The Results After Two Years

What have been the results?

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

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

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

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

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

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

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

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

These figures would include any accumulation. As the first occasion in which a body has had such jurisdiction, the element of "backlog" should be kept in mind. There is no reason to assume a recurring rate of serious cases approaching that of the first two years.

A word of caution should be said about the limited scope of the jurisdiction. The Commission has nothing to do with the selection process. The legal ability of a judge is outside Commission purview. There is no possible interference with the proper independence of the judiciary.

The California experience has shown these characteristics as important in the system.

1. A tribunal, a majority of the members being judges, should have the continuity, responsibility and authority to initiate investigations and conduct hearings with respect to all state judges, and to close groundless charges.

2. Removal or retirement should be by recommendation to the state supreme court, not to the legislature or governor, and for "cause", besides disability or incapacity.

3. Confidentiality should be preserved on all complaints, inquiries, investigations and hearings until the case reaches the stage of Supreme Court review.

No other state has a comparable system.

Why should the public be imposed upon? Why should erring qualities in a few instances be permitted to cast a shadow over the achievement and dedication of others?

Knowing the constitution of the human animal, it can be assumed there have been, there are, and there will be instances among judicial officers of lack of fitness. Such cases are rare compared to the great preponderance of conscientious and able judges. Nevertheless, a suitable legal remedy is essential.

Not only is the independence of the judiciary protected, but we are convinced that the strength and capability of the judicial branch of the government is greatly enlarged. The existence of such a body, functioning and able to be used if and when necessary, is an effective element in the strengthening of the judicial system and is leading to a higher standard of judicial conduct.

EXCERPT FROM

Judicial Discipline and Removal

The California Story

by LOUIS H. BURKE

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

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

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

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

Conferences, both state and regional, of civic leaders, lawyers and judges have been held in all parts of the Union for the purpose of study of their respective state judicial systems and constitutional provisions with a view of modernizing methods for the selection of judges, at the conclusion of which conferences a consensus of conferees has been published, and by way of example may I quote briefly from one of the more

Reprinted from 48 Journal of the American Judicature Society 167 (February, 1965)

recent of these conferences the consensus of the "Citizens' Conference on Florida's Judicial System":

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

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

"There should be a review of the appointed judge by the voters after a short probationary term of judicial service and, thereafter, at the end of each term of that judicial office. The judge should be required only to run against his record in office on a noncompetitive ballot where the only question before the voter is whether the judge's record justifies his continued retention. . . . In addition, judicial compensation should be realistically established, after thorough study, in order to attract the most capable men to the bench with reasonable assurance of a continuing judicial career based on performance."

California Modifies Plan

California was one of the first states of the Union to apply the essentials of such a system in 1934; but, unfortunately, it is applicable only to the appointment and tenure of Supreme and Appellate Court judges. Such judges are appointed by the governor after confirmation by a Commission on Judicial Appointments. At the next general election the appointee's name goes on the ballot and the voters vote on the proposition whether he shall be retained in office. If he receives a favorable vote, he then serves a term of twelve years before his name again must go on the ballot. The voters vote either "yes" or "no" on his retention. If a majority vote "no" the governor makes another appointment subject, again, to confirmation by the Commission on Judicial Appointments. This periodic facing of the electorate on the basis of the judge's own record tends to prevent a judge from becoming arbitrary, as sometimes occurs where a judge is given life tenure with no review of his record following his appointment.

The California plan was a forerunner to a similar program endorsed by the American Bar Association in 1937, but which program is applicable to trial court judges as well as to appellate judges. Missouri adopted the plan in 1940 and it became popularly known throughout the nation as the "Missouri Plan." Recently Kansas, Iowa, Nebraska and Illinois adopted similar plans in whole or in part. The constitution of Alaska, adopted in December, 1955, included a resolution which provided that judges run for election, unopposed, on their records.

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

Florida Consensus

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

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

"All complaints and commission proceed-

ings should be confidential in order to protect all parties concerned. The commission should make any necessary recommendations to the Supreme Court of Florida for appropriate action.

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

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

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

None of these methods provide an effective means for a private citizen to seek relief against the wrongful act of a judge. There is no board or agency to which he can complain with some expectation that his complaint will be investigated and heard. To expect such a person to seek relief through the urging of impeachment proceedings by his state legislature, or to resort to petitions for recall is not realistic. These are methods which are beyond the reach of the ordinary citizen and particularly in populous states.

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

The commission established by the constitutional amendment is called "The Commission on Judicial Qualifications," a misnomer since the commission does not participate in the qualifying of judges but only in their disqualification—their removal. The commission consists of nine members: five judges, two lawyers and two laymen. The judges are appointed by the Supreme Court, two from the intermediate appellate courts, two from the trial court of unlimited jurisdiction and one from the trial

court of limited jurisdiction. No members of the Supreme Court are eligible for appointment to the commission, since the Supreme Court itself acts in a sense as an appellate body to review the actions of the commission and since it has the final power to remove or retire a judge upon recommendation of the commission. The two lawyers are appointed by the Board of Governors of the State Bar, which is an integrated bar, and the two laymen are appointed by the governor. These persons all serve for staggered terms which provide for a measure of continuity.

The Duties of the Commission

The duty of the commission is to recommend to the Supreme Court for removal from his judicial office any judge in any court of the state, including the Supreme Court, who is found by the commission to be guilty of wilful misconduct in office, of wilful and persistent failure to perform his duties, or of habitual intemperance. Likewise, the commission may recommend for retirement any judge having any disability which seriously interferes with the performance of his duties, and which is, or is likely to become, of a permanent character. The commission has the power to subpoena witnesses, make investigations, take evidence and to make findings.

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

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

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

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

"(3) The Commission provides a medium through which the disgruntled litigant, and even the crank, may air his grievances against the courts or judges without publicity affecting the particular judge singled out. In most instances the complaints are so groundless that we do not even notify the judge charged that a complaint against him has been made. In a sense, the Commission offers an apparently sympathetic shoulder upon which these complainants may cry. While they are never satisfied with our actions, nevertheless, you would be surprised to find how much more content they are than they would have been had there not been a public agency to give them consideration. In many of these complaints the complainant is seeking a retrial of the action which he contends was improperly determined against him. We, of course, have no appellate jurisdiction.

"(4) In quite a number of instances, these complaints disclose situations, which, while not serious enough to warrant the removal of the judge designated, nevertheless disclose practices indicating that the particular judge has a poor idea or none at all, of public relations, or the proper relationship between judge and counsel, or judge and witness, or party; or they may indicate a lack of knowledge of the Code of Judicial Ethics of the American Bar As-

sociation and of the Conference of California Judges, of such matters, for example, as continued failure to start court on time, taking unlimited recesses, constant wisecracking in court, short court hours, etc. In these instances, we notify the judge of the charge and tactfully suggest that if the practice complained of exists, it be discontinued. Thus, the Commission, in cases of improper judicial conduct not serious enough to warrant removal, does have a sort of disciplinary power. This is important in preventing the judicial image from losing the respect of the people.

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

The Value of a Commission

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

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

As I have indicated, when the record of proceedings before the commission is filed with the Supreme Court with a recommendation for removal or retirement of a judge, the Supreme Court conducts its own review of the proceedings and may, if it deems necessary, permit the introduction of additional evidence. At the conclusion of its review the Supreme Court may order the removal or retirement of the judge if it finds just cause, or it may wholly reject the recommendation of the commission. It is interesting to note that in the single instance referred to by Justice Bray, where the commission at the conclusion of its formal hearing recommended to the Supreme Court that a judge be removed, the court as a result of its own review of the proceedings rejected the recommendation, evidently disagreeing with the commission that there were sufficient grounds to warrant the removal of the particular judge from office. This result certainly gave evidence that the appellate process whereby the recommendations of the commission are subject to the review of the Supreme Court on both the law and the facts is wholly independent, as it should be, and is similar to the final review accorded litigants in ordinary court proceedings by the highest court of the state.

Excerpt from

1968 REPORT OF THE CALIFORNIA COMMISSION ON JUDICIAL QUALIFICATIONS

The statistical side of the year's work can be quickly stated. As of December 1, 1968, 1030 judges were within Commission jurisdiction as follows:

Appellate Courts	52
Superior Courts	406
Municipal Courts	324
Justice Courts	248

During 1968 132 complaints were filed with the Commission of which 48 warranted some inquiry or investigation. In 35 instances this included asking the judge for his explanation and reply. In two cases the judge resigned or retired from office thus terminating the investigation. This is but a fraction of the total retirements this year. The great majority of retirements and resignations are by judges who have never been brought to the attention of the Commission. There was no recommendation during the year to the Supreme Court for censure, removal or retirement. The number of valid complaints is small.

The great majority of the communications to judges for their comment were not major accusations but involved matters which the Commission concluded were of sufficient significance to deserve the particular attention of and, in some cases, correction by the judge. Often the judge's response absolved him of any fault. In several instances, after receiving their explanations, judges were admonished; in some cases the inquiry itself had the effect of a cautionary notice. In such matters the precise Commission action depends upon such factors as the nature and extent of the infraction and the attitude and cooperation of the judge. Some of these cases were terminated after an exchange of letters while others have required extensive investigation and review extending over many months. A substantial contribution to better judicial performance is being rendered by the ability of an impartial body comprised of representatives from the public, the legal profession, and the judiciary to act promptly, effectively and confidentially.

Article VI - Judicial

Section 8. The Commission on Judicial Qualifications consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in this State for 10 years, appointed by its governing body; and 2 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 4 years.

Commission membership terminates if a member ceases to hold the position that qualified him for the 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.

Selected Sections
from
THE CANONS OF JUDICIAL ETHICS
of the
American Bar Association

4. Avoidance of Impropriety. A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

12. Appointees of the Judiciary and Their Compensation. Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances whether or not excepted to or complained of. He cannot rid himself of this responsibility by the consent of counsel.

13. Kinship or Influence. A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

14. Independence. A judge should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

24. Inconsistent Obligations. A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

25. Business Promotions and Solicitations for Charity. A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events

reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

26. Personal Investments and Relations. A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments, previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

27. Executorships and Trusteeships. While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

28. Partisan Politics.* While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments, or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities.

Where, however, it is necessary for judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the judge from attending or speaking at political gatherings, or from making contributions to the campaign funds of the party that has nominated him and seeks his election or re-election.

20. Self-Interest. A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

30. Candidacy for Office.** A candidate for judicial position should not make or

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* As amended August 31, 1933 and September 20, 1950

** As amended August 31, 1933

suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.

While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.

If a judge becomes a candidate for any judicial office, he should refrain from all contact which might tend to arouse reasonable suspicion that he is using the power of prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonable lead to such suspicion.

31. Private Law Practice. In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states it is permitted, because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utulizes or seems to utilize his judicial position to further his professional success.

He should not practice in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practice law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefore, if such course does not interfere with the due performance of his judicial duties, and is not forbidden by some positive provision of law.

32. Gifts and Favors. A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

ADOPTION OF THE AMERICAN BAR ASSOCIATION CANONS OF JUDICIAL ETHICS

Originally, the Canons of Judicial Ethics numbered thirty-four when they were first adopted at the annual convention of the American Bar Association in 1924. Since then two more canons have been added bringing that number to thirty-six, and the Bar Association has made changes in three of them by amendment. Canon twenty-eight, dealing with judges' involvement in partisan politics, was amended in 1933 and again in 1950. Canon thirty was amended but once, in 1933. It pertains to judges' candidacies for non-judicial offices. The canon that prohibits courtroom publicity, number thirty-five, was first adopted in 1937 and since then has been changed twice, in 1952 and again in 1963.

Since approval of these canons by the American Bar Association, a voluntary organization with no legal authority to regulate judges, could not make them effective to govern judges but only provided recommended standards, it was necessary that states wanting their judges regulated by the canons had to adopt them. A majority of the states have adopted some or all of the canons and their amendments in whole or in part, but a dwindling minority of nine states have not. Those that have adopted them have done so in four ways: by order of their highest appellate courts, by action of their judicial conferences, or by their unified bars, in those states that have organized bars, and by the non-unified bars in those that do not.

All of the states are listed here, and those that have adopted at least a part of the canons can be distinguished from those that have not by the tables that show the years they were approved and the groups that adopted them. In some states the canons that are in effect were approved by more than one group, it will be noted.

Reprinted from American Judicature Society Report No. 8
(Revised June, 1969)

	Adoption By:			
	Court Order	Unified Bar	Non-unified Bar	Judicial Conference
Alabama				
Alaska	1963			
Arizona	1956			
Arkansas			1940	
California			1928	1949
Colorado	1953			
Connecticut	1950		1950	
Delaware	1952			
Florida	1941	1950		
Georgia	1965		1925 (Lapsed)	
Hawaii	1955	1939		
Idaho	1952	1951		
Illinois			1957	1964
Indiana			1938	
Iowa	1958		1948	
Kansas			1941	
Kentucky	1953			
Louisiana	1960			
Maine				
Maryland			1953	
Massachusetts				
Michigan	1947			
Minnesota	1966		1950	
Mississippi	1962			
Missouri	1966			1951

	Adoption By:			
	Court Order	Unified Bar	Non-unified Bar	Judicial Conference
Montana	1963			
Nebraska		1951		
Nevada		1965		
New Hampshire	1964		1963	
New Jersey	1948			
New Mexico	1969	1941		
New York			1930	
North Carolina				
North Dakota				1953
Ohio	1954			
Oklahoma	1959			
Oregon	1952	1935		
Pennsylvania	1965		1949	
Rhode Island				
South Carolina				
South Dakota	1942	1942		
Tennessee	1948			
Texas		1963*		
Utah	1951	1951		
Vermont	1965			
Virginia	1938			
Washington	1951			
West Virginia	1947			
Wisconsin	1968			
Wyoming	1966			

Excerpts from

THE MODEL JUDICIAL ARTICLE FOR STATE CONSTITUTIONS

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

Committee comment: The first two sentences of this section derive from the New Jersey and Puerto Rico Constitutions. The impeachment process is not utilized with reference to lower court judges because it is the Committee's view that the Supreme Court, in its supervisory capacity over the judicial system, is better qualified and the more logical body to determine the issues than is the legislature.

The last two sentences are for the purpose of requiring that the judge devote his full time to his job as judge and to remove all judges from politics to the extent possible. Several jurisdictions have had the sorry spectacle of a judge running for the governorship, accepting contributions from lawyers, etc., while retaining his judicial office. Certainly this is conduct unbecoming a judicial officer and hardly compatible with the idea of safeguarding the judicial system from political ravages. The last clause of the last sentence is taken from the Missouri Judicial Article §29 #f.

¶2. Retirement. Every justice and judge shall retire at the age specified by statute at the time of his appointment, but that age shall not be fixed at less than sixty-five years. The Chief Justice is empowered to authorize retired judges to perform temporary judicial duties in any court of the State.

Committee comment: Most States have a fixed retirement age. The Committee is of the opinion that the legislature should be free to fix a retirement age, so long as it does not reduce it below sixty-five. The Committee has reluctantly chosen a fixed retirement age rather than indefinite tenure because it is of the view that the interests of sound administration of justice will be better served by the possibility of retiring competent judges than by risking the continuance in office of judges with truly limited capacities.

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

Committee comment: This provision follows the Alaska plan to have an independent body make the determination whether a high court judge has become incapacitated while in office. The nominating commission seems to be a logical agency to charge with this responsibility. The difficulties which seem to arise when this power is put in the hands of fellow judges are avoided by this process.

§7. COMPENSATION OF JUSTICES AND JUDGES.

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

Committee comment: Certainly one of the greatest drawbacks to securing an adequate judiciary has been the niggardly salaries which most of the States pay to their judicial officers. While the Committee was cognizant of the fact that the Constitution of the State is not the appropriate place to fix salaries in terms of dollars and cents, it was the hope of the Committee that the lower limit set forth in this section would afford some base for more adequate compensation for judges.

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

Committee comment: Again, the Committee understood that the pension program could not be spelled out in the Constitution. It has endeavored nevertheless to fix a floor on such pensions so that the requirement of a pension does not become meaningless.

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

Committee comment: This is the usual provision for the protection of judicial independence by removing the legislative power to reduce the salaries of judges while in office. Without such a provision all attempts to secure tenure of office would be futile.

Chapter III

COURT ORGANIZATION AND ADMINISTRATION

What are the general principles that should govern in the reorganization which will in reality be an organization of our courts? The controlling ideas should be unification, flexibility, conservation of judicial power, and responsibility. Unification is called for in order to concentrate the machinery of justice upon its tasks, flexibility in order to enable it to meet speedily and efficiently the continually varying demands made upon it, responsibility in order that some one may always be held, and clearly stand out as the official to be held, if the judicial organization is not functioning the most efficiently that the law and the nature of its tasks permit. Conservation of judicial power is a sine qua non of efficiency under the circumstances of the time. There are so many demands pressing upon the government for expenditure of public money that so costly a mechanism as the system of courts cannot justify needless and expensive duplications and archaic business methods. Moreover, waste of judicial power impairs the ability of courts to give to individual cases the thoroughgoing consideration that every case ought to have at their hands. Administrative organization of the entire system with responsible heads of each branch, department and division, and responsible superintending control of the whole, is quite as important as the reform of procedure upon which the profession and the public have concentrated their attention for a generation...

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 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.

Excerpts from Organization of Courts
by Roscoe Pound, pp. 275-277 (1940)

Who should have the responsibility for the enforcement of the court devised policies and procedures? The principle that is espoused is that he should be the chief executive of the judiciary, that is the chief judge of the top court of the system. No business or other governmental department can operate efficiently without an administrative head. Neither can a court system, and many court systems are far larger operations than some of our larger businesses and larger governmental departments.

Excerpt from "The Citizens' Responsibility," by William J. Brennan, Jr.,
48 Journal of the American Judicature Society 148 (December, 1964)

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SELECTED READINGS ON
THE ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT

* Excerpt

A Topical Outline for Guided Reading and Discussion

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   - A. What is a unified court system?
   - B. Why is it necessary?
   - C. Does judicial "business" need the same kind of organization and management needed by corporations today?
     1. Is efficiency and economy in handling judicial "business" as important as in a business-for-profit?
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        - d. What kind of staff is needed?
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        - a. How many judges are needed?
        - b. Should there be a chief administrative judge?
          1) Should he have special qualifications?
          2) How should he be selected and for what term?
        - c. Should all judges sit on every case or can panels be used?
        - d. What kind of staff is needed?
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     4. Where should court be held in the districts?

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    a. Political boundaries
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    c. Typical workload
6. Personnel
    a. How many judges are needed?
    b. Should there be a chief administrative judge?
        1) Should he have special qualifications?
        2) How should he be selected and for what term?
7. Jurisdiction
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2. Bailiff
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1. Should a court administrator be a lawyer?
2. How should he be selected and by whom?
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D. What administrative and supervisory functions should be assumed by administrative judges and their staffs?

1. Uniform rules of procedure
2. Temporary assignment of judges
3. Assignment of cases
4. Uniform reporting by judges
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    b. Disposition of cases
    c. Calendars
    d. Time records
5. Supervision of employees
6. Investigation of complaints
7. Fiscal operations
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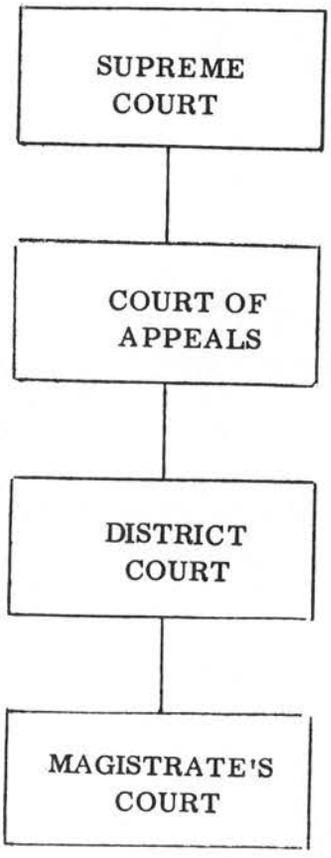
COURT STRUCTURE

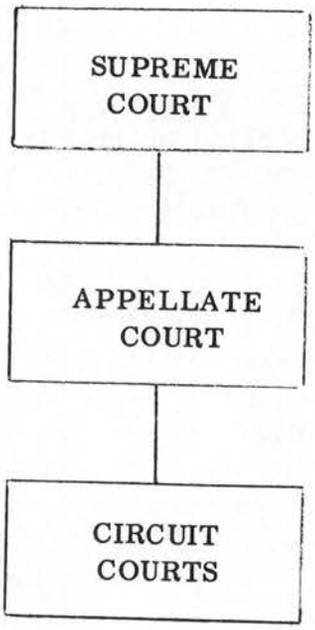
SAMPLE ORGANIZATIONAL CHARTS

Simplified court organization and efficient administrative oversight have been regarded as essential ingredients of any system of effective justice by experts in judicial administration for more than 50 years. Today, there is a growing movement to substitute a unified system of courts with clear lines of administrative responsibility for the conglomerate of functional autonomous courts with overlapping jurisdiction, expensive duplication and imbalance of workloads. The charts below illustrate some variations of the principles of simplification and unification of court organization.

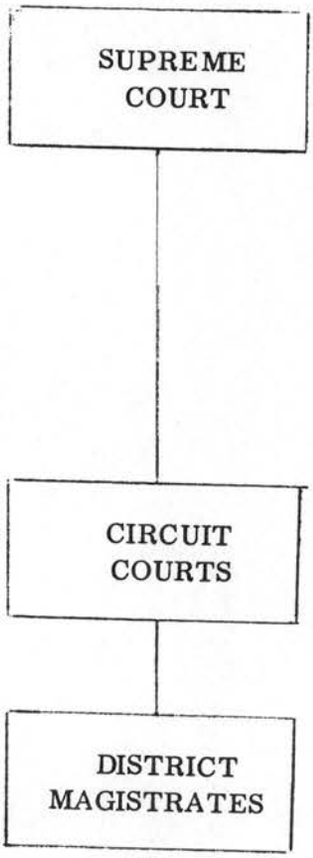
MODEL JUDICIAL ARTICLE



ILLINOIS



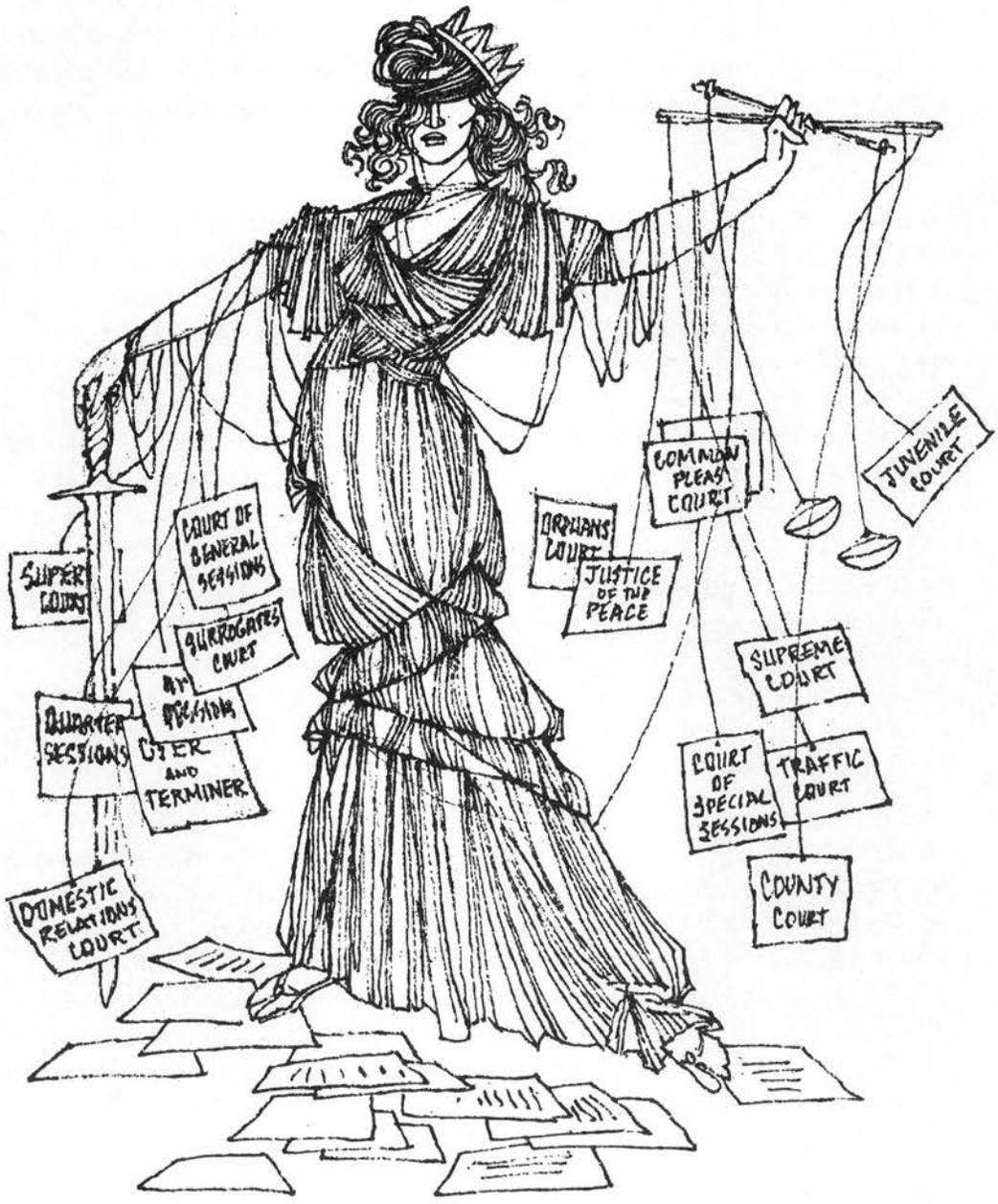
HAWAII



Court organization in the model article permits a four-tier court system. The intermediate appellate court is an optional feature depending upon the amount of the appellate workload. The district courts (trial courts of general jurisdiction) may have specialized divisions. The magistrate's courts have jurisdictional limits as set by rule of the supreme court.

Effective January 1, 1964, Illinois' new court system follows the model article with one major variation. At the trial level there is only one court; however, there are full-time magistrates who hear such matters as are assigned by law to them. Thus, there is a two-tiered division of labor within the circuit court.

Hawaii's constitution provides for one supreme court, circuit courts and such other courts as shall be provided by law. The legislature has created the district magistrates as a court of limited jurisdiction.



Reprinted from 50 Judicature 184 (February, 1967)

The Case for a Two-Level State Court System

Five years ago the American Bar Association approved a Model Judicial Article for state constitutions. In it the judicial system is divided into four levels: "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."

In doing away with the miscellaneous assortment of specialized courts which have grown up in the judicial systems of most of the states, the drafters of the Model Article were following the principle enunciated years ago by Roscoe Pound—not specialized *courts*, but specialized *judges*. Thus the Model Article contemplates that juvenile, domestic relations, probate, criminal, equity and other types of cases heretofore handled in special courts will all go into the hopper of what it calls the District Court, and to whatever extent specialized handling of them may be necessary or desirable, it will be accomplished by assigning them to specialized judges within the single court.

Small cases, however, are still held out in the Model Judicial Article for trial in a separate minor court called the Magistrate's Court. Judges of the other courts are to be nominated by a commission, appointed by the governor, and go before the voters at ten-year intervals for retention or rejection; magistrates are appointed and reappointed by the chief justice for three-year terms. They are clearly lower-level judges of a lower-level court.

The ink was scarcely dry on the Model Judicial Article when the voters of Illinois approved a new judicial article which goes a step beyond the Model Article in simplification of the judicial structure. Illinois has judicial officers which it calls magistrates, but they are an integral part of the state-wide trial court called the Circuit Court, and the magistrates are appointed by and responsible to the circuit judges in the several circuits. Thus in Illinois there is only one trial court, and the Illinois system, on paper at least, is a three-level system—Supreme Court, Appellate Court and Circuit Court.

Except for the difference in method of appointment, however, the Illinois magistrates look and function very much like those of the Model Article. They are a lower level of judges in the judicial hierarchy, and in one respect

Reprinted from 50 Judicature 185 (February, 1967)

their position is worse than that of the Model Article magistrates—they have no tenure, but serve at the pleasure of the circuit judge who appointed them. It has remained for the Indiana Judicial Study Commission to come up with a plan for what will be the first truly unified state trial court. The proposed judicial article drafted by the Commission for introduction in the 1967 legislature says: "The Circuit Court shall exercise original and general jurisdiction in all cases." This is the only trial court provided for, and the circuit judges are the only trial judges. The Commission comments:

"The Commission did not provide for specialized courts (probate, juvenile, criminal). It is contemplated, however, that natural divisions of labor will evolve. Small claims, traffic, domestic relations, criminal, probate and juvenile may be possible divisions of a geographic district in large urban areas. The Constitution does not restrict or control the use of divisions. In the absence of rule, the judges of each district are free to experiment and divide the work according to the needs and desires of the local community as well as the abilities and inclination of the judges."

Needless to say, when trial work increases under this system, Indiana will not create new courts, as it and other states have done in the past. It will simply provide for more circuit judges.

Illinois and Indiana both agree with the Model Judicial Article, however, in providing for both a Supreme Court and an intermediate Court of Appeals. Some 16 states now have such intermediate courts as a separate rung on the judicial ladder. In recent years Florida, Arizona, New Mexico, Michigan and Maryland have established them, and Washington and other states with overworked supreme courts are now moving in that direction.

As the volume of judicial work increases, whether trial or appellate, so of course must the number of judges. But why another *court* for either one? Why is not the Roscoe Pound dictum just as applicable to the appellate as to the trial bench?

We predict that one day the Model Judicial Article will be revised to provide for a two-level judicial structure—a single state-wide Court of Justice with a unified trial division which may be referred to in those very words as the Trial Division, and a unified appellate division which may be known as the Supreme Court, the Court of Appeals or simply as the Appellate Division of the Court of Justice. The Trial Division will be divided by administrative rule into as many individual trial units as convenience and efficiency dictate, having due regard for geography, specialization and other factors. The Appellate Division will be divided into as many three-judge panels as the volume of appellate work requires, and these will sit at such times and places as convenience and efficiency dictate. All cases filed for trial will be filed in the one Trial Division and administratively assigned to the trial unit which can handle them most efficiently and advantageously. All appeals will be filed in the one Appellate Division and administratively assigned to the individual appellate panel which can most advantageously handle them. The resolving or preventing of conflicting decisions by different panels within the court will be worked out under administrative rules, perhaps by means of a hearing before a seven-man tribunal consisting of two three-man panels and the presiding judge. Selected cases of great public importance might be similarly heard, but no litigant will have a right to a hearing before more than three judges, nor to a second appeal.

Even states that are not working on judicial reorganization are no longer establishing new trial courts to cope with trial court backlogs.

They are adding more judges to existing trial courts. Why, then, is this out-moded device still the standard remedy for congestion in our courts of last resort, and whose interests does it serve?

Not the litigants. Details of judicial organization and administration are of no concern to them as long as their cases are heard promptly and decided fairly, and if there is a question about the latter point, they want that question resolved promptly and fairly. This the two-level court system is well equipped to do. There is a psychological benefit in having every appellate decision handed down by and in the name of the court of last resort, so that no litigant need ever be told, "Sorry, your case isn't big or important enough to be heard by the Supreme Court; the Court of Appeals is as high as it can go."

Not the lawyers. They certainly have no professional interest in arguing cases in an intermediate court rather than the court of last resort. They may have a short-range financial interest in the additional practice that double appeals occasionally provide, but in the long run the lawyer's best interest, like the litigant's, is in getting each case heard, decided, closed and paid for, and moving on to the next one. Decisions of an intermediate court are of doubtful value as precedents, and in a two-level court system there would be none.

Not the judges. Some present supreme court judges might, indeed, look askance upon the dilution of their power and prestige that might be thought to follow if they were to be one of a dozen or 15 judges of equal rank rather than one of seven or nine at the top of the heap. This would be offset by the higher status that would be given to those who would otherwise be only intermediate appellate judges. However, considerations of personal prestige and status are really not worthy of very much of anybody's attention or concern, and the important thing is that the judges would benefit as much as anybody from having a simplified and efficient judicial organization.

Certainly least of all the taxpayers. Even though the number of judges is the same, if they work in one court instead of two, there is only one court's administrative and clerical staff, and the second court staff is one the taxpayers will be glad to do without. With the natural trend in government constantly toward increased complexity, more employees and more expense, a move toward simplification, economy and efficiency in one branch of government cannot fail to be welcomed.

Why has this not been done before? The only answer is that it is a product of evolution and we have not yet come that far. We have, however, unquestionably been moving in the direction of the two-level court. At the appellate level, the highest courts of Puerto Rico, Missouri and other states now regularly sit in divisions. In New York there are only two courts above the level of minor court, the Supreme Court (a trial court of general jurisdiction) and the Court of Appeals (a court of last resort), with the Appellate Division actually a part of the Supreme Court.

The two-level state court will not come quickly, but it will come. The Indiana unified trial court will be a step in that direction. Meanwhile, planners will do well to think twice before adding another court of any kind to the judicial structure of any state.

TOWARD THE IDEAL COURT

By William H. Burnett
Presiding Judge
Denver County Court

When Will Rogers visited Washington during the Great Depression, he noticed the competing recovery plans and commented: "Everyone wants to feed them but they all want to feed them **their** way." And I suppose the same could be said of us Judges. Someone said you can lead Judges if you are willing to accept certain principles; the analogue being you can lead a horse with a string—if you don't walk too fast! But I doubt if judges are all that hard to budge, especially in this state where they have lead the way toward many progessive changes in court organization.

My views spring primarily from our experience in Colorado and as Khrushchev used to say, "Each duck praises his own swamp." Colorado finds itself in an enviable position at the moment, becoming the first state to adopt the merit system of selections and the judicial qualifications commission for discipline and removal of all judges of all courts in the state system; and, further by setting forth strong administrative machinery under the chief justice. But I would hope to be sufficiently objective to share with you our mistakes, also, in the hope that they need not be repeated by you.

Our states are similar in area; both are mountainous; each has densely populated metropolitan areas and lonely sparsely populated remote areas, thus we face with you the challenge of providing justice machinery which will at once serve the complexities of urban life without depriving ttown and country of needed service.

The task of establishing adequate judicial machinery has confronted man through the ages. Our existing organizations frequently are explained more by history than logic. The word "court" itself originated with the idea that only the monarch, or some member of his "court" could settle disputes and interpret laws. That there was no other provision for justice than to gain the ear of the King in his uncertain sojourn about the realm was a principal point of contention with King John, culminating in the Magna Charta. This first "citizens' conference on the courts" in 1215 resulted in the establishment of a court of common pleas, independent of the king, to be held at a fixed place and time, and this became a vested right of the citizen never again to be questioned among English-speaking peoples. Many times since, citizens have met to improve this machinery and each real improvement has been accompanied by greater liberty and security on the part of the people.

But, whereas our task is now new, it is given special urgency by a dramatic change of pace in the movement of events. For the river of time, which throughout civilization has meandered evenly and slowly, has in the past few decades come upon ever-accelerating rapids of change. None of us is wise enough to see clearly where the currents of human destiny are moving, but this we know—they **are** moving faster all the time. In what amounts to only an "instant" in history's scale, we have seen urbanization, scientific advancement and complexity of human organization which could have scarcely have been imagined by prior generations, and we sense we are witnessing a beginning rather than an ending! Pity us if we fail to devise judicial machinery to meet not only the **reality** of today but the **uncertainty** of tomorrow, for the vine of human society grows on a lattice of law. This legal framework governs our political life, our economic life and our human relations. Stability, security, democracy and freedom are ours **only** with law. Our system of administration of justice must, therefore, take the very top priority, for all other progress, all that we cherish depends on its fate. Let us look at it well, for time is not in our favor.

Courts are big business. The court over which I preside with eleven judges is a small court by some big city standards, yet, even it has nearly a hundred employees, a payroll of a half million dollars annually and handles both public and private moneys involving many millions of dollars. Reflect, then, in terms of a state-wide judiciary and you will immediately realize that we are dealing with an enterprise comparable to a very large business or industry.

Suppose a multi-million dollar commercial enterprise, doing business in this state, were subjected to the rule that branches must be established in each of several districts, irrespective of the business prospects in each; that even though population and business varies to the extreme among the districts, so that some facilities get little business whereas orders are permitted to pile up for months and even years in others, still neither can the

This address was delivered before the Citizens' Conference on Arizona Courts at Scottsdale, November 17, 1967, and was reprinted from the Arizona Weekly Gazette.

business be transferred from busy to idle districts, nor is there machinery to transfer personnel and inventories from the idle to the busy districts. As a matter of fact, suppose each manager is pretty much his own boss, who "paddles his own canoe," and may or may not cooperate with the other managers, depending on his own desires. Nor can he be easily removed or retired, although he may have reached the age of senility.

Now go a step further and suppose that the president of the company either has little real authority or has been provided with no staff to carry out his policies. In fact, imagine that he has been given no prior training in managing and administering such a large business. Also, he isn't going to get much on-the-job experience because the business has from five to nine other directors and every year the position of president rotates among them so that about the time he becomes familiar with the problems he steps down. His task is made more difficult because no one knows what the state of busines is, how many orders are on file, how many have been cancelled due to inability to deliver, what the working hours are in the various branches and, most important, of what the future prospects may be. The record system isn't too good.

Even suppose that the business is divided into two or more concurrent systems; one or more to handle small transactions, serving most of the customers, and the other to handle larger transactions and that, although the skills required for each should be identical, the branch serving most of the customers has been pretty much ignored so that the customers have a pretty sorry view of the whole business; and suppose in the small transaction branch a record is not kept, necessitating a rather expensive and time-consuming review method where a customer is dissatisfied.

Then, go one step further and suppose that the customer is not permitted to go to the store of his choice but rather only the one of his district even though other customers are already waiting in long lines for service.

Your immediate reaction will be that the only way this operation could survive would be to have a complete monopoly of an indispensible product. Yet, this pretty well described the judicial business in my state a few years ago, to some extent it still does; and to a greater or lesser degree it describes the condition of judicial business in all of the states, no doubt yours as well as others.

Your reaction is also, I hope, that we can and must develop a more business-like system of justice to meet the challenge of this fast moving society. But what principles will guide us in devising the court organizational structure most likely to give us the best, both in efficiency and service to the public? If I had to reduce them to just three, I would state them thus: first, SIMPLIFY; secondly, SIMPLIFY; and lastly SIMPLIFY!

The curse of most of our state judicial systems is that we have created a hodgepodge of specialized independent courts. This has been particularly true at the trial level. We have in various states provided specialized courts for big cases; for little cases; for criminal cases; for civil cases; for probate cases; for domestic relations cases; for juvenile cases; for law cases; for equity cases; for city cases; for state cases and on and on.

Our logic has been that these are all specialized fields and in need of specialized Judges. But, as Dean Pound long ago pointed out, such need hardly calls for separate courts but only specialized divisions of the same court.

"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 iourts, although we have often made them work very hard. Befort adding more judges or more courts, we should be sure we are making the best and fullest use of those whom we have."

Perhaps the place of the lower court deserves some special attention because, from the point of view of the number of persons to be touched by the court process and consequently the view most will have of the judicial system, this is the most important court of all. Yet it is the undeniable ragged edge of our judicial system which we have let flap is the breeze of expediency, somehow deluding ourselves that a judge need not be quite a judge; that a court need not be quite a court; that its judgment need not be quite a judgment; that respect due to it need not be quite complete. It is too bad this has happened and it at least partially explains many of our problems including that of disrespect for the law. It is a well known fact that 80 to 90 percent of the serious criminals get their first judicial experience in these courts, usually devoid of good judicial atmosphere and without diagnostic and corrective facilities. The President's Crime Commission recently turned its attention to these courts and concluded "The commission has been shocked by what it has seen . . ."

In spite of this there has been a tendency to leave this court out of the state judicial system or to include it in a way which perpetuates its defects and for conferences to "study" the judicial system and ignore its

most important part. I fear we have become more interested in broken contracts than in broken lives. But, again, the guiding principle is clear. As with other specialized courts, it should be abolished as a separate court and become merely a specialized branch of the one great trial court. If I may again quote from Dean Pound in his now famous "Principles and Outlines of a Modern Unified Court Organization":

> **"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."**

In spite of difficulties, judicial evolution is clearly moving in the direction of complete unification, and I would hope your state would be in the forefront of this movement. The Federal system manages to get by quite nicely with one trial court hearing both big and little cases. In tht last century the Royal Judicature Commission recommended the one great trial court principle for England. The Wickersham Commission, appointed to study the crime problems of the 1930's, recommended the abolition of the minor courts and similarly, last year, the President's Crime Commission reached precisely the same conclusion.

Unfortunately, the drafters of the Model Judicial Article, several years ago, seemed unaware of previous studies and recommended two trial levels with magistrates being appointed by the supreme court. This was thought to be a great step forward at the time by suggesting a far simpler structure than existed in many states. But the ink was hardly dry on the model article when Illinois surpassed it by adopting a structure which purported to vest all trial jurisdiction in the circuit court. Unfortunately, it authorized the circuit court to appoint magistrates so that in practice it, in many areas, still has the two-trial levels. More recently, however, the Indiana Judicial Study Commission has proposed for that state a system to vest all jurisdiction in the circuit court. Period. And, as citizens' conferences in other states are making the same recommendations, it is obvious that such is the wave of the future.

In Colorado we tried something of a compromise with a state-wide system of county courts for minor cases and district courts for general jurisdiction. Many of us are firmly convinced that this was a mistake from the point of view of judicial efficiency, and we contemplate the neel of yet anotrer amendment incorporating the one great trial court principle.

I suppose justification for concurrent systems may be contained in the argumests: (1) there is a need for a 'little man's court" where the small cases may be heard informally (2) there is a need for accessibility of people in remote areas to a court and (3) it would be too expensive to attempt to provide big court "trappings" such as a record of proceedings to the court hearing such things as traffic, breaches of the peace, etc.

Of course, no one has ever explained why we couldn't have the informal "little man's court" as a specialized division of the circuit court; or why accessibility is less possible with a consolidated court. The cost argument assumes certain economic advantages of maintainisg a court which isn't quite a court or of a judge who isn't quite a judge. But, as I have suggested, this is a concept we are pretty much going to have to scrap anyway if we value respect for law, the latter being far more dependent on the impression people gain from the court where most appear rather than what might be gained from the courts where relatively few appear. Also, the expesses are not so great even of maintaining a court of record where electronic recording equipment is used as we do throughout most of the lower court systems in Colorado. As a matter of fact, one wonders why in this electronic age any court should be not of record. To permit a party to appeal by having a new trial regardless of legal error in the original trial is both expensive and bad public policy. It favors the rich over the poor, the ringwise over the unwary, the guilty over the honest. When the practice was abolished with us, appeals were cut in half so that the economic advantages are not all one way.

As may be indicated by the recommendations of both the Wickersham Commission and the President's Crime Commission, one of the arguments for this consolidation is the prevention of crime.

The typical docket will bring many different types of defendants before the judge. He will see the forger who repeatedly cashes small bogus checks to finance alcoholism; the passive aggressive personality who has used the motor vehicle in an attempt to destroy himself and others; the mentally retarded youth who has swiped a bicycle; the senile old man who has exposed himself in public; the crippled young man who has broken into a grocery store; the mentally ill or disturbed woman who has assaulted a neighbor; the man who shoplifts repeatedly though capable of hold-

ing an honest job; the member of the racial or ethnic minority whose sense of futility feeds a misguided hate anl contempt for the laws of more successful citizens. In these and countless other situations the judge can no more operate "by the seat of his pants" than the ariline pilot can go through the storm without his instruments. In handling these critical cases the judge is in need of the very best diagnostic and corrective facilities. He will need something far in excess of his usual domain of the fine or short jail sentence.

And these corrective facilities should be available to courts of all levels. As indicated, most persons convicted of felonies have previously been before minor courts for minor offenses. To withhold our large "corrective guns" until the felony is committed, as we have done, is like not treating a cancer when first discovered.

The virtues of the single court structure are not limited to the trial court. While many states have followed the example of the Federal system in establishing intermediate courts of appeal, there is a growing body of thought favoring one supreme or Appellate court with as many three-judge panels as are necessary to carry the load and with provision for full-court review to resolve conflicts. This would, of course, insure the principle of one trial and one appeal, rather than multiple trials and multiple appeals as may now be possible. An editorial in last Febrrary's **Judicature** stated flatly: "We predict that one day the Model Judicial Article will be amended to provide for a two-level judirial structure — a single statewide court of justice with a unified trial division which may be referred to in those very words as the trial division and a unified appellate divisios which may be known as the Supreme Court, the Court of Appeals or simply as the appellate division of the Court of Justice."

The foregoing principle of court unification, simple in the extreme, is hopefully the ideal toward which you will wish to move

As the next guiding principle, I would suggest clearly placing responsibility for the effective operation of the system in one man, the chief justice, giving him the power to do the job, giving him the tools to do the job and then holding him accountable and responsible for the proper functioning of the wheels of justice. It is here that we gain the flexibility to meet changing conditions; it is here that we gain maximum conservation of judicial resources.

Specifically, the chief justice should have the power to transfer judges from idle to busy districts and cases from busy to idle districts. His authority should also be to interassign judges between courts where there is more than one type of trial court and to make ample use of retired judges. In Colorado our Chief Justice has all four of these tools in that when confronted with a trial backlog in a district, he may (1) transfer cases out (2) transfer judges in other district courts (3) transfer judges in from other county courts and (4) use retired judges. A tremendous backlog in our Denver District Court last year was brought under control by using all of the foregoing methods.

A word should now be said about the judicial administrator and his staff, for without them flexibility and conservation of judicial resources made possible by the centralized administrative power will never be realized. The Judicial Administrator, therefore, has become a key profession, bearing little resemblance to the supreme court clerk of bygone years. He may or may not be a lawyer but he absolutely must be trained and skilled in public administration. Upon his shoulders will largely rest the successful operation of the machinery. He will see to it that good and uniform records are kept throughout the state, for he must know current conditions throughout the system.

To the complaint this is too much centralization goes the remander that in a good system the Chief Justice will appoint a Chief Judge in each district, with like authority, and staff within the district and with directions to solve administrative problems within the district wherever possible.

Add to the foregoing a state judicial budget financing the whole operation, reviewed and appropriated by the legislature, as is the case with the Executive Department, and you have an ideal administrative structure which can compare with that of any business enterprise in the country.

The accomplishment of the foregoing principles evokes an occasional complaint from a judge that his judicial independence is threatened. The contrary is true. Judicial independence requires the judge decide cases impartially and without outside interference with the **judicial function.** This is most likely to happen in an efficient organization where the judge is relieved of unnecessary nonjudicial duties; or, turning the proposition around, judicial independence has really been hampered in the past through such things as assigning political chores to judges and confronting them with dockets which force expediencies.

Court Integration and Unification in the Model Judicial Article *

By J. WESLEY McWILLIAMS

J. WESLEY McWILLIAMS of the Philadelphia bar is chairman this year of the Committee on the Model Judicial Article of the American Bar Association.

THE efficient administration of justice today requires that the courts in any jurisdiction should be integrated and unified into a unitary functioning organization. In most of our states, such an organization of courts will require constitutional revision. These state constitutions establish judicial systems in which there is no integration of the courts; no unification of administration and no efficient utilization of judicial manpower. A modern court system requires centralized but flexible administrative control over all judicial operations within the jurisdiction. The Model Judicial Article approved by the American Bar Association contains the provisions which, if adopted, will give our states, modern, streamlined and efficient judicial systems.

In a discussion of the provisions of the model article relating to the organization and administration of the courts, a brief history is in order. Many of our states today are operating under constitutions which in the organization of their judiciary are completely outworn and archaic. In the state of Pennsylvania, for example, the courts are attempting to function under a constitution written 90 years ago. Under its judiciary article, there is established for each judicial district one or more trial courts of original jurisdiction, each of which is autonomous, separate from and wholly independent of the other courts of the same and other districts, and substantially free of any outside control or interference. Judges of one district cannot be compelled to serve outside their district. Each court possesses unfettered administrative power and insists, to use Chief Justice William Howard Taft's phrase, "on paddling its own canoe".

This constitution was written in 1873, and since that time we have gone from dirt roads, horse conveyances and lighting by kerosene to hard roads, automobiles, telephones, jet propulsion and nuclear energy, with all the adjustments and maladjustments which these fundamental advances have brought about. Nevertheless, the provisions of the fundamental law governing the organization of the judiciary and the administration of the courts have remained largely unchanged, and the situation in Pennsylvania is no different from that of most of our states.

There have been many and exhaustive

Reprinted from 47 Journal of the American Judicature Society 13 (June, 1963)

studies made of the American judicial system during the last 50 odd years, beginning in 1906 when Roscoe Pound delivered his masterful address on "The Causes for Popular Dissatisfaction with the Administration of Justice". From then on the American Judicature Society, Elihu Root, William Howard Taft, Charles Evans Hughes John J. Parker, Arthur T. Vanderbilt and other leaders followed in the effort to arouse the bench and bar to the necessity for modernizing our court organization if we are to have an effective administration of justice.

The 1938 Report

In 1938, the monumental report of the Judicial Administration Section to the American Bar Association was approved. This report constituted a comprehensive and thoughtful study of all phases of judicial organization and administration, and of the measures necessary for improving the functioning of our courts. Although written 25 years ago, this report still stands as the landmark in our efforts to secure an effective administration of justice. In this report, the sub-committee on the Efficient Use of Judicial Machinery stated (63 A.B.A. Reports, 532):

> To have effective judicial machinery within the state, it is not sufficient that each judge shall discharge his functions efficiently in the trial of a case. Some judge or judges within the judicial system in the state must be charged with the responsibility of the efficiency of the system in the state as a whole. In some districts within the state, there is not sufficient work to keep the judge reasonably occupied, while in other districts the calendars are months or perhaps years behind. The tenure of a judge in a less crowded district must be held subject to be sent in his spare time to the overcrowded district.

The report then significantly concludes:

> The power to enforce other administrative measures for the benefit of the efficiency of the Judicial Department in a state as a whole, but not infringing upon the independence required for the necessary exercise of the judicial function, must be centered in some judge in a unified state system. This judge must have power to appoint a director and staff, subject to his continual supervision, or this administrative power must be centered in various judges in the state, each responsible for administration in a homogeneous locality, and all responsible to one judge. Wherever such a system has been in operation, with the same judicial machinery, efficiency has been increased by at least one third.

This report was written a quarter of a century ago, but its conclusions are as insistent today as they were then, and we have done little to implement them. We must not be discouraged, however, particularly when we bear in mind that the English fought "The Hundred Years War for Law Reform", culminating in the Judiciary Acts of 1873-1875, which established one Supreme Court of Judicature, consisting of the Court of Appeals and the High Court with its three trial divisions. When we look at American experience, we find that it took New Jersey 17 years to secure a constitution with a modern judicial establishment. As Vanderbilt so often emphasized: this job is not for the "short-winded". If the bench and bar will take the initiative, we will be assured of success, as the people will support our effort.

The provisions of the model article involve changes, indeed, fundamental changes in the systems of the great majority of our states. But after all, change is the law of life, both social and biological. No one lawyer will agree with each and every detail of the suggested article. Each will have his own opinions as to the wisdom of one or more of the sections. If, however, the article as a whole, and its fundamental philosophy, be compared with the existing provisions in most of our state constitutions, it is submitted that such comparison will demonstrate the improvement and advancement which will result from its adoption. It is

recognized also that each state has its own peculiar judicial traditions and history, so that it may desire to modify one or more unessential details in accordance with its local requirements and experience.

It must be emphasized that there is substantial agreement among the various groups in the profession which have studied the constitutional requirements for a modern and efficient court organization. The model article is in accord with the recommendations of the American Judicature Society, the Institute of Judicial Administration, the Commission on the Courts of New York and the National Conference on Judicial Selection and Court Administration. Its essential provisions have been incorporated in the latest of our state constitutions, in part in the amendments consolidating the courts of New York, in Connecticut, in Maine, in the Iowa and Nebraska revisions, and in the revisions which were approved in Illinois, North Carolina and Colorado this past November.

The provisions covering the organization of the courts as set forth in the model article are briefly examined.

Obtaining Effective Court Organization

In order to obtain the unification and integration of the judiciary of a state, there should be but three courts:

(a) A supreme court to review questions of law from the trial court and administrative agencies, with an intermediate appellate court (the court of appeals) to relieve the supreme court of the burden of such review in the larger states.

(b) A general trial court (the district court) with statewide original jurisdiction over all cases except minor causes involving relatively small amounts of money and summary criminal offenses.

(c) A minor court (the magistrates' court) for petty civil and criminal matters and the holding of defendants for action by the grand jury.

The model article accordingly provides:

> The judicial power of the State shall be vested exclusively in one Court of Justice which shall be divided into one Supreme Court, one Court of Appeals, one Trial Court of General Jurisdiction . . . and one Trial Court of Limited Jurisdiction.
>
> The Supreme Court shall consist of the Chief Justice of the State and six associate Judges of the Supreme Court.

The number of justices is not one which will be applicable to all states and may vary from state to state. It is believed that the number of justices should be fixed by the constitution so as to make it impossible for any administration to pack the court in order to effect a change in its decisions.

The supreme court is given no original jurisdiction. It is to exercise appellate jurisdiction over such appeals from judgments of the district court, both criminal and civil, as it shall prescribe in rules, but it is expressly provided that appeals from sentences of death, life imprisonment or imprisonment for a term of 25 years or more shall be taken directly to the supreme court, and that in all criminal cases the defendant shall have an absolute right to one appeal, and it may, by rule, review and revise the sentence imposed.

The jurisdiction of the intermediate court of appeals is flexible and will be determined by rules of the supreme court. It, likewise, will have no original jurisdiction. It shall consist of as many divisions as the supreme court shall determine to be necessary, and each division of the court shall consist of three judges.

The Trial Court

The district court, the court of general jurisdiction, will exercise original jurisdic-

tion in all cases except such as may be assigned to the minor courts by supreme court rules. It is further provided that the district courts may be authorized by rule of the supreme court "to review directly decisions of state administrative agencies and decisions of magistrates courts".

The district court will consist of such divisions as the supreme court shall determine. The authorization to provide for divisions of the court is desirable because of the need for specialized courts such as criminal courts, probate courts, divorce courts and the like. This court is to be composed of such number of judges "as the supreme court shall determine to be necessary" and the state shall be divided by the supreme court into districts with the proviso that each district shall be a geographic unit and shall have at least one judge.

It is believed that the supreme court with an effective administrative office at its disposal would be the best informed and most expert body to decide the number of judges required in each district, in light of the provision that each judge should be eligible to sit in every district.

The magistrates court will be a court of limited jurisdiction and shall exercise jurisdiction in such cases as the supreme court shall designate by rule. The magistrates are to be appointed by the chief justice for a term of three years and they, likewise, shall consist of such number as the supreme court shall deem necessary. To hold any judicial office in the state, the person must be licensed to practice law in the courts of the state, thus putting an end to the conventional but often scandalous system of lay justices of the peace.

By extending effective state-wide organization and administration to this lowest level of the court hierarchy and requiring a professonal judiciary with tenure, the model article insures that cases involving even limited amounts of money will be adjudicated efficiently and justly. This complete unification avoids the full re-trials which often characterize appeals from inferior courts where records are incomplete, judges untrained and procedures inadequate. As Roscoe Pound said:

> The amount of money involved has a direct relation to the amount of expense to which the law may reasonably subject litigants and thus may well determine to which branch of the court a case should be assigned. But it does not necessarily determine the difficulty of the case or the amount of learning and skill and experience which should be applied to determine it. . . . A judge dignified with the position and title of judge . . . is none too good for cases which are of enough importance to the parties to bring to the court and hence ought to be important to a state seeking to do justice to all.[1]

The Rule-Making Power

Since the supreme court has the responsibility for the effective administration of the system as a whole, it must possess the means of performing its high duty. It is, therefore, given the power to prescribe rules of practice and procedure for all courts, trial and appellate, including rules of evidence. This rule making power is now possessed to a greater or lesser degree in 28 of our American states. Of course, the supreme court can set up an advisory rules committee and can call upon a judicial council or any other body of experts to advise it in the formulation of rules.

In making the supreme court's rule-making power complete (i.e. not subject to legislative action), the model provision returns to Dean John Wigmore's first principle "that the legislature exceeds its constitutional power when it attempts to impose upon the judiciary any rules for the dispatch of the judiciary's duties. . . . "[2] It acknowledges that the legal expertise essential to the development of effective procedural practices can best be provided by

1. "Principles and Outlines of a Modern Unified Court System," 23 *J. Amer. Jud. Soc.* 226 (1940).

2. Wigmore, "Legislature Has No Power in Procedural Field," 2 *J. Amer. Jud. Soc.* 159 (1936).

judicial leadership and that constant judicial surveillance rather than intermittent legislative action is most suited to keeping these rules current.

A Flexible System

The advantages of judicial rule-making are not limited to pleading, practice, and evidence. Supreme court rulings in organizational matters make a substantial contribution to the flexibility of the court system under the model judicial article.

Through the supreme court's power to establish district court divisions, for example, the efficiency of functional specialization may be utilized, and duplication of judicial effort kept at a minimum. A judge could be assigned by the chief justice to the division dealing with the subject in which he possesses specialized experience, but he would be nonetheless available for other work when the court calendar required it. The power to transfer judges from one district to another and from one division to another permits and assures the efficient functioning of the courts without creating a hodgepodge of separate tribunals, which historically have caused many cases to be decided on technicalities of jurisdiction and venue instead of merit. In addition, organizational flexibility is provided by the court's rule-making power over appellate jurisdiction. For instance, the case load can be more evenly distributed between the supreme court and the intermediate court of appeals by apportioning the several classes of appeals between the two courts.

Quick response to changing judicial needs is again facilitated by the supreme court's authority to determine the geographic unit assigned to a particular district court. Judicial districts need not necessarily follow county lines or some other political boundary which may have little or no relevance to caseloads. Through judicial re-districting by the supreme court, the system can be adopted to keep pace with population shifts, changing concentrations of industrial and commercial activity and other factors which affect judicial workloads.

The court's power to establish rules for review of administrative agency decisions acknowledges the growing significance of the administrative process. By opening the way for recourse from the politically appointed boards and commissions, the model article guarantees that ultimate judicial decisions shall be in the hands of the judicial branch of government. At the same time the model provisions, which permit initial court review at the trial or intermediate court level, leave flexible, for example, the extent to which judicial review should go with respect to questions of law and fact and would permit the court to vary the review procedures for the numerous types of administrative proceedings.

The model article wisely provides for an efficient administration of the courts by making the chief justice executive head of the judicial system and giving him authority to appoint an administrator and "such assistants as he deems necessary." This insures a uniform operation of the system and eliminates court autonomy which has characterized a judiciary where responsibility is divided. It will also avert abuses which have grown up in some states simply because responsibility for overseeing the entire system was unassigned. The model article also prevents another danger in this connection which Roscoe Pound described:

> Unless responsible headship for the whole judicial system is provided and given power to meet the exigencies of the responsibility, there is real danger than an administrative superintending control of the courts will be set up from without. This would not merely infringe the constitutional separation of powers. It would be a dangerous subjection of the courts to the executive. . . .[3]

Further, the article provides that the

3. "Principles and Outlines of a Modern Unified Court System," 23 *J. Amer. Jud. Soc.* 23 (1940).

budget for the entire judicial system be prepared by the administrator under the direction of the chief justice and that fiscal control of that budget be the responsibility of the chief justice. Hence, the two essentials of any efficient organization, administrative and fiscal control, are assured. A necessary check on this centralization of power is provided in that the entire court can exercise policy control through its rule-making power.

Simplicity Is a Significant Feature

Finally, the flexibility provided by the centralization of managerial functions and broad rule-making power of the court is insured by the fact that the model article does not specify every detail of the unified court system. Its functional simplicity then is perhaps one of its most significant features. The model article has none of the detailed provisions which characterize judiciary articles in many states and require constitutional amendments to solve every new problem. It avoids not only the complex and confused organization likely to result from such amendments, but also the long delays inherent in the amending process.

Thus all of the major principles of effective court organization – unification, flexibility, responsibility, and conservation of judicial man-power—are incorporated in the model judicial article.

An Urgent Reason for Action

In an article written by a layman appearing in *Fortune* magazine it is stated:

> Today the United States has urgent reason to be concerned about the condition of justice. In recent years, a small band of worried judges and lawyers have been warning with increased urgency that the composite picture of the American Courts is a sorry one. . . . A layman's hard look at the condition of the courts today results in the conclusion that the reformers are not alarmists. The American Courts must move fast if they would purge themselves of their present low esteem. If they do, they can be the principal institution that gives point to American national development. If they do not, there will not be much point to the development.

It is suggested that in the study of these problems the sage words of Benjamin Franklin be recalled. At the conclusion of the Federal Constitutional Convention in Philadelphia he said:

> I confess that there are several parts of the Constitution which I do not at present approve, but I am not sure that I shall never approve them. For having lived long, I have experienced many instances of being obligated by better information to change opinions . . . which I once thought right . . . I agree to this Constitution with all its faults, if they are such. . . . I doubt too whether any other convention may be able to make a better Constitution.

Excerpts From
MODERN COURT ORGANIZATION
AND ADMINISTRATION
by
Thomas F. McCoy, State Administrator
Judicial Conference of New York

What kind of court structure is desirable? A short answer can be given: the simpler the better. History indicates that our court systems generally have grown haphazardly; they have been brought into their present being by a process of accretion. Courts have been piled upon courts without regard to the result but to satisfy some particular legal need. The result is a multiplicity of courts, unrelated one to the other, each with its own sphere of operation, its own singular procedure--all to the vexation and confusion of lawyers and litigants.

There are many modern theories of court structure; therefore, what I suggest to you is not new or startling.

First, at the apex of the structure, there should be the ultimate court of appeal, which might be called the supreme court. Second, there should be a court of general jurisdiction for the trial and disposition of all cases, civil and criminal, above the grade of small cases and petty offenses. This should be a statewide court in all that that term conveys. To give it a name, it could be called the superior court. It may or may not be organized in divisions--for matters at law which require a jury, for equity matters and perhaps for probate matters. This, to my mind, is a matter which is best left to tradition and experience.

Provisions should also be made in the court structure for courts which will deal with cases of lesser magnitude. These may be organized on a county level or on a departmental or district level. It may also be that larger metropolitan cities which have their own particular needs may require their own courts either as separate entities or as branches of the county tier of courts. This is a matter for study and depends upon particular circumstances. A system of review of decisions and judgments of this court should also be provided. Two caveats may be noted in this regard: this tier of courts must (1) be readily accessible to the people and (2) be an integral part of the unified court system and subject to its disciplines since they, being local, will, more than the other courts, resist assimilation.

Such a court system is simplicity itself. I commend to you this concept: The emphasis must be upon specialized judges, not specialized courts.

I must also mention -- and this is important -- that the machinery, the means to achieve this streamlined court system should also be simple. In other words, this: it is the better course, to my mind, not to include too much detail in a constitutional amendment authorizing court reoganization. A constitutional amendment affecting the courts

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This address was delivered before A Citizens' Conference on the Modernization of the Pennsylvania Judicial System held in Philadelphia January 9-11, 1964.

should be simple, direct and concise -- it should prescribe the unified court system, delegate responsibility for its operation and leave to supplementing legislation or rule or order the details of the court operation and administration. It is much easier to amend a statute or rescind a rule or regulation should it prove not feasible in operation than it is to amend a constitutional defect.

Equal in importance to a streamlined, unified court system is the administration of the system. For it is in the administration of the court system, that the principle of unification and effective operation finds its substance.

It is elementary that responsibility for the operation of the court system must be reposed in some one person. Ideally, this person should be the chief judge of the highest court of the state. Again, however, variations may be desirable--in my own state, ultimate responsibility for the administration of the courts is vested in an administrative board, consisting of the chief judge and the presiding justices of the four judicial departments of the state. In the discharge of its responsibilities, it meets and consults with a judicial conference, composed of judges of the different courts of the state. This management suits our needs and may be adaptable in states of large population such as your own. In the nature of things, judges must decide cases and it is perhaps too much to require that they also devote every working hour to the minute details of administration. The solution we have achieved is the establishment of an administrative office and a system of administrative judges. After discussion and consultation with the judicial conference, the administrative board determines policy and adopts standards and regulations for the operation of the court system which are then put into action and effect by my office and the administrative judges, both of which have a considerable degree of autonomy. Other states may vary in kind in their administrative operation. Once again, I commend them all to your attention and consideration.

What should be the impact and focus of administration? There are those who say, and properly so, that we, of the courts, can learn a great deal from private industry. I agree -- but I also say that we should not entirely equate the operation of a court system with private industry. We deal not with a profit and loss statement, but with human values. To the extent, however, that we can make our courts efficient and economical in operation we should strive to do so.

Court administration, I submit to you, should embrace every facet of court operation but, most particularly, the following matters:

1. Personnel

A program should be authorized for the government of the personnel of the court system. This program, operated either in association with a civil service system or independently should establish statewide standards for the recruitment, promotion, compensation, retirement of court personnel. The standards established should be uniform for the court system.

2. Budgets

Procedures should be authorized and promulgated for the preparation and analysis of the budgets of the courts and for their submission to the appropriating authority through the administrative office. Whether the cost of operation of the court system should be

borne by the State alone or shared by the State and local government is a matter of policy.

3. Purchasing

Closely allied to budgetary procedures is the matter of the purchase of supplies for the operation of the courts. Ideally, this should also be done through the administrative office and not upon an independent basis. The economies effected will more than justify the arrangement.

4. Statistics

This is a colorless and often-maligned topic. Yet, no system, unified or not; no enterprise, public or private, can do the job it was designed to do unless it knows its position from day to day, or year to year.

A sound statistical system is essential to the courts--not merely as an historical device, not merely to record court cases, but as a tool to forecast court calendars or problems in the future.

Modern data processing systems are readily adaptable to court processes. They are more accurate, more timely and less wasteful than the pencil and pad operations of the past.

5. Assignment of Judges

It goes without saying that, in a truly unified court system, machinery must be devised for the transfer and assignment of judges from less busy areas to areas experiencing or threatened with congestion and delay. It is no answer to say that delay is a local problem and should be cured locally. Any undue delay anywhere weakens the whole system.

Parenthetically, however, I might mention that no court system can operate unless it is adequately staffed with both the necessary judicial and non-judicial personnel. To secure these is a task of the administrative office, assisted by the bar and the public.

6. Practice and Procedure

Ideally, perhaps, control of practice and procedure should be vested in the highest court of the state. If this could be achieved, it may be possible to work out some compromise whereby the legislature and the courts share the responsibility, each consulting with the other in this important area.

7. Training or Refresher Programs

A program which has a great deal to commend it is a periodic training or refresher program for judges, designed (A) to afford an interchange of ideas among judges from various parts of the state and (B) to keep them abreast of recent developments in the law.

Such programs have been held in many areas of this country, including my own state. Their worth is incalculable. They are welcomed and sought after by the judges. Such programs should be a prime subject for the administrative office to institute.

8. Judicial Conference -- Judicial Council

Judicial conferences and judicial councils have been powerful forces in the administration of justice generally. They can also be a powerful force in the administration of a court system, advising and consulting with those previously charged with administration. The composition of such a group is a matter of choice but certainly it should embrace judges and lawyers and perhaps legislators and community leaders who will be in a position to assist court administration to achieve its goals.

SPECIALIZED COURTS V. SPECIALIZED JUDGES

A Point of View

What are the general principles that should govern in the reorganization which will in reality be an organization of our courts? The controlling ideas should be unification, flexibility, conservation of judicial power, and responsibility.

* * * *

As has been said in other connections, instead of setting up a new court for every new task we should provide an organization flexible enough to take care of new tasks as they arise and turn its resources to new tasks when those to which they were assigned cease to require them. The principle must be not specialized courts but specialized judges, dealing with their special subjects when the work of the courts is such as to permit, but available for other work when the exigencies of the work of the courts require it. For two generations, at least, we have not fully utilized the judges of our courts, although we have often made them work very hard. Before adding more judges or more courts, we should be sure we are making the best and fullest use of those whom we have.

* * * *

Moreover, enough obvious advantages remain to make full measure. For one thing, unification would result in a real judicial department as a department of government. . . In the states there are courts but there is no true judicial department. Again, unification of the judicial system would do away with the waste of judicial power involved in the organization of separate courts with constitutionally or legislatively defined jurisdictions and fixed personnel. Moreover, it would make it the business of a responsible official to see to it that such waste did not recur and that judges were at hand whenever and wherever work was at hand to be done. It would greatly simplify appeals to the great saving not only of the time and energy of appellate courts, but to the saving of time and money of litigants as well. An appeal could be merely a motion for a new trial, or for modification or vacation of the judgment, before another branch of the one court, and would call for no greater formality of procedure than any other motion. It would obviate conflicts between judges and courts of coordinate jurisdiction such as unhappily have too often taken place in many localities under a completely decentralized system which depends upon the good taste and sense of propriety of individual judges, or appeal after some final order, when as like as not the mischief has been done, to prevent such occurrences. It would allow judges to become specialists in the disposition of particular cases of litigation without requiring the setting up for them of special courts.

In a unified court judges can be assigned permanently to the work for which

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Excerpts from Organization of Courts by Roscoe Pound, pp. 275-290 (1940)

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 Administration of a State Court System

Edward B. McConnell

New Jersey is a unique combination of commercial, industrial, residential, resort, rural and urban communities. With approximately 7 million people it ranks 8th among the states in population, but geographically is only 46th in size. Sandwiched between New York and Philadelphia, it is not surprising that New Jersey has the highest population density and the highest traffic density of any of the 50 states. These factors, among others, make for a high volume of court business, both civil and criminal. Our state and county courts are presently manned by 221 judges, not counting the judges of over 500 municipal courts.

We have in New Jersey five ingredients that make for good court administration.

1. Our Constitution fixes administrative responsibility in the Supreme Court, which is empowered to make rules of administration as well as rules of practice and procedure, and in the Chief Justice, who is specifically designated as the administrative head of all of the courts in the state and given broad powers to assign judges from county to county and court to court. In our state there is no room for doubt in anyone's mind, be he judge, lawyer, litigant or layman, who has the ultimate responsibility for making the system work.

2. Rules adopted by the Supreme Court provide for the division of the state into regions, each presided over by an administrative judge designated by the Chief Justice. Each such judge is responsible for the administration of civil and criminal justice in all courts in his region (the state is presently divided into 12 regions). In addition, provision is made for the designation of presiding judges who are responsible for the administration of each multi-judge court within a region. This delegation of responsibility has proved effective in implementing at the courthouse level the administrative rules and policies set by the Supreme Court and Chief Justice.

3. An Administrative Office of the Courts provides the Supreme Court, the Chief Justice and the administrative judges with the necessary staff assistance to permit them properly to discharge their administrative responsibilities without neglecting their judicial duties. I will have more to say later about the specific functions of our Administrative Office.

4. Channels of communication have been established to permit and encourage the free flow of information and ideas among court personnel at all levels, between bench and bar, and among the judicial, executive and legislative branches of government. For example, there are bi-weekly conferences of the Supreme Court on administrative matters, frequent meetings of the Chief Justice and the administrative judges, annual judicial conferences attended by representatives of all groups in the state concerned with the administration of justice, numerous judges' seminars, and a constant flow of reports, directives and informational bulletins, not to mention more informal exchanges by personal visits and telephone calls. Everyone in the system is given reasonable opportunity to be heard and to participate in the decision-making process, and no one is kept in the dark as to what is going on or what is expected of him.

5. Perhaps most important of all, the Chief Justice, his associates on the Supreme Court, and the judges of the other courts at all levels have demonstrated a continuing willingness to involve themselves in the day-to-day problems of court administration. Without their interest and participation effective court administration in New Jersey would be a mere fiction.

Our Administrative Office is, of course, in-

A version of this article was originally presented at the joint meeting of the Conference of Chief Justices and National Conference of Court Administrative Officers in Hawaii last August.

Reprinted from 51 Judicature 253 (February, 1968)

volved with such matters as the assignment of judges; the collection and publication of judicial statistics; handling for the state judiciary the so-called "housekeeping" functions of budget, personnel, purchasing, court facilities, and the like; and maintaining a liaison between the judiciary and other governmental agencies at the state level. Important, necessary and time-consuming though these tasks may be, they do not adequately reflect the variety of ways in which an administrative office can make itself useful—indeed indispensable—to the effective administration of a state court system. Accordingly, rather than discuss our approach to these more common functions, I will mention instead some of the less routine assignments which our office has been given by the Supreme Court and the Chief Justice.

1. We are responsible for the employment and supervision of sufficient court reporters to cover all of the courts of general jurisdiction throughout the state, and for seeing that all transcripts, especially those ordered for use on appeal, are prepared and filed promptly. By maintaining a constant check on the status of all outstanding transcript requests, and by relieving a reporter at his expense from court duty if a transcript is not filed within time, we have eliminated the frequent appellate delays that previously were attributed to late transcripts. In addition, pursuant to a recently adopted Supreme Court rule requiring a record of proceedings in our Juvenile and Domestic Relations Courts, sound recording equipment has been installed in these courts, operators have been trained and arrangements made for preparations of transcripts when required.

2. All moneys paid into the Superior Court in connection with pending litigation—the bulk of it in condemnation proceedings—are the responsibility of our office. These funds are invested. Out of earnings interest is paid on deposits and the state is reimbursed for all expenses incurred, including salaries. Currently we have over 22 million dollars on deposit in some 6,000 separate case accounts.

3. We undertake a variety of studies and research projects on matters of special interest or concern to the judiciary. For example, last summer we made a county by county field study of the administration, record-keeping and procedures of our Juvenile and Domestic Relations Courts in order to submit a factual report to the Supreme Court to serve as a basis for recommending improvements. We also have underway a detailed analysis of the results of the last three bar examinations, with particular emphasis on the correlation between an applicant's law school record and his performance on the bar examination. In addition, we are completing a survey of every county and municipality in the state to determine whether recommended release without bail programs are operative and the extent of their success. Studies and projects such as these are invaluable not only in spotting deficiencies in present operations but also in providing information essential for the intelligent development of improved procedures.

4. We are actively engaged in providing in-service training both for judges and for the supporting personnel of the courts. During the past year, in addition to our regular judicial conferences and judicial seminars, we conducted a seminar for municipal court judges on housing code enforcement; a three-day seminar for sentencing judges which included a tour of the state penal and correctional institutions to which they make commitments; a four-day seminar for all Superior and County Court judges appointed within the preceding twelve months; three sixteen-hour evening courses attended by over one hundred Municipal Court clerks; a ninety-hour orientation course for all newly appointed probation officers; and six specialized courses for more experienced probation officers. In addition, last August we arranged a special three-day seminar on data processing and the law for the Justices of our Supreme Court and our administrative judges. It was followed the first week in September by a three-day seminar for all judges at the state and county level which concentrated on review of the rules of evidence adopted by our Supreme Court effective with the opening of the September term. Conferences, training programs and seminars such as these are supplemented as the need ap-

pears by manuals and bulletins prepared and published for the information and guidance of judges and other court personnel.

5. We provide expert consulting services to county probation departments and to the judges responsible for their administration, and we will soon be prepared to offer management consulting services to various other court-related offices throughout the state. We are also involved in the development of electronic data processing programs to aid in the solution of court administrative problems.

6. The Administrative Office, in addition to acting as secretariat for our judicial conferences and our judges' seminars, provides staff assistance to the several standing and special committees appointed by the Supreme Court, including its Committee on Rules (incidentally, a comprehensive revision of all our rules of court is presently before the Supreme Court for final consideration and adoption). The Administrative Director serves as secretary of the Supreme Court's Advisory Committee on Professional Ethics and of its Committee on the Unlawful Practice of Law. The Administrative Office maintains duplicate files on all ethics matters handled by the county ethics committees appointed by the Supreme Court, keeps a check on their status and reviews their disposition. In addition, with the assistance of the New Jersey Medical Society, we manage the impartial medical expert program and the special program for the screening of medical malpractice claims, both provided for by rule of the Supreme Court.

7. Copies of all appellate and trial court opinions are filed with the Administrative Office and, except for those of the Supreme Court, are screened for publication by a court-appointed committee of which the Administrative Director is chairman. Those opinions approved for publication in the official reports are edited for style, a digest of them is prepared for publication each week in the *New Jersey Law Journal*, and copies of all opinions are reproduced and distributed to all judges, county prosecutors and law libraries in the state to make them readily available before publication in the advance sheets of the official reports.

8. Members of the Administrative Office staff are regularly on the road making routine administrative audits of the courts, with particular emphasis on the municipal courts, in order to insure compliance with the administrative rules and policies of the Supreme Court and the Chief Justice. All complaints with respect to the operation of the courts, from whatever source and including complaints against judges, are investigated by the Administrative Office. Where indicated, remedial action is taken, and where appropriate, reports are made to the Supreme Court for its information and consideration.

9. Each year a legislative program covering matters affecting the administration of the courts is prepared and submitted to the Supreme Court for review. Those matters meeting with its approval are put in bill form and transmitted with the Supreme Court's recommendation to the Governor and legislative leaders. The Administrative Office also keeps the Supreme Court informed on all pending legislation affecting the judiciary. At the request of the Governor's office or members of the Legislature and after consultation with the Supreme Court, we prepare and submit memoranda setting forth the Supreme Court's views on contemplated or pending legislation.

The foregoing is not, nor is it intended to be, a complete catalogue of the wide variety of tasks which the Supreme Court and the Chief Justice have called upon the Administrative Office to perform. It does, however, serve to illustrate the point I am trying to make; namely, that there is virtually no limit to the number of ways in which such an office can be of assistance. The only real limitation on the things an administrative office can do is the size and competence of its staff. We are fortunate in this regard, but it seems to me that too few offices in other states are adequately staffed to do the job.

Heading our office is a director and an assistant director with the assistance of three secretaries. Our legal and statistical section is staffed by six attorneys, a statistical supervisor, a field representative, and eight secretaries and clerks. The management services section is headed by an executive assistant who has the

help of a management analyst, a personnel technician, a senior accountant, four bookkeepers and three offset machine operators. Our probation section consists of two consultants and a secretary. This makes a total staff of 35 whose annual salaries for next year will total about $300,000. In addition, we have six administrative assistants assigned to work directly for the administrative judges in the larger counties.

At first it may seem that a staff of this size is an administrative extravagance that most judicial systems can ill afford. As a matter of fact, since the Administrative Office was established in New Jersey in 1948, the number of people engaged in administrative work has not increased in relation to the total number of persons employed in the judicial branch. This is mainly attributable to the consolidation of administrative functions in a single office with the resulting elimination of wasteful duplication of effort and expense. I am firmly convinced that without an adequately staffed Administrative Office (and, quite frankly, we could still use a few more people in our office) not only would the cost of operating our courts increase, but also many matters now receiving the attention they deserve would be neglected. Other branches and departments of government, schools and colleges, hospitals, and business concerns have found that they cannot operate effectively without adequate and competent administrative staffs; there is no reason to believe a judicial system is any different.

Having made my pitch on behalf of court administration and court administrators, I will conclude with a word of caution. I have often read and heard it said that the reason for an administrative office's existence is to relieve judges of the need to concern themselves with administrative matters so that they may devote their entire attention to the more important task of deciding cases. First, let me say that we should not underestimate the importance of having well-administered courts in which the judges and supporting personnel who man them, the attorneys who practice before them, and the litigants and public they serve, can have justifiable pride and absolute confidence. Second, if an administrative office is worth its salt, judges (and particularly those specially charged with responsibility for the administration of the courts) will find themselves more, and not less, involved with administrative matters. However, with the assistance such an office can give, they will be able to do an effective job and the time they devote to administration will be well spent.

Modernizing the Administration of Justice

Joseph D. Tydings

It is a matter of common knowledge that the dockets of many courts across the nation—Federal courts, as well as State and local courts—are in a sorry condition. The propensity to litigate seems to have grown even faster than the population. Moreover, standards of criminal procedure have become more exacting, with the consequence that many cases must be processed with increasing care. Under this load of more and longer litigation the courts have themselves been put on trial, accused, not of incompetence, but of a vice that breeds its own kind of injustice—sluggishness.

In an article that appeared in the August-September, 1966, issue of this journal I cited statistics to illustrate the problem of court congestion and delay, and indicated that we have failed to cope with that problem simply by creating more judgeships. Instead, it is clear that we must overhaul the process by which courts handle this business. The article discussed briefly the role that management consultants and systems analysts might play in that overhaul by bringing to bear techniques similar to those that have been developed for business and industry. It is the purpose of this article to set out, in somewhat greater detail, a description of the type of court study that such experts could make.

COURT ADMINISTRATION PROBLEM

The court administration problem involves the effective management, organization and operation of a court system. Management consultants and systems analysts would focus on three principal and related areas:

a. Descriptive analysis of the current operation of the court, and identification of significant bottlenecks in the processing of cases and related court business.

b. Recommendations for appropriate reforms in the processing of cases and court business, and a transition program for working with judges and court administrators until the recommended reforms are implemented.

c. Suggestions for the proper organization of the courts within the system. This would include the possibility of realigning the jurisdictions of the various courts.

LIMITS OF STUDY

There are certain areas that are *outside* the scope of study by management consultants, and it is important that these be identified clearly at the outset. The rules of substantive law, the nature of the judge's own decision-making process, and the exercise of judicial discretion are the principal areas beyond the reach of the experts. A study should identify instead the steps required to present to a judge as expeditiously as possible and with a minimum of administrative detail any matter that needs his attention. Procedural rules designed to move the court's business should be examined to assess whether they do indeed serve their function, or whether there are better alternatives.

Experts might eventually examine alternatives to the adversary process. But initially it should be their purpose to devise ways of improving that process. Extra-judicial administrative procedures may be required, but only as a last resort.

Perhaps the single most important improvement a research effort should seek is the development of an orderly and steady flow of properly prepared cases. In order to prepare cases for judicial action, a number of preliminary steps must be taken with care and timeliness. The problem is not solely one of scheduling or even of "calendaring," although both are vitally important. It is also one of exploring systems that will schedule and coordinate jury panels, minimize conflicts in court ap-

Reprinted from 50 Judicature 258 (April, 1967)

pearances, store for prompt use relevant information to help evaluate the progress of cases and the necessity for continuances, and encourage judges to prepare their cases with dispatch. Additionally, a court study of a congested judicial system should evaluate the management aspects of pre-trial, trial and post-trial procedures related to the processing and disposition of litigation.

One of the critical requirements for a smooth and rapid flow of cases is the ability of the court to analyze its dockets accurately at regular intervals. Today courts are relatively unable to predict when any case will be ready for trial, or how long the trial will take. One research task of great potential profit would be a study of the differences in the time required to prepare various classes of cases in order to identify those elements of a case that significantly contribute to delay. Such a study might develop an information system to facilitate the analysis and monitoring of the dockets. Any such system should be designed to provide a continual flow of information about pending cases, thereby enabling timely calendar revisions that would reduce conflicts in the commitments of judges and lawyers. In this regard, the guidance of the bench and bar will be necessary to identify those delays that aid in the preparation and settlement of cases, as contrasted with those that interfere with proper case flow.

"QUICK CALL" CALENDAR

Another important matter to be studied is the effect upon calendar control of cases withdrawn because of settlements or changes in plea. It may be possible to determine whether it is feasible to replace a removed case by another case of the same anticipated duration, rather than to move up the next scheduled case. The cases on such a "quick call" calendar would presumably be simple ones where the parties, attorneys, and witnesses are readily available. It might prove not only unnecessary, but inefficient, to advance the entire calendar when a case is removed from the docket—the practice generally followed now. It also might be possible to identify certain types of cases that could be placed on a special "accelerated" calendar, which would move as a whole at a more rapid pace than the regular calendar.

SCHEDULING SYSTEM

Another task worth pursuing is to determine whether requiring routine responses from attorneys would help prevent delays that are due to conflicts with other assignments for the same attorney, the unavailability of witnesses, insufficient time to prepare cases, delays in the discovery proceedings, and so on. The feasibility and desirability of an information system that would store all relevant data in this process should be explored. Management and systems experts suggest that the entire scheduling effort might be supported by such an information system that keeps track of all scheduling plans, prints all necessary notices, and receives all information bearing on the schedule. Moreover, data might be collected about the workload of attorneys to determine whether some of them are accepting more business than they can manage, or are regularly unable to prepare cases on time, marshal witnesses, etc. The attorneys responsible for cases should pursue the court's business diligently, and the information system should help the court ensure that the inefficiency of lawyers is not the cause of delay.

Additionally, there are a number of other important tasks that a properly run management study can contribute to improved court administration. These include analyzing the job requirements of the clerk of court and other supporting personnel, examining the design and flow of documents and forms, assessing methods of compiling and preserving necessary records, recommending the optimum use of courtrooms and other facilities, and where needed, assisting the planning and design of new facilities.

In conducting a study, management consultants must be sensitive to the relationships between the procedures within the court, and those procedures and practices outside the court that are within the domain of the attorneys and parties. Some appreciation of the outside pressures that interfere with efforts to

prepare cases must be acquired. In addition to the work of the lawyers directly related to the preparation of cases, office work and other counselling activities may conflict with their court preparation and appearances. It may be possible to identify areas where lawyers themselves can make a more adequate assessment of their own commitments and work distribution. Such a reduction of conflicting obligations would be of great economic advantage to the bar. Too long the judicial system has functioned without a complete understanding of all the pressures and interests that can prevent cases from proceeding expeditiously.

SYSTEMS ANALYSIS

There is good reason to believe that a management study of a court is best conducted in conjunction with a thorough systems analysis utilizing a computer model of the court's operations. What this means, essentially, is that all the factors and resources involved in the processing of cases are quantified and translated into mathematical formulae. This mathematic scheme is then programmed into a computer which, in operation, will represent the actual functioning of the court. The benefits of such a simulation are numerous, but perhaps the most important one is that experiments in administration may be carried out in the computer without actually disrupting the day-to-day operations of the court.

Such a computer simulation on a limited scale has in fact been constructed in the District of Columbia on an experimental basis. In conjunction with the President's Commission on Law Enforcement and Administration of Justice, the Institute for Defense Analyses (IDA) has constructed a simulation of the felony docket of the U.S. District Court for the District of Columbia. Due to limited time and funds, the IDA computer model was based upon only those resources of the District Court allocated to the felony docket.

The IDA analysts ran several experiments with the computer, simulating operation of the District Court for periods varying from three to twelve months—and all in a matter of minutes of computer time.

The report of the President's Commission as to this one aspect of computer simulation was as follows:

> To study the impact of alternative methods of alleviating the delay in the processing of felony cases, the task force developed a computer simulation of the court processing activity. The simulation permitted experimentation with the court operating procedures with no disruption to the actual court operation.
>
> The model was validated by using the 1965 felony data cited above. In 1965, one grand jury was sitting and an average of five district court judges were assigned to the criminal part of the court. Under these conditions, the simulation faithfully reflected the actual court operation: In both there was a median time of approximately six weeks between initial presentment and the return of an indictment, and 14 weeks from arraignment to beginning of trial.
>
> Most of the time prior to arraignment was spent waiting at the Grand Jury Division for indictment (five out of seven weeks). By simulating the system with a second grand jury sitting part of the time, the wait for indictment was reduced from 35 days to less than one day, resulting in a median time of approximately two weeks from initial presentment to return of the indictment. Thus, it appears that for a cost of probably less than $50,000 per year for the additional grand jury and associated support resources, the delay from presentment to return of indictment could be reduced by 70 per cent.

Such a computer model can be used to plan, program and budget for future personnel and facility requirements, to decide how limited court resources are best allocated, and to evaluate alternative operating procedures and court organization schemes. It can also serve as an operational tool to aid in the day-to-day scheduling of defendants, witnesses, and attorneys. Moreover, it can be used to investigate and compare a variety of contemplated but untried court operating concepts, allowing court administrators to experiment with possible changes before putting them into effect. Hopefully, the use of such computers can lead to a fuller understanding of how the entire court system operates and how its various elements interact.

THE ILLINOIS UNIFIED COURT SYSTEM

In 1962 the people of Illinois approved a proposition submitted to them by the Illinois legislature which completely replaced the judicial article in that state's 1870 constitution. The new judicial article became effective January 1, 1964, so Illinois has operated under it now for over five years.

It has brought many far-reaching changes to the state: a unified simplified court organization; clearer principles of jurisdiction; a more equitable geographical selection of justices of the Supreme Court; additional rule making power exercised by the Supreme Court; administrative authority over all courts by the Supreme Court and power given that Court through the Illinois Courts Commission to discipline judges or, if necessary, retire them for disability or cause; an independent intermediate Appellate Court; 21 circuit courts with jurisdiction over all justiciable matters, each circuit staffed according to population and need with sufficient circuit judges, associate circuit judges and magistrates to do the work and each circuit presided over by a chief judge with broad administrative powers; tenure in office for all elected judges based solely on their record and not on an adversary political election; establishment of a constitutional Judicial Conference; and abolition of the archaic justice of the peace and all fee offices, substituting salaried appointed magistrates who are lawyers wherever possible.

John W. Freels, former Director of the Administrative Office of the Illinois Courts, in an address to a meeting of the American Judicature Society in 1966, made the observation, and subsequent events have confirmed his views, that the most significant feature of the new article is a unified court system that is so simple and streamlined that it is truly classic in form and concept. Its complete departure from the old inefficient system of conflicting, overlapping and competing courts is refreshing. Under the old judicial article the courts of original jurisdiction had some concurrent and overlapping jurisdiction, and each court operated independently from the others. Under the old system each county had a circuit court with state-wide original jurisdiction, and it had some appellate jurisdiction; in Cook County, there was also a superior court with concurrent jurisdiction with the circuit court, the criminal court, also with concurrent jurisdiction with the circuit court but limited to criminal cases, a family court, and several others. Each county also

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An address delivered by R. Stanley Lowe, Associate Director of the American Judicature Society, May 22, 1969, at a meeting of the California Council on Criminal Justice held in the Hilton Inn at San Francisco, California.

had a county court with special jurisdiction that overlapped in part with that of the circuit court; a probate court in some counties with special jurisdiction; statutory municipal, city, town and village courts, with jurisdiction overlapping that of the circuit court, and justice of the peace and police magistrate courts with limited jurisdiction.

The new judicial article has eliminted this conglomeration of lower courts and simply provides instead, "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Court."

It provides one circuit court for each judicial circuit with such number of circuit and associate judges and magistrates as is prescribed by law. The circuit court has unlimited original jurisdiction of all matters and such powers of review of administrative decisions as may be provided by law.

In Cook County one circuit court now functions in place of the 208 separate courts that existed previously. These included the circuit, superior, family, criminal, probate and county courts of Cook County, the municipal court of Chicago, 23 village, town and municipal courts in the suburban area, 75 justice of the peace courts and 103 police magistrate courts. The judges of the old circuit and superior courts and those of the county and probate courts became circuit judges. The judges of the municipal court of Chicago and of the various suburban city and municipal courts all became associate judges of the circuit court of Cook County. The elected justices of the peace and police magistrates became "carry-over" magistrates who were entitled to serve out the balance of their elected terms. They have now been replaced by appointed law-trained magistrates, who were first approved by the Chicago Bar Association.

You can easily imagine the complexity of the problems facing a single court serving the needs of a metropolitan area of over five million people. To handle the many problems that inevitably arise the new judicial article provides for a circuit judge to serve as chief of each circuit, chosen by the circuit and associate judges of each circuit. It further provides the chief judge with general administrative authority over the court including authority to provide for divisions, general and specialized, and for appropriate times and places of holding court.

The circuit court of Cook County itself is divided into county and municipal divisions. The county division, in turn, is divided into the usual branches -- law, chancery, criminal, tax, family, probate and divorce. Each major

division is presided over by a presiding judge who deals directly with his chief judge.

The municipal division hears the smaller civil and tax matters, ordinance violations, traffic cases, local misdemeanors and bindovers. It has six districts. The first municipal district is the city of Chicago proper and the organization of that district follows closely the old municipal court of Chicago. The balance of the county is divided into five municipal districts, each having between three and four hundred thousand population.

As the five suburban municipal districts correspond to the five work days of a week, criminal matters are set in one district on Monday, in the next on Tuesday, and so on. A single "circuit-riding" team consisting of assistant state's attorneys, public defenders, probation officers and assistant circuit clerks visits each of the municipal districts in turn. Tax cases are set on days that do not conflict with the criminal hearings, and a similar team of assistant state's attorneys and clerks rotates among the districts handling the tax cases. State highway police officers and local police officers know when the court will be in session in each particular district. They are thus able to have all of their cases heard on one day in any particular week and avoid a serious loss of time from their regular duties.

The consolidation of 208 separate courts into one unified whole presented so many complexities that immediate success seemed unlikely. Although the experience with the new court system has been short (about five and one-half years, as I noted before), some dramatic changes have taken place in the court system of Illinois. This is not meant to suggest that there is not room for improvement in the system. There is room for improvement and steps are under way to effect them at the forthcoming constitutional convention scheduled to begin December 8 of this year. They include, for example, changing the method of selecting judges at all levels of the system. On the positive side of the ledger, however, the new system can be credited with improving the financial picture of the courts and altering the trend of spiraling backlog statistics that until recently threatened to break down the judicial process in the nation's second largest city.

In an address delivered over a year ago, a justice of the Illinois Supreme Court made the following observations:

"The new Judicial Article was not intended as a money-making operation. The sole purpose was to create a

modern, efficient court system designed to protect the liberties and guarantee the rights of our citizens. However, during the campaign for its adoption, one of the chief criticisms was the allegation that the cost would be prohibitive.

"It was widely recognized that creation of a unified state judiciary would result in an increased burden on the State. Under the new plan, the salaries of all judges were to be paid in full by the state. This would transfer from the City of Chicago to the State the obligation of paying the 36 judges of the former Municipal Court of Chicago. The State would also assume the salary of all city and municipal judges who had formerly been paid by the municipalities. The State has now also assumed the payment of all court reporters formerly paid by the various counties, as well as the salary of all magistrates appointed to take the place of the former police magistrates and justices of the peace. The additional financial burden on the State amounts to almost 7 million dollars per year, all of which had formerly been borne by the counties or municipalities.

"In 1966 the Conference of Chief Circuit Judges sponsored a study to determine the amount of revenue generated by the new court system, as compared to the revenue received in 1963 before the adoption of the new Article. In some counties it proved impossible to get exact comparisons. The revenues under the old Article were received by circuit clerks, county clerks, probate clerks, city and municipal clerks, state's attorneys, sheriffs and other officers. Some counties, however, were able to give us comparative figures which demonstrated the difference between the income before and after the new Article became effective.

"Because of its data processing equipment, the most complete and the most significant figures were received from Cook County. The figures relating to the suburban area of Cook County were separate from those relating to the City of Chicago itself. The results in the suburban area are amazing. In 1963, the last year before the effective date of the Article, the total income from the fines and costs in the suburban area was $511,876. In 1964 the aggregate income in this area had increased to $2,582,540 or more than five times as much. In 1965 the total was $3,825,000. In 1966 the total was $3,919,000, and in 1967 the same figure was $4,881,077.

"The results in the City of Chicago proper were very similar. There has been a steady increase in the fines from $9,230,000 in 1964 to $12,048,000 in 1967. In addition to the fines recovered in the city, there was a total of over $10,000,000 collected in 1967 for filing fees, sheriff's

fees, bail bond forfeitures and other sources of court revenue. Thus the total court revenue in 1967 from Cook County alone was over $27,000,000.

"The figures from downstate while not as spectacular all indicate greatly augmented revenue. Our first study had reports from only 49 downstate counties. Those reports indicated that revenues in these counties in 1963 had totaled $2,610,422. In the first year under the new system those same counties reported revenues of $6,500,000 and for 1965 over $7,000,000. Individual counties downstate uniformly reported an increase in revenue of two to three times that received under the old system.

"The appropriations made to our Court to cover judicial salaries, court reporters and similar expenses total less than 35 million for the two year period ending June 30, 1969, or just under 17 and a half million per year. As noted above the court income generated in Cook County alone is almost 10 million more than the state's cost of the entire court system. Adding the revenue from the other 91 counties which have reported gives a total of over 41,000,000 or more than twice the total cost to the state of operating the courts."

Everyone is concerned with the backlog of cases. In most states the backlog contains only the cases that have been announced ready for trial -- in other words, cases in which all pleadings, depositions, and preliminary matters have been completed. Many of those cases have been filed two or more years before they ever became a backlog statistic. Illinois, however, lists every case, and it immediately becomes a part of its backlog the day it is filed.

The records show the tremendous volume of work that can be done by a unified trial court. During 1964, 1,617,822 cases of all types were filed in the circuit court of Cook County and 2,173,265 were terminated. In 1965, 1,753,182 cases were filed and 2,304,524 cases terminated. In the first two years as a unified court, the circuit court of Cook County terminated a million cases more than were filed in the same period. Traffic, personal property tax, and other small cases, of course, constituted the bulk of these gains.

The 1967 Annual Report of the Administrative Office of the Illinois Court reflects a continuing pattern of more cases being terminated than filed in the state's unified trial court system. During 1967, 1,628,075 cases were filed in Cook County, and 1,671,477 cases were terminated. The state total is similarly impressive. In all 21 circuits of the state 2,389,752 cases were filed, and 2,402,477 cases were terminated. What is significant about these figures is

that this favorable trend has continued notwithstanding a steady growth in the number of cases filed each year. However, a preliminary report on the Cook County court for 1968 indicates that a small regression occurred last year, but this can be largely attributed to the extra load of misdemeanors that arose from last year's unusual riot conditions. The record shows a total of 1,767,865 cases filed compared to 1,740,180 ones terminated.

Roy O. Gulley, the director of the Administrative Office of the Illinois Courts and a former Illinois judge, recently made this observation about the backlog situation:

"The unified trial court in downstate Illinois which allows us to use all of our judicial manpower in all of the courts of the state, instead of having one judge sitting idle because no cases were filed in his court, and another judge swamped with business because the lawyers preferred his court, has resulted in a great increase in the efficiency of our judicial manpower. There is no 'backlog' nor delay in the trial cases anywhere in downstate Illinois. A lawyer can get a case to trial from six to fourteen months after filing same.

"There is no 'backlog' in Cook County (Chicago) except in the law jury division. There is a delay there of some five years between filing and trial of a personal injury case. We are trying to figure out ways to eliminate this, but have been unsuccessful to date in doing so. This delay is no greater now and, in fact, is somewhat less than it was in 1964 when our new Judicial Article went into effect. I can say without fear of contradiction that the delay would have been far greater by January 1, 1969 than five years if the Judicial Article had not been adopted when it was...."

Some downstate Illinois lawyers, who have practiced under both the old court system and the new, have recently commented upon the new system and the improvements they have noted since it became effective. Timothy W. Swain of Peoria, a former president of the Illinois State Bar Association and a practicing lawyer with approximately 35 years of experience, made this observation about the new unified court system:

"One of the greatest results we accomplished in my opinion was in abolishing the old justices of the peace system where we wound up with a myriad of JP and Police Magistrates courts in our townships and municipalities, manned often by unskilled laymen who held court in the back room of their barber shop or shoe repair shop as contrasted to our Magistrate system manned by lawyers who are appointed by the Circuit Judges and work under their supervision and

hold court in our court houses. We had some real speed trap situations in Illinois that received national publicity as I recall involving the town of Odin, Illinois. These evils have been eliminated."

Mr. Jack E. Horsely, a Mattoon, Illinois lawyer with thirty years experience in the courts, had this to say about the new court system:

"First, under the old system there was a network of courts, some with overlapping jurisdiction. It was interwoven into a complex web of intricacies with elaborate appeal requirements, wasteful trial de novo and an archaic pseudo-judicial system administered by laymen whose pay depended upon costs taxed against the parties whose welfare was at issue. These were styled Circuit Courts, County Courts, Probate Courts and Justice of the Peace tribunals. At the appellate level, the intermediate Court of Appeal was served by Circuit Judges to whom this work was assigned by the Supreme Court as an additional duty.

"Under the reorganized court system, all nisi prius work is in the Circuit Court. It has various divisions all served by one Clerk's office in each county. It is administered by Circuit Judges, Associate Circuit Judges and Magistrates. Under Section 8 of the new Judicial Article there is at least one Associate Judge per county. Justices of the Peace, masters in chancery and other officers whose income came from fees received from litigants in the cases over which they presided have been abolished. No longer do we have the midnight session in the kitchen of a farmer to mete out punishment in the form of fines and costs, the latter of which he kept as his fee, to unfortunate motorists apprehended by a Town Constable on an interstate highway for allegedly exceeding the speed limit by 5 or 10 miles per hour. Nor do we have the Master in Chancery system where large fees were taken off the top by a layman who supervised a mortgage sale and whose primary purpose frequently was to have a personally profitable experience whether it served the welfare of the litigants or not. These are but illustrations of the types of deficiencies the new Article has eliminated."

The other two areas in which he noted improvement deal with judicial staffing of courts in rural counties and the improved efficiency of the appellate courts of the state.

These observations attest better and more eloquently to the benefits that have been brought by the unified court system in Illinois than I am capable of doing. Modesty compels me, therefore, to close without additional comment about, except endorsement of, the unified court concept.

A SELECTED CHRONOLOGY ON COURT ORGANIZATION REFORM

Excerpts from
American Judicature Society
Report No. 12 (July, 1967) and Supplements

VIRGINIA
1936 and 1956
Va. Acts 1956, c. 555

Under the 1936 reform, salaried trial justices replaced justices of the peace in certain cities and towns and in all counties not already having such justices by virtue of special legislation. Most justices were appointed by circuit judges (trial court of general jurisdiction), but some continued to be elected. Trial justices have exclusive civil jurisdiction up to $200 and concurrent civil jurisdiction with the circuit courts between $200.00 and $1,000.00. Trial justices have criminal jurisdiction over violations of ordinances, county, city and town by-laws, and most misdemeanors.

The 1956 reform retained the essential provisions of the earlier reform but it enhanced the uniformity of the system. All trial justices were designated as municipal or county court judges. All trial justices are selected by appointment by the circuit judges. Exclusive civil jurisdiction was raised from $200 to $300 and maximum concurrent civil jurisdiction was raised from $1,000 to $2,000. Justices were required to be licensed to practice law in the state.

See: Kingdon, Trial Justice System of Virginia, 23 J. Amer. Jud. Soc. 216 (1940); Virginia Trial Justice Act is Revised and Improved, 40 J. Amer. Jud. Soc. 26 (1956); Duval and Miller, A New Law for Courts Not of Record, 42 Va. L. Rev. 1032 (1956); Whittle, Streamlined Justice in Virginia, 10 Wash. & Lee L. Rev. 9 (1953)

NEW JERSEY
1947
New Jersey Constitution, Article VI
N.J. Stat. 1948, chapters 264, 270, 319-329, 331-339, 354-369, 371-385, 388-390, 394

The reforms in New Jersey were the first significant ones to be made on a state-wide basis for an entire state judiciary.

In place of the multiple courts with overlapping jurisdiction, the New Jersey reforms created a five level court system. Under the constitution the Supreme Court was empowered to make rules governing the administration, practice and procedure in the state courts. The chief justice was also empowered to make assignments of judges as needed.

The old separate courts of law and equity were combined into a single superior court with state-wide trial jurisdictions of civil and criminal matters. Chancery and appellate divisions of the superior courts were established.

The county courts, with county-wide jurisdiction in civil and criminal matters, were retained.

Other minor courts authorized to be created by law included county-district courts with minor jurisdiction primarily of civil cases, and municipal courts with jurisdiction over minor criminal offenses and some special civil matters. Justices of the peace were eliminated and police courts and other magistrates and recorders courts were made municipal courts.

See: Convention Committee Describes New Judicial System Adopted in New Jersey, 31 J. Amer. Jud. Soc.. 138, text of judicial article 142, chart of court system 143 (1948); Vanderbilt, The First Five Years of the New Jersey Courts Under the Constitution of 1947, 8 Rutgers L. Rev. 289, bibliography 311 (1954); Karcher, New Jersey Streamlines Her Courts: A Revival of "Jersey Justice", 40 A. B. A. J. 759 (1954); Brennan, After Eight Years: New Jersey Judicial Reform, 43 A. B. A. J. 499 (1957).

CALIFORNIA
1950
Constitution of State of California, Article VI, Sections 1, 11, 23
California Stats. 1949, pages 2268, 2681, 2694, 2695, 2697, 2698, 2699, 2701

A uniform system of municipal and justice courts was created to replace the old system of minor courts including six types of city courts and two classes of township courts. Because courts had been established on the basis of political subdivisions without regard to caseloads, some areas had more judicial business than could be handled by the existing courts and others did not have enough business for existing courts.

Under the reform, the legislature established districts each having a single court: a municipal court in districts with populations of 40,000 or more, a justice court in other districts.

Municipal courts were granted civil jurisdiction up to $3,000 and criminal jurisdiction in cases involving crimes below a felony. Justice courts were granted civil jurisdiction up to $500 and criminal jurisdiction in low-grade misdemeanors.

Municipal judges were required to have 5 years experience in the practice of law and justice court judges were required to be admitted to the practice of law or pass the qualifying examination prescribed by the state judicial council.

1966
California Constitution, Article 6, Sections 3, 11 and 12

Section 3 of the constitution was amended to allow the legislature to increase the number of judges in each Court of Appeal division. Prior to the amendment each division was limited to three judges.

Sections 11 and 12 were amended to increase the Supreme Court's discretion over appellate jurisdiction. Except for appeals from the death penalty, most appeals will go to the Courts of Appeal and from there, on petition, to the Supreme Court.

See: Proposition 3 - For: A Simple, Uniform System of Courts in California, Journal of the State Bar of California, July-August, 1950; State-Wide Minor Court Reorganization..., 34 J. Amer. Jud. Soc. 58 (1950); Report on the Reorganization of the Lower Courts, Judicial Council of California, 14th Bienniel Report 13, 21 (1953).

NEW HAMPSHIRE
1957 and 1963
New Hampshire Laws 1957, ch. 244
New Hampshire Laws 1963, ch. 331

Under the 1957 reform, the civil and criminal jurisdiction, which justices of the peace had exercised concurrently with other state courts, was abolished, leaving justices only ministerial functions.

Under the 1963 reform, 37 of the existing municipal courts were made district courts; the remaining municipal courts were abolished. The district courts were given criminal jurisdiction in cases involving fines up to $1,000 or one year imprisonment or both, exclusive civil jurisdiction up to $500 and concurrent civil jurisdiction with the superior court (general trial court) up to $1,500. No justice of the district court is permitted to be an attorney in a case pending in his court or a case which had been examined or tried in his court. Justices in populous areas are not permitted to engage in the practice of law at all.

See: New Hampshire. . . Abolished Justice Court Jurisdiction, 42 J. Amer. Jud. Soc. 126 (1958).

OHIO
1957
Ohio Revised Code, chs. 1907 to 1923

Justice of the peace courts were replaced by a system of county courts in all but those 26 counties in which the municipal court was given county-wide jurisdiction. The jurisdiction of the county courts extends to all the territory of the county not subject to municipal court jurisdiction and the county courts have exclusive civil jurisdiction up to $100 and concurrent civil jurisdiction with the courts of common pleas between $100 and $300. They also have criminal jurisdiction in motor vehicle violations, misdemeanors and other cases in which the justice of the peace formerly had jurisdiction.

County court judges are required to be members of the bar who have practiced law for at least one year. Judges are compensated by salaries and permitted to practice law in cases not involving their courts.

In 1968 Ohio's voters ratified an amendment which gave the state Supreme Court broad administrative and rule making powers, including the power to divide multi-judge common pleas courts into divisions and assign judges from any part of the state to relieve work loads in metropolitan centers. Probate courts were made a division of the state-wide common pleas court system. Judges were banned from judicial office after age 72, but the chief justice was authorized to assign retired judges to active duty with their consent.

See: Meier, The New County Courts in Ohio, 3 Ohio Opinions (2d) 295; Justices of the Peace Abolished in Ohio by Legislation, 41 J. Amer. Jud. Soc. 15 (1957).

CONNECTICUT
1959
Conn. Pub. Acts. Reg. Sess. 1959, No. 28

A state-wide system of circuit courts, staffed by full-time, salaried judges trained in the law, was established to replace justices of the peace, trial justices and borough, town and police judges. Under the supervision of the chief judge of the Supreme Court of Errors (final appellate court) and his administrative assistant, the circuit courts have state-wide territorial jurisdiction to hear criminal cases involving up to $1,000 in fines and no more than one year imprisonment and to hear civil cases involving claims up to $2,500. An appellate section composed of circuit judges was established to review most of the court's own decisions. Provision was also made for a uniform method of handling minor matters and for less expensive trials.

1965
1965 P.A. 331

The position of Chief Court Administrator was created by the 1965 enactment. The administrator, who must be a judge of the Supreme Court, has the power to issue orders and regulations necessary for the efficient operations of the courts. He also appoints the chief judges of the various courts and transfers judges as needed. To handle the nonjudicial business of the judiciary, the legislature created the position of executive secretary, which will be filled by an appointee of the Administrator.

The number of Supreme Court justices was increased from five to six, superior court justices from 27 to 36, and court of common pleas justices from 12 to 14. The salaries of justices of the three above courts, the juvenile courts, and the circuit courts were increased.

The jurisdiction of the circuit courts and the courts of common pleas was enlarged to $7,500 and $15,000 respectively, while that of the superior courts was decreased.

The 1965 legislation provided for year-round court sessions instead of the previous nine month sessions.

See: Details of Connecticut's New Minor Court Act, 43 J. Amer. Jud. Soc. 25 (1959); Pettengill, Court Reorganization: Success in Connecticut, 46 A. B. A. J. 58 (1960); Davis, Administration of Justice in Connecticut, Institute of Public Service, University of Connecticut (1963).

MAINE
1961
Me. Rev. Stat. Ann., ch. 108A (Supp. 1961)

A unified state-wide system of district courts replaced the old justice of the peace and municipal courts. Fourteen full-time district judges, sitting in 11 district court districts, replaced 50 part-time municipal court judges and 24 trial justices. In addition to matters formerly handled by the municipal and justice courts, the new district court has concurrent jurisdiction with the superior and probate courts over

domestic relations matters and civil jurisdiction in cases with claims up to $1,200. The district court system is administered by the chief judge of the district court and the finances are controlled by the state treasurer. District judges are required to be qualified lawyers.

See: Municipal Court Revision Proposed for Maine, 44 J. Amer. Jud. Soc. 224 (1961); A District Court System in Maine was Enacted..., 45 J. Amer. Jud. Soc. 75 (1961), A District Court for Maine, study prepared and published by the Institute of Judicial Administration, New York, 1961, 54 pages; Williamson, A Down-East Approach to Local Justice, The Maine District Court, 47 J. Amer. Jud. Soc. 64 (1963).

COLORADO
1962
Colo. S. C. Res. 12 (1960) amending the Constitution of Colorado, Article VI

A new constitutional judicial article provides for a supreme court with general superintending power over the court system and authority to promulgate rules governing the administration, practice and procedure in all civil and criminal cases in the courts of the state.

The article eliminated justice of the peace courts. The district courts were retained and their existing jurisdiction in all causes in law and equity was expanded to include cases of probate, mental health and juvenile proceedings over which the county court formerly had jurisdiction. Jurisdiction of the county court is to be set by law.

The City of Denver retains its independently constituted probate and juvenile courts and the amendment guaranteed the power of home rule cities and towns to create municipal and police courts.

Judges must be licensed to practice law in the state for a period of at least five years.

See: Colorado Becomes Sixth State to Send Judicial Amendment to Voters, 45 J. Amer. Jud. Soc. 77 (1961); Court Reorganization Reform -- 1962, 46 J. Amer. Jud. Soc. 110 (1962); Colorado Legislative Council Report to General Assembly, Research Pub. 49 (Dec. 1960), especially Appendix D: Comparison of Judicial Article and Proposed Article.

1969
H. B. 1028 (passed 1969 - effective January 1, 1970)
S. B. 126 (passed 1969 - effective January 1, 1970)

An Intermediate Court of Appeals was established as part of Colorado's unified court system. Practically all cases are appealable to the Intermediate Court. These cases can only reach the Supreme Court by special permission.

An act was also passed which provided for full state funding of the entire court system.

See: 52 Judicature 170 (1968)

IDAHO

1962

Joint House Resolution No. 10 (1961 sess. Idaho Legislature) amending Idaho Constitution, Article V

All references to justice of the peace and probate courts were removed from the constitution thereby permitting reform by act of the legislature.

See: A Proposed Amendment to Idaho's Constitution, 45 J. Amer. Jud. Soc. 107 (1962); Court Reorganization Reform -- 1962, 46 J. Amer. Jud. Soc. 110 (1962).

1967

Idaho Code (1967) Title 1, Chapters 6, 8 and 21

The position of Administrative Assistant of the Courts was created and the Supreme Court was granted administrative authority over the state courts. The state was redistricted, creating seven judicial districts and a seven-member judicial council was created. The council was empowered to conduct studies for the improvement of justice and to serve as both a judicial nominating and judicial discipline and removal committee.

See: 50 Judicature 244 (1967).

1969

S. B. 1112 (passed 1969 - effective January, 1971)

Magistrate divisions were added to the existing district courts, replacing the municipal, justice and probate courts. New magistrates' commissions were created in each of the state's seven judicial districts.

See: 52 Judicature 438 (1969).

ILLINOIS

1962

Ill. H. J. Res. 39 (1961) amending the Illinois Constitution, Article VI

A constitutional amendment provided for a unified state-wide court system. The Supreme Court was granted general administrative authority over all state courts including powers of assignment of judges among circuits, power to provide for inexpensive and expeditious appeals, power to convene an annual judicial conference and power to appoint an administrative director of the courts.

The intermediate appellate court, formerly staffed by circuit and superior judges, was provided with judges specifically selected to sit in that court.

A state-wide system of circuit courts staffed by circuit judges and magistrates appointed by circuit judges was created to replace the complex of courts which included circuit, superior, criminal, justice of the peace, police magistrate, municipal, city,

village and incorporated town courts. The circuit court within each circuit is under the general supervision of the chief judge of the circuit, who is in turn subject to the supervisory powers of the supreme court. Jurisdiction of the circuit courts includes all justiciable matters. The legislature is to specify which matters may be assigned to magistrates.

All judges are required to be licensed attorneys of the state.

See: Allard and Breen, A New Judicial Article for Illinois, 45 J. Amer. Jud. Soc. 281 (1962); Fins, Analysis of the Illinois Judicial Article, 11 DePaul U. L. Rev. 185 (1962); The Blue Ballot Judicial Amendment, 50 Ill. Bar Journal 651, Supplement, (1962).

NORTH CAROLINA
1962
N. C. Sess. Laws 1961, ch. 313 amending Article IV of the North Carolina Constitution.

The constitutional amendment provided for a general court of justice which constitutes a unified judicial system for the purposes of jurisdiction, operation and administration. The Supreme Court, superior court and district court are divisions of the general court of justice. The Supreme Court was granted exclusive authority to make rules of civil and criminal procedure and practice subject to legislative veto and to exercise general administrative authority over the court system with the aid of an administrative office of the courts. The jurisdiction of the superior and district courts is to be established by law.

A uniform system of district courts and magistrates is to replace the justice of the peace and statutory minor court system.

The compensation of judges by fees was abolished.

1965
North Carolina Constitution, Article 4, Sections 5, 6, 10 and 14, and G. S. of N. C. 7A-130 to 345

The constitutional amendments provided for the establishment of an intermediate appellate court, the Court of Appeals, of not less than five justices. To date, the court has not been established.

The legislators provided for the establishment between 1966 and 1970 of a district court for each of the thirty judicial districts of the state. The district courts will replace justices of the peace, mayors' courts, domestic relations and juvenile courts, recorder's courts, city courts and county courts. Each court shall have one or more judges and one or more magistrates. The magistrates have various ministerial duties, but the chief judge of a district may assign small claims actions to the magistrates.

The district court has jurisdiction over civil cases where the amount in controversy is $5,000 or less, over criminal cases below the grade of felony, over domestic relations problems and exclusive jurisdiction over juveniles. A uniform state-wide cost and fee schedule for criminal and civil actions was adopted.

The legislature also provided for an Administrative Office of the Court which will be supervised by a director appointed by the Chief Justice of the Supreme Court.

See: North Carolina's Court Reform Campaign is Renewed, 44 J. Amer. Jud. Soc. 222 (1961); Court Reorganization Reform - 1962, 46 J. Amer. Jud Soc. 110 (1962); Ball, The Proposed Revision of the Courts of North Carolina, 28 Pop. Govt. 19 (1961).

DELAWARE
1965 and 1966
10 Del. Chs. 91, 92, 93, 95, 96, 97 and 98.

The Delaware legislature completely overhauled its sytem of justices of the peace in 1965. The justices of the peace were placed under the supervision of the Chief Justice of the Supreme Court and are to be governed by rules promulgated by the Supreme Court. The maximum number of justices was reduced from 94 to 46. (The 1966 amendment increased the latter figure to 53). Specific residence requirements were eliminated. It was provided that at least one justice would be available at all times in Kent and Sussex Counties and two justices in the remaining county. The justices were granted an annual salary of $8,000 and the fee system was abolished. The legislation called for offices and staffs to be provided for the justices, gave the Deputy Administrator to the Chief Justice of the Supreme Court the authority to assign justices to hold court where and when needed, and provided that the justices should have state-wide jurisdiction.

OKLAHOMA
1967
Oklahoma Constitution, Article VII

Oklahoma voters adopted a new judicial article at a special election in July 1967. The new article calls for the abolition in January, 1969, of the Superior Courts, Common Pleas Courts, County Courts, Children's and Juvenile Courts and Justices of the Peace. Municipal Courts will be limited to jurisdiction of matters involving municipal ordinances. The District Court, with few exceptions, will have unlimited original jurisdiction of all justiciable matters. The Article provides that the legislature may create an intermediate appellate court and change or abolish the Court of Criminal Appeals, the State Industrial Court, the Court of Bank Review and the Court of Tax Review.

New District Court Judicial Districts are to be established and staffed by District Judges, Associate District Judges and Special Judges. The new districts and the number of judges in each district are to be determined by the legislature.

The Supreme Court is to have administrative responsibility for the court system. The new article provides for the appointment of an administrative director and staff to assist the Supreme Court in its administrative work. The State will be divided into Judicial Administrative Districts of one or more District Court Districts. Each Administrative District shall have a presiding judge to handle the work of the district.

See: 51 Judicature 78 (1967)

Excerpt from the Consensus of the National Conference on Judicial Selection and Court Administration

Effective Use of Judicial Manpower

The effective use of judicial manpower requires businesslike administrative organization and control. The variety and efficiency of the methods in use in many of the states demonstrate this. Differences in the systems are occasioned by factors of historical development, traditional attitudes, the size and population of the state or a particular community, constitutional limitations, etc.

1. There is need for an annual judicial conference of all judges at all levels within a court system to supply a forum for development and sponsorship of needed revisions of court procedures and administration; and to afford opportunity for the sharing of experiences and ideas and the development of a colleagueship among the judges. The judicial conference should have an official status. The trial of cases should be suspended during the period of the conference. The expenses of attendance should be paid out of the public treasury.

2. A state judicial council of 15 to 20 members can be a major influence in devising and promoting improvement of court procedure and judicial administration. The composition of the judicial council may vary with local conditions but in general it should include representatives of the bench, the bar, the legislature and the public.

3. Chief justices should be empowered to assign judges from court to court throughout the state to meet varying needs and to equalize the case loads. The exercise of this power should not be dependent upon the consent of the judge who is assigned, or of his presiding judge, or of the judge or judges of the court to which he is assigned. It is important that the power to assign be recognized, although in practice it should not generally be exercised without consent. Any apprehension that the power might be abused is negated by the experience in states in which the chief justices have exercised it.

4. Chief justices of state supreme courts and presiding judges of other multi-judge courts must perform important administrative functions. This fact must be considered in devising methods for their selection. These positions should not be filled on the basis of seniority, political influence or automatic rotation.

Whether the presiding judges of intermediate courts should be designated by the chief justice, or by some other authority, or elected by their fellow judges, may well vary with local conditions and traditions.

5. In state and metropolitan courts the members of the judiciary should be relieved of personnel, budget and other administrative matters. These should be delegated to a qualified administrator who is not a judge of the court. This will enable all the judges of the court to devote their full time to judicial work and ensure the application of efficient and economical management techniques.

6. The keeping of judicial statistics is necessary to the efficient operation of a court or a court system. The nature and complexity of the statistics vary with the needs of the particular system. Whatever statistics are kept must be current, have continuity, clarity, be under a definition of terms that is uniform throughout the jurisdiction, and be compiled only in the fulfillment of a definite purpose. These statistics will be useful only if kept under the constant surveillance of those officials who have a continuing need of them. A proper system of statistics can make an impressive and useful contribution to judicial administration and to the understanding and the interest of the public.

Reprinted from 45 Journal of the American Judicature Society 12 (January, 1962)

Excerpt from

THE MODEL JUDICIAL ARTICLE FOR STATE CONSTITUTIONS

§1. THE JUDICIAL POWER.

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

Committee comment: It is contemplated to set up by this section a single unified judicial system with a single court of original jurisdiction. This follows the recommendation of advocates of judicial reform from Pound to Vanderbilt. And this is one of the recommendations made by the American Bar Association in 1938. It is a reflection of the unfortunate experiences too many states have had with multiple courts of original jurisdiction.

Thirteen states with large populations and consequently with an extremely busy judicial system now provide for an intermediate appellate court. It is expected that more and more states will find this kind of a court to be a real aid in dealing with problems of congestion in the appellate system. The Model Judicial Article, therefore, provides for such a court.

The titles of the trial courts may, of course, vary from jurisdiction to jurisdiction. The ones chosen here are merely for purposes of example.

§2. THE SUPREME COURT.

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

Committee comment: The question of the number of justices is not one which has an ideal solution and the number may vary from state to state. The experience of the United States Supreme Court would indicate that any number above nine has passed the point of diminishing returns. On the other hand, the number must be large enough to divide the tasks sufficiently to give the justices ample time for reflection and deliberation in the preparation of opinions.

The Committee is of the view that the number of justices should be fixed by the Constitution to avoid such suggestions as that of McReynolds when he was Attorney-General, adopted by President Franklin D. Roosevelt in his court-packing plan, to increase the number of justices in order to effect a change in the substance of the Court's opinions.

The Committee is of the opinion that the Supreme Court should not sit in divisions, but has not made provisions to prohibit it. Such a practice has been utilized by several state jurisdictions. Its main purpose is, of course, to allow the high court to increase the number of cases which it can hear in order to overcome or prevent delay and congestion. It must be recognized, however, that decisions by divisions, even if provided for by the Constitution, will not have the same force and effect as a decision of the whole Court. Moreover, sitting in divisions creates the possibility of minority views on the Court becoming controlling doctrine because of the accident of the make-up of a division. It is the Committee's belief, therefore, that while divisions could be utilized for clearing temporary congestion or delay, an intermediate appellate court and/or a limitation on the Supreme Court's appellate jurisdiction are more appropriate long-term remedies.

¶2. **Jurisdiction.**

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

Committee comment: It is the view of the Committee that no original jurisdiction be imposed on the high court. That court lacks facilities for the fact finding process inherent in every question of original jurisdiction. References to masters and referees, in the pattern of the United States Supreme Court, do not seem so adequate or desirable as requiring the case to enter the judicial system by way of the trial court.

Silence on the question of the issuance of writs has generally been interpreted as authorizing the Supreme Court to issue original writs. It is proposed to eliminate this power for the same reasons that call for the elimination of original jurisdiction. By way of its appellate jurisdiction, the high court can review all grants or denials of writs below and can properly, in the extraordinary cases, remove a case from the lower court to the high court even before judgment on the petition for the writ has been made by the lower court.

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

Committee comment: The only categories of cases in which the Committee felt that it was necessary to impose compulsory jurisdiction were those involving the life of the defendant and those involving liberty of the defendant for an extensive period of time. Most high courts now exercise this power in capital cases. For this purpose the Committee was unable to rationalize a distinction between capital cases and long-term sentences of imprisonment.

As to all other matters it was believed that the appellate power should be exercised in accordance with the demands of the times. On the question whether this allocation of power should be in the Court or in the legislature, the Committee chose the Court for several reasons. Among others, these reasons included: 1) the fact that such power in the Court would enhance the independence of the judiciary; 2) the fact that it would place the power to meet current problems in the hands of those most likely to be expert in the subject; 3) the fact that the rule making power was more flexible than the legislative power in its capacity to meet the demands of judicial administration.

The proposal that the appellate power in criminal cases include the power to review sentences is based on the efficacious use to which that power has been put by the Court of Criminal Appeals in England. Recognizing the possibility of undesirable imposition on the appellate processes, the Committee thought it desirable to leave the Court with the power to limit the categories of cases in which sentences would be reviewed.

§3. THE COURT OF APPEALS.

The Court of Appeals shall consist of as many divisions as the Supreme Court shall determine to be necessary. Each division of the Court of Appeals shall consist of three judges. The Court of Appeals shall have no original jurisdiction, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies of the State and it may

be authorized by rules of the Supreme Court to issue all writs necessary or appropriate in aid of its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rules which shall, however, provide that a defendant shall have an absolute right to one appeal in all criminal cases and which may include the authority to review and revise sentences in criminal cases.

Committee comment: The necessity for intermediate courts of appeal, already existent in thirteen states and likely to become necessary in others, was the reason the Committee felt that provision should be made in the Constitution for their creation. The primary function of such a court would be to hear appeals in cases which the Supreme Court should not be expected to handle because of the importance of its business. The jurisdiction of the court of appeals has, therefore, been framed in the same terms, except for the Supreme Court's compulsory jurisdicition, as is the jurisdicition of the Supreme Court itself. The same reasons exist for allotting the power to the Supreme Court rather than the legislature to specify the jurisdicition.

§4. THE DISTRICT AND MAGISTRATE'S COURTS.

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

Committee comment: The number of District Court judges and magistrates and District Court divisions must be flexible in order to allow for adjustment to new conditions. The authorization to provide for "divisions" was thought desirable in terms of the need for specialized courts, such as probate and divorce courts. But it was also thought to be desirable that these specialized courts be manned by judges whose functions need not be confined to such courts. Thus, all branches will be administered as one court with no conflicts of jurisdiction and no waste of judicial manpower.

The Committee believed that the Supreme Court would be the most expert body to decide how many judges and magistrates are required in each district.

The authority of a district judge and magistrate to sit in any district is complementary to the authority of the Chief Justice to assign judges anywhere in the State in order to make the most efficient use of judicial manpower.

¶2. District Court Jurisdiction. The District Court shall exercise original general jurisdiction in all cases, except in so far as original jurisdiction may be assigned exclusively to the Magistrate's Court by the Supreme Court rules. The District Court may be authorized, by rule of the Supreme Court, to review directly decisions of State administrative agencies and decisions of Magistrate's Courts.

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

Committee comment: It was the Committee's view that cases involving minor matters such as traffic offenses and small claims should be delegated to magistrate's courts, and that this would be necessary to avoid an unreasonably large number of district judges with general original jurisdiction. It was also thought that where the districts covered a large geographic area or temporary congestion occurred in any district, magistrates might appropriately be used to relieve the district court of undue burdens. Because of the need for flexibility in the use of such courts it was deemed best to leave the terms and conditions of the magistrate's court jurisdiction in the control of the Supreme Court by rule.

§8. THE CHIEF JUSTICE.

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

Committee comment: The vesting of administrative authority in the Chief Justice follows the recommendation of the American Bar Association. The desirability of the concept has been proved by the experience in the New Jersey system which adopted such a method of administering its courts.

§9. RULE MAKING POWER.

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

Committee comment: The vesting of the rule making power in the Supreme Court has long been an objective of those interested in judicial reform. This is another of the recommendations of the American Bar Association. Rule making power over all the courts of the States is already exercised to a large degree in 28 States. Several states provide that the judicial council should fulfill this function, but the Committee thinks that the Supreme Court, because of its responsibility for the operation of the judicial system, is the proper body to exercise this power. Of course, the Supreme Court can call upon a judicial council or any other body of experts to advise it in the formulation of rules.

The provision giving to the Supreme Court the power to promulgate rules of evidence is a more controversial issue than the other rule making powers. In only eight states does the Supreme Court have control over rules of evidence, and in most of these states the power is conferred by statute rather than by the Constitution. The Committee follows the recommendation of the American Bar Association as most consistent with the proper concept of rules of evidence as procedural and most conducive to the effective administration of justice in the court system.

The last sentence of Section 9 contains language broad enough to authorize the Supreme Court to deal with either an integrated or an unintegrated bar of the State in connection with supervision of its members, discipline of its members, and other regulation or supervision of the bar. The language is broad enough to permit the Supreme Court to order an integrated state bar to be organized as was done in Wisconsin. If it is preferred that an integrated bar be a constitutionally created corporation, the following sentences may be added to Section 9:

"The State Bar of _____ is a public corporation, having, as an agency of the Supreme Court, perpetual existence and succession. Membership in it shall be a condition precedent to practicing law in this State. The Supreme Court by appropriate orders may provide for its organization and its regulation and supervision."

Chapter IV

COURTS OF LIMITED AND SPECIAL JURISDICTION

I never speak of this work of our higher courts without the reflection that after all it is the courts of minor jurisdiction which count the most so far as respect for the institution of justice is concerned.....If our bar associations could create a sentiment which would demand that in all our cities the police and minor civil courts should fairly represent the Republic as the embodiment of the spirit of justice, our problem of Americanization would be more than half solved. A petty tyrant in a police court, refusals of a fair hearing in minor civil courts, the impatient disregard of an immigrant's ignorance of our ways and language, will daily breed Bolshevists who are beyond the reach of your appeals. Here is work for lawyers. The Supreme Court of the United States and the court of appeals will take care of themselves. Look after the courts of the poor, who stand most in need of justice. The security of the Republic will be found in the treatment of the poor and the ignorant; in indifference to their misery and helplessness lies disaster.

- Charles Evans Hughes

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THE ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT

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Minor Courts– MAJOR PROBLEMS

by **ALLEN LEVINTHAL**

COURTS OF limited and special jurisdiction have most aptly been described by Justice Bernard Botein of New York as "social problem courts." Although their decisions seldom make headlines, their proceedings are most fundamental to our concept of justice. Here our ability to solve the problems of modern society is tested daily. By the actions of these courts the people judge the efficacy of our judicial structure. Unfortunately, this true drama of our legal system is often lost in the fantastic volume of cases processed.

Each day in a hundred cities and towns across the country young people become involved with the law. Their futures and the contributions they may make to our world could well be determined by the treatment accorded them by judges hearing juvenile matters. These judges will be sitting in "social problem courts."

Each day thousands of marital difficulties arise. The problems of divorce and separation, custody and support of children, disposition of property and disruption of family life are determined by judges hearing domestic relations matters. These judges will be sitting in "social problem courts."

Each day tens of thousands of traffic violations occur. Injury, death and damage to property effect innumerable lives. The fixing of guilt and determination of punishment will be decided by judges hearing traffic matters. These judges will be sitting in "social problem courts."

Each day brings new widows and orphans, businesses opened and closed, debts incurred, tax delinquencies, rents past due, mortgages foreclosed, public disorders, a hundred thousand petty annoyances. A hundred thousand items of social disorganization which could build up into a crescendo of despair and violence, which could completely disrupt law and order, must be heard and disposed of by judges in courts dealing with social problems.

En masse, these matters are of considerable social significance demanding public concern and serious reflection; individually they are important only to the parties concerned. Because of the comparative unimportance of the individual matters the shortsighted fail to recognize the necessity of providing adequate, competent and well paid judges, decent courtrooms, time conserving procedures guaranteeing consideration of all issues and records for review. They fail to recognize that justice purveyed in quantity need not suffer in quality.

All states have social problems and have established courts of limited and special jurisdiction to deal with them. Unfortunately, in many areas there has been too little attention paid to their proper functioning. Many are completely independent of the courts of general jurisdiction. Powers and duties overlap both in subject matter and territory. There are often no administrative ties to the rest of the judicial system, no unified court budget, no general standards for personnel, no reliable complete statistics, no machinery or responsibility for assignment of additional judges to meet community needs and no effective insurance of the ability, competence, specialized training and understanding of the judges.

It is a tribute to the many fine men in the judiciary that, faced with this conglomerate, they have been as effective as they have in preventing complete chaos. But preventing chaos is not enough. Examination and reorganization of our concepts of minor court justice must take place to push back the tides that threaten to engulf us.

Reprinted from 48 Journal of the American Judicature Society 188 (February, 1965)

Juvenile and Family Courts

In the areas of juvenile behavior and family relationships the problems are particularly acute. Cases having a major impact on the lives of the individuals and families involved are routinely disposed of without drawing upon the contribution of the behavioral sciences. Orders involving one family by one judge are often unrelated to and in conflict with orders of other judges in the same jurisdiction. Intrafamilial relationships are ignored with tragic results.

The jurisdictional problems of courts handling family relation controversies have been pointed to as most descriptive of the condition of all of our courts in specialized fields.

> To maintain an elaborate system of independent tribunals and agencies, each with limited jurisdiction, endeavoring to adjust the relations and order the conduct of the several parties to a suit for a divorce, a controversy involving . . . guardianship or custody of children, or crimes affecting each other or their children in the course of carrying on the relation, such as contributing to the delinquency of the children and juvenile delinquency, in the course of operation of a single household—to do these things is wasteful of public funds and private means, wasteful of the time and activity of both the parties and the particular judicial or administrative or private social agencies to which resort must be had. . . .[1]

Those most concerned with the legal processing of family problems believe that to insure the effectiveness of judges involved in family cases, they should have status commanding the respect of the legal profession, of the persons appearing before them and of the community generally. This can only be achieved by making the judges part of the highest court of general trial jurisdiction.

To attract individuals of high judicial caliber to this specialized work, it is necessary that they be given sufficient tenure to become specialized in family law and experienced in hearing juvenile and domestic relations issues. The salary of the judges and the jurisdiction of the court must be commensurate with the gravity of the matters with which they deal.

The Standard Family Court Act promulgated by the National Council of Crime and Delinquency calls for a Family Court as a division of the highest court of general trial jurisdiction, thus commanding community prestige and having the necessary stature to obtain the services required for its full operation and at the same time making most effective use of available judicial manpower.

Effective operation of specialized judges requires the use of specialized services. Because of the shortage of trained personnel—social, medical, psychiatric, and psychological, great disparities now exist in this area. These disparities can be most effectively dealt with by the establishment of an integrated family court controlling the use of existing personnel and facilities and, through the assignment power of the general trial court, meeting the inequalities between jurisdictions in the present availability of services.

Traffic and Small Claims Court

These problems also exist in the areas of small claims and traffic. Reliance on unqualified and part-time judges, justices of the peace, and police magistrates is still prevalent. Most of these judicial officers are not legally trained and are unfamiliar with the laws they administer. Even if they are honest and conscientious, as surely most of them are, they cannot furnish the kind of trials litigants have a right to expect.

"Most justices make their rulings on common sense rather than legal technicalities and base them more on the spirit than the letter of the law. . ."[2] In this regard, an article in the Illinois Bar Journal stated:

> This homely appeal to "common sense justice," which at best amounts to "amateur justice" but frequently to a denial or miscarriage of justice, is a part of the "home rule" argument (local justice for local people by local justices) of the proponents of the jus-

tice of the peace system. Actually, however, those who have studied the justice of the peace system in operation are agreed that familiarity with local affairs and litigants makes the justice susceptible to local economic, social and political pressures and to personal prejudice and, therefore, operates as a deterrent to an impartial adjudication. Thus, Professor Edson R. Sunderland has stated:

> It has sometimes been urged that there is an advantage in having a local court serve a small enough area so that the judge and even the jurors will have a fairly intimate knowledge of local affairs. As an advisor and conciliator the judge might be more useful if well informed regarding local people and local events, but as an agency for the administration of justice both judge and jury are probably harmed rather than benefited by such knowledge.
>
> Questionnaries which have been circulated among lawyers show a widespread professional suspicion of this aspect of local courts. It is a common belief among them that too many cases are decided on personal considerations rather than upon the evidence presented. A judge personally acquainted with the circumstances of the litigants is likely to be influenced in his decisions by prejudice and personal opinion rather than by the merits of the cases. Discrimination against non-residents of the locality is frequent. And local contacts too often lead to judicial action based upon personal and political expediency.[3]

The President's Committee for Traffic Safety has promulgated National Standards for courts dealing with traffic matters. These standards point out the necessity that full-time judges be assigned to traffic courts. Part-time judgeships represent a "plum" that will not easily be given up. The role of the part-time judge does not call forth the responsibility and dedication which is to be expected of full-time judges. All too often the part-time judge is seeking only to increase his personal prestige and earn additional money and does not look upon judicial service as a public responsibility. Lawyers who serve as part-time judges are faced with an obvious conflict of interests in spending half of their time on the bench and the other half in front of it. The most serious problem is that many part-time judges cannot devote enough time to each case and must hurry through cases to keep up with the court calendar.

The problem of part-time judges requires immediate attention. In New Jersey the retention of a part-time judiciary in the traffic courts is a serious deficiency in the state's traffic court reorganization of 1949. Based upon New Jersey's experience the Connecticut court reorganization of 1959 avoided this pitfall.

Failure to remove traffic court judges from political pressures has also proved to be a detriment to the New Jersey reorganization. Adoption of the American Judicature Society's nonpolitical judicial selection plan as recommended by the National Conference on Judicial Selection and Court Administration will assist in accomplishing this objective.

Salaries of judges and prosecutors of traffic courts as of other courts of limited jurisdiction have not kept pace with those of the rest of the judicial system. Their salaries should be relative to those of judges of courts of general jurisdiction.

If it is absolutely necessary that laymen be given judicial duties, the Canons of Judicial Ethics should, by legislative action, be made to apply to them and disciplinary machinery must be set up to deal with judicial misconduct whether of lawyers or laymen.

Provisions for removal and retirement should be extended to traffc court judges, and similar disciplinary machinery should be available for the removal of other incompetent personnel.

One of the standards most often cited with regard to all courts of limited and special jurisdiction is that these courts should be given "court of record" status with elimination of the trial *de novo* appeal. Only two cases out of every thousand were appealed in 1929 from the courts participating in the annual Traffic Court Inventory, and this seems like an insignificant number. The volume is so immense, however, that from those 929 courts there were 10,683 appeals[4]—too many to be tried twice through the wasteful *de novo* system.

This appeal problem is most acute in

serious traffic violations such as reckless driving, driving while under the influence of intoxicating liquors, hit-and-run cases, and violations arising out of accident investigations. Appellate judges often fail to appreciate the seriousness of traffic violations and are unwilling to dispose of these appeals within a reasonable time after docketing.

Modern Courts

The functions and procedures of the Los Angeles County Superior Court, serving a population of approximately 6,656,000 and an area of 4,083 square miles and composed of 120 judges is an example of what can be done. This court has been described as resembling the fabled two-headed monster in its multitude of divisions and branches; but it is as a remarkably well-organized and co-ordinated beast. It is a creature of the state, not the county. It makes its own rules subject to the state's constitution, state laws and the general rules of the state's judicial council.

Of the 120 judges, 19 are assigned to the Criminal Division, 2 to the Probate Division, 3 to the Appellate Department, 3 to the Juvenile Court, 1 to the Psychiatric Court and 78 to the Civil Division. In addition there are 30 court commissioners. The area is divided into 8 regional districts and 25 judges are assigned to these regional branches.

The magnitude of business that comes before this court has forced adoption of streamlined organization and procedures. As a result of this necessity, specialization of departments and judges has become the keynote. Specialization of personnel within the organization much as in the modern business corporation has led to decreasing of waste and effective utilization of manpower and facilities. When one division is overloaded, help is sought from the pool of judges, and master calendars regulate the even flow of work throughout the complex. The success of the court in dealing with a population up 67 per cent and filings up 60 per cent since 1957 has been pointed to throughout the country as indicative of the advantages of the system. In Los Angeles County there are no minor courts, there are no courts of limited or special jurisdiction, there is only one court whose specialized branches and judges are effective enough to command the respect of all who come to it.[5]

Since January, 1964, the state of Illinois has been operating under a similar system and it has become quite apparent that many of the problems of court administration resulting from the disparaties of needs between urban and rural communities, distance from central courthouses, and centralization of treatment, personnel, and facilities that existed under the old independent court system have been substantially eliminated by this new approach. On January 1, 1964, 30 courts of records, 75 justices of the peace courts and 103 police magistrate courts were consolidated into the new Circuit Court of Cook County. The report of the Circuit Court of Cook County for calendar year 1964, its first year of operation as a unified trial court, indicates that 1,617,822 cases (of all types) were filed in that court and 2,173,265 (of all types) were terminated. The reorganization assisted in the "successful digestion of an astronomical caseload."[6] In this era of modern travel, communications and data processing, no part of any state is so remote as to require its separation from adequate justice. Gathering the pieces of justice into a unified whole and providing adequate tribunals for all classes of cases within a single framework has been found to be one successful method of meeting the needs of the present and preparing for the future.

This is not the only answer. As our population increases and society becomes more complex the problems will multiply. We must continue to seek the means to provide effective justice at the common level. Only by doing this can we insure the continued respect for the law and for our traditional concept of judicial settlement of disputes.

Some Plain Talk About

Courts of Special and Limited Jurisdiction *

by Harvey Uhlenhopp

HARVEY UHLENHOPP is District Judge of the Eleventh District, Hampton, Iowa.

FINEST justice, reasonable expense, and ready accessibility are the three grand objectives of courts of special and limited jurisdiction. Generally called the inferior courts, they currently handle juvenile and family proceedings, probate matters, and small civil and criminal actions.

The evolution of American courts begins with English progenitors[1] and continues to the present day. Early England had little juvenile delinquency as such and crimes by youths were prosecuted the same as crimes by adults. Probate matters in medieval England were handled by the ecclesiastical courts. Justices of the peace handled small actions such as assaults, intoxication, and poaching—but, of course, none of the traffic charges with which we now associate such courts. These officials were quite different from our present judicial officers of that name. Conferred as an honor by the crown on a leading subject of the area, the office carried considerable prestige but no compensation.

Here in the colonies also there was little incidence of juvenile delinquency as such. For probate matters the colonies and later the states generally established probate courts, sometimes called county or surrogates courts. For small litigation—small debts, disturbing the peace, drunkenness—the justice of the peace system was generally adopted. But the justice was usually elected rather than appointed, and the office was not honorary—the justice was allowed to keep all or part of the court costs.[2]

Rumblings of discontent with the inferior courts began to be heard by the end of the 19th century. In England, which is usually about 50 years ahead in jurisprudence, a Royal Judicature Commission was appointed to examine the entire British legal establishment. In 1869 the Commission proposed a single trial court, sitting at various places throughout the realm and composed of divisions for cases of all sizes and kinds.[3] Since rapid transportation had not yet come about, it did not seem that a single trial court, though ideal in theory, would be sufficiently accessible to small litigants. Consequently in 1873 and 1875 Parliament established a single trial court for litigation other than small actions, and retained the separate county court system for those cases.[4] Such is the basic judicial establishment in England today.

1. The various English courts are described in I Holdsworth, *History of English Law* (1931).
2. American courts in pre- and post-colonial periods are described in Pound, *Organization of Courts*, chs. III, IV (1940).
3. *Report of Royal Judicature Commission* (1869).
4. Judicature Acts, 36 & 37 Vict. ch. 66 (1873), 39 & 40 Vict. ch. 77 (1875).

Reprinted from 49 Journal of the American Judicature Society 212 (April, 1966)

In the United States, from about 1890 to 1920 the tide of juvenile delinquency began to rise. Probate courts still existed for probate matters. In the justice of the peace courts a new action began to appear with increasing frequency—the automobile traffic case. The result was a manifold increase of cases before the justices, and a manifold increase in their fees.

During this period no American state adopted the English upper trial court-county court combination. The states retained their autonomous general trial courts for major litigation. But in cities the pressures of population and automobiles brought about abolition of the justices of the peace in favor of a new inferior court, usually called the municipal court. This new court, it was thought, would provide the answer to the small litigation problem. So this was the picture generally in the United States: juvenile cases were usually placed in the municipal courts in the cities and in probate courts in rural areas; probate matters were left in the probate courts in city and country; and small litigation went to the municipal courts in cities and to justices of the peace elsewhere. The volume of small cases rose tremendously, consisting mainly of uncontested traffic charges. Those charges came to constitute the bulk of the cases before municipal court judges and justices of the peace. Thus the office of justice of the peace, once held as an honor, became a very lucrative position from cases which did not even exist when it was originated. Such has been the typical state judicial establishment since about 1920.

Evaluation of American Inferior Courts

How well are the three classes of cases in question being handled in these inferior courts? Generalizations have exceptions, and in particular instances a poorly structured court may be operated well by an exceptional judge, while a well structured court may leave something to be desired because of a poor judge. But have the inferior courts generally achieved the objectives of finest justice, reasonable expense, and ready accessibility for the three kinds of cases?

First are the juvenile cases. Placing these cases in municipal, probate, or other inferior courts cannot be defended. Juvenile proceedings at once deal with our most precious asset and present the most complex and baffling of human problems. Authorities in the juvenile field believe that these cases belong in the state's highest trial court, so that the attention of the state's most competent trial judges may be brought to bear on them.[5]

Next are the probate cases. The extra expense to the public of separate probate courts is also completely indefensible. States such as Iowa have demonstrated beyond question that probate work can be handled in a division of the general trial court.[6] Contested probate matters may thus have the attention of the state's highest trial judges, while comparatively little enlargement of that court is required since most probate proceedings are uncontested and the clerk can be authorized to sign probate orders in uncontested matters.

Then as to small litigation—largely uncontested traffic charges—there are in the main the justice of the peace and municipal courts. Justices of the peace should have left the American scene with player pianos and button shoes. Usually the justice is not legally trained, and in this day of complex law his decisions are often curious, to put the matter in the most complimentary terms.[7] Moreover, in many places justices are still allowed to keep the court costs, and this gives them a financial stake in litiga-

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5. *Standards for Specialized Courts Dealing with Children*, Children's Bureau, U.S. Dept. of H. E. & W., 22-3 (1954).

6. Sec. 631.1, Iowa Code Annotated.

7. E. g., search and seizure problems under *Mapp v. Ohio*, 367 U. S. 643 (1961).

tion. On the criminal side they often develop most cordial relations with individuals who can bring them business, such as enforcement officials, and on the civil side the justice is often collection agent for the very claim in suit.[8] But the fundamental difficulty is that the justice court no longer possesses the prestige of old. It is getting more and more a problem to get able lawyers to accept state judgeships generally, and the lower the court the more acute the problem. Yet no court is better than its judges.

It was originally thought that the municipal court would answer these shortcomings, with its full-time judges recruited from the bar.[9] The municipal court was and is a great improvement over the justice of the peace. But the municipal court has not risen to the high hopes of its founders. Its primary infirmity is that it is still an inferior court, and the problem remains of interesting the abler lawyers in the judgeships. There seems no answer to this infirmity if the municipal court is retained as a separate court. Salaries may be raised and secure tenure may be granted, but when leading lawyers are approached about municipal or other inferior court judgeships they take on an uninterested look and seem to feel they would lose status. They cannot see themselves spending their lives on small litigation and primarily on traffic tickets. The result in general is that the municipal court has not lived up to the bright expectations of 1900 and that lawyers endeavor to get their more significant cases before the general trial court if they can—and this is the acid test of a court.[10]

Another infirmity in the municipal court revealed by passage of time is its exorbitant expense per contested case. A recent study revealed that an ordinary one-judge municipal court in a typical state costs over $40,000 per year, plus expense for jury, building, and equipment. Yet about 95% of the cases in such a court are uncontested—primarily run-of-the-mill traffic violations. Highly paid judges are not normally necessary for uncontested cases; those cases can be adequately handled in less expensive ways.[11] The separate buildings, judges, juries, reporters, clerks, and constables of municipal courts duplicate their counterparts of the general trial courts, and the two sets of courts are divided solely by an arbitrary jurisdictional line. Indeed the buildings housing the two autonomous courts may be side by side. As the jurisdictional limits of the municipal courts are increased, the duplication of expense to the public becomes more blatant.

Still another infirmity of the municipal court is its limited base, which is simply too small for a high standing court. The city constitutes a reasonable base for many governmental services, but not for the judicial function of government. The smaller the base of a court, the more parochial the outlook of its judges. The state itself has become a community, and ideally, trial judges should be judges of the whole state.[12] Such judges, like state supreme court justices, are "state" judges in the true sense. Judges of the whole state have the broadest outlook, and judges of a particular political subdivision the narrowest, no matter how populous that subdivision may be. But at the very least, with modern roads and cars certainly court districts are practical substantially larger than a single city or county.

It is easier however to criticize the inferior courts than it is to devise a better

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8. Iowa even allows him a commission on collections as part of the court costs. Sec. 601.129(22), Iowa Code Annotated.

9. Harley, "Administration of Justice," 16 Proc. La. Bar Assn. (1915).

10. A random check disclosed that of 90 cases filed in the general trial court in places having municipal courts, 41 or 45 per cent could have been filed in municipal court. Uhlenhopp, "Judicial Reorganization in Iowa," 44 Iowa L. Rev. 6, 9-10, fn. 15 (1958).

11. Mainly the traffic violations bureau. See Recommendation 14, Report of Twenty-seventh American Assembly, Columbia University, 8-9 (1965).

12. Such as New Jersey superior court judges under N. J. Const. Art. VI, sec. III(2).

system. Juvenile proceedings and probate matters can be shifted to the general trial court without great difficulty, but what about small litigation? The past few years have seen four main experiments in various states.[13]

Devising a Better System

The first and most modest experiment has been to retain but upgrade the justice of the peace. Thus in some states salaries have been substituted for fees, or short courses in law have been required, or the jurisdictional limit has been raised, or the court has been given a new name. But the results have been disappointing. A rose by any other name smells about the same, and it is difficult to make a silk purse out of a sow's ear. The court remains an inferior court and does not attract superior judges. Lawyers still endeavor to avoid the court with their cases if they can get into a higher court.

A second experiment has been to absorb the justice of the peace and municipal courts into a county court. Again the results have been discouraging. To the extent of its jurisdiction, the county court constitutes a virtual duplication of the general trial court, and as the jurisdiction of the county court is raised the double expense becomes harder to justify. The county court is still an inferior court, and leading legal lights ordinarily cannot see themselves as county judges. Too, the county court, like the municipal court, is a court of limited base, submerged in local issues, pressures, and personalities.

A third group of states, in New England, have taken the county court a step farther by making it a multi-county or multi-city court; the judges ride circuit like the general trial court judges. These multi- county or city courts tend to reduce provincialism, but they magnify the problem of double expense for the taxpayers. If judges are to ride circuit, why should two sets of them do so? Thus two such judges may meet on circuit, each coming from the same home town and proceeding to the same place, one to try a case for $1,900, just under the jurisdictional limit, and the other to try a case for $2,100, just over the limit. This double system constitutes wheels within wheels, and the public is put to the support of two autonomous institutions. What insurance company would maintain two sets of traveling adjusters, one for claims under $2,000 and the other for claims over that amount? Moreover, the multi-county or city court, being of limited jurisdiction, still suffers the stigma of an inferior court. The problem persists of attracting bigger lawyers to its bench.

The fourth and farthest advance has been in Illinois, embodying the original principle of the Royal Judicature Commission. Early in this century Roscoe Pound visualized "one great court" for all litigation, founded on the Royal Commission principle.[14] At about mid-century, brave and far-sighted bar leaders in Illinois seized upon the one great court idea, and after a long struggle and several discouraging compromises secured a constitutional amendment in 1962 abolishing all trial courts in Illinois except one, called the circuit court, containing parts for cases of various sizes and kinds and sitting at various places where needed.[15]

How does a single trial court as proposed by the Royal Commission actually function? There is only one court, and one clerk and one sheriff with their necessary deputies, in any given area. The court has unlimited jurisdiction, and is manned by sufficient judges to take care of all work promptly. To provide accessibility, the judges sit where there are cases to be

13. Citations to specific states are gathered in Uhlenhopp, "The Integrated Trial Court," 50 A.B.A.J. 1061, 1062, 1064, fns. 8, 9, 10, 21 (1964).

14. Special Committee of American Bar Association to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in the Administration of Justice, 34 A.B.A. Rep. 578 (1909).

15. Ill. Const. Art. VI (Amend. 1962).

heard in the area. Two auxiliary services are needed. One is a traffic violations bureau in the clerk's office for uncontested, nonhazardous violations, so that the judges can concentrate on more serious offenses.[16] The other is an expeditious, simple, and inexpensive procedure for small civil claims, with authority in the clerk to grant default judgments.[17]

Of the four main experiments thus far, the one great court undoubtedly best subserves the objective of finest justice, since higher calibre judges are attracted to such a court; the objective of reasonable expense, since duplication of courts is eliminated; and the objective of accessibility, since the judges sit where actually needed. Whereas the single trial court was not feasible in 1875, modern transportation has made it practical.

Obstacles To Change

The uninitiated may say, "well then, why don't we get on with the change?" This question requires a look at the facts of life about court reorganization. Changes in governmental institutions are hard to accomplish, and changes in the courts are hardest of all to achieve. Some of the obstacles are obvious, but some are more subtle and are seldom publicly discussed.

One obstacle is tradition. If for 50 years a state has had general trial courts, probate courts, and justice of the peace and municipal courts, its citizens seem to find change of this court structure hard to visualize. Then there is public apathy about small litigation. "The amounts involved are small, so why worry about these cases?" Yet small cases are so numerous that the total amount of money involved actually rivals the total amount involved in the so-called big cases. Too, the little cases are important to the people involved in them. There are no unimportant cases to the litigants. Thus the state should not merely provide a means for handling small cases; it should provide a good means.

Another obstacle is the age-old difficulty in reducing the number of officeholders. Inferior court officialdom—judges, clerks, constables, and other functionaries—natually resist abolition of their offices. It is difficult to abolish any public office and these particular offices are especially hard to eliminate, for the incumbents are often close to their legislators. In rural areas justices of the peace are often personal friends of their legislative representatives; they may even be pinochle partners. Inferior court officials not infrequently attend political gatherings and sit at the head table with their legislators. Moreover, justices of the peace and the judges of the municipal and other inferior courts usually have state associations which exert influence in legislative halls.[18] Charts and figures are displayed to prove that the city or county could not get along without the particular court and to demonstrate how busy the officials of that court are. It seems that the public is about the only group left without an organized lobby.

In addition, the typical municipal or other inferior court in the city will have several judges; its clerk will have a score or more of deputies and helpers; and its constable will have his deputies. Sometimes each of these chief officials—the judges, the clerk, and the constable—will be popularly elected and will therefore have a political organization of his own. These officials have their own votes, the votes of their families, and the votes of their employees and their families, plus the friends of these people. Thus altogether such a court presents a

16. Warren, *Traffic Courts*, ch. V (1952).

17. Cayton, "Small Claims and Conciliation Courts," 205 Annals 57 (1939).

18. Cf. statement of Harrison Tweed on defeat of New York court reorganization bill: "Aligned in opposition, and in the forefront of it, were most of the Supreme Court Justices and the Surrogates, and many of the County Judges, particularly those taking lucrative advantage of the right to practice law on the side. The opposition of these judges was irrespective of party affiliation or geographical location. In my opinion, their opposition was based entirely on self-interest." 13 Record 278, 282 (April 1958).

pretty formidable block of votes. The pressure on legislators from such communities can be considerable, and it takes a strong legislator to stand up to "the courthouse vote."

Perhaps the answer is to blanket some of the inferior court officials into the new court and gradually phase them out on retirement, such as municipal court judges who have left their practice for the bench. In fact, reduction by attrition is humane, and similar to changes in industry resulting from automation. Thus evolution to a better trial court system may come about by way of merger and amortization. Fortunately, some outstanding municipal court judges see the big picture and favor change, but they are understandably concerned about their own personal fortunes in the process.

But among judges, opposition to change is not limited to the inferior courts. Some general trial court judges lack enthusiasm about it. A number of them do not relish taking all this extra business into one institution. A few of them apparently want to occupy a high court aloof from the myriad problems of youthful offenders, probate matters, and small causes. But here too progressive judges are found who see the overall picture of litigation in the state.

Then there is the problem of leadership. Who will spearhead the movement for a better system? Someone must be willing to call a spade and spade and reveal the inferior quality justice and the duplication of expense. Who is willing to speak out?

Bar associations and lawyers individually have the public interest at heart, but they are caught in a crossfire. Many inferior court judges and their lawyer friends are members of bar associations, and of course such associations do not want to alienate members and above all do not want to have internal dissension which might endanger the association itself. Individual lawyers can hardly be expected to relish the prospect of speaking out publicly against an inferior court one day, and then appearing before that very court the next day for a client or for allowance of a probate fee. Yet leadership from the legal profession is needed, and it can safely be said that states with the most courageous and far-sighted bench and bar have made the greatest advances. It is a matter with the legal profession of placing the public interest first.

But the courts belong to everyone, and the public cannot abdicate all responsibility to the legal profession. Men and women of good will must make a decision on this basic issue: are juvenile proceedings, probate matters, and small cases sufficiently important that something should be done to improve the handling of them? If so, then public spirited laymen are going to have to join lawyers and judges in laying hold of the problem and solving it.

In solving the problem an important caveat should be observed. Experience across the country demonstrates that the necessary changes cannot be accomplished piecemeal. Overall reorganization cannot be achieved by presently improving this particular court and leaving another one till later, or improving the city courts now and leaving the country courts till later. Somehow "later" never comes. When the first improvement is accomplished, the steam goes out of the movement and the opposition digs in. States which have attemped reorganizaion by halves have ended up only halfway.[19] Yet justice in small litigation is not just a problem of the city or of the country or of this court or that court. Every litigant is entitled to justice, and small litigation is statewide. If high quality justice is to be readily accessible to all litigants at reasonable expense, the attack will have to be mounted statewide.

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19. E. g., New Jersey's remaining plethora of courts. See Annual Report of Administrative Director of New Jersey Courts, 1 (1958-59) (superior court, 21 county courts, 501 municipal courts, 21 county district courts, 21 juvenile and domestic relations courts, 21 surrogates courts).

Excerpts from

SURVEY OF METROPOLITAN COURTS: FINAL REPORT
by Maxine Boord Virtue

With the possible exception of delay, multiplicity of separate trial courts is the court problem identified as typical of metropolitan court systems by virtually all writers. From Archeion through Pound to the Tweed Commission, all have been concerned with the vast confusion of multifarious tribunals serving large population centers.

Typical is a recent comment of The Honorable David W. Peck, former Presiding Judge of the Supreme Court of the State of New York, Appellate Division:

"The historic practice, particularly in the large cities, has been to splinter and parcel out fields of jurisdiction among many courts of limited jurisdiction. The trend for a century has been to create rather than consolidate courts, to narrow rather than broaden jurisdiction, to divide rather than concentrate administrative authority. The result, in many places, is a conglomeration of courts, each autonomous in administration, confined but overlapping in jurisdiction.

"In many cities administration of the criminal law has been separated from administration of the civil law. Separate courts have been created for probate and estate proceedings and for domestic relations. There has even been an elaborate stratification of courts in the same legal line. New York City, for example, has three layers of courts in both the civil and criminal lines. The civil courts are divided by monetary limits. The criminal courts are divided by degrees of crime.

"Such a fragmented court organization, without flexibility in moving judges and cases about to achieve balance in distribution, and without centralization of administrative authority, lacks the elementary essentials of a court system. It is not a court system."

* * * *

"Reasons for the costly and inefficient piling up of courts include (1) retention of the outmoded justice of the peace system, (2) population shifts resulting in demand for new courts, and (3) ephemeral local pressures to create a new court for each specialized set of issues. . . . 'Sibling rivalry' among . . . governmental units, and heavy case loads in congested population centers, also contribute to the pressure for more courts."

* * * *

The problem of multiplicity within the mother city seems to consist partly of duplicating general trial courts set up to ease congestion, and partly of a piling up of separate highly specialized courts.

We have already noted that the problem of the specialized court wears two faces: to some extent, specialization is an informed recognition of the need for specialized attention to certain types of cases. But its other aspect presents the disadvantages of

freezing specialized parts or departments of the general court into aggressively independent autonomies, narrowly specialized and so confirmed in their procedures and provincial in their specialties as to have defeated the original purpose of improving the quality of disposition of cases by segregating certain cases for specialized handling. Instead, at this extreme phase, we have all the disadvantages of multiplicity: waste, inefficiency, bureaucratism, lack of communication with other parts of government, and loss of public confidence.

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The large number of total courts existing in the entire metropolitan area is in good part comprised of one-man justice courts which continue to exist in their original state -- one-man, fee'd, lay justice courts -- in the nonurban and even some of the urban territory satellite to Metropolis.

No doubt most readers have encountered this phenomenon directly, as in traffic cases. Its relation to the special metropolitan court problem is the existence, within a single metropolitan area, of large numbers of these anachronistic tribunals. Their presence preserves waste and confusion, assures inadequate handling of large numbers of cases, and provides the self-seeking, ambitious, or unscrupulous with a ready means of avoiding or negating the control of an efficient and modern court designed to serve the metropolitan community.

* * * *

Summing up, then, it is suggested that the special jurisdictional problem of the metropolitan trial court system, yet largely unsolved, is that of providing a tribunal or series of tribunals (a) with adequate geographic jurisdiction to reach the real as opposed to the original legal community, and yet be readily accessible to all; (b) with a means of integrating jurisdictional control so as to avoid conflicting, confused, or competing jurisdiction, and yet provide for informed attention to special types of cases; (c) with sufficient inherent power in the judiciary to permit control by the court of all aspects of judicial business, and yet protect the prerogatives of counsel and the right to due process of every litigant; (d) with sufficient centralized control to achieve responsible knowledge of and control over each unit in the caseload, and yet preserve full relationship to the over-all hierarchy of judicial control in the state trial court system of which the metropolitan trial court system is a part.

* * * *

As has been pointed out in earlier portions of this study, the predominance of certain types of cases occuring in metropolitan areas has resulted in the need to isolate certain cases by subject matter, in an attempt to achieve more knowledgeable and expeditious disposition. This need has variously expressed itself in (1) the establishment of entirely separate courts of specialized subject-matter jurisdiction; (2) the development of specialized divisions or parts of general courts, sometimes manned by specialized judges; or (3) the segregation of certain cases by subject matter into specialized dockets or calendars. These categories are not always

easy to differentiate. A tribunal established by statute as a division of another court may, upon close analysis, turn out to be in every sense a fully separate court, while what looks, on paper, like a separate court may turn out, as administered, to be fully integrated with some or all of the rest of the court system.

[Discussion of separate courts of specialized subject-matter jurisdiction is omitted. Ed.]

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Separately Functioning Divisions, or Parts

Small Claims

Most metropolitan court systems make provisions for special handling of small claims. The typical arrangement is a small claims, or conciliation, division in a municipal court. The Small Claims Division of the Municipal Court of Chicago, established by court rule, is well known, as is the Cleveland conciliation branch.[26] A tabular presentation of specialized divisions or branches dealing with small claims has been made available. How many of these tribunals have specialized judges, we have no way of knowing, but we have formed the impression that the attendance of a long-term specialized judge is usually the boundary dividing the specialized docket, or part, from the specialized division. This is the point where the latter begins to emerge as a separate operating unit.

The Municipal Court of New York City, itself restricted to claims for less than $3,000, has a small claims part for actions not in excess of $100. In Detroit, the Court of Common Pleas,a nine-judge court consolidating the jurisdiction of the former city civil justices of the peace, has jurisdiction up to $3,000. It used to have an active conciliation division, which fell into disuse after the depression and now exists in name only. This illustrates one advantage of the specialized division over the separate specialized court -- when the special need ceases to exist or to justify full-scale operation of the specialized division, the facilities can be absorbed elsewhere in the court, to be reinvoked by court rule whenever and to whatever extent the future caseload makes advisable.

The Los Angeles study shows twenty-one municipal court judicial districts in Los Angeles County. The largest, the Los Angeles Municipal Court, is a forty-two judge court with various divisions; the others are autonomous. Within the Los Angeles court, the small claims court consists of two full-time divisions of the municipal court, located in a separate building apart from the other municipal courtrooms. The operation is described in the Holbrook study. More than one-third of all civil filings in municipal courts in Los Angeles County are small claims actions (demand not over $100). In 1953-1954 in the Los Angeles Municipal Court alone there were 49,235 such cases filed. No attorneys are permitted, and the question has been raised whether sufficient time is given to each litigant to convince him that he has had his day in court. This operation is so specialized that a special calendar has been set up within the specialized division, known as "store day," and reserved for stores and other business.

Traffic

It is the conclusion of this writer, based on observation, library research, and questionnaire reports received for this study, that in most metropolitan areas traffic cases are physically and administratively separated from the rest of the caseload of the municipal, police, or magistrates' court which handles traffic cases. Although the specialized facility for handling such traffic cases is often called a "traffic court" (as in Miami), the entity so designated is most often not structurally a separate court but rather a specialized appendage of a court with more general jurisdiction.

The specializing process is described in part as follows in the recent Harvard Law Review survey of metropolitan criminal courts:

"Criminal courts of first instance have tended in large cities to become specialized in their handling of cases, and these specialized courts have been vested with city-wide rather than police-district jurisdiction. Traffic is generally the first area of specialization and is the only area which has been established as a separate city-wide division in Philadelphia, New Orleans, and Atlanta . . !'

The Warren study reported that of fifty-six populous cities in the various states surveyed, ten had municipal courts with several branches, one or more of which was devoted exclusively to traffic, and eleven either set separate days for traffic cases or heard them during special hours.

Direct observation for this series of studies showed that in Detroit traffic cases are handled by a fully separate court, linked in name only to the Recorder's Court. In Los Angeles, four courtrooms in the Los Angeles court are designated as traffic divisions and are housed in the Traffic Courts Building, handling traffic offenses committed within the City of Los Angeles. The four branch courts in the judicial district handle offenses committed in each respective district. All jury trials arising out of traffic violations committed within the judicial district (barring San Pedro, Van Nuys, and San Fernando) are sent through the misdemeanor master calendar division at the Civic Center. "Of the four traffic divisions at the Civic Center, one is designated as the traffic arraignment division, another as the traffic master calendar division." Most traffic cases are disposed of without court appearances.

In New York City, the City Magistrates' Court (forty-nine magistrates) is divided into court districts in each borough other than the Bronx. In addition, the court sits in twelve divisions, one of which is known as the "traffic court."

Juvenile and Family Cases

The best known special divisions handling family cases are probably the Ohio "family courts." Each is established as a separate division of the Court of Common Pleas, each has its own separately elected specialist judge, and each contains within itself separate departments for juvenile and for domestic relations cases. Such courts have been established in Cincinnati, Dayton, Columbus, Toledo, Akron, Canton, Youngstown, and Warren. The operation of the Toledo and Cincinnati courts has been

described as observed by this writer in another study. Their jurisdiction includes divorce, juvenile, and bastardy cases.

Responding to questionnaire for this study, the following metropolitan areas report specialized divisions handling family cases within more generalized courts:

Cleveland reports a separate domestic relations branch of the Court of Common Pleas (but in 1961, a new statutory family court will be established there). Las Vegas reports a separate juvenile division (called "juvenile court") in the district court. St. Paul reports a juvenile branch of the district court, while Philadelphia reports several divisions within the municipal court, i.e., juvenile division, domestic relations division, adoption division, and division for delinquent women.

Minneapolis has recently set up a specialized juvenile division and a family division in the district court; Boise has a juvenile division in the probate court.

Special divisions created by statute within specialized courts occur in several large metropolitan areas, for example, New York City and Charleston, South Carolina.

Recorder's Court in Detroit has recently established a Youth Division by court rule; Juvenile Division of Probate Court of Wayne County (Detroit) has separate divisions for neglect, girls' delinquency, and boys' delinquency cases; Municipal Court in Chicago has a Boys' Court, a Women's Court, and a Family Court as separate divisions.

In Los Angeles, the judges have invoked their constitutional and statutory authority to create a separate conciliation division (meaning, in this context, reconciliation of divorcing spouses) in the Superior Court. The operation of this division has been described by this writer as it existed prior to 1953, and by Judge Louis H. Burke, now presiding judge of the Superior Court of Los Angeles, as it developed under his guidance from 1953 on.

Other

It is not unusual to find that where jurisdiction of criminal cases is placed in a court of more general jurisdiction, the actual handling of such cases in metropolitan cities is arranged within a specialized division of that court, either by court rule or statute, with its own physical facilities and full-time staff. Thus, for example, in Los Angeles' Civic Center, the Superior Court of Los Angeles County has established a criminal division with its own master calendar, with eight departments devoting full time to criminal cases, and with its own presiding judge. Holbrook reports that all informations, indictments, and accusations are assigned automatically to the master calendar department of the criminal division, and all proceedings prior to trial are heard and determined in this division.

The specialized division for chancery and probate cases is also common. An example is the separate probate division of the Superior Court of Los Angeles. In some places (for example, Chattanooga) we are told that probate matters are handled as part of the business of one division of the chancery court. [1.4]

Owing to the dominance of negligence cases in most law-jury caseloads and the relatively longer trial length of such cases, investigators of court delay have emphasized the importance of giving special attention to such cases. So far as we have been able to learn, there are no specialized divisions exclusively designed to handle negligence cases alone. The negligence case emerges as a special problem because of its special trial time requirements, and hence is an administrative problem related to case progress in metropolitan areas, rather than a problem of structure.

In several large metropolitan areas, it has been observed or reported that city transit cases loom large enough in the caseload of the general trial court to be separately docketed and often assigned to specialist judges and prosecutors or assistant city attorneys.

Specialized Dockets or Calendars

The term "specialized dockets or calendars" is used here to differentiate between an operation administered as a self-contained unit focused on a specialized caseload (though structurally part of a court of wider jurisdiction), on the one hand, and a more informal segregation of certain types of cases for expeditious handling within an operation geared to a miscellaneous caseload, on the other.

The former, discussed in the preceding section, shows an adaptation of the entire judicial mechanism to the needs of a particular type of case. The latter may be no more than a clerical or docketing device by which certain types of cases are segregated for more convenient processing. The latter, then, displays a simpler and less differentiated response to the metropolitan need for specialized attention to certain types of cases.

The meaningful use of the distinction depends on practice, not on nomenclature. Such words as "court," "part," "division," "calendar," "dockets," and so on, are used in widely varying senses and are subject to interchangeable usage. The reader is cautioned that except where based on actual observation, the designation of any operation as belonging in this section rather than the preceding is based on nomenclature used in library research or reports received and should be read as subject to further analysis in light of the actual nature of the operation.

Examples of Specialized Dockets or Calendars

In the small claims area, it is probable that some of the examples already given of conciliation and/or small claims "divisions" within larger courts might prove, upon observation, to be mere calendaring devices without real specialized administration. It is interesting to contrast the machinery for handling small claims within the City of Los Angeles with that employed in outlying branches of the municipal court, where the judges hear all types of cases, and where small claims are heard on Thursday afternoons, traffic cases for half an hour every morning, and civil trials every Monday and Thursday.

Responding to questionnaire, St. Paul reports that its municipal court has separate calendars for conciliation, traffic, and criminal cases.

In the State of Washington, it is reported that family, juvenile, and probate work in the metropolitan areas is segregated into specialized dockets, each of which is assigned to one judge for a limited time, then rotated. In Cleveland and Minneapolis, rapid transit cases are assembled into separate dockets. Milwaukee separates contested divorces and uncontested divorces, and rotates these two special dockets among the judges. In Milwaukee, ordinance violation cases coming into district court are by statute heard in branch "2" of that court, and misdemeanors in branch "1," unless transferred for prejudice.

Several cities report separate calendars for criminal and divorce cases. In Des Moines, Iowa, the district court handles juvenile cases in one specialized docket, domestic relations cases in another. In Phoenix, juvenile work in the superior court is assigned to one judge full time, for a minimum time of one to three years, but other domestic relations cases are handled by judges on general assignment.

The separate domestic relations dockets in San Francisco and Los Angeles have been described for this series of studies.

In New York, there are many specialized calendars and dockets within the bewildering complication of courts serving the city. Typical are the Girls' Term of the Magistrates' Court and the "Social Court for Men" "intended for the arraignment of defendants arrested for disorderly conduct due to intoxication, whose condition indicates that social treatment is necessary for their rehabilitation."

The psychopathic department of the superior court of Los Angeles, established by court rule, is located in the county hospital, and the judge assigned to that department handles all proceedings, other than guardianship, relating to the care, supervision, treatment, and restraint of alleged mentally ill persons, feeble-minded persons, drug or narcotic users, inebriates, users of stimulants, and mentally abnormal sex offenders. A similar specialized assignment, with the hearings actually taking place in the hospital, was observed in San Francisco. It seems to this writer that this is the most successful method of handling mental cases (no matter how they have reached the litigation process) to obtain adequate medical evaluation, to protect the dignity and morale of the patient, and at the same time to observe the requirements of due process. In neither Los Angeles nor San Francisco is the judge assigned to the psychopathic department a permanent or specialized judge, but merely receives this assignment in rotation in his turn. Recent developments in the Los Angeles court include a prelitigation screening device consisting of a professional evaluation of the mental condition of persons alleged to be in need of commitment prior to court hearing.

Other examples of specialized calendaring may be found in profusion in the literature of court administration.

Specialized Judges

There is a good deal of controversy about the proper relationship of the judge to the specialized court, or division, or docket. On the one hand, it is asserted that prolonged assignment to a single subject matter, such as criminal cases, is unwise. On the other, it is argued that it is useless to provide specialized dockets, adminis-

trative personnel, and expert professional consultants, unless the judge is permitted to become thoroughly familiar with and knowledgeable about the specialty.

Dean Pound has been a persuasive advocate for the specialized judge, rather than the specialized court, as a remedy for waste of judicial manpower, for multiplicity of courts, and for perfunctory or otherwise inefficient disposition of special problem cases.

". . . where separate courts are set up, jurisdictional lines become necessary which are not easy to draw in advance of experience. Such courts do not need to be separate in order to secure the services of specialist judges. As has been said before and cannot be said too often, specialized courts should be replaced by specialist judges sitting in branches or departments of unified courts."

Observation has finally convinced this writer that successful specialization in such fields as juvenile and domestic relations cases is best accomplished where a specialized judge is made part of the unit handling the specialized cases. The best known example, perhaps, is Judge Paul Alexander, of the Toledo Family Court, who is elected to that particular judgeship.

The more usually encountered method of selecting a specialist judge is that employed by the superior and municipal courts in Los Angeles, where the presiding judge of the particular court assigns judges to certain specialized assignments. In Los Angeles, the fixed policy is reported to favor periodic rotation of all assignments in order to avoid over-specialization and to avoid overtaxing certain judges with the "mankiller" assignments. The unwillingness of many judges to accept a steady diet of divorce or juvenile cases is well known. This sometimes results, however, in prolonged assignment of a temperamentally well-qualified judge to a specialized family problem caseload, as observed in Los Angeles and Detroit. Holbrook notes that the dislike of municipal judges for the "Sunrise Court" (mostly arraignments for intoxication) is a motivating factor in determining the strict rotation policy of all assignments, including the "bete noire" assignments.

Another reason often given for avoiding overspecialization is the disadvantage of leaving the specialized court without knowledgeable judicial manpower when the long-term specialist finally retires. Several such situations have been encountered during observation.

Our information suggests the trend is towards specialized judgeships in the large metropolitan areas for traffic and juvenile cases, with other specialties occuring sporadically as the needs and personalities inspire them.

The Institute of Judicial Administration notes judges specially elected or appointed for specialized juvenile, domestic relations, or family courts in approximately a dozen states. Those responding to our questionnaires report specialist judges selected for specialized family courts in Cleveland, in Minneapolis, and in Charleston, South Carolina. The same persons report specialist judges assigned by presiding judges for fixed terms to full-time work in specialized divisions or dockets in Des Moines (juvenile, domestic relations), Baton Rouge (family), Phoenix

(juvenile), Minneapolis (traffic, small claims, family court), St. Paul (juvenile), Las Vegas (juvenile, small claims), and Newark (juvenile, domestic relations).

During observation, a few elected specialists were encountered, but in the main the impression formed was that specialists develop after assignment on a routine rotation basis, and eventually become virtuosos in their specialties by leave of their colleagues. This occurs most often in the "personal problem" case area, where judges temperamentally suited to such a caseload are rare and, where found, have little competition from their brothers on the bench. Honesty compels the statement, however, that one or two juvenile court judges were encountered who gave the impression of having sought and kept that office because of the political advantages of appearing to be affectionately concerned with the needs of children.

There is controversy about the best method for selecting a specialist judge. This writer has formed the opinion that appointment by a presiding judge is, on the whole, the method offering more advantages and fewer disadvantages than other methods employed. This method places responsibility for selecting the specialist, and for determining the length of his assignment, upon the judge responsible for administration of the entire court. The advantages are integration of the specialty with the entire court administration problem, flexibility, and avoidance of the dangers of empire building, multiplicity of overspecialized courts, unavailability of or waste of judicial manpower, and retention of ultimate control of the specialty, along with other aspects of court administration, by the judicial officer responsible for the administration of the total court.

Material gathered for this series of studies and all other material available to the writer show a strong trend, in virtually all metropolitan areas, towards the development of some type of specialized facilities for dealing with certain types of cases, notably traffic, criminal, small claims, and family cases. The need for such special facilities has increased the tendency towards the occurrence of a multiplicity of separate courts, the principal structural disadvantage of metropolitan court systems.

The special division within a larger court system, where such division is operated as a unit with specialized personnel but is integrated with the general court system under a presiding judge, appears to offer the most promising method of meeting the needs of special types of cases without incurring waste, multiplicity, and confusion.

Special devices for docketing or calendaring certain types of cases are often encountered. These are too ephemeral to offer grounds for generalization. The special docket does seem to be a typical first step towards real specialization when operated by a judge temperamentally well suited to a specialized caseload under a presiding judge sympathetic to development of the specialty.

It is the writer's impression that the establishment of specialized courts or divisions by constitutional provision or statute has fallen out of professional favor, and that the contemporary preference is for the use of court rule for this purpose.

The Modernization of the Minor Courts

William W. Litke

The only courts the majority of our citizens have come to know with any degree of intimacy are those of the minor judiciary; the only "judges" they personally know are the justices of the peace, aldermen, and magistrates. To them the administration of justice is identified with these courts of first instance, and their understanding or misunderstanding of our entire judicial system derives from personal experiences, perhaps involving a small civil claim or summary traffic proceeding in these minor courts. To refer to these courts as minor courts is an error, because the name "minor" carries the implication that they are of little importance and of little interest to the average citizen concerned with the dignity, justice, and social usefulness of our judicial system. Nothing could be further from the truth. In subject matter these courts are not minor courts. As John Alan Hamilton, a former president of the New York State Bar Association said: "We are beginning dimly to perceive that if we are to be consistent in our professed desire to provide equal justice for all, we must measure the significance of the cause by its importance to the litigant. With such a standard to be met, who shall say that the small cause of the poor man calls for less wisdom, less judgment, less breadth of vision than are assumed to be required for the higher bench?"

Unhappily these minor courts have been a part of the political system of most of our states rather than a part of the judicial system, and in many states they continue to be such part of the political machinery of the state.

In every field of endeavor within our nation great strides have been made and are constantly being made in transportation, communication, and education and in government generally; but in the administration of justice in minor matters no change or worthwhile progress has been made since Colonial days.

There has been great dissatisfaction in recent years with the administration of justice in these minor courts throughout the entire nation. More and more we are coming to realize that much of the dissatisfaction with our judicial system in its entirety springs from the experiences of our people in these courts of first instance. This public dissatisfaction has been so pronounced in recent years as to engage the attention of many of our eminent jurists and legal scholars.

A nation-wide movement has been gaining momentum, which has as its goal the improvement of the judicial machinery generally and the improvement of justice in minor matters in particular. In recent years this movement has resulted in far-reaching reforms in the minor judiciary in numerous states. In Pennsylvania proposed amendments to the constitution of Pennsylvania are currently in the legislature. One of these would abolish the magistrate system in Philadelphia. Another one would go further and abolish not only the magistrate system but justices of the peace and aldermen throughout the state. Unhappily, the struggle between these forces appears to have become a political one, one party favoring the one bill and the other party the other, although they both pretend to be in favor of improving the minor judiciary generally.

The Pennsylvania Bar Association conducted two studies on minor courts in Pennsylvania. The first was completed in 1942 and published in a bound volume entitled *Survey of the Minor Judiciary in Pennsylvania.* The second, completed in 1962, entitled *Minor Courts in Pennsylvania,* reviews the changes which had taken place in the intervening twenty years. The two studies provide a compendium of facts about the minor judiciary within the state.

Some of the most common complaints concerning minor courts are the following:

1. There are too many justices of the peace,

Reprinted from 50 Judicature 67 (August-September, 1966)

magistrates, and aldermen, and the districts that are represented are too small. Many of these districts were created over a hundred years ago and fixed for a rural society when transportation was difficult and slow. With the continued growth of urban life and the advent and development of the automobile, the functions of these rural justices of the peace, magistrates, and aldermen have remained much the same as they were before the Civil War.

2. Justices are poorly qualified by training and experience to handle the many changes in our changing and complex society.

3. Minor courts lack the dignity required to instill respect for the law and justice.

4. Minor courts are inadequately staffed, housed, and equipped.

5. The present decentralization of minor courts prevents effective management of judicial affairs.

6. When paid by fees, as most minor justices are, income is usually too small to attract able candidates. Furthermore, the fee system encourages the pyramiding of costs and collection between prosecutors and justices.

7. Minor court records are poorly kept, and auditing is inadequate.

In many states the minor courts are so highly decentralized that both the layman and the expert find it difficult to assess their failures and weaknesses. It is well-nigh impossible to find out how many minor justices there are. In Pennsylvania, for example, there is no place where this information is recorded and kept up to date. Vacancies due to death or resignation are frequently not reported. There should be a central place for the receiving and recording of information about the activities of minor justices. This would facilitate research, public understanding, and evaluation.

Even those records which are kept and are public in character are difficult to interpret. Many of them are not prescribed, and hence they lack uniformity. The system of bookkeeping and accounting is not uniform. Even docketing of cases is done according to standards that are vaguely prescribed by statutes. Only the accounts showing fines transmitted to local and state governments and costs for handling criminal cases which are reimbursed by the county are audited. This leaves a large volume of criminal, as well as non-criminal, transactions which are unaudited. Moreover, responsibility for auditing is divided among state, county, and local officials, and often the auditing is performed by elected or appointed personnel who lack professional training and who are not aloof from political considerations.

MORE JUSTICE THAN NECESSARY

From the records available in most states, it is clear that many more minor justices are authorized than necessary. In Pennsylvania, for example, a minimum of 5,471 were authorized as of July 1, 1960, but only about 4,134 were commissioned. Thus, approximately 25 per cent of the authorized positions were unfilled. Of those commissioned, many were inactive.

It was the opinion of 93 per cent of the presiding judges and of 72 per cent of the district attorneys over the Commonwealth who returned questionnaires that the number of justices should be reduced. The recommendation of the judges would effectuate a reduction of the number of the minor justices by 87 per cent. Applying this rate of reduction over the entire state, the total number of justices would be reduced from 5,471 to 751.

The total volume of work done by the minor judiciary in many states is unknown, since complete reports are not required or made. The work falls generally into two broad categories—judicial and non-judicial. The latter consists of notarizing documents, miscellaneous services, solemnizing marriages, etc.

Judicial work consists of hearing criminal and civil cases. Docketed criminal cases greatly outnumber the civil. The ratio is nine criminal cases to one civil case. Not included under civil cases are the undocketed collection of bills which for many justices are both time-consuming and lucrative.

JUSTICE FOR THE PLAINTIFF

The data on criminal cases determined from our study in Pennsylvania confirmed the often-made charge that the initials "J.P." mean "Justice for the Plaintiff." Of 63,040 cases, 51,997, or about 83 per cent, resulted in conviction; another 6,375, or 10 per cent, were bound over for court trial; and 4,668, or about 7 per cent, were dismissed. The data for civil cases indi-

cated that the defendant had even less chance of winning. One must remember, however, that in most cases that reach the trial stage the probability of culpability is strong.

A few minor courts do most of the work. Our 1962 study confirmed the findings first made in our study of 1942, which showed that a few justices in most counties did most of the work and collected most of the money paid by the county. The data indicate, also, that the collection of fines is concentrated in comparatively few justices. A number of reasons are given to explain this concentration, but there can be no doubt that prosecuting officers take most cases to the justices who are most likely to decide in their favor.

In proposing any reforms or changes, however, it is necessary, first, to consider what major result is to be accomplished and, second, what measures will lead to such accomplishment. The result at which we should aim is the improvement of the judiciary in minor matters both civil and criminal.

This naturally leads to the next inquiry: What measures taken will lead to the improvement of the administration of justice in such minor matters? Generally, the recommendations fall into three classes:

I. The abolition of the minor judiciary by constitutional amendment.

II. Statutory changes improving the minor courts.

III. The creation of minor courts, or of divisions of existing courts, to function alongside the justices of the peace, magistrates, and aldermen.

1. *The abolition of the minor judiciary by constitutional amendment.*—In many states it is impossible to abolish the functions of justices of the peace, magistrates, and aldermen without constitutional amendment. This is true in Pennsylvania. Our constitution includes the magistrate and justice of the peace courts in its judicial article. This has made it a difficult task to abolish the administration of justices in the minor courts, because the voters of the Commonwealth have been in the past extremely reluctant to agree to any constitutional changes no matter how desirable they may be. Within the last several years, however, great interest has been aroused through the work of the Bar Association and a citizens' committee aimed at modernizing our entire constitution, and there are presently pending in the legislature two proposed amendments to change the judicial article. One of these would eliminate the magistrate courts of Philadelphia and leave it optional with the rural counties as to whether they wish to eliminate the justice of the peace courts. The other would abolish all justices of the peace, magistrates, and aldermen. Unhappily, these two proposals have resulted in making these proposed changes to the judicial article into a political football contest.

II. *Statutory changes improving the minor courts.*—In many states constitutional provisions are not present to prevent the bringing about of improvement in these minor courts by statutory change. Indeed, such changes have been effectuated in a great many states.

III. *The creation of minor courts, or of divisions of existing courts, to function alongside the justices of the peace, magistrates, and aldermen.*—One of the most promising developments within the last twenty years has been that of small claims or community courts. A great many states have provided for such courts wherein minor causes, both criminal and civil, are heard and disposed of by persons learned in the law. Without exception these courts have met with universal success and acclaim where inaugurated. In many of these the procedure is simple and informal so as to be a place where the average citizen may bring his problems. Pleadings are usually simple and informal and the filing fees nominal. In a good many of the small claims courts service by mail is a favorite device and thus does away with cumbersome service of process in small causes by constables, sheriffs, or other officials. This also does away with the costs which accompany such service. Plaintiffs generally are not required to consult counsel in order to have a small claim filed. The clerk of the courts assists in the filing of a small-suit paper. The case is generally set for hearing within five to fifteen days.

In order to bring about the modernization of the minor courts, it is necessary to do the

following:

1. Study and research to develop the facts. In Pennsylvania, as has already been pointed out, our State Bar Association conducted two elaborate studies, both of which were published in book form. Very often a bar association may avail itself of research students at law schools or universities who may be available for research, the gathering of facts, and the compilation of them under the guidance of a bar association committee. For example, the Pennsylvania Bar Association on both occasions made an arrangement with the Pennsylvania State University whereby one or more research students devoted a substantial part of his time to developing the detail and in doing the research, which ultimately found its way into print.

2. Publish and distribute the findings and recommendations of the committee after the study has been completed. Again, using our bar as example, both studies, after their publication, were disseminated and distributed throughout the state, first to members of our association who were interested; second, to the judges throughout the state; and, finally, to newspapers, radio, and television stations. By doing this, we developed a substantial body of informed opinion throughout the state, which has stood us in good stead.

3. The organization of citizens' groups to press for modernization. It is not enough for the bench and bar to be interested in this as an academic topic. It is necessary that influential citizens throughout the state be encouraged to press for modernization. In Pennsylvania a Citizens Conference on a Modernization of the Entire Judicial System was held early in 1964. As a result of this conference, a citizens' group known as Citizens for a Modern Constitution, Inc., was incorporated. Other groups thereafter became attracted to the movement for modernization. These groups represent a powerful body of public opinion in Pennsylvania, and we look forward ultimately to a new judicial article in our constitution which will have the effect of modernizing not only the judicial article generally but the minor courts in particular.

This may, of course, take some additional years. After all, our first study began in 1940 and was completed in 1942. As Arthur T. Vanderbilt, a former president of the American Bar Association and thereafter chief justice of New Jersey, said: "Judicial reform is no sport for the short-winded."

(Editor's Note: The voters of Pennsylvania approved a new judicial article on April 23, 1968, which provides for replacing justice of the peace courts on a local option basis with new courts called community courts. Both systems will be operated under the rules and supervision of the Supreme Court.)

Justice Court Improvement and Traffic Courts

by James P. Economos

THE Sexcentenary Anniversary of the Justices of the Peace, created by statute, 34 Edw. III, Act of 1361, is still being celebrated in England. The carryover stems from the same anniversary of the Act of 1362 which required the Justices of the Peace to hold quarter sessions. This period is considered the founding date of the modern Justice Court in the intervening six centuries.

It was the English prototype which was introduced into the American Colonies, with certain important changes made necessary by the existing environment of great distances and lack of communication between the colonial settlements. This was obviously the only court of justice which was known to them at the time.

ENGLISH-AMERICAN DIFFERENCES

There were two vital distinctions between the English and American Justices of the Peace of the seventeenth century. These were described by one writer as follows: "The first was the early granting to the colonial justices of civil jurisdiction for the trial of small claims—an extension of duties and authority made as a matter of necessity, reasons of distance, lack of transportation and isolation of communities... The second was that the colonial justices were paid by a fee system, whereas the English justices served in the main without pay (at least known pay) as a matter of public service and for the honor attached to the royal appointment. So, the English and American justices of the peace have borne the same name and boasted the same Anglo-Saxon ancestry, but have . . . developed along lines which are materially different. Oddly enough, the English system has been marked by a considerable degree of flexibility and adaptation, while its American counterpart, since the earliest colonial days, has clung to an ancient and rigid mold with an almost complete disregard for essentially changed conditions."

THE FEE SYSTEM VS. SALARIES

The fee system for compensating justices of the peace still exists in the states of Alabama, Arkansas, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, New Mexico, North Dakota, Oklahoma, Pennsylvania, Tennessee, Texas, Vermont, West Virginia and Wisconsin. A variation of the fee system with maximum limits as to the amount to be retained is being utilized in the states of Colorado, Indiana, Iowa and Montana. This represents a reduction of sixteen states since 1940, the year in which the Warren Study on Traffic Courts was approved by the American Bar Association House of Delegates, Sections of Criminal Law, Judicial Administration and Junior Bar Conference. This study also bears the approval of the National Conference of Judicial Councils.

Some of the states enumerated above have made a partial retreat from the fee system by reducing the jurisdiction of the justice court through the creation of another court to assume the powers taken away. A recent example is the action of Wisconsin, which enacted a complete court system revision in 1959. It divested the Justice of Peace of all criminal jurisdiction except over battery and disorderly conduct cases, and as to these it retained its previous fee basis. The new county court system, which

Reprinted from XXXV State Government 118 (Spring, 1962)

went into effect on January 1, 1962, is manned by salaried judges. (*Wisconsin Laws,* 1959, Chapter 315.)

North Dakota is another state which has been able to eliminate the effects of the fee system. *North Dakota Session Laws,* 1959, Chapter 268, provides that each county (except those with existing county courts of increased jurisdiction) may by resolution of the Board of County Commissioners create a county court which replaces the Justices of the Peace in that county. The effective date of the new county court system was July 1, 1961. The new County Judges receive salaries.

Tennessee had previously undertaken a similar program when it established salaried General Sessions Courts to replace fees paid Justices of the Peace. More than two-thirds of the counties in this state have established General Sessions Courts, and the balance will eventually follow suit.

The most recent converts to salaried Justices of the Peace are Illinois, Kentucky and Washington. In Illinois the change took complete effect on April 4, 1961, when the newly elected Justices of the Peace served under a salary basis uniform within each county. The General Assembly established the salaries to be paid within each county at not less then $600 and not more than $12,000 per year, to be determined by the county board. (*Illinois Revised Statutes,* Chap. 53, Par. 59.1.)

In Kentucky the Supreme Court, in the case of *Roberts* vs. *Noel* (decided May, 1956), held that fees paid Justice of the Peace constituted a violation of the due process clause. This followed the earlier case of *Tumey* vs. *Ohio,* (273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 1927), which has been the landmark decision in this field. The effect of the *Roberts* case was to take away criminal jurisdiction in this state. To remedy the defect, the 1958 Kentucky legislature established a salary system for the exercise of criminal jurisdiction by Justices of the Peace.

The Justice Court Act, Washington Laws of 1961, Chapter 299, provided compulsory reorganization of the justice courts in the counties of King, Pierce and Spokane. Salaries for Justices of the Peace, both full time and part time, are provided by this act. Any other county in the state may make similar provisions applicable upon a majority vote of its Board of County Commissioners.

In West Virginia an act to place all Kanawha County Justices on a salary basis, effective July 1, 1961, was subsequently declared unconstitutional. This has sparked a new move to secure salaried judges in lieu of fees paid judges in this state.

RELATED QUESTIONS

More converts are needed if the fee system is to be eliminated from every state in the nation. There is no doubt that the activity and the steps required to eliminate it naturally draws consideration to many other facets of court reorganization. For example, questions such as the following must be answered:

How many salaried judges should there be?
Should the judges serve full or part time?
Who should be eligible for the position of judge?
Should the position be confined primarily to lawyers?
Should laymen be allowed to serve in such positions, with or without special qualifications?
Should qualification examinations be required of new laymen seeking judicial positions?
Should the county be used as the unit for such a court?
Should the county be divided into judicial districts?
What population factor should be used for such judicial districts?
What effect is to be given to the traffic case jurisdiction of such courts?

These and many other questions must be considered in changing from a fee system. In most states the change may be accomplished without a constitutional amendment. This permits legislative action after a careful study of the problem in each state.

There is no one solution which can be applied to every state. This has been found true

in the statewide traffic court studies undertaken by the Traffic Court Program of the American Bar Association. It has also been reported in other studies by other agencies. There is, however, general agreement that the fee system is one of the most pernicious evils of any organization of trial courts of limited jurisdiction.

ALTERNATIVES TO JUSTICE COURTS

Previous efforts to eliminate the fee method have resulted in the development of several different systems of courts to serve the needs usually served by the Justice of the Peace. District courts, with district judges or magistrates, are serving the states of Alaska, Hawaii, Maine, Massachusetts, Oregon, Rhode Island and the Commonwealth of Puerto Rico. Maine is a newcomer to this group, having just enacted its legislation establishing a District Court, which is scheduled to become fully effective as a sixteen-judge District Court in 1963. This changeover will replace the existing fifty municipal courts and twenty-four trial justice courts.

Some form of magistrates courts serve the states of Georgia (local option), Missouri (county), New Jersey (municipal) and South Carolina. As stated before, the General Sessions Court in Tennessee is its replacement for the justice court. In California each county is divided into judicial districts served by municipal courts and justice courts. The dividing line between the districts in each county is based on population. The judicial districts with 40,000 or more population are served by municipal courts, and those below this figure by justice courts.

In Connecticut a sweeping reorganization has wiped out 169 municipal and trial justice courts and substituted on January 1, 1961, a forty-four-judge Circuit Court, divided into eighteen circuits. The justice of peace courts in this state have been deprived of all judicial functions.

The District of Columbia, New Hampshire and Minnesota depend on municipal court organization. The county court is used in Ohio, Virginia and Wisconsin. In Ohio it replaced the Justices of the Peace and provided a forum for that portion of each county not served by a municipal court. It did not, however, eliminate the Mayor's courts. The Virginia Trial Justice system, itself a development designed to eliminate use of the Justice of the Peace, was recently replaced with the county court. The newest member of this group is Wisconsin, as mentioned above. In the same section should be included the unique Metropolitan Court of Dade County, located in Miami, Florida. It was an outgrowth of a home rule constitutional amendment which permitted its establishment as the only court with exclusive jurisdiction over traffic offenses in Dade County. The Metropolitan Court assumed all traffic case jurisdiction previously exercised by twenty-six municipal courts and the courts serving the unincorporated areas.

COUNTY VARIANTS

Four states have preferred a County Justice Court setup. As noted in an earlier paragraph, North Dakota provided for this change to take effect on July 1, 1961. North Carolina provided for a County Justice Court in 1959 legislation designed to make the changeover effective July 1, 1961, but it is subject to a resolution of the Board of County Commissioners for its creation. The Washington plan was mandatory in the three largest counties and optional in all others. A court of this character is also provided in Mississippi. In Pennsylvania central traffic courts have been authorized for Philadelphia, Pittsburgh and cities of the third class. Rural court revision has not been undertaken.

A recent constitutional amendment revising the judicial article in New York, adopted in November 1961, retained the justice of peace court in all counties except in New York City and Nassau County. It permits any other county to go to the District Court setup now in existence in Nassau County. The justice of

peace court was also retained as a constitutional court in Arizona's "Modern Courts Amendment" to its judicial article in November 1960. A recent American Bar Association Traffic Court Program study has recommended an integrated county justice court plan, consolidating all justices of peace and police courts.

COMING REFERENDA

Five states will be voting on proposed constitutional amendments to their judicial articles in referendums in the fall of this year—Colorado, Idaho, Illinois, Iowa and Michigan. In Illinois, successful adoption of the amendment would completely eliminate the justice court, Idaho's amendment would modernize its inferior courts, and Colorado and Michigan (if present plans are approved by its constitutional convention, still in session) would substitute a county court for the Justices of the Peace. Iowa also would achieve an improved lower court setup. Several other states have undertaken activity which should lead to submission of constitutional amendments in the near future. The State Bar of Texas has just finished polling its members on its views as to a proposed constitutional amendment providing for local-option abolition of justice of peace courts and replacement with county courts of record. There is a very healthy interest in judicial improvement in at least eight other states which could lead to revisions of justice of the peace courts.

A SET OF GUIDELINES

George Warren, writing in *Traffic Courts,* has outlined eight essentials for a separate statewide traffic court system. These are (1) personnel; (2) impartiality; (3) availability; (4) procedure; (5) dignity; (6) predictability; (7) accountability and (8) practicability. The eight points can serve as guideposts to anyone evaluating the present justice of peace organization or any one of other court systems designed to eliminate the shortcomings of the justice court. Although designed primarily for traffic courts, these guides have acquired greater validity for measuring other courts of limited jurisdiction, since it has been established statistically that traffic cases constitute the bulk of their judicial business.

VALUE OF COURT ADMINISTRATORS

The development in recent years of offices of state court administrator and their National Conference of Court Administrative Officers will be another source for securing valuable comparisons of the respective court organizations. These trained men and women should provide considerable source material for those interested in the revision of any system of trial courts of limited jurisdiction. The Model Act for an Administrator for State Courts, as revised in 1960, specifically provided that such officers assume supervision and administration over all courts trying traffic cases. Given adequate staff and proper financing, they will make an important contribution in this area of court administration. They will supply a much needed cohesive factor in integrating such courts into the judicial family. It is no accident that greater judicial improvement is being accomplished (as will be even more evident in the future) in the states with an "Administrator for the State Courts."

ADVANTAGES OF FULL-TIME JUDGES

One of the many reasons for the current interest in trial courts of limited jurisdiction stems from the obvious benefits that will accrue from a court staffed with full-time judicial prosecution and clerical presonnel, in contrast to one dependent on part-time judges to service the judicial business. Apart from financial consideration, a supervised full-time judiciary is able to accomplish more than even a supervised part-time municipal magistrate setup. Full-time availability will enable the court to handle more cases with greater ease than is the case at the present time in some states. This will permit growth compatible with the increased caseloads that will follow in the wake of the population explosion. Preparation today will

save many unfortunate inconveniences in the immediate future. The mobility and transferability by assignment of full-time judges will permit better calendar control in all of the courts in a state or its subdivisions. It is suggested that every county in the United States with 20,000 or more population should be served by a full-time court. Below this population figure it will probably be necessary either to combine counties to be served on a full-time basis or retain the part-time system with safeguards.

Full-time judicial service should demand more adequate salaries for the judges of trial courts of limited jurisdiction than now obtain. It has been recommended that the salaries of such judges should be equal to those paid to the judges serving trial courts of general jurisdiction. The present inequality in salary does not jibe with the often repeated declarations of many prominent jurists and leaders of the bar that the trial courts of limited jurisdiction are the most important in the judicial hierarchy because more citizens have their first and perhaps only contact before them. No state judicial system can afford to have any judges serving in these most important courts who do not measure up to an adequate salary standard.

Unfortunately, there are not enough judges presently serving in them with the necessary qualifications and the required performance to warrant such salary considerations. But legislative recognition of the principle indicated on salaries must come first, before the more highly qualified individuals will consent to serve.

Another difficulty experienced with a part-time judiciary is found in their prevailing lack of interest in taking advantage of opportunities to improve themselves through participation in judicial and traffic court conferences. For the past fifteen years the American Bar Association has been conducting traffic court conferences in leading law schools. Up to this date only a comparatively small percentage of the potential attendance has been achieved. There should be more participation and more conferences to assist these judges in the daily performance of their duties. Such training opportunities will do much to eliminate dissatisfaction with the present judges in justice of the peace courts and in the courts which have replaced the justice courts. Initial unfamiliarity with the requirements of these courts can be overcome if opportunities for self-improvement are made available and attended with conscientious intent to learn. The public image of the lower court is improved only by performance in a manner which inspires confidence in the judicial system and its administration.

PROGRAM FOR TRAFFIC COURTS

The motor vehicle has increased travel between states tremendously. Traffic offenses requiring appearance in courts in other states has broadened the driving public's concept of what is good and bad in our trial courts of limited jurisdiction. There is developing a national concept that courts everywhere should meet at least minimum standards of the administration of justice. This applies to the justice of peace court in the most remote sections of highly rural areas as well as to the magistrate court in the most populous city of New York. There is no sound excuse for either not to conduct court in accordance with national standards, adopted by the President's Committee for Traffic Safety and the American Bar Association House of Delegates.

A well-rounded program for state court improvement appears in the 1961 Action Program for Traffic Courts, adopted by the above organizations. These recommendations propose that:

1. The National Standards for Improving the Administration of Justice in Traffic Courts be applied by every state and municipality.

2. All traffic courts be integral units of the judicial system of each state and, wherever necessary, a constitutional or legislative reorganization of courts for that purpose be undertaken.

3. The judges of traffic courts be selected on

a nonpartisan basis under a method which should ensure high judicial qualifications, the judges to serve full time, with adequate security as to tenure.

4. The highest judicial authority in each state appoint an administrator of state courts, with duties specifically including supervision and administration of all courts trying traffic cases in that state. The Model Act for a State Court Administrator should be used as a guide.

5. Each state adopt, preferably through its highest judicial authority, uniform rules governing procedure in traffic cases. These should apply to all courts trying traffic cases.

6. The Model Uniform Traffic Ticket and Complaint Act be adopted on a statewide basis, one copy serving as a report of conviction or disposition. All enforcement agencies within the state should be required to use the model form.

7. The salaries paid to traffic court judges and prosecutors be equal to those of trial courts of general jurisdiction.

8. The fee system for compensating judges and justices of the peace be eliminated, and in its place a salary system provided.

9. All judges, whether lawyers or laymen, be subject to the Canons of Judicial Ethics and adequate provisions be made for disciplinary action against judges where justified; the removal and retirement provisions of trial courts of general jurisdiction should be made applicable to traffic courts.

10. Courts of record status be provided for all traffic courts.

11. It be mandatory for all traffic court judges and prosecutors to attend annual judicial conferences, and adequate provision be made for payment by local, county and state governments of all expenses incurred in connection therewith.

12. Each state staff all courts fully with adequate judicial, prosecution, clerical, and administrative personnel.

13. All offenders charged with hazardous moving traffic violations be required to appear in court and answer the charges in person.

14. All state, county and local governments eliminate budgetary practices calling for an estimate of anticipated revenue from the handling of traffic cases—the actual revenue derived from traffic fines and forfeitures for the prior fiscal year taking the place of such estimates.

15. The American Bar Association continue to assume major responsibility for the national program to improve traffic courts and accelerate its activity in this behalf.

VIGILANCE FOR STANDARDS

The future demands that every state give special emphasis to the improvement of the administration of justice by the trial courts of limited jurisdiction. This is true whether the state is operating under a justice of the peace system or under any of the variations thereof, including the most recent. Constant vigilance is required to keep the standard of judicial administration on the highest possible level.

Judicial Reform for Colorado Courts of Special Jurisdiction

Daniel J. Shannon

Up until a few years ago no one knew much about the operation of the lower court system in Colorado. There was no court administrator, and neither the secretary of state nor the county clerks were aware of the exact number of justices of the peace operating at any one time. Some judges never posted performance bonds after having been elected. Others refused to handle cases after their fee limitation which went up to $7,500 but averaged less than $3,600 had been reached. Because of increasing public concern and pressures from various interested groups throughout the state, a comprehensive study was made by the Legislative Council at the direction of the Colorado General Assembly.[1] The research uncovered many interesting facts and conclusions which eventually led to the reform of Colorado's entire lower court system.[2]

At the time of the study, the only qualifications required for the office of justice of the peace were that the candidate be 21 years old, a qualified elector, and a resident in the county and precinct in which the office was located. Of the judges interviewed, 65 per cent were over 60 years of age and only 1 was under 35 years of age. Half of the justices had at least 4 years' experience, and 30 per cent had more than 10 years experience in the position. Little or no opposition in the general elections was reported, exceptions being those judges serving in the populated areas where the case load was high enough to provide a high income for a part-time position. Of the justices interviewed, many had completed high school and several had taken some college work; however, none had graduated from a school of law.

Although some of the justices had adequate court facilities provided for them in the county courthouse, or town hall, or the municipality in which they resided, the majority held court in their homes or places of business. Justices were located in most communities, and court was usually held 24 hours a day, 7 days a week, although only 7 justices worked full time and 21 were retired.

Records were generally kept on an informal basis. In some counties, judges kept few, if any, records. Of those that were kept, many were inaccurate and none were standardized. According to law, justices' dockets should have been audited along with those of other county officers. Almost half of the justices said that their dockets were audited every six months, but 15 of these had only their criminal dockets audited. Four of the justices said that their books had never been audited, and 25 said that their dockets (7 of these criminal only) were audited once a year or even less.

Procedure was set strictly by statute, yet only about half of the justices were provided with a set of statutes by the commissioners. Full-time clerical assistance was provided for only two justices, and the vast majority had no clerical help of a subsidized type.

A sampling of work loads revealed that approximately 60 per cent of the cases filed were traffic, 29 per cent civil, 7 per cent criminal, and 3 per cent miscellaneous. Of the traffic cases, 70 per cent were handled on guilty pleas and 6.5 per cent of those filed resulted in dis-

DANIEL J. SHANNON serves as County Judge of Jefferson County, Colorado, and is President of the Colorado Association of County Judges.

1. Information for this study came from 2 main sources: 7 regional meetings were held in various areas of the state by the committee to which all justices in each area were invited, and a complete docket analysis of the case loads of all justices of the peace in a selected sample of 22 counties covering 4 judicial districts was made. In all, 129 of the state's approximately 275 justices of the peace were contacted either by the committee or the council staff.

2. Several years ago the city and county of Denver established a modern municipal court in which attorney judges acted both as municipal judges and as justices of the peace. Adequate clerical staff and facilities were also provided. Municipal and magistrate courts are not considered state courts and as such were not substantially affected by the judicial reform.

Reprinted from 50 Judicature 16 (June-July, 1966)

missals. Attorneys were present in only 4.5 per cent of the total case load and appeared 4 times more often in civil than criminal cases. Average time between arraignment and trial was a week, with a maximum of 3 months.

Most of the justices indicated that they gave the traffic violator his day in court, but a few indicated that they assumed the alleged violator was guilty or he would never have been brought into court in the first place. These men had jurisdiction over cases with penalties up to one year in jail and a $5,000 fine!

Judicial Structure Before Reform

The supreme court, with 7 justices, presided as the court of last or final resort. The vast majority of its work was the review of cases appealed from courts of record.

The next level was comprised of the district courts of record empowered with original jurisdiction over all civil and criminal matters except probate and juvenile cases. Some of the districts of the state contained a single judge and others up to 10 judges.

Each of Colorado's 63 counties had a county court with jurisdiction over civil cases up to $2,000 or less, misdemeanor cases, exclusive jurisdiction over juvenile and probate matters, and appeals from justice of the peace courts (*de novo*). In each of the 63 counties, a number of justice of the peace precincts were established (from 1 to 12) with at least 2 judges presiding in each precinct .

The justice court was not a court of record, and the justices of the peace had jurisdiction to handle misdemeanor cases (including traffic), civil matters up to $300, replevin actions, and eviction cases. Any appeals from the justice court were certified to the county court on a trial *de novo* basis.

Consolidated Justice Court System

In 1958, a significant step was taken by the county commissioners of Jefferson County to improve the justice court system. Pursuant to statutory authority, they reduced the number of justice precincts from 4 to 1 and the number of justices of the peace from 8 to 2 and empowered them to consolidate justice court operations. In 1959, 2 attorneys were elected to the office of justice of the peace. The county provided courtrooms, a clerk's office, and witness and jury rooms. A staff of 4 clerks was later increased to 8 to handle the case load.

The new judges formulated a set of rules of procedure to modernize and make uniform the handling of these cases. The courtrooms were located in the county seat of Golden, Colorado, and during the first year of operation over 8,000 criminal and civil cases were filed. Rules of evidence were strictly adhered to, the district attorney's office provided deputies for the prosecution of traffic and criminal cases, and the trials were conducted in a formal atmosphere, complete with judicial robes, imparting respect for the court and the law. Appeals diminished by three-fourths.

The judges conducted court during regular courthouse hours and established bail procedures under the supervision of the clerk of the court to handle after-court-hour bonds.

A streamlined jury-selection system was established, replacing the archaic system of the constable's picking jurors from the street in order to serve in justice court cases. A bookkeeping system was inaugurated to insure the proper receipts and disbursements of the court; in its first year of operation the funds totaled over $100,000.

Judicial Reform Amendment

The successful operation of the Denver Municipal and Jefferson County Justice Courts showed the way to eliminate the obvious abuses in many justice of the peace courts. Again the Colorado Legislative Council was called upon to draft a judicial reform amendment for the general assembly, which in turn was referred to the people in November of 1962. Most people recognized that the clear intent of the amendment was to upgrade the judicial system as well as to provide for an integrated bench, and the amendment was approved by a substantial majority.

The material parts of the amendment are:

1. The jurisdiction of the supreme court remains unchanged, but justices can be increased to 9 upon request of the court and upon ratification of the general assembly.
2. District courts of the state have original

jurisdiction as courts of record over all criminal and civil matters, including probate and juvenile cases. All district judges are required to be full-time judges and must be admitted to the bar for at least 5 years. A probate court was created for the city and county of Denver, and the general assembly has authority to establish other minor courts.

3. The offices of justice of the peace and of constable were abolished. New county courts replaced the justice courts. Each county is to have a court with one or more county judges as might be provided by law. The county court jurisdiction is set by statute, except that felonies and title-dispute matters are specifically prohibited as being assigned to the county court jurisdiction.

The Colorado Legislative Council and Legislative Council Committee drafted a series of bills to implement the amendment which were submitted to the general assembly and, with some minor variations, passed into law.

The new county courts were made courts of record and limited to jurisdiction of $500 in civil cases. They were empowered to handle replevin actions, actions involving the possession of realty (but not title disputes), misdemeanors, peace bonds, restraining orders, and preliminary examination cases in felony matters. Appeals based upon the record made in the trial court were to be lodged with the district court (superior court in Denver) for appellate review. An automatic trial *de novo* was abolished. County judges could act as referees in district court matters and juvenile and mental-health court cases. County judges are permitted to act as district judges if they have the qualifications of a district judge.

A simplified procedure was established for the handling of misdemeanor and civil cases. The counties were graded into four classes—A, B, C, and D. In counties of Class A and B (population over 25,000), the county judge must be an attorney and devote full time to court duties. In Class C counties (population from 10,000 to 25,000), the judge must be an attorney but may practice law in courts other than the county court. In Class D (population 10,000 or below), the judge need not be an attorney but must be a high-school graduate and attend a training seminar before taking office.[3] Salaries based on the classification of the county, from $1,200 to $12,000 annually, replaced the fee system.

Pursuant to statutory and constitutional authority, the Supreme Court of the State of Colorado established rules of civil and criminal procedure for the county courts. Statistics are reportable semiannually to the judicial administrator, who serves all county and district courts, and county court records are audited by the state and by the county.

Jefferson County Court

The Jefferson County Court, relying upon the experiences of the consolidated justice court, converted easily into the new county court system. Three attorney judges were elected to 4-year terms. As the result of the court's becoming a court of record and an anticipated increase in case load, the number of clerical personnel was increased to 17, with a chief clerk to supervise the clerical operation. The case load of the Jefferson County Court totaled 10,454 during the first 11½ months of operation. The transition from a court of nonrecord to a court of record further reduced appeals, and it was noted that litigants and attorneys became aware of the fact that only one trial would likely be held and accordingly they were better prepared for trial.

Of the 10,474 cases filed with the court in 1965, 9,053 were criminal and 1,421 were civil cases. As of December 31, 1965, a total of 1,722 cases was pending in the county court, and of this number only 351 represented cases awaiting trial, 351 represented warrants outstanding, and the other 1,020 were pending arraignments and miscellaneous matters of course. Over the 12-month period, 1,262 criminal cases were tried by court and 372 by jury; 401 civil cases went to trial to the court or jury. From the total case load enumerated above, only 15 appeals were lodged with the

3. Colorado population figures per 1960 census reveals that there are extreme population variations from county to county; e.g., Denver County, 493,887; Hinsdale County, 208. Over a dozen counties do not possess a resident attorney.

county court and were referred to the district court for review.

For the year 1965, a budget of approximately $135,000 was allocated to the Jefferson County Court. The bulk of the budgetary amount was for salaries, with the remainder for supplies, equipment, and witness and professional fees. Total receipts from the operation amounted to $187,000.

In October, 1965, a new hall of justice to house county and district courts was dedicated for the county of Jefferson. With facilities surpassed by few courts in the western states, the county court has 4 courtrooms, each seating approximately 70 spectators with elaborate judges' benches, counsel tables, and jury boxes with places for 14 jurors. Each of the three divisions of the court is provided with judges' chambers, division clerk's room, a court reporter's office, and a judicial hearing room. The central clerk's office is spacious and provides room for 7 clerks and a separate office for the chief clerk. In addition to storage space, the courts have two rooms which are utilized by the court's probation department and district attorney's office. There are two fully equipped jury rooms and two prisoner rooms and a courtroom complex for heavy arraignment sessions.

A number of innovations have been inaugurated by the Jefferson County Court. For example, the court has available and frequently utilizes a complete professional probation department which serves both the district and county courts of Jefferson County. The county judges have appointed a probation officer and have assigned one of the deputy clerks to act as his clerical assistant. In some cases where the services of the formal probation department are not desired, the court's probation officer oversees the supervision of the traffic violators or misdemeanants, especially the younger ones, without the inconvenience and expense of formal probation.

The county jail list is scrutinized daily, and with the co-operation of the district attorney's office those defendants who have not yet been formally charged are brought before the court and advised of their constitutional rights. The court has undertaken a bonding system under the supervision of a night clerk wherein personal recognizance and surety bonds, as well as cash and property bonds, have been utilized to a great extent. Those defendants who are incarcerated and are unable to make bond before trial are given first priority on the court's calendar. Oftentimes other cases are reset in order to provide an early and a speedy hearing for those in jail awaiting disposition of their case.

The court is exploring the possibility of assigning defendants on probation to lay probation officers to work with them on a group-therapy basis and to assist the court in its handling of chronic offenders whose basic problem lies in the addiction to drugs and alcohol or in family or emotional problems.

Denver County Court

The city and county of Denver is now served by the largest county court in the state, with 10 separate divisions. The judicial reform amendment caused minimal changes in its operation since many improvements were already adopted. All 10 full-time judges are attorneys, appointed for 4-year terms by a nonpartisan selection committee.

The case load of the court during 1965 is very impressive. A total of 133,765 cases was filed. Of these cases, 15,636 were civil; 93,868, traffic ordinances;[4] 4,362, state criminal; and 21,464 ordinances other than traffic. Out of that tremendous total, 128,677 were terminated during the year, including the pending matters at both the beginning and end of the year; 17,840 cases were awaiting trial, arraignment, or were failures to appear as of December 31. Appeals perfected and certified to the superior court were 160, or a percentage of $\frac{1}{10}$ of 1 per cent of the total matters terminated during the year!

The new system has been greeted with sincere approval by the general public, the press, and the state's various bar associations. Obviously, the transition from a system involving 275 part-time justices of the peace to 89 coun-

4. Of this number 55,660 were disposed of by arraignment courts and a violations bureau wherein a court appearance by the defendant is waived.

ty judges, with consequent changes in the jurisdiction and procedures, necessitated a transitional period in order to reach a state of efficient operation. After a year's experience, the vast majority of the county courts have been able to cope with the major problems of operation, records, scheduling, and procedures; most all are extremely current in the time lapse between arraignment and trial. In smaller counties, a party requesting trial to the court or jury may usually obtain a date within 30 days and in the larger counties within 90 days. Attorney appearances in county courts have greatly increased, and most courts require a deputy district attorney to prosecute all traffic and criminal cases.

Utilizing the system previously adopted by the Jefferson County justice courts, most county courts have adopted a modernized jury-selection system.

Results of the New Court System

State-wide, most of the county judges have been able to utilize the facilities previously provided by the commissioners for the county courts. The larger counties in the state were faced with a situation of having inadequate room for the increased work load of the county court, and most of them either rented or built new buildings to house the court operation. The rural areas of the state seem well pleased with their new county court system as compared to the former justice courts.

The jurisdiction of the new county courts, although about the same as the justice of the peace courts, was extended to create courts of record with state-wide jurisdiction. Vast judicial manpower has been added to cope with mounting case loads and backlogs. For the first time in the state's history, most of the lower court judges were provided clerical assistance. The consequence has been that most judges have been relieved of the performance of many ministerial acts, thus allowing them more time to devote to judicial responsibilities.

The judicial administrator of the state has been of invaluable assistance in co-ordinating judicial activities, in assigning judges from county to county as the need arises, and in the compilation of court statistics to enable the proper administration of problem areas of the courts. His office has prepared a county court manual for both judges and clerks. The undesirable fee system has been completely eliminated and salaries are paid to all judges, based upon the population and, consequently, the case load of the county in which the judge serves.

The new system has brought about a substantial improvement in the qualifications of those sitting as lower court judges. Whereas, in 1964, approximately 95 per cent of the state lower court cases were handled by non-attorney judges, under the new system over 94 per cent of the state cases were tried by attorney judges.

Less-accessible court locations and the lack of 24-hour court hearings have not constituted major stumbling blocks to the effectiveness of the lower court system but, on the contrary, have enhanced the dignity of its proceedings and improved the efficiency of its operations.

Appeals from the lower courts to the higher courts have been drastically reduced, and the taxpayer has realized the consequent savings, as compared with the expensive trial *de novo* system in effect previously.

Many of the new courts are adopting new and successful arraignment and trial procedures and flexible modes of corrective penalization. Rehabilitation and probation innovations have been adopted with great success. A strong effort is being made to standardize and make uniform the forms and procedures in all parts of the state.

Colorado has taken a substantial step forward in the fair administration of the law in its courts of limited jurisdiction and away from "roadside courts" and "basement justice."

JUSTICE OF THE PEACE COURTS IN NEW MEXICO

The following are selections from the report of the State Judicial System Study Committee to the Twenty-fifth Legislature of New Mexico, January, 1961. Committee chairmen were Senator Fabian Chavez, Jr., and Representative Oscar H. Beasley.

The report is largely composed of selections from testimony given before the Committee in various communities of the state. Subsequent legislation has created administrative controls which have corrected some of the major problems. (Ed.)

THE COURTS IN NEW MEXICO

Chapter 1

The Justice of the Peace Story as Told by the JP's Themselves

In order to be absolutely fair to the justices of the peace, this account will open with statements by the JPs concerning the justice of the peace system.

The following materials, taken from official transcripts of hearings before the State Judicial System Study Committee of the 24th Legislature, present the ways in which the JP's view themselves and each other.

* * * * * *

In response to a question as to how the justice of the peace system can be improved, one JP stated: "I know a lot of justices of the peace that aren't qualified as justices of the peace. They can't even sign their name and can't read or write."

An elderly JP said of himself, "I am healthy all right but my memory is kind of going off, you know, and so is my tongue, I can hardly speak as well as I used to."

A statement was discussed concerning the functioning of the JP system. A JP felt that what is wrong with the justice of the peace system "is ignorance, and ignorance of the law, and through that ignorance."

A JP, the head of a county association of JPs, stated that what is wrong with JPs is that "a lot of them either don't know or just don't want to follow the statutes."

One justice of the peace, with approximately 20 years of experience, stated, "one thing that raises public opinion against the justices of the peace, that we have had magistrates that should never have been justices of the peace."

A JP, who operates his courtroom in the rear of his curio shop, stated, "I don't think I am well qualified to be a good judge."

After three years' experience in JP work, a JP testified, "You know, I was ignorant when I went in (JP work) and I'm still that way."

A JP, who grossed between $18,000 and $23,000 a year in JP work, believed that a JP should "have at least a high school education."

A JP testified as follows:

"Q. That means you are unaware of any laws that have been passed concerning the justices of the peace since 1953?
A. That's right . . .
Q. And you sit there, judge, and judge on people without ever knowing exactly what the law is in a case?
A. Well, I mean, we just -- those things, I mean--. . ."

One JP, with eight years experience, said of the JP system, "I believe it is antiquated to a certain extent. It is just as good as the men behind the desks. Some are not too wise, some are excellent." This seemd to be the kindest statement about JPs, made by a JP, before the Judicial System Study Committee. There are perhaps as many as two or three other instances where statements of JPs about JPs were not wholly disapproving.

Chapter 2

The Justice of the Peace in Action As Seen by the Public

. . .

Probably the majority of JP courtrooms in New Mexico are the living rooms of JPs' homes. When JPswere asked where they held court, such replies as the following were common:

"in our living room"
"in my house, but I got my office separate"
"I have an office in my home"
"in my living room"

Another JP testified that, in less than a year's time, "I received over 100 cases that I tried in a cafe booth." He also testified that his court was held "in the cafe." He further testified--the exact answer is important--that "the patrolman would bring them in the cafe and fine them before all the people during the noon hour." The JP acknowledged that he had received so much criticism of his cafe-operated JP court that he moved his court to a separate building, across the street from the cafe, which building he had remodeled at considerable expense into an adequate courtroom. He complained, rather bitterly, that his business dropped off sharply when he moved into the adequate courtroom.

There is conclusive evidence that some JPs do lack even an elementary sense of fair play. A few examples, from the many available in the testimony before the Committee, will clarify this point.

A JP, who handled about 570 cases, testified as follows:

"Q. Do you dismiss any of the cases brought by an officer?
A. I don't believe I have dismissed a single case."

A state police officer testified that he had been ordered by superior officers to take traffic violators to a particular JP. He protested to his superiors that this particular JP was not fit to handle cases. He was still ordered to take cases to this JP. The testimony of this police officer in regard to this JP appears in part as follows:

"Q. How was the judge (JP) dressed?
A. I believe at that particular time all he had on was trousers.
Q. So far as you know, did he hold court in his trousers?
A. To my knowledge.
Q. No shirt?
A. To my knowledge."

In connection with game and fish cases a JP testified:

"Q. You have had cases and in every instance you have found them guilty?
A. Well, it depended according to the evidence. I go by the charge and the evidence. I can't recollect one that I found not guilty."

A particular man has been a JP for about eight years. According to his testimony, he handles almost 50 traffic cases a month from state and local police. The following is typical of his testimony:

"Q. What if the defendant pleads not guilty to excessive speeds.
A. Well, we give him a chance to get a lawyer and defend himself.
Q. Defend himself?
A. Yes.
Q. Are any of that kind ever found not guilty?
A. No.
Q. In other words, you take the testimony of the arresting officer as against the testimony of the defendant?
A. Yes.
Q. And in every case that you have handled, you sustained the officer's report, is that it?
A. Yes.
Q. And you found the person guilty.
A. Yes."

Chapter 3

The Justice of the Peace and the Police

The following is from testimony before the Judicial System Study Committee as to the kind of gifts state policemen said they were receiving from justices of the peace.

First State Policeman: A total of $60.00 in cash, from JPs, for two Christmases.

A 4th of July gift from a JP, $5.00.

A $5.00 from a JP to buy a steak.

"Sir, to my knowledge, I believe that every officer (in a particular district) received . . . (such) gifts."

Second State Policeman: "I'm not sure if it was $20.00 or $25.00" in reference to a Christmas gift from a JP.

Third State Policeman: "I received $25.00 from (a) judge . . . in 1958," as a Christmas gift.

"I received two cartons of cigaretts from (the) judge . . . and I believe one other time he gave me $5.00 to buy a steak or eat a meal."

Chapter 4

The Justice of the Peace System As Viewed by Law Enforcement Experts

The chief of the state police appraised the importance of the JP system as follows: "I think . . . that ninety percent of the people in this country and in New Mexico (have) their only experience in a court of law . . . in a justice of the peace court. And when that court fails to provide an environment of justice and dignity and decorum and due process of law, I think we are failing them and something should be done about it."

An attorney general of the state points out that attracting business and tourists to New Mexico certainly should not be the, or even a main, basis for constructing a good system of justice. Nevertheless, he notes "the black eyes that we were getting in some spots without tourist trade (because of the JP system). And our tourist trade is very important to the state of New Mexico, and we hope to work something out that will continue to keep the traffic flowing in an orderly manner, but at the same time encourage the tourists to stay in New Mexico."

Chapter 5

The Justice of the Peace System and the Law

A JP may only try cases arising in his county. He has no jurisdiction over cases arising outside of his county.

One JP testified: "I have taken care of speeding tickets, things like that, for nearly every county in the state. That was the practice, you know." There is much other testimony and evidence that many JPs were taking cases outside of their own counties.

Any justice of the peace case may be appealed to the state district court. Appeals should be taken to the district court within 10 days after the JP has rendered his judgment, except that an appeal may be taken within 30 days under certain special circumstances.

A considerable amount of testimony by the JPs before the Judicial System Study Committee shows that many JPs do not understand appeal procedures (and therefore could be of no help in telling a convicted person of his rights to appeal and the way in which to file an appeal).

According to law, fines may not be paid on an installment basis. Yet it is fairly common to find JP courts arranging installment payments of fines.

And then there was the JP who, at least in one instance, went out physically, in his own automobile, and arrested a traffic violator; tried the violator; and assessed a fine and court costs. That such ignorance of the American concept of justice could exist is almost unbelievable; nevertheless, this combining of administrative and judicial functions did occur.

Chapter 6

The Justice of the Peace System and its Administration

The JPs, in every conceivable way, have shown incompetence and illegality in the administration of their courts. The following listing of JP practices is not intended to be exhaustive; it is intended merely to be illustrative of what happens in the JP system:

(Then the text excerpts parts of statements made during hearings which show that one JP filed no reports, another was without a docket book for about six months, another admitted to running an advertisement in a telephone book soliciting business like marriages, civil suits, notary public work, etc., and another related a story of a woman giving him a five dollar tip. Ed.)

A district judge stated, "the very fact, of course, that the fee system prevails is in itself a cause of the weakening of the process of the justice of the peace courts. It's hard for anyone, whose income depends upon whether he does or does not convict, to look upon any case with the same impartiality and detachment that he could and would if he had no interest in the fees."

A state police captain stated that the public seems to view the JP courts as a "kangaroo set-up." This attitude may be unfortunate, from the standpoint of respect for the law. Yet even more significant is the fact that most JP courts in New Mexico are, indeed, a sort of kangaroo set-up.

Excerpts from the
STANDARD FAMILY COURT ACT
Promulgated by the
National Council on Crime and Delinquency
1959

The family court shall be a division of [the highest court of general trial jurisdiction]. The state shall be divided into..... family court districts, for each of which a judge or judges shall be chosen as provided in Section [ ].[1] In each county a family court shall be held at the courthouse or other duly designated place by the the judge or judges of the family court district. The family court judge shall hold sessions in each county at times directed by the presiding judge of the family court, except that he may, at his discretion, hold court in any county within the district at any time required by the urgency of a case. The presiding judge may temporarily assign a family court judge to preside in another district when the urgency of one or more cases requires him to do so.

In any case in which it has jurisdiction, the court shall exercise general equity powers as authorized by law.

COMMENT ON SECTION 3

The family court should be a statewide division of the highest court of general trial jurisdiction, thus commanding community prestige and having the necessary stature to obtain the services necessary for its full operation. Its judicial work is necessarily of a high order, and it should not be either a so-called "inferior" court or a specialized court, either of which would suffer the inherent limitations of inferior or special courts. The family court requires the full jurisdiction of the general trial court.

Although the family court should be placed within the existing court organization, it should be a separate division within the court structure at the level of and a part of the highest court of general trial jurisdiction.

Excerpts from the
JUVENILE COURT ACT
Promulgated by the
National Council on Crime and Delinquency
1959

There is hereby established for the state of ..... a court to be called the juvenile court. It shall be a court of record; it shall have a seal; and the judges, clerks, and referees of the court shall have power to administer oaths and affirmations. The judges shall have the same powers and salary as the judges of the [highest court of general trial jurisdiction].

The juvenile court districts of the state shall be constituted as follows:

District 1 shall be composed of the following counties:....
District 2 shall be composed of the following counties:....
[Etc.]

In each county a juvenile court shall be held at the courthouse or other duly designated place by the judge or judges of the juvenile court district. The juvenile court judge shall hold

sessions in each county at times directed by the presiding judge of the juvenile court, except that he may, at his discretion, hold court in any county within the district at any time required by the urgency of a case. The presiding judge may temporarily assign a juvenile court judge to preside in another district when the urgency of one or more cases requires him to do so.

COMMENT ON SECTION 3

The 1949 edition of the Standard Act contained a provision for the establishment of juvenile courts on a local basis without suggesting a particular level of court aside from providing that it should be a court of record. However, one of the weaknesses of the county system is that most counties—whether they provide personnel through court staff or, as in many rural counties, through public welfare departments and other chil- juvenile court shall be a division of the highest court of general trial jurisdiction. The text of the section refers to counties as the territorial basis of jurisdiction, but where the court of general trial jurisdiction is so districted that a district covers two or more counties, the same districting can apply to the juvenile court. In such a state the bracketed alternative designated by the words "or other jurisdictional district" may be adopted.

The bracketed terms "local court" and "state court" do not, of course, appear in the law; they are inserted to identify the alternative plans of recommended court organization. The term "local" is not fully descriptive, since in many states the highest court of general trial jurisdiction is at the circuit or district level, and the court is often supported in whole or in part by state funds.

The state juvenile court plan is somewhat different from that in the 1949 edition of the Standard Act. Three states (Connecticut, Rhode Island, and Utah) have set up state-administered and -financed juvenile court systems. The Connecticut and Utah courts are on the basis of a small number of districts, with full-time judges and other specially selected personnel. In Rhode Island the two judges cover the entire state as one district. At its annual meeting in 1948, the National Probation and Parole Association adopted a resolution endorsing the state form of juvenile court organization.

dren's agencies—do not hire adequately trained persons or do not hire enough of them. One of the main reasons for this state of affairs is that the courts are frequently "inferior" courts, at a level lower than that of the court of general trial jurisdiction. Thus they do not command the prestige, status, and financial support accorded courts of highest general jurisdiction.

The present provision for local courts therefore states that the local

The district plan has been effective and advantageous for many purposes, and it has presented no difficulties. (See William N. MacKay, "The Juvenile Court as a State Responsibility," NPPA *Yearbook,* 1951.) The problem of travel when judges are on a circuit has not proved to be a difficulty. Many matters may be handled nonjudicially; in those cases in which a decision before the judge is necessary, the child can be brought to the place in the district where the judge is holding court.

The plan of a juvenile court as a division of the highest court of general trial jurisdiction is in accord with modern concepts of judicial administration. Most leading authorities in the field believe that a state should have, instead of many specialized courts, a uniform court system with branches or divisions to which the judges are assigned according to their special abilities for particular kinds of judicial work and according to the needs of the service. (See Roscoe Pound, "The Juvenile Court and the Law," NPPA *Yearbook,* 1944; "The Place of the Family Court in the Judicial System," NPPA JOURNAL, April, 1959.)

The Children's Bureau prefers the structure provided for in the alternative section.

Excerpts from

THE MODEL JUDICIAL ARTICLE FOR STATE CONSTITUTIONS

§4. THE DISTRICT AND MAGISTRATE'S COURTS.

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

Committee comment: The number of District Court judges and magistrates and District Court divisions must be flexible in order to allow for adjustment to new conditions. The authorization to provide for "divisions" was thought desirable in terms of the need for specialized courts, such as probate and divorce courts. But it was also thought to be desirable that these specialized courts be manned by judges whose functions need not be confined to such courts. Thus, all branches will be administered as one court with no conflicts of jurisdiction and no waste of judicial manpower.

The Committee believed that the Supreme Court would be the most expert body to decide how many judges and magistrates are required in each district.

The authority of a district judge and magistrate to sit in any district is complementary to the authority of the Chief Justice to assign judges anywhere in the State in order to make the most efficient use of judicial manpower.

¶2. District Court Jurisdiction. The District Court shall exercise original general jurisdiction in all cases, except in so far as original jurisdiction may be assigned exclusively to the Magistrate's Court by the Supreme Court rules. The District Court may be authorized, by rule of the Supreme Court, to review directly decisions of State administrative agencies and decisions of Magistrate's Courts.

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

Committee comment: It was the Committee's view that cases involving minor matters such as traffic offenses and small claims should be delegated to magistrate's courts, and that this would be necessary to avoid an unreasonably large number of district judges with general original jurisdiction. It was also thought that where the districts covered a large geographic area or temporary congestion occurred in any district, magistrates might appropriately be used to relieve the district court of undue burdens. Because of the need for flexibility in the use of such courts it was deemed best to leave the terms and conditions of the magistrate's court jurisdiction in the control of the Supreme Court by rule.

Chapter V

ACTION PROGRAMS FOR IMPROVEMENT

Judicial reform is not a sport for the shortwinded.

- Arthur T. Vanderbilt

Is it worth it? For you, maybe not. Maybe you are one of the considerable number of people who can live a lifetime and never go to court for anything more serious than a traffic violation.

But when a uniformed officer rings your doorbell and hands you a paper which says that the home you live in is not going to be yours any more, or when the telephone rings at night and it is your son calling to say that he is in jail charged with a crime that he knows nothing about, or when the other automobile runs through the stop sign, smashes your car and puts you and your family in the hospital, then suddenly the circuit court in your county, and the judge who presides over it, become more important to you than anything else.

- Glenn R. Winters

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SELECTED READINGS ON
THE ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT

* Excerpt

A Topical Outline for Guided Reading and Discussion

ACTION PROGRAMS FOR IMPROVEMENT

I. Education
   - A. Are members of the legal profession aware of the problems and possible solutions for improving the methods of selection and tenure for your state's judges? If not, how can they be made aware?
   - B. Are other governmental officials aware of these problems and solutions? If not, how can they be made aware?
   - C. Are leading citizens of the state aware of these problems and solutions? If not, how can they be made aware?
   - D. Is the general public aware of these problems and solutions? If not, how can they be made aware?
   - E. How can the degree of awareness of the above groups be determined?
     1. Personal interview
     2. Direct correspondence
     3. Public opinion polls
     4. Other
   - F. Who is responsible for developing an awareness in each of the above groups?
     1. Judges and judges' organizations
     2. Lawyers and state and local bar associations
     3. Law schools
     4. Civic organizations
     5. Others
   - G. What techniques can be employed to develop informed awareness in each of the above groups?
     1. Research and dissemination of results
     2. Circulation of proposals
     3. Conferences and resulting recommendations
     4. Discussion and study programs from organizations and schools
     5. Systematic use of the various media
   - H. Can the method of selecting judges in your state be changed by legislation or would it require a constitutional amendment?
   - I. What are the methods of amending your state's constitution and what are the respective requirements?
     1. Referendum
     2. Initiative

II. Action
   - A. Referendum
     1. Who should draft proposed legislation?
     2. Who should introduce such proposed legislation?
     3. How can supporters make their views known to legislators?
        - a. Personal contact
        - b. Committee appearances
        - c. Others
   - B. Initiative
     1. Is procedure available under existing law?
     2. If it is, what are the requirements to get a proposal on the ballot?
   - C. Voter campaigns
     1. What kind of basic steering or planning committee should be formed?

a. What sub-committees should be formed?
    1) Finance
    2) Publicity
    3) Liaison
        a) Legal profession
        b) Media
        c) Political parties
        d) Organizations
        e) Business and professional
        f) Education
        g) Religion
        h) Ethnic groups
        i) Others

b. Meetings
    1) Organizing
    2) Speaker's bureau

c. Endorsements

d. Voter services

2. What kind of financing is required and how can it be obtained?
3. What kinds of publicity and public relations are necessary for a successful campaign?
    a. Is there a need to retain professional public relations council?
    b. What kinds of media (newspapers, periodicals, radio and television) support can be obtained?
    c. What types of campaign literature are necessary and where should they be distributed?
4. What kinds of support from judges' organizations and bar associations should be sought?
5. Who will be opposition and how can such opposition be met?
6. What kinds of pre-election day activities should be utilized?
7. What kinds of election day activities should be utilized?

D. Implementing legislation
    1. Who should be responsible for anticipating and drafting such legislation?
    2. What are the deadlines for initiating the necessary reasearch and drafting of such legislation?
    3. When should such legislation be introduced and by whom?

EXCERPTS FROM CONFERENCE CONSENSUS

NATIONAL CONFERENCE ON JUDICIAL SELECTION AND COURT ADMINISTRATION
1959

Action Programs to Achieve Judicial Improvements

Action programs to achieve judicial improvements of a basic nature require years of careful planning, education and execution and substantial sums of money. Strong, active state and local bar associations are essential.

The necessity for thorough education of the bench and bar with respect to a program is often overlooked. This education should be carried on in the law schools and should be continued after graduation. Law teachers should be active participants in these programs as well as in other activities of the organized bar. The need for able and impartial judges and efficient administration of justice should be emphasized in the colleges, high schools and even the grade schools.

Public participation should be enlisted as early as the drafting stages of the program.

The support of newspapers and other media of communication is essential to the success of any program. Obtaining that support requires individual conferences with and requests for assistance from publishers, editors, editorial writers and the executives of other media.

Careful research is the foundation of success. Professional advice is highly desirable in both research and public relations.

There is a growing awareness on the part of the public throughout the United States of the desirability of judicial improvement that will welcome the encouragement and guidance of the bar.

There is a continuing need on the part of state and local bar associations for a central agency on the national level to accumulate, assemble and act as a clearing house of information on current and past activities in the practical aspects of the planning, research and execution of projects for improvement in judicial selection and tenure, court administration and court reorganization and integration. The central agency should investigate and report upon sources and means of financial and other assistance available on a national scale in these areas of activity.

Experience has taught that compromise and expediency early in any program have failed to gain commensurate support.

It is vital to supply information to state and local civic organizations and to obtain their support and active participation.

EXCERPTS FROM PRESIDENT'S COMMISSION REPORT RELATING TO THE COURTS

Last month the President's Commission on Law Enforcement and the Administration of Justice, established nearly two years ago, issued its long-awaited report. Its 340 pages comprise the work of 19 commissioners, 63 staff members, 175 consultants, and hundreds of advisers. The commissioners, staff, consultants, and advisers come from every part of America and represent a broad range of opinion and profession.

In the process of developing the findings and recommendations of the report the Commission called three national conferences, conducted five national surveys, held hundreds of meetings, and interviewed tens of thousands of persons.

The report makes more than 200 specific recommendations—concrete steps the Commission believes can lead to a safer and more just society.

We present here excerpts dealing with some of the more important aspects of judicial administration. Space does not permit quotations of much additional material equally worthy of presentation in these pages. Readers are urged to order the complete report, which is available from the Superintendent of Documents, Washington, D.C. 20402 at a price of $2.25.

COURT REORGANIZATION

While in some states successful court reform has created courts able to meet new demands, in many states the entire court structure continues to reflect an earlier age. There is a multiplicity of trial courts without coherent and centralized administrative management. Jurisdictional lines are unnecessarily complex and confusing. Each court and each judge within the court constitute a distinct administrative unit, moving at its own pace and in its own way. In a number of states courts not responsible to a statewide system nor subject to its management continue to be viewed as a source of local revenue, and criminal justice is seen as a profitmaking activity.

Modern management and efficiency can be promoted by putting all courts and judges within a state under a single, central administration with provision for the shifting and allocation of judicial and administrative manpower to meet changing requirements.

For this to be effective the judiciary must be given rulemaking power over the methods used to handle its business. It is important that men continuously and intimately involved with court procedures be responsible for court rules. Legislatures cannot deal with the technical problems of court management and procedure effectively. In most States the rulemaking power is lodged in the Supreme Court, a judicial conference, or some other body of judges.

States should reexamine their court structure and organization and create a single, unified system of courts subject to central administrative management within the judiciary. The Commission urges states that have not yet reformed their court systems to draw upon the experience of those states and organizations that have made advances in this area. Central administration within the judiciary should have the power to make rules and shift manpower to meet changing conditions.

COURT ADMINISTRATION

For cases to move expeditiously through a court with many judges and thousands of cases, it is necessary that all the cases and all the judges be centrally supervised. Central supervision of cases makes it possible to keep track of the status of every case, to shift cases from one judge to another according to their various caseloads, to set up special calendars for cases that inherently demand prompt action or that have fallen behind the normal schedule. Central supervision of judges makes it possible to assign judges appropriately, to set up work and vacation schedules that all judges are expected to conform to, and to press dilatory judges to act more speedily.

Of course, the supervision of calendars and judges is a judicial function. It could be performed by a court's chief justice, or by a small administrative committee of judges, or by an administrative judge appointed for this purpose. Whatever form central supervision takes, large and complicated courts need the services of professional administrators to assist the judges charged with administration. Some thirty states have provided for an administrative office to aid the judiciary by collecting judicial statistics, managing fiscal affairs, supervising court personnel, and performing duties

Reprinted from 50 Judicature 239 (March, 1967)

in connection with the assignments of judges and scheduling of cases. In many of these states, however, the functions of this office are limited, and its potential has not yet been realized. By bringing men into courts with training and a primary interest in management, techniques of court management will be improved. Court administration is a developing field in which a clear understanding of techniques is evolving. There is a need for more experimentation and increased use of promising methods for ordering the business of the courts. . . .

In some of the largest cities the volume of criminal court business has reached a point at which the use of computers and automatic business machines is being instituted to maintain an orderly flow of clerical business. While there does not yet appear to be a pressing need for the use of such elaborate equipment in medium sized cities, many of their courts do need to reorganize and modernize their manual clerical methods through better forms, filing systems, and indexing and scheduling methods. Modern technical management holds promise for enabling these courts to perform their job more quickly and cheaply by improving the retrieval of information, the scheduling of cases, and the maintenance of records.

The Commision urges courts and court administrators to seek the advice and assistance of experts in business management and business machine systems in an effort to develop plans and forms for more efficient court business systems. . . .

SELECTION OF JUDGES

The quality of the judiciary in large measure determines the quality of justice. It is the judge who tries disputed cases and who supervises and reviews negotiated disposition. Through sentencing the judge determines the treatment given to an offender. Through the exercise of his administrative power over his court he determines its efficiency, fairness, and effectiveness. No procedural or administrative reforms will help the courts, and no reorganizational plan will avail unless judges have the highest qualifications, are fully trained and competent, and have high standards of performance.

Methods for the selection of judges vary from jurisdiction to jurisdiction, and some states use different methods of selection for upper court judges than for lower court judges. In 11 states judges are appointed either by the governor or the legislature; in some of these states they are first appointed and then must run for election on their records; in 15 states they are elected without party labels, and in 19 states they are elected on a partisan basis. In a number of states there is a professional or nonpartisan screening process that develops an identified group of professionally qualified persons from which all nominations or appointments are made, or that reviews proposed nominations or appointments for professional competence. Sometimes this process is required by state constitution or statute; sometimes it is informal. Sometimes it is employed for all judges, sometimes only for certain kinds of judges. It is employed least often in states in which judges are elected in partisan contests.

The elective process, particularly if judges are elected as candidates of political parties, has not proven an effective system for choosing persons to fill an office as removed from daily political pressures as the judiciary should be. Selection of candidates tends to be dictated to an excessive degree by party considerations and other factors unrelated to the candidates' qualifications for office, and the electoral process gives the voters little opportunity to weigh the relative abilities of the candidates. Interest in and experience with politics are qualities that may contribute to a judge's effectiveness in settling disputes and dealing with people who appear before the court. But judicial appointments should be made on grounds other than partisanship, and sitting judges should be free from political obligations. Indeed there is reason to believe that the elective method discourages the candidacy of good potential judges and sometimes subjects those who do run to undue political pressures in the performance of their office.

In general, the Commission favors the appointive methods for the selection of judges over the elective method, although it recognized that in some special situations the elective method presents advantages. especially in diverse urban communities where the election of judges may insure that all groups in the community are represented in the judiciary. The Commission believes that far more important than the choice between elective and appointive systems, however, is the existence in the selection system of an effective procedure for the screening of potential candidates for the judiciary on the basis of their personal and professional qualifications for office. The group that performs this screening function should be established by law, should be directly responsible to the appointing authority, and should be carefully selected to insure that its membership is representative and is not drawn from an unduly narrow segment of the bar or the community.

The Commission believes that the best selection system for judges is a merit selection plan generally of the type used successfully in Missouri for some 25 years, and long supported in principle by the American Bar Association and the American Judicature Society. The Missouri type plan is now in use by the mayor of the city of New York to appoint criminal court judges. The Missouri plan is characterized by four elements:

1. The nomination of a panel of judicial candidates by a nonpartisan commission composed of

conscientious, qualified laymen and lawyers.

2. The requirement that the executive appoint judges only from the panel submitted by the commission.

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

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

Another way to remove judges from undue political influence and to increase their independence is to provide lengthy tenure. Yet in a number of States the judges of major criminal trial courts must seek reelection as frequently as every four years. Federal judges hold office for life during good behavior, and in many states they sit to a fixed retirement age, or for a term of from 10 to 14 years. Under both of these approaches giving long tenure, generally high judicial standards have been maintained. It is important that there be liberal provisions for the dignified retirement of judges at a fixed age to ensure the continuing capacity of the judiciary. Many states and the federal government have authorized the continued service of vigorous judges, enabling the full use of their experience while making room for the appointment of younger judges.

The Commission recommends that judiical tenure in major trial courts should be for a term of 10 years or more, with appropriate provisions to facilitate retirement of judges at a predetermined age. . . .

Long tenure for judges makes the maintenance of high standards of judicial performance crucial. It requires that there be administrative methods of dealing speedily and appropriately with judicial incompetence or misbehavior. In most states the only available methods are impeachment or recall, which are both cumbersome and far too severe to be invoked in most cases. A particular problem is excusing physically or mentally incapacitated judges from their duties without publicly humiliating them. Recently California and Texas, among other states, have set up within the judicial department commissions charged with examining judicial conduct and taking necessary action. These commissions rely heavily upon informal conferences and discussions calculated to appeal to an individual judge's sense of status and his self-motivation. In California over a 4-year period this commission has removed 26 judges and has been instrumental in the retirement or resignation of a number more, yet only one recommendation for removal was contested in the state supreme court. The Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee has held hearings on proposals to create similar machinery in the federal system, as well as to improve procedures for the compulsory retirement of physically or mentally disabled judges. In New York a Court on the Judiciary has been established to hear complaints of judicial misconduct.

The Commission recommends that states should establish commissions on judicial conduct taking the approach used in California and Texas. States should review their statutes governing the retirement of physically or mentally incapacitated judges to insure that the judiciary can require the retirement with dignity of judges unable to bear the burdens of office.

THE LOWER COURTS

The Commission has been shocked by what it has seen in some lower courts. It has seen cramped and noisy courtrooms, undignified and perfunctory procedures, and badly trained personnel. It has seen dedicated people who are frustrated by huge caseloads, by the lack of opportunity to examine cases carefully, and by the impossibility of devising constructive solutions to the problems of offenders. It has seen assembly line justice. . . .

Study commissions have pointed out the scandal of the lower criminal courts for over a century. More than 30 years ago the Wickersham Commission concluded that the best solution to the problem would be the abolition of these courts. The Commission agrees. While the grading of offenses as felonies, misdemeanors, and petty offenses is an appropriate way of setting punishments, is dictated by history and constitutional provisions, and is necessary for such procedural purposes as grand jury indictment and jury trial, the Commission doubts that separate judicial systems are needed to maintain these distinctions. A system that treats defendants who are charged with minor offenses with less dignity and consideration than it treats those who are charged with serious crimes is hard to justify. The unification of these courts and services may provide a sound way to bring about long overdue improvements in the standards of the lower courts. Existing differences in punishment, right to grand jury indictment and jury trial, and the like should be retained unchanged, but all criminal cases should be tried by judges of equal status under generally comparable procedures. . . .

The rural counterpart of the lower criminal court is the justice of the peace, who continues to exercise at least some criminal jurisdiction in 35 states. In a majority of these states his compensation is fixed by a fee assessed against the parties. In at least three states justices of the peace receive a fee only if they convict a defendant and collect from him, a practice held unconstitutional 40 years ago by the Supreme Court. . . .

Careful consideration should be given to total abolition of these offices and the transfer of their functions to district or circuit judges who have full-time professional standing. In states where it is decided to retain the office, all justices of the peace should be placed under central state administration and supervision; they should be made accountable to a state judicial officer and be required to maintain records of their activities. Justices should be salaried and all fines and fees should go to the state treasury. The fee system should be replaced and local government foreclosed from considering criminal justice a prime source of revenue. All justices should be required to be fully trained in the law and in their duties, and their level of competence should be maintained by continuing training.

PRE-TRIAL RELEASE

Bail projects should be undertaken at the state, county, and local levels to furnish judicial officers with sufficient information to permit the pretrial release without financial condition of all but that small portion of defendants who present a high risk of flight or dangerous acts prior to trial. Each state should enact comprehensive bail reform legislation after the pattern set by the Federal Bail Reform Act of 1966. . . .

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

DEFENSE COUNSEL

All jurisdictions that have not already done so should move from random assignment of defense counsel by judges to a coordinated assigned counsel system or a defender system. . . . Each state should finance assigned counsel and defender systems on a regular and statewide basis. . . .

The objective to be met as quickly as possible is to provide counsel to every criminal defendant who faces a significant penalty, if he cannot afford to provide counsel himself. This should apply to cases classified as misdemeanors as well as to those classified as felonies. Counsel should be provided early in the proceedings and certainly no later than the first judicial appearance. The services of counsel should be available after conviction through appeal, and in collateral attack proceedings when the issues are not frivolous. The immediate minimum, until it becomes possible to provide the foregoing, is that all criminal defendants who are in danger of substantial loss of liberty shall be provided with counsel. . . .

Legal assistance should be provided in parole and probation revocation proceedings, in juvenile delinquency proceedings if there is a possibility of coercive disposition and in all legal processes that threaten the respondent with a substantial loss of liberty.

CITIZEN ACTION

Plans to improve criminal administration will be impossible to put into effect if those responsible for criminal administration do not help to make them. On the other hand, as this report has repeatedly stressed, crime prevention is the task of the community as a whole and, as it has also stressed, all parts of the criminal justice system can benefit from the special knowledge and points of view of those outside it. Business and civic leaders, lawyers, school and welfare officials, persons familiar with the problems of slum dwellers, and members of the academic community are among those who might be members of planning boards, or who might work with such boards as advisers or consultants. . . .

The Commission does not believe that the federal government itself should provide the staff to conduct studies or advise the very large number of local agencies that might wish such services. Federal assistance should be aimed instead at developing state or regional bodies with the skills to perform these services. In addition, the federal government could contract with private groups to conduct surveys and studies. Advice and studies by expert groups could become a valuable adjunct to the continuing work of the state and local planning bodies. . . .

As members of groups and organizations outside the official agencies of justice, citizens can play even a greater part than they can as individuals in helping to reduce crime. Private business, welfare agencies and foundations, civic organizations, and universities can contribute much toward helping them do it. . . .

Bar associations and other professional groups have an important role in encouraging legislatures and official agencies to implement changes such as those recommended by this report.

Excerpts from:

Crisis in the Courts

Howard James

I am proud to be here today. Proud because this is an important organization and in the past you have selected nationally known political figures to speak at your breakfasts. Last year Mayor John Lindsay and Attorney General Ramsey Clark. And before that Senator Joseph Tydings.

That you should now invite a newspaper reporter gives me great satisfaction.

Now because I know you can buy breakfast cheaper elsewhere, I must assume that at least some of you are here because you have either read, or heard rumors about, the series that appeared in *The Christian Science Monitor* last spring.

For that reason perhaps it would be appropriate to make a few comments about the series and the professional reaction to it.

First, some lawyers and judges seemed surprised that a newspaper would devote so much time, money, and space to the subject. I can understand this reaction because most newspapers have, except for the more sensational criminal cases, generally ignored the courts.

This, I believe, is changing.

I think the citizens' conferences held by the American Judicature Society have played an important role in this.

But so has the Reardon committee. It now appears that this effort on the part of the bar to tell the press what it can and cannot print has helped awaken the press to its responsibility to keep watch over the courts as well as other branches of government.

But the growing interest of the press in our system of justice is also dictated by the times. Readers are more knowledgeable and better educated than at any time in history. They want to know what the Supreme Court is up to. Is it the High Court's role to take up the causes of all the little men trampled by the masses? Or should it reflect the thinking of the majority of Americans in its decisions?

Is Associate Justice William J. Brennan, Jr., right, when he writes in the current issue of the *American Bar Association Journal:*

> Society's overriding concern today is with providing freedom and equality of rights and opportunities, in a realistic and not merely formal sense, to all the people of this nation. . . .

Or is George Wallace right?

Or what about Roscoe Pound's attack on the adversary process—calling it, with some disdain, the "sporting theory of justice?"

What about our system of questioning witnesses? Or of each side bringing in an expert witness to refute the other side's expert?

Does our system of criminal justice really work when recidivism averages 70 per cent or more? Are we still more concerned with retribution than reformation when dealing with criminals?

Should we be helping the town drunks—I mean helping beyond keeping them from freezing in the streets, or being hit by a car?

Should a man be *qualified* to run for a judicial office? A New Mexico court official sent me a campaign card he picked up in a courthouse there—a card being distributed by a Democratic candidate for probate judge. It is hard to believe, but this is the message the card contained, along with the picture of the candidate: "Vote for John D. Hall, Democratic candidate for probate judge. Old poor broke man needs a job. Have no education but can sign on the dotted line."

I am told this man didn't win, but he didn't miss it by far. And as I traveled the nation gathering information on the courts I found other men with similar qualifications in office.

Should we have ways of taking care of children who have been mistreated by parents—ways other than throwing them behind bars with young hoodlums? For this is what is happening across the country.

Is a barber, factory worker, or local policeman really qualified as a probation officer?

Excerpt from 51 Judicature 283 (March, 1968)

Why do people complain that sheriffs' offices and local police departments are too often staffed with near-Neanderthals? Is there any truth to this charge?

Should criminal court judges be green men who have little or no experience with the criminal process? I found this is often the case in our large cities, and it is true to a large extent here in Chicago.

Should thousands of minor court magistrates operate without supervision—even by the local newspaper?

Should a judge or magistrate be able to use his official position and the courthouse—which is owned by the taxpayers—to profit as a marriage broker, as some do? A Houston lawyer told me he makes $20,000 a year on marriages, as a justice of the peace. There are some reports that Detroit's Recorder's Court is becoming a marriage mill. If other governmental officials, a building inspector or a U.S. Senator, pocketed money given them by citizens for services rendered, either through tradition or for any other reason, the official would be condemned.

Should a judge or magistrate function as a kind of tax collector—as is the case in hundreds of communities across this nation where the city fathers depend upon traffic fines and costs to help balance the local budget?

Should courts continue as collection agencies for local merchants and loan agencies?

Some judges and lawyers oppose this. A recent issue of the *Des Moines Register* reported that a District judge in Iowa ordered a justice of the peace to pay $2,500 damages when it was discovered the JP "issued a warrant on a charge known to be false." The judge said the JP carries on "an extensive collection business," and "is not adverse to using the criminal arm of the law in furtherance of his collection business."

There is a truism that only unusual events make news. The unusual thing in this case seems not that the JP was running a collection agency. This is common across the country. It is news because the system was challenged.

In all of this I do not point my finger at all judges and lawyers—that would be both unjust and unwise. I am not really talking about corruption in the courts—at least of the kind that hit Oklahoma's Supreme Court not long ago; or the kind that is uncovered every few years in a trial court or two in nearly every state.

But I am talking about the kind or *quality* of justice that is found in our state courts.

Does a judge have the right to be irascible? Sarcastic? Should he pay attention during a trial—or can he read a newspaper or even the journal of the American Judicature Society?

Should a rural judge show favoritism towards a local lawyer when an attorney from the big city has to try a case in that community?

Shouldn't the average middle class American, a person not eligible for free counsel, have a clear-cut, certain way of finding a competent lawyer when he needs one?

These are some of the things the people are asking—or at least they should be asking these things.

Along this line I think one of the more disappointing comments that I have heard about press coverage of the courts, and I have heard it with surprising regularity, is that laymen cannot understand the law and the courts.

It is disappointing because it tends to be a little self-serving on the part of those who say it. The implication is that a mere newspaper reporter should not delve into these mysteries that are reserved for the learned men who have the right to put Esquire after their names.

Now I do not mean a newspaper reporter should try to go to court and argue a case; draw up contracts; or do other things that lawyers do.

But if newspapermen can successfully criticize an opera or our foreign policy or write about modern rocketry, nuclear physics, or biochemistry, then why not about our system of justice?

The greatest barrier is the language of the law. The professional jargon and formality. Yet the language of a nuclear physicist can be equally perplexing.

If the press is to do its job in these confusing times, it will ordain specialists who understand the law. Reporters who know how a trial should be run. Who have a basic concept of

what justice is all about.

Perhaps it should be pointed out that the *Christian Science Monitor* is not alone in its interest in the condition of our courts. As early as 1961 Louis Banks wrote in *Fortune* magazine:

> A layman's hard look at the condition of the courts today results in the conclusion that the reformers are not alarmists; in fact, the trouble with the administration of justice today is graver than they have indicated. In state after state too many courts flounder in mismanagement, ineptitude, and archaic organization.

If conditions were bad in 1961, they are equally critical in 1968. It seems certain that if the lawyers and judges do not act swiftly, then the rest of us must.

You see, somewhere in my travels I began to realize that, contrary to what some professionals say, our system of justice does *not* belong to the judges and lawyers. It belongs to the people.

Now I must defend an independent judiciary. It should not bend under the weighted will of the masses, a will that ebbs and flows as the tide. This is not what I am getting at.

I mean that the people have the right, and the obligation, to demand that our system of justice be efficient, effective, and just.

We are in an era of change. Two cars in the driveway and a traffic jam in civil court. Urbanization. A mobile society. A potential breakdown of the family tied in part to commonplace divorce and use of the "pill" for nonmarital excursions. Riots. Crime. Big government that can smother the individual. Big brotherism that may leave you standing naked. You name a problem and the United States is probably wrestling with it.

It is our system of justice that is, to a large extent, supposed to resolve these problems.

Is it doing the job? I wonder. *Can* it do the job?

Perhaps.

As I traveled around, looking at our system of justice, three points kept coming to me. These three thoughts help explain why conditions are as they are.

First, it seems that not all judges and lawyers—perhaps partly because some search for riches, fame, or personal comfort—fully understand their role in our changing society.

Next, I have discovered that scholarship in and about our system of justice is not only lacking, it is appalling.

My third conclusion is that too many professionals refuse to look at our system of justice as a whole.

To begin with the first point, we all know what a pilot does: he flies a plane. A teacher teaches. And a garbage man—except, perhaps, in New York City—picks up garbage.

But what does a lawyer or judge do? This is a question that is constantly being debated. Lines grow fuzzier and fuzzier as we consider specialization both in the courts and the practice of law; as hearing boards and commissions are formed; and as non-lawyers take on jobs once reserved for lawyers, while attorneys get their fingers into more and more fields long handled by laymen or other professionals. Look at divorce and the court's growing role in reconciliation—something once reserved for the family pastor. Or look at the tradition in the juvenile field started here in Chicago, where the judge is supposed to be a substitute father.

A lawyer or judge may know how to look up the law, or handle a jury, but do they really have the skill and training to do *all* of the non-legal things we ask them to do?

Now this is tied tightly to the second point: scholarship.

Billions of dollars and millions of man hours have been spent on getting men into space. We count the stars in the Milky Way and the miles to Mars. We find out why Johnny can't read; and how to spoon feed him his new math. All for the good.

Now if we can do this, then why can't we find out how many minor court judges there are in Pennsylvania or Georgia? Find out what they do? How they do it? Or why they do it?

Or take the trial courts. We ship men off to prison or put them on probation without knowing why. Nor do we know what impact it will have on their families or the community as a whole.

Then the third point, also related: we fail to see our system of justice as a whole. We frag-

ment it, turn our backs on the meaner parts, looking only to those segments that come under the heading of the "big league."

This is not how the *people* see it.

How does the punch press operator feel about our system of justice when he is done in by some collection agent working for a small loan company, and who carries the title and power of justice of the peace?

How does the business executive react when he is stopped in a speed trap and soaked by city hall's hand-picked magistrate, a man interested far more in collecting money than in traffic safety?

How does the slum teen-ager feel when he sees prostitutes or numbers racket runners operating openly because they have paid off city hall or a policeman—while the slum dwellers themselves are harassed by the police and other officials?

What about the lawyer who gets close to a local judge?

Here in Chicago we have had two scandals in the past year involving the local jails. Murder. Brutal homosexuality. Beatings. Privilege-buying.

You have all heard about the prison situation in Arkansas.

I found children in jails across the United States. Some had simply run away from intolerable home conditions.

Right here in Chicago a boy who was being beaten regularly by his drunken father grew uncontrollable in school. So this boy was sent to a school for delinquents. Now this child was so bright he had skipped a grade, but we throw him into a school for young hoodlums because he falls apart after his father constantly beats him.

How can a judge of conscience permit these things to happen? Is his comfortable career so sacred and significant that he will simply turn his back on his fellow human beings?

A Tennessee judge got his name in the papers not long ago because the county did not clean his courtroom. He was so indignant he closed down the court until something was done.

Are there no judges in America with the courage to do the same thing to force more important reforms?

Judicial Reform through Total Revision of State Constitutions

Susan A. Henderson

As noted in recent issues of JUDICATURE, the series of Citizens' Conferences jointly sponsored by the American Judicature Society and various state organizations are beginning to have wide-spread results. Not only are demands for reforms of court organization and procedures increasing, but movements for parallel reforms of the legislative and executive branches of state governments are snowballing as well. This growing interest in revising state governments has already resulted in the passage of hundreds of constitutional amendments, including 552 adopted by referenda in 50 states between January 1963 and June 1967. (*State Government*, Winter, 1968, page 20.)

However, it is becoming quite apparent that the amendment process alone is inadequate to transform constitutions written by late nineteenth century believers in laissez-faire into the streamlined mandates of authority needed to support effective state government in the latter half of the twentieth century. States must modernize their government if they are to be effective partners in federal assistance programs. For this reason, there has been a dramatic revival of mechanisms for writing new state constitutions. Most frequently, attention has been focused on the use of constitutional conventions as a means toward this end. Since 1961, conventions have been held in Connecticut, Maryland, Michigan, New Hampshire, New York, Pennsylvania, and Rhode Island. Plans are currently underway for a convention to be held in Hawaii this summer. In the fall, voters of Illinois, New Mexico and possibly Arkansas and Tennessee will decide whether or not to call conventions.

Though conventions have received the most publicity, the use of revisional commissions has been more widespread. They are currently investigating the possibilities of total constitutional revision in Arkansas, Florida, Illinois, Kentucky, Michigan, Tennessee, Texas, and Virginia. Such commissions have been used by 21 other states during this decade alone. As a third device, a California commission has been successfully working on article-by-article revision of its constitution, submitting articles for approval by referendum as they are finished.

Ideally, those desiring the promotion of judicial reforms will be able to capitalize on this trend, combining forces with groups working for complementary reforms in other branches of state government. However, success may be lost if strong forethought is not given to the most effective means of channeling these forces for reform. The purpose of this article is to summarize some of the major advantages and disadvantages of the two most frequently used devices, conventions and commissions, with specific reference to the effectiveness with which they have been used to procure modern judicial articles, in contrast with revision of the judicial article alone by constitutional amendment.

Traditionally, the calling of constitutional conventions has been the preferred mechanism for writing state constitutions. Since the first conventions were held in Delaware (1776), Massachusetts (1779), and New Hampshire (1778), well over 200 such meetings have been held in this country. While all states have held at least one convention, the device has been used more frequently in some states than others, with Louisiana (10), Vermont (12), Georgia (12), and New Hampshire (15) having called conventions most often. Between 1900 and 1923, 19 constitutional conventions were held. The device then lapsed into disuse for 15 years except in New Hampshire, where the convention is the sole method of amending its constitution. Between 1938 and 1961, 13 conventions were held in seven states. Yet of these, all but the Missouri Convention (1945) were limited in scope. While New Jersey (1947) and Missouri pro-

Reprinted from 51 Judicature 347 (April, 1968)

duced new documents which were submitted for public approval, the other states merely drafted amendments to existing constitutions. The use of conventions for comprehensive revision is thus on the whole a recent revival.

Supporters of the convention approach argue that it is the most democratic means of writing constitutions, that it is frequently the most efficient means of achieving needed revisions, and that it allows for maximum education of the public as to the merits of proposed revisions because of the widespread publicity received. Others note, however, that such conventions are apt to be extremely partisan in nature, that they can be very expensive (estimates are that the recent New York convention cost $10,000,000), and that they are unlikely to approve measures which reduce available patronage provisions. Also, it may be extremely difficult to attain the necessary legislative and electoral approval needed for the calling of such conventions.

As a means of remedying these weaknesses in the convention approach, constitutional revision commissions have been used in many states. Ideally these commissions are composed of a small number of non-partisan experts who have the capacity to draft an instrument of a high quality, after a thorough investigation of the state's needs, which embodies all needed revisions of the old constitution. They are theoretically able to perform the necessary research and drafting with the expenditure of fewer man hours and require much smaller budgetary appropriations. Additionally, it is easier to obtain legislative approval of commissions because their products must be reported to the legislature for modification and approval before submission to the public.

However, many weaknesses are inherent in this device. Because these commissions often act as adjuncts to the legislature, they are frequently dominated by it and may be even less willing to suggest controversial revisions than conventions. As appointees, the commissioners may refrain from offering suggestions which they know will displease those who have appointed them. The main disadvantage, however, is that draft constitutions must be submitted to the legislature for approval, which they seldom receive. For instance, Oregon's proposed constitution, written by commission and containing provision for court reorganization, was rejected by the Legislature in 1963.

Given the strengths and weaknesses of both conventions and commissions, the decision of which to use must be based on an assessment of the likelihood of its success in achieving needed reforms. Unfortunately, the records of both have been weak within recent times. In the last quarter of a century, over 60 commissions have been appointed in half that number of states. Yet, only one constitution produced in this way has eventually been approved by the electorate—by Georgia in 1945. There is a possibility that Florida will soon follow. However, this is indeed a meagre record of success.

Unfortunately, constitutional conventions have not had much more success in the period since World War II. New Jersey in 1947 was able to draft a workable constitution with what at the time contained one of the nation's best judicial articles, but was not permitted to deal with parallel needs for legislative reform. Between that convention and the Michigan convention of 1961 all conventions, with the exception of those called to draft the initial constitutions of Alaska, Hawaii, and Puerto Rico, were so limited in scope that none dealt effectively with their state's judicial article. Within this decade, the results of the Michigan, Rhode Island, New York, and Pennsylvania conventions have ranged from mediocre to abortive. Only in Maryland has the institution been effective in producing a document of uniformly high quality.

It thus appears that neither the calling of a constitutional convention nor the appointing of a revision commission will of itself insure the desired results. Both devices are subject to political pressures and are apt to produce drafts so full of compromises as to be little or no improvement over the prior constitution. However, if approval of a constitutional convention can be obtained, it seems somewhat more likely to produce a document which will be eventually approved by the electorate.

The Maryland convention has shown that it is indeed possible for a constitutional conven-

tion to write a good judicial article. Almost simultaneously, the New York convention showed how not to write a good judicial article and how not to get voter approval. It is therefore worth spotlighting some of the key aspects of the Maryland and New York conventions which contributed to those results.

MARYLAND

As pointed out by James E. Clayton in the *Washington Post*, the Maryland convention came closer to the ideal convention attended by public-spirited, nonpolitical delegates than any other held within the century. Much of this was due to the influence of former Governor J. Millard Tawes who actively promoted the convention and helped lay the groundwork by appointing a commission of well qualified experts to draft proposals for changes in the existing constitution. The commission's work was so outstanding, both in its content and in its lack of political overtones, that it would have been difficult for the convention to inject a significant amount of partisanship into the document.

The Maryland General Assembly wisely ruled that delegates should be chosen in a non-partisan election and set salaries at an unattractively low level. As a result, the state's regular political leaders were discouraged from running for positions as delegates—there was little to gain by election and much to lose by defeat in the non-partisan election.

A recent analysis of the Illinois constitutional convention of 1920 has observed that low pay for delegates had two unfavorable side effects—it narrowed the field to men of largely independent means, and it resulted in a great deal of absenteeism on the part of delegates. These effects were not noted in Maryland, where interest was widespread among all classes of citizens, and the resulting blue-ribbon slates yielded a group of dedicated, well-qualified individuals. Those elected were encouraged to maintain their individualism by the practice of seating delegates in alphabetical order, rather than by party or district, at the convention.

There was some disadvantage in this extreme individualism as it frequently led to lengthy debates and an occasionally frustrating lack of leadership. However, the disadvantages were more than outweighed by the fact that the delegates, men and women who for the most part had no political ambitions, were willing to give consideration to good ideas gleaned from many sources, including leading governmental authorities from other states. This was seen in the final judicial article, written to include the Niles plan for selection of judges with a nominating commission, despite the fact that the proposal had previously been defeated in the legislature five times.

NEW YORK

In New York, on the other hand, a high decree of partisanship was shown by the 98 Democratic, 85 Republican and 3 Liberal delegates. After selection in a partisan election, the delegates symbolized their strong political leanings by electing as president of the convention the Democratic leader of the state legislature's lower house. Even residency was on a partisan basis, with Democrats tending to stay at the DeWitt Clinton Hotel and Republicans at the Schine-ten Eyck. The majority were experienced politicians with a stake in maintaining the existing constitution's provisions for patronage positions. Of the 186 delegates, 19 were sitting and three were retired judges. More than 100 others were lawyers, many of whom held or had held political office or appointments. Despite Governor Rockefeller's endorsement, proposals for merit selection of judges were defeated. Proposals for a court reorganization doing away with the appointive office of justice of the peace were similarly rejected. The resulting judicial article was a catastrophe and contributed significantly to the partial defeat of the proposed constitution.

The recommendations of the Pennsylvania constitutional convention as to the judicial article had not been finalized at the time this was written, but it was generally known that while some important judicial reforms were in the making, others had scant chance of approval and the net result was apt to be a par-

tial disappointment to some who had hoped for more. Pennsylvania judicial reform leaders indicated their feeling that here, too, partisan election of delegates was a major factor.

It thus appears that the character of the convention's delegates is the factor most likely to affect a convention's attitude toward the incorporation of needed judicial reforms. This will of course surprise no one. However, reformers may, in their haste to get a convention, overlook the disastrous effect which inadequate attention to the method of delegate selection may have on the eventual outcome. Messrs. Allen and Ransoni point out in their book *Constitutional Revision in Theory and Practice* that opposition to change tends to come from those who have some status in the existing document. Thus prior political experience, while an asset to a delegate in many ways, more often than not appears to make him less receptive to innovations like non-political judicial selection than his non-partisan colleague. As shown in Maryland, non-partisan elections are most apt to yield delegates who will favor needed reforms.

Additional factors were also extremely important in the Maryland experience. Certainly not the least of these was the support of Governor Tawes. However, the New York convention, in which Governor Rockefeller's proposals were rejected, is proof that this alone is not enough. The excellent draft constitution prepared prior to Maryland's convention was also important. However, in view of the extensive work by Pennsylvania's preparatory committee, this was not the decisive factor. Strong campaigns for public education and support were carried on by citizens groups in all three states. In both Pennsylvania and Maryland, a firm advance time table was established and most deadlines were met. Maryland combined all these factors.

Maryland's success* can best be attributed to the combination of all these factors. But one of the major lessons her experience teaches is the substantial contribution made by delegates elected in non-partisan elections. This lesson is further emphasized by the work done at the 1952 Hawaii convention and the 1955 Alaska convention by non-partisan delegates. Where this example cannot be followed, experience in Arizona, California, Colorado, Florida, Illinois, Iowa, Missouri, Nevada, New Mexico, North Carolina, Oklahoma, and Texas suggests that the most reliable road to major judicial reform still lies in seeking specific constitutional amendments.

(*Notwithstanding the high quality of the proposed new constitution, Maryland voters rejected it in the May 14, 1968 elections, leaving Michigan the only state in recent times to adopt an entirely new constitution. Reports indicate that negative voter attitudes about parts of the new constitution other than the judicial article defeated the Maryland proposal. Editor)

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

Reprinted from 51 Judicature 17 (June-July, 1967)

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.

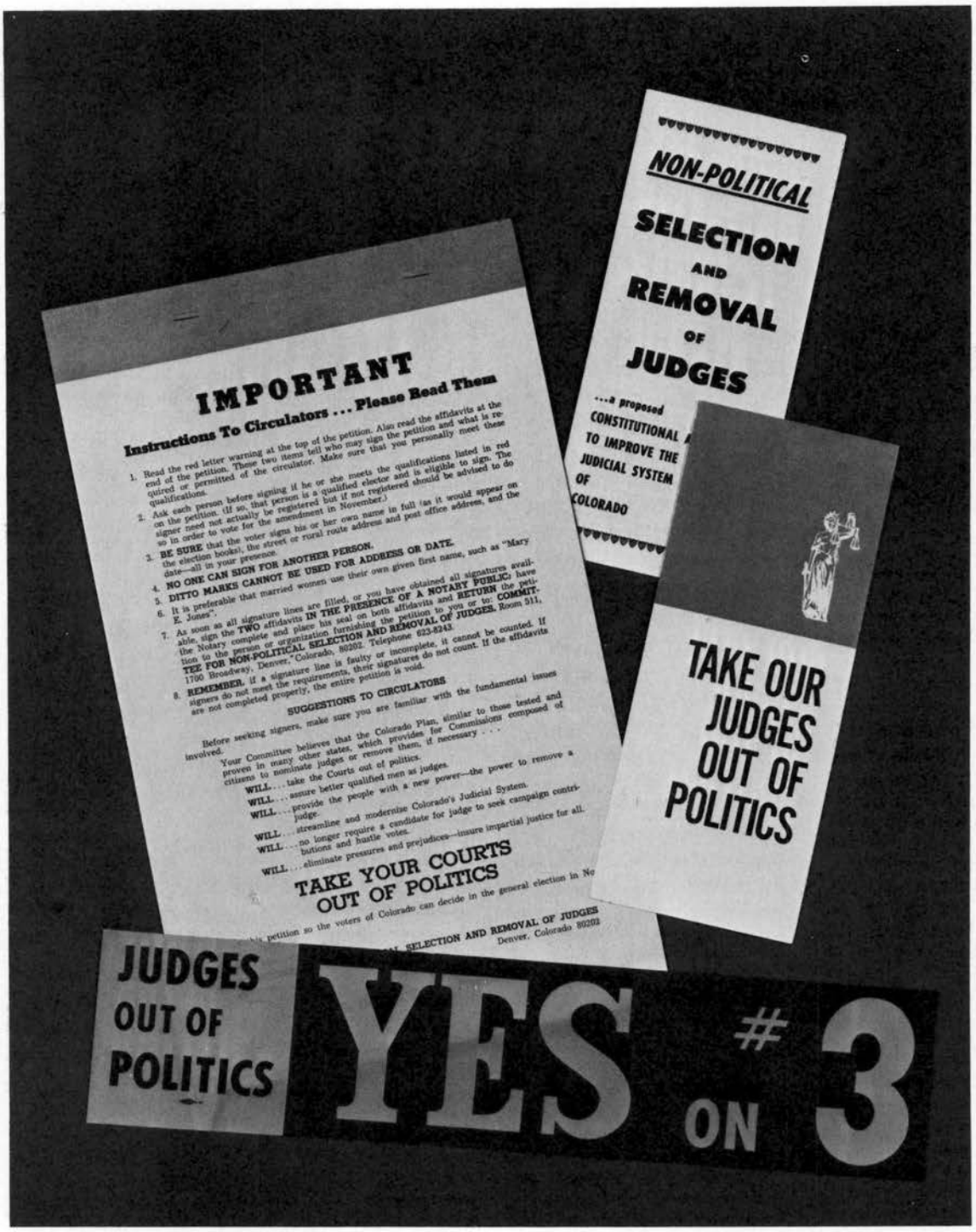
The proposition was designated Amendment No. 3 and was submitted with four other amendments, and two referred laws dealing with daylight saving time and capital punishment. Ours received a larger total vote than any other question.

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

bills (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.

Excerpts from

Iowa Shows The Nation It Can Be Done

THE IOWA STATE BAR ASSOCIATION

WINNER OF THE

AMERICAN BAR ASSOCIATION

1962 AWARD OF MERIT

Completion of a Program. On June 4, 1962, the voters of Iowa approved an amendment to the Iowa Constitution which replaced the partisan election of judges with the American Bar Association plan for non-political selection and tenure. This event marked the successful completion of a program which has been the main project of this Association since 1958.

Steps Taken. The steps taken in carrying out the program were:

A. Research and drafting of the Amendment.
B. Securing approval of the Amendment by the Iowa Legislature in 1959 and 1961.
C. Conducting a campaign to inform and persuade the public of the advantages of the Amendment, culminating in the favorable vote of the people on June 4, 1962.

Problems and How They Were Met.

A. The Key - a strong and dedicated bar. It has been said that Judicial reform can be accomplished only over the dead bodies of lawyers and judges. Iowa has shown that this is not true. We firmly believe that that individual members of the bench and bar, when properly informed, will support improvements in judicial administration, and that a strong and active organized bar is the key to success in such programs. This is the message we wish to bring to other associations engaged in similar efforts -- do not sell yourselves short; lawyers and judges, through the organized bar, will support and can accomplish fundamental judicial reforms.
B. Fundamentals - Compromises. Judicial reorganization programs commonly include improvements in court structure, (such as minor court revision) and tightening up of court administration, as well as selection and tenure of judges. The program originally prepared by our committee was quite broad in scope, but was later cut down simply to the American Bar Association plan for selection and tenure. This is the fundamental reform.
C. Drafting -- Gaining Bar Support. Many years ago the American Bar Association, The American Judicature Society, and many state bar associations, including The Iowa State Bar Association, embarked upon studies in the field of judicial selection and tenure. From these studies

a formula developed which has served as a basis for practically every judicial reorganization program sponsored by bar associations throughout the country. In Iowa, we developed our own plan based upon the lessons of these studies. This plan was submitted to the Board of Governors of the Association early in 1958, which directed that it be submitted on a state wide basis to the lawyers and judges of Iowa. Discussion was had in nearly every country of the state from June to November, 1958, and every opportunity was given to the bar generally to express itself. Opponents to the plan also circularized lawyers throughout the state. In November, 1958, the Board convened to evaluate all suggestions, criticisms and recommendations. The Board, after considering all points of view, including those expressed by the Iowa District Judges Associations, the Iowa Conference of Bar Association Presidents, and the Junior Bar Section, ordered the appointment of a special committee to endeavor to hammer out a proposal based on the debate and discussion. A most remarkable thing happened at this point. The President of the Association appointed to the committee three of the most vigorous and informed opponents of the plan, together with three past Presidents of the Association, plus one man from the most populous county in the state. These seven men, coming from the four corners of Iowa and having broadly divergent ideas, met for many days, argued basic principles, objections and details, and literally locked themselves in a room until they were able to obtain unanimous agreement upon a plan of judicial selection and tenure in the form of a proposed constitutional amendment which each could conscientiously recommend. The plan that these dedicated men developed was submitted to and approved by the Board of Governors by a unanimous vote. It was then presented to the Iowa Supreme Court, which adopted it as its own plan by unanimous vote and recommended it to the General Assembly in a written report filed in January 1959. Later the seventy-five District Court Judges of Iowa endorsed the Amendment, with only half a dozen dissenting voices.

D. Legislative Approval. Amendments to the Iowa Constitution must be approved twice in identical form by the General Assembly before being submitted to a referendum of the people. The problem at this stage was obvious -- securing a majority of the votes in each house in two consecutive sessions of the Legislature. It was felt that a large-scale public campaign at this point would be wasteful and unnecessary. Instead, we relied mainly on individual contacts by lawyers and judges from each locality with their own legislators, as well as expressions of support by county and city bar organizations. The lawyers and judges came through; the Amendment passed by a very close vote in 1959 and by a four to one margin in 1961.

E. Timing the Election. Iowa statutes permit the submission of proposed constitutional amendments at general or special elections. If we had waited for the general election of November, 1962, we would have had the anomalous situation of asking the people to vote on an amendment to remove judges from politics at the same election in which sixty-four of our seventy-five District Court judges and three of our nine Supreme Court judges would be running for reelection on party tickets. Hence, it was decided that the Amendment should be submitted at a special

election at the time of the June, 1962 primary.

F. Planning for the Campaign. The planning began in July, 1961. We had ten months. Our thinking was confused and somewhat divided. Some felt that the Amendment would carry with no promotion whatsoever. Others felt a full-scale campaign should be launched immediately. We finally agreed that we should wage a limited campaign, aimed mainly at people who vote in primary elections, and timed to reach maximum impact just before the election.

G. Professional Counsel. Our uncertainty convinced us that we should seek help from those more skilled in advertising and promotion of public measures. A public relations firm was employed. Their first recommendation turned out to be invaluable -- to secure a motivational survey in depth of the attitudes of Iowa voters toward the plan. This survey took longer than expected, and was difficult to evaluate, but it taught some important lessons:

(1) the people were frightfully uninformed, not only about the proposed Amendment, but about selection of judges in general;
(2) the people were not particularly excited about this subject;
(3) it would be the kiss of death to have this Amendment known as a "lawyers' bill;"
(4) the people had a very high opinion of judges; and,
(5) initial reactions of the uninformed to the Amendment were likely to be negative.

Later on, we realized we had misconceived the function of public relations counsel. We had thought we could turn most of the burden over to them and let them run the campaign. This was wrong. Luckily, we found out before it was too late that the promotion of this kind of Amendment demands a fervor almost characteristic of religious evangelism, and the driving force behind such a movement cannot be hired.

H. Bar Organization for the Campaign. One member is elected to the Board of Governors of the Iowa State Bar Association from each of the twenty-one judicial districts of the state. Each board member served as chairman of the promotional committee for his district. District committees varied in size, but in most cases members from each political party were on the committee. County chairmen were appointed in each county. Similar organizations were created in the Junior Bar Section and in the District Judges' Association. The principal duties of the county and the district committeemen were to arrange for speeches before local civic groups of all kinds; to secure news coverage of such speeches; to recruit members of the county lay voters' committee; to handle arrangements for local essay contests, local advertising and direct mail; to write letters to friends and clients; and finally, to get out the favorable vote. At the height of the campaign, it is estimated that over 1,000 of Iowa's 3,200 lawyers were actively working for the Amendment. Response and activity varied from county to county, of course, and with some exceptions, this was directly reflected in the final vote.

I. Judge Support. The attitude survey provided convincing proof of the high esteem in which judges are held by the Iowa public. It was important, then that the judiciary have a pre-eminent role in the campaign. This was assured through the fine cooperation of the Chief Justice and other

members of the Supreme Court and of the officers and members of the Iowa District Judges' Association. The Iowa Judges' Association's name appeared prominently on all promotional materials. Judges gave unstintingly of their time in making speeches to groups of all sizes, and in making television and radio appearances. They also appeared as signers of direct mail and as sponsors of newspaper advertising on a local basis. When two or three district judges began to get under publicity for the opposition late in the campaign, the overwhelming support for the Amendment among the judiciary was brought home to the public by a barrage of letters from judges to editors of state-wide and local newspapers.

J. Lay Support. The League of Women Voters of Iowa officially endorsed the Amendment while it was still in the Legislature. The League printed and distributed pamphlets explaining the plan. League members made speeches, house calls, and telephone calls in support of the Amendment, and worked to get out the favorable vote on election day. A state-wide lay committee, with members in each county, was formed early in 1962 with a popular, widely-known newspaper editor as its head. The committee was called the "Voters' Committee for Judges and Courts." People from all walks of life were included, with particular attention to community leaders such as prominent farmers. Their names appeared as sponsors of advertisements in local papers and as signatories of direct mail appeals to voters. They were asked to talk or write to friends and relatives urging a "Yes" vote. Many did so. The Committee's name was used on almost all campaign materials as the sponsor of radio and television commercials. The endorsement of the program by these community leaders was the important message we wished to carry to the voters. By election day, the Voters' Committee had assumed great importance. Valuable support was also received from the teachers' and bankers' associations and from the leadership of the Iowa Farm Bureau.

K. Financing. Fortunately, we didn't have to call on our lay committee or any outside source for financial support. Much of the cost was met from the current budget of the Bar Association. Many individual lawyers, judges and local bar groups contributed on a local level to defray costs of mailings to voters and advertising in local papers.

L. Spreading the Gospel.

(1) A fifteen minute film was prepared for use in presenting the Amendment to luncheon clubs, P.T.A. groups, and the like. Panel participants in the film included the Chief Justice of the Supreme Court, a district judge, a member of the League of Women Voters, the head of the Voters' Committee, a prominent farmer, and a high school girl.

(2) An essay contest was announced in all high schools of the state. The subject matter of the essay contest was "Why the Citizens of Iowa Should Adopt the Iowa Plan for the Selection of Judges." The winner was to receive a year's tuition at any Iowa University or College of his or her choice. A number of county bar associations sponsored prizes for county winners. More than one thousand high school students participated.

(3) Pamphlets of various kinds were prepared and widely distributed.

Extensive use was also made of materials prepared by the American Bar Association and the American Judicature Society. Hundreds of thousands of sample ballots were prepared with the "Yes" square filled in, and the message "Vote Yes for America's Finest Court System" emblazoned across the front. This sample ballot and a folder bearing the picture of Chief Justice Theodore G. Garfield and containing his answers to nine key questions about the Amendment were mailed to 350,000 primary voters. We feel that this was one of the most important and effective aspects of the campaign.

(4) The primary voter was our target. Since the referendum on the Amendment was to be held at the same time as the primary election, we were confident that the vote would be small and confined mainly to those who customarily vote in the primary. This was most fortunate because we could concentrate on this group, rather than the electorate at large. In nearly every county of the state the names of the persons who voted in the last primary election were obtained and envelopes were addressed to them. Letters were prepared by state headquarters, showing endorsement of the plan by the Voters' Committee members for each county. These letters, together with the enclosures mentioned above, were then mailed by the local people in each county. The impact was much greater than if the same materials had been mailed from the state capitol, without the endorsement of local leaders.

(5) News coverage was excellent and unbiased. Favorable items were constantly placed at the editor's finger tips through news releases issued by the headquarters office and our public relations counsel. At times it appeared that our opponents obtained coverage which was disproportionate to their numbers and the actual weight of the points they were making. To offset this, countering releases were issued as soon as possible, and in some cases before the opposition's item even hit the papers.

(6) Editorial support was received from over 95% of the papers of the state. This was facilitated by an exchange of selected editorial comments, handled by our public relations counsel; thus many fine editorials were reprinted in a great many papers which otherwise might not have carried them. Television and radio stations carried public service programs in which the pros and cons of the Amendment were discussed. Such efforts met with varied success. In general, it was our conclusion, after a few such encounters, that the debate type program should be avoided where possible, because the opposition is able to raise more confusion with misleading arguments and incorrect factual statements, and more aversion to the plan through emotion-packed harangues, than can be dispelled in the limited time available on such programs.

(7) Television and radio advertising was used extensively and with great impact during the final week of the campaign. This was mainly of the one-minute and thirty second spot variety, although a number of taped five-minute television interviews also appeared on each television station in the state. Only one person was interviewed on each of these tapes, including the President of the Iowa Farm Bureau, the Chairman of the Voters' Committee, the Chief Justice, and one other member of the Supreme Court. This was pursuant to a decision late in the campaign to "beef up"

the television advertising. We feel that it was worth the cost.

(8) Newspaper advertisements were placed in every daily and weekly paper in the state. Bar groups and judges paid for many other advertisements in local papers. A half-page advertisement appeared in every Sunday paper in the state the day before the election.

(9) Pride of the voter in helping Iowa to be the first to make this fundamental change was emphasized in all of our publicity and other materials. We had no scandal to trade on. We knew that the apathy of most voters would make it impossible to command their attention long enough to truly inform and convince them of the merits of the program. Hence, we had to do our best to create a favorable image in the mind of the voter, and the appeal to state pride was the technique which was used.

M. Opposition. Very little opposition of a partisan nature was made public. Principal opposition came from a group of lawyers and two or three judges who banded together under the name of "Iowans to Preserve the Constitution." They received considerable publicity from the announcement of their formation and from the passage of a series of resolutions. Their press releases were picked up and given wide publicity. They made use of open forum columns in the papers, demanded time on radio and television stations equal to free time made available to the proponents, and arranged several television and radio debates. They also distributed pamphlets in a few localities. Their constant theme was that the Amendment would take away the right of the voters to select their judges, and that such power would henceforth be vested in the hierarchy of the bar association. We countered this argument by pointing out (1) that under the old system seventy-five per cent of Iowa's judges were originally appointed by the Governor, with no restraints; (2) that seventy-five per cent of them traditionally run for reelection without any opposition; (3) that the Amendment will thus give the voter a real chance for the first time to cast an effective vote on retention of judges; and (4) that this vote will be on the judge's own merits, free from confusion with political issues. There is no question but that our opponents scored heavily in some places and with some people, but they were hampered by ineffective organization and lack of funds. More importantly, the people they were convincing were not voters. Our converts went to the polls and theirs stayed home.

N. Results! The vote was decisive. The Amendment carried in 73 of Iowa's 99 counties. The favorable margin was 40,000 out of a total of 276,494 votes cast -- a 57.2% vote for the Amendment.

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*.

Reprinted from 51 Judicature 23 (June-July, 1967)

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.

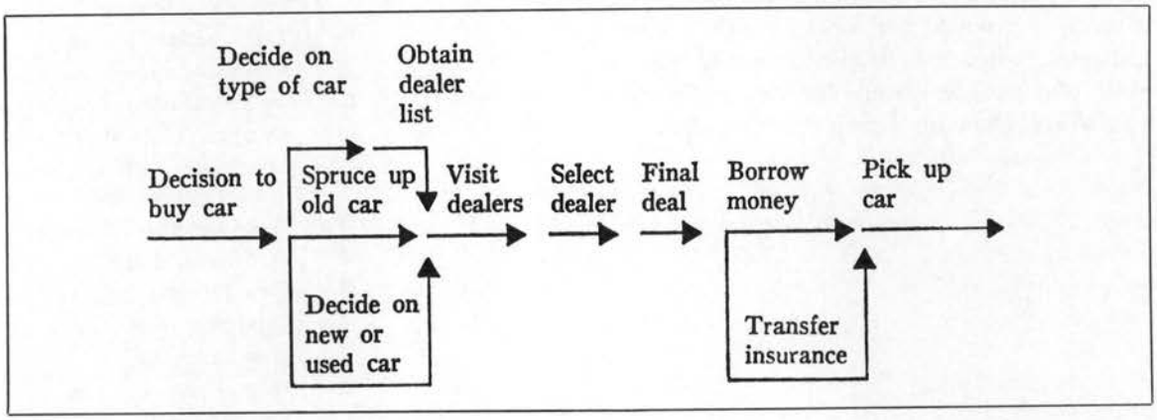
cated plane for campaign planning for both issues and candidates at local, state and national levels of government.

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.



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 sophisti-

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;

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.

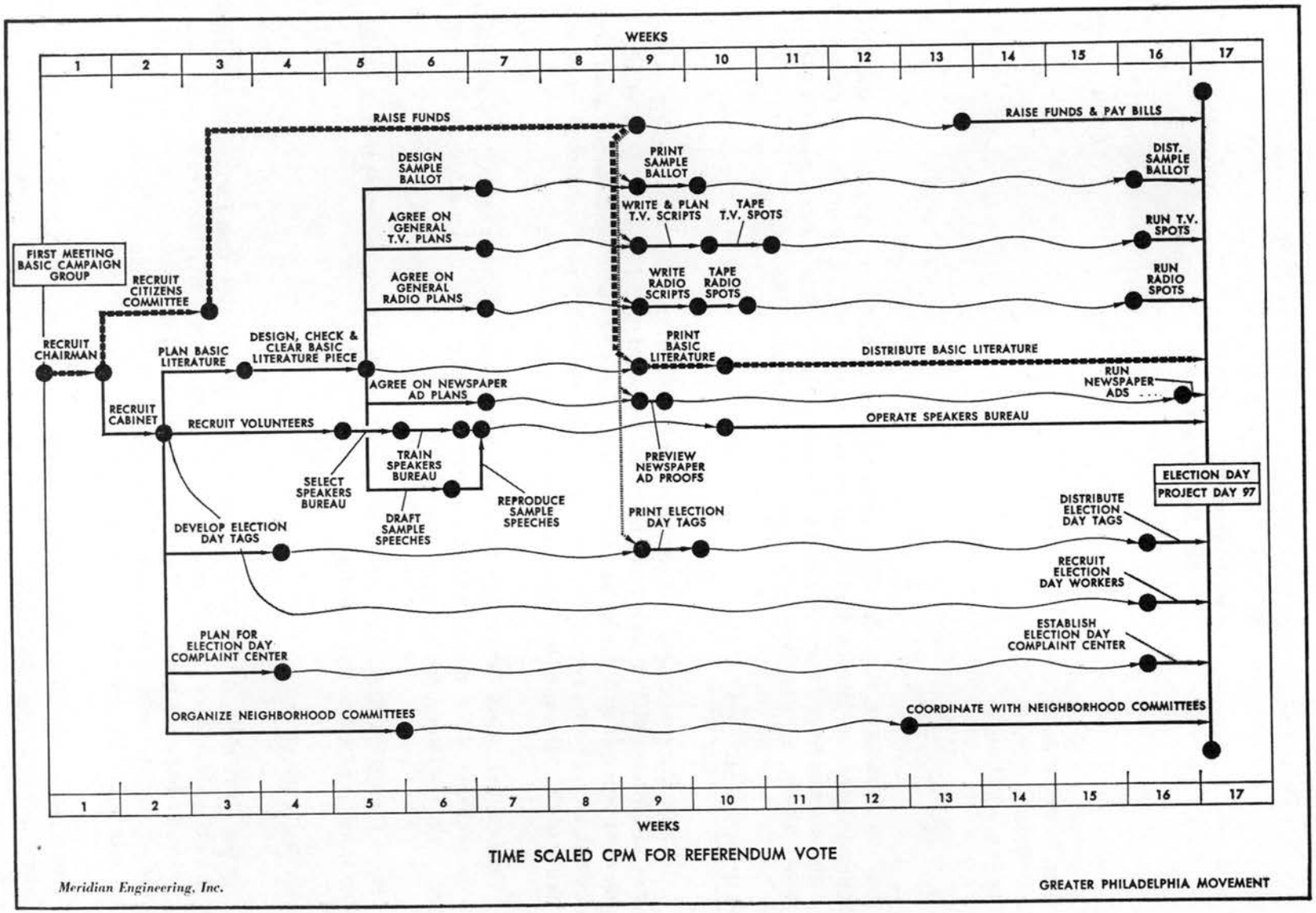
(*d*) write radio scripts; (*e*) print election day tags; and (*f*) preview newspaper ad proofs.

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.

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



TIME SCALED CPM FOR REFERENDUM VOTE

Meridian Engineering, Inc.

GREATER PHILADELPHIA MOVEMENT

M. B. MARSHALL
Public Relations Counselor
424 Madison Avenue
New York, N. Y.

April 15, 1941.

Hon. John Perry Wood
458 South Spring Street
Los Angeles, California

My Dear Judge Wood:

At the request of Mr. Ronald J. Foulis I am pleased to give you a resume of the campaign conducted in Missouri in behalf of Amendment No. 3, the "Non-Partisan Court Plan", which amendment was adopted by the voters of the State at the general election, November 5, 1940, by a majority of approximately 90,000 votes.

SPONSOR OF CAMPAIGN

Although the movement was initiated by the St. Louis Bar Association, with the backing of the Missouri Bar Association, it was recognized, I believe, by virtually everyone concerned that it would be best for the campaign to be sponsored by an organization composed of both layman and lawyers. The campaign was conducted, therefore, in the name of the Missouri Institute for the Administration of Justice.

This organization, while small, was composed of well-known laymen and lawyers in various sections of the State, and this group served as the nucleus for the formation of a large, state-wide campaign organization.

State Campaign Headquarters were opened in St. Louis on December 5, 1939, or eleven months prior to the election.

PLANS FOR CAMPAIGN

As the first step, a plan of procedure for the campaign was formulated, following closely the procedure I had found practicable in some fifty other movements with which I had previously been connected. There was no material deviation from this plan of procedure throughout the entire campaign, although we did not raise sufficient funds to carry out in full our publicity and advertising program.

This plan of procedure took into consideration the fact that there were the following three distinct steps in the campaign:

1. The formation of a strong, state-wide campaign organization, and the raising of sufficient funds to finance the campaign.

2. Securing the signatures (on initiative petitions) of a minimum of 5% of the voters in two-thirds of the congressional districts of the State, necessary to place the proposed Constitutional Amendment on the ballot.

3. The intensive state-wide publicity, educational and organization effort for the adoption of the Amendment after it was placed on the ballot.

A campaign Steering Committee, consisting of seven members, was appointed immediately. This committee served as the executive committee throughout the campaign --all plans, activities, expenditures, etc., being subject to the approval of this committee.

The Board of Directors of the Missouri Institute for the Administration of Justice was enlarged, so as to give equal representation to all sections of the state, to have both major political parties about equally represented, and to maintain a balance between laymen and lawyers.

A prominent banker was appointed Treasurer.

A Drafting Committee was charged with the responsibility of preparing the final text of the proposed Constitutional Amendment.

The campaign organization was divided into four divisions--the Finance Division, the Organization Division, the Speakers Division, and the Women's Division.

Under the law, the final date for the filing of the initiative petitions with the Secretary of State was July 5, 1940, or four months prior to the election. It was necessary, therefore, to coordinate and carry on at the same time the state-wide organization effort, the raising of funds, and the circulation of the initiative petitions.

It was recognized in the beginning that we would meet opposition from many members of the Bar. We also had to consider that strong political opposition might develop. However, we felt that if our ground-work was laid properly, opposition could be minimized.

FINANCE DIVISION

One of the principal problems, of course, was the raising of funds to keep all activities moving. Our goal was to raise the budget before the summer vacation period, so that funds would be available for intelligent planning and preparation for the intensive phase of the campaign, in September and October, for the adoption of the Amendment.

It was realized that most of the funds would have to be raised in St. Louis and

Kansas City.

A committee was formed to solicit lawyers, and another committee was formed to solicit laymen.

As the first step in obtaining the support of laymen, a dinner was given by a prominent business man to which many of St. Louis' business leaders were invited, and our plans were fully explained to them.

A list of prospective contributors was prepared, and following the dinner a letter and literature were mailed to this list. All other literature, as issued, was also mailed to this list.

A plan for direct solicitation of all prospects was worked out, and the direct solicitation proved to be the only effective way of obtaining substantial contributions.

Little effort was made to solicit funds outside of St. Louis and Kansas City until after the circulation of the initiative petitions was completed.

ORGANIZATION DIVISION

The Organization Division was charged with the responsibility of circulating the initiative petitions and it also served as the working organization for the adoption of the amendment.

Our campaign plan called for the formation of a campaign committee in each of the 114 counties in the State--each county committee to have a Finance Division, an Organization Division, a Speakers' Division, and a Women's Division.

We wanted to localize the activity as much as possible in order that it would not be merely a St. Louis and Kansas City movement. We tried to fix responsibility on each county unit, yet at the same time all activities were guided from the State Headquarters, so that each unit would work along the same lines and there would be a coordination of effort throughout the State.

Realizing that our success in organizing a campaign committee in any county would depend greatly on the attitude of the lawyers in the county, a letter was mailed to every lawyer in the State over the signature of the President of the Missouri Bar Association. A return "pledge card" was enclosed--to be signed by those favoring the Amendment and willing to aid in the campaign. This was followed up by subsequent mailing to the entire list.

It was realized further that the State could not be properly organized by a mail campaign alone, and that laymen as well as lawyers had to be interested and enrolled as workers.

Field men were employed, and we had as many as six in the field at one time. These field men were sent out when the initiative petitions were ready for circulation. Each field man was assigned a definite territory and was given specific instructions as to what he should try to accomplish on each trip through his territory. Daily reports from the field men made it possible for the State Headquarters to have accurate information at all times as to the situation in all sections of the State.

On his first visit to a county it was the task of the field man to contact as many of the influential lawyers as possible. He also endeavored to secure a Campaign Chairman (who was selected on the basis of prominence and influence in the county), and an Organization Chairman, who was expected to do most of the work, and to take charge of organizing the county and circulating the initiative petitions.

We endeavored to arrange a schedule for each field man so that he would return to the county every ten days or two weeks--to check up on the progress being made, to stimulate interest and to guide the activity.

In addition to the State Headquarters in St. Louis, we opened an office in Kansas City, and employed a paid Secretary for the Kansas City Campaign Committee.

One of our principal organization problems was obtaining the cooperation of labor. We anticipated some opposition from this source, and special committees were formed early in the campaign, in both St. Louis and Kansas City, to handle the labor situation. Although the Missouri State Federation of Labor adopted a resolution opposing the amendment, the various A. F. of L. groups did not campaign as a unit against us. The C. I. O. endorsed the Amendment.

WOMEN'S DIVISION

The work of the Women's Division was coordinated with the work of the Organization Division.

The cooperation of the Missouri League of Women Voters, the Missouri Federation of Women's Clubs, the Society of University Women, and several other important groups, was obtained.

This division did most effective work. The women were very helpful in circulating initiative petitions, and were enthusiastic workers in the campaign for the adoption of the Amendment.

SPEAKERS' DIVISION

The Speakers' Division in a county was charged with the responsibility of covering meetings within the county. In only a few instances were speakers sent from the State Headquarters. This plan saved traveling expenses, and also helped in localizing the campaign.

CIRCULATING INITIATIVE PETITIONS

The petitions were circulated principally by volunteers. In a number of districts paid circulators were employed, a few weeks prior to the filing date, to assure that there would not be a shortage.

The petitions were circulated in all congressional districts, although we were required to reach the quotas in only two-thirds of the districts. This was done for its publicity value and to help in arousing support for the Amendment.

The number of signatures finally obtained was approximately twice the legal requirement.

CAMPAIGN FOR ADOPTION OF AMENDMENT

All activities up to the time of the filing of the initiative petitions were conducted with consideration to the campaign which would follow for the adoption of the proposition.

Even the Drafting Committee, in working on the text of the amendment, considered the wording from a publicity standpoint.

Originally the proposal had generally been referred to as "an amendment relating to judicial selection and tenure." We sought a simple title, and one that would be short enough for newspaper headlines. We also knew that there would be a number of other propositions on the ballot for the November election, and that our proposition had to be clearly identified in the minds of the voters.

We decided to call it the "Non-Partisan Court Plan" and all of our literature, and our speakers and workers, as well as the newspapers, referred to the Amendment by that name.

When we began the organization work, and when our field men were sent out, we initiated a mail campaign to keep up the enthusiasm of everyone cooperating in the campaign, and to suggest definite activities. Almost every week some piece of mail was forwarded to the entire list from the State Headquarters. We also published a monthly newspaper of tabloid size to inform our workers of the progress of the campaign and to give them additional talking points.

By the time the initiative petitions were filed we had built up a state-wide organization of approximately 10,000 workers (i.e. persons who had signed pledge cards or who had indicated in other ways a willingness to aid in the campaign).

The summer months were devoted to expanding our organization, to perfecting our county campaign committees, and to enlisting the support of farm organizations, teachers' associations, chambers of commerce, civic, professional and other organized groups throughout the State.

Not having raised as much money as we had hoped for by July 1, 1940, we anticipated that we would not have sufficient funds to carry out in full the publicity and advertising program originally planned for September and October.

We felt, therefore, that the success of our campaign might depend largely upon the effectiveness of the work of our county organizations, particularly in those counties where the population is centered in one or two large cities.

Approximately two-thirds of the voters of Missouri reside in 37 of the 114 counties.

We concentrated our organization effort in these 37 counties, and retained two field men during July and August to aid in this work.

As the campaign progressed it became apparent that too much detail about the Amendment and its operation was confusing to the average layman, and that a brief statement of what the Amendment would accomplish had the greatest appeal.

We prepared a sample speech as a guide for speakers. We also prepared a small circular setting forth briefly "Ten Good Reasons for Supporting the Non-Partisan Court Plan." This little circular was probably the best piece of literature issued during the campaign.

Approximately 3,000,000 of the circulars were distributed throughout the State. They were of a size for insertion in small envelopes, and many business concerns inserted them in mail to customers, in packages and in monthly statements.

We were fortunate in obtaining the active support of all of the principal daily newspapers.

The editors of virtually all of the newspapers in the State, both daily and weekly, were contacted personally, either by our field men or by members of our county organizations. We sent out from the State Headquarters a large volume of news and editorial materials, and each of our county committees was urged to supplement this by giving local news regarding activities to the newspapers in the county.

The radio stations were very cooperative, and donated a considerable amount of time. The radio news commentators were prevailed upon to mention the Amendment on many occasions.

We also secured the cooperation of a large number of motion picture theatres, and "trailers" were shown in these theatres during the last two weeks of the campaign, without cost except for making the "trailers".

The funds available for advertising were rather limited and were insufficient. Some money was spent for newspaper advertising, and a small amount for radio time.

Little was done with regard to the political situation until September, because

we felt that if we first perfected a strong state-wide organization and secured much favorable publicity, the political leaders could be forced at least into a position of neutrality. The Republican and Democratic state platform conventions were held in September, and we endeavored to have a plank written into both platform endorsing the Amendment. This effort failed; however, nothing was said in either platform in opposition to our proposal, and later both the Democratic and Republican nominees for Governor issued statements personally endorsing the Amendment.

We also contacted most of the county political leaders. Some were friendly, and a few gave us active opposition. However, the net result of this work was that most of the county political committees kept hands off.

We gave considerable attention and time to organizing for election day. Since there were a total of seven propositions on the ballot to be voted upon, were were of the opinion that a last minute reminder would make many votes. We endeavored to place workers in every precinct. This plan was carried out fairly successfully, particularly in the larger cities and towns. Two million "reminder slips" were printed for our workers to hand out on election day.

I believe that this covers most of the highlights of the campaign. In my judgment, the most important phase of any campaign of this nature is in organizing along the right lines in the very beginning, getting the proper set-up, and deciding upon a definite plan of action with due consideration of all problems that may develop during the campaign. In other words, build the proper foundation.

Time is another important factor. Many campaigns fail because sufficient time is not allowed for organizing and systematizing each phase of the effort. It is virtually impossible to get up momentum in a campaign overnight. When an attempt is made to crowd too many activities into a short period of time, the result is a scattering of effort, and in most cases not one of the tasks can be done well.

When there is careful planning, when the various activities are well timed, when there is sufficient and proper backing in the beginning, and when there are adequate funds, it has been my experience that most campaigns can succeed, provided, of course, that the proposition is sound and meritorious.

IDAHO DAILY STATESMAN -- Boise, Idaho
August 19, 1966

Citizen Group Reveals Goal To Modernize Idaho Courts

Modernization of Idaho's court system was described Thursday as the goal of a citizens' group, formed following a public conference last June.

Organized as a nonprofit corporation, the Citizens' Committee on courts is headed by A. L. Gross Jr. of Boise.

He said the impetus came from the conference sponsored by the American Judicature Society but since then the work has continued by persons with no connection either with the courts or the bar.

At the June conference, those attending voiced general approval of a court modernization plan drafted by an Idaho Legislative Council committee.

Myran Schlechte, council director, said the preliminary report of the committee now is being put into form for a series of hearings throughout the state. The committee hopes to make recommendations to the 1967 legislature.

The hearings will be Sept. 8 in Caldwell, Sept. 9, Twin Falls; Sept. 22, Pocatello; Sept. 23, Idaho Falls; Sept. 29, Lewiston, and Sept. 30 in Coeur d'Alene. A followup meeting in Boise will be held Oct. 6-7.

The preliminary report suggests establishment of a two-level court system, made up of a Supreme Court and district courts. Under jurisdiction of district courts would be magistrates who would handle much of the work which now goes to justices of the peace and city courts.

A judicial council would be established to aid in selection and removal of Supreme Court and district judges, who would first be appointed but later be subject, periodically, to approval by vote of the people.

A court administrator also would be named and the present 13 judicial districts would be consolidated into seven districts.

CITIZENS' CONFERENCE ON IDAHO COURTS

CONFERENCE CHAIRMAN:

C. Patrick King
Coeur d'Alene
District Chairman
Citizens' Committee on Courts, Inc.

ARRANGEMENTS

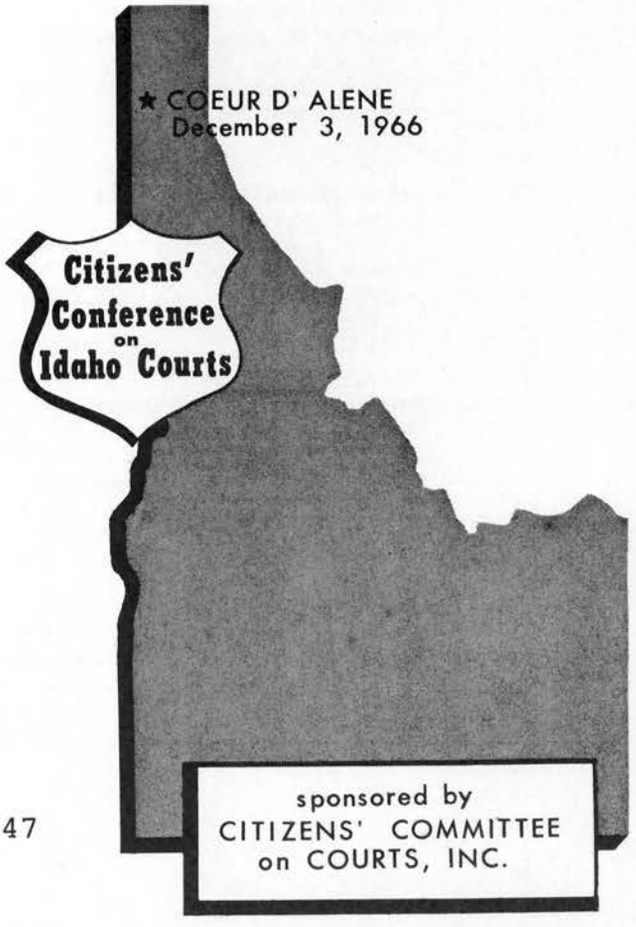
James Hawkins
Coeur d'Alene

Robert G. Templin
Coeur d'Alene

Donald Pierce
Kellogg

Gerald Turnbow
Kellogg

R. J. Bruning
Wallace



DESERET NEWS -- Salt Lake City, Utah
November 22, 1966

Work Begins To Revamp Court System

By PAUL SWENSON
Deseret News Staff Writer

A 13-member citizens committee went to work Monday to implement a program that would make these sweeping changes in Utah's court system:

—Replace justices of the peace with "courts of record."

—Remove, discipline or involuntarily retire judges—when necessary—by action of a commission rather than by the present system of legislative impeachment.

Rather than elect judges by popular vote, appoint them by action of a commission and the governor, allowing the people to remove unqualified judges at the polls.

The three recommendations were contained in a consensus statement of more than 100 interested laymen, judges and lawyers who attended a Citizens' Conference on Utah Courts during the weekend.

"To effectuate the recommendations of this conference, a citizens' organization—adequately staffed and financed—will be formed," said Dan W. Sheffield, executive secretary of the Utah State Bar.

The organization will advance education and information about judicial improvment.

"A steering committee, with two representatives from each discussion group at the conference has been established," Mr. Sheffield said.

'All members of the conference will be charter members of the organization and other interested Utah citizens are invited to join. We will give immediate priority to formulating a program for submission to the 1967 Legislature.'

Members of the steering committee are Eugene Johansen, Castle Dale; Mrs. N. A. Talvitie, Rev. John J. Hedderman, L. Reed Wood, Albert B. Fritz, Wendel E. Adams, Dr. William John Seare, all of Salt Lake City; Blaine R. Porter, Fred A. Schwendiman, Luke Clegg, all of Provo; H. Joel Salazar, Granger; C. K. Cordray and Dr. William D. Stratford, both of Ogden.

"The justice of the peace system is no longer adequate to serve the purpose for which it was originally designed," the conference consensus statement said.

"It should be replaced with courts of record, presided over by qualified judges whose compensation is not derived from fees collected. In rural areas where this would be impractical, the existing system should be improved."

The statement also said the legislative impeachment of judges is "archaic."

"This authority should be vested in a commission composed of judges, lawyers and laymen to investigate complaints and recommend appropriate action, including discipline, removal or involuntary retirement."

Present judges' salaries in Utah are too low, the statement said.

"Judicial salaries should be commensurate with income of the average experienced, successful lawyer."

Under another conference proposal, judges would be nominated by a non-partisan commission and appointed by the governor, then face possible removal by running against records (rather than opponents) on the ballot.

The conference also proposed creation of the office of court administrator under Utah Supreme Court supervision, and a judicial council of judges, lawyers and laymen to study and recommend judicial administration improvements.

CLARION LEDGER - DAILY NEWS
Jackson, Mississippi
October 15, 1967

New Voting For Judges

BY MIKE SMITH
Daily News Staff Writer

Our Declaration of Independence recorded the following grievance against the King:

"He has made the judges dependent upon his will alone for the tenure of their offices and the amount of their salaries."

Since that time, Americans have tried to keep the third branch of government—the judiciary—free from politics.

Yet the system now in use in most of America—and in Mississippi—places judiciary selection on the level of pure politics. Candidates for judicial office must seek the pleasure of "the establishment" and the voters through the familiar system of political concession.

But Mississippi may soon have a better system.

One of the determinations reached last month by the Citizens' Conference on Mississippi State Courts—a meeting of some 100 lay leaders from all parts of the state—was that the "Missouri Plan" should be adopted for selection of Mississippi's judges.

Twenty-five years ago the voters of Missouri adopted the plan. .Here is how it works:

—When a judicial vacancy occurs, a nonpartisan nominating commission selects three condidates for the post. This committee is composed of members of the bar association and the state's high courts, as well as members of the lay community.

—The governor of the state then appoints one of the three proposed candidates to the judgeship.

—At each following election, the voters decide whether to retain the judges in office or remove him. The only choice on the ballot is for retention or removal, thus doing away with political campaigning. If the judge is voted out of office, the process is begun anew.

This is a most effective and intelligent way to select and retain judges. It allows men on the bench to spend their time deciding cases, not running for the next election. Obviously, it does away with the need for cultivating political sup-

Backers of the plan in Mississippi doubtlessly will present legislation to introduce the system to the Magnolia State during the next session of the legislature. It could soon be a reality.

THE CITIZENS' CONFERENCE

Also recommended several other ideas for streamlining Mississippi judicial process. Among them were:

—Uniting all state courts under one administrative authority.

—Easing the appellate court workload, possibly by establishing a new intermediate appeals court between the trial courts and the Supreme Court.

—Establishing a jury selection commission in each county to secure, under uniform criteria, qualified jurors. Women should be used on juries under the same requirements as men, the conference recommended.

—Consolidation of all trial courts into one trial court of general jurisdiction in each community. This would do away with the justice of the peace system, but would include provisions for disposition of small claims on an informal basis.

—Raising of judicial salaries and benefits so they are more commensurate with the income of successful lawyers. This would attract the best members of the legal profession to the bench.

Former Chancellor Arnold Pyle of Jackson, long an advocate of court reform in Mississippi, serves as chairman of the conference committee and is using his extensive influence to make the conference recommendations a realiity.

The Sunday Advertiser

HONOLULU, JULY 14, 1968

A Progressive Judiciary

Besides reapportionment and debt limit, the issue which seems to have stirred the most general interest in the months preceding the Constitutional Convention is judicial reform.

This is largely attributable to two developments — the holding of a Citizens' Conference on the Administration of Justice in January of last year and the subsequent formation of the Citizens' Administration of Justice Foundation.

The chief value of the conference, which was sponsored by Governor Burns and Chief Justice Richardson, is that it brought Hawaii up to date on what other states are doing.

The net is that while our judiciary system's structure is basically sound, its operation is far less progressive than in many other states. This is especially true in the method of selection of judges and the provisions for their tenure, compensation and discipline.

THE COURTS EXIST not for the judges and lawyers — but for the public. They are the place where people go to get justice. Which is why the question of improving the judicial section of the Constitution is a fundamental one for the convention delegates.

The Citizens' Administration of Justice Foundation, the State-chartered, non-partisan organization which grew out of last year's conference, has now submitted proposals for consideration by the convention.

They are thoughtful proposals, in line with the actions taken in recent years by many Mainland states to raise the standards, improve the quality and heighten the effectiveness of their judicial systems.

What the foundation is urging, in brief, is the selection of competent judges through non-political methods based on merit; adequate compensation, with fair retirement benefits, for the judges; and security of tenure, subject to an appropriate and expeditious method of discipline, including, when necessary, removal for cause.

ELSEWHERE ON this page is the text of the citizens' foundation proposals, together with a summary of what has been done around the country in judicial reform.

The summary was prepared for the Con/Con Conference here last January by a world-recognized authority, Glenn R. Winters, executive director of the American Judicature Society, Chicago.

A careful reading of both articles will do much toward explaining why Hawaii should readily move forward toward the merit plan of selection and improved provisions for judges' pay and tenure.

Former U.S. Supreme Court Associate Justice Tom Clark, who came to Hawaii to speak on behalf of judicial reform, once wrote:

"Justice is everybody's business. . . . It affects every man's fireside; it passes on his property, his reputation, his liberty, his life; yes, his all!

"Courts sit to determine cases on stormy as well as calm days. We must therefore build them on solid ground, for if the judicial power fails good government is at an end."

THE MERIT PLAN system of naming judges works in the direction of getting the most highly qualified individuals on the bench.

By adopting it, the Constitutional Convention would — in the words of the citizens' foundation — "enable Hawaii to join those states which have moved to the forefront of judicial improvement."

THE SUNDAY ADVERTISER
Honolulu, Hawaii
July 14, 1968

Four Steps Toward Better Courts

The Citizens' Administration of Justice Foundation has submitted to the Constitutional Convention delegates four proposals for improving the operations of Hawaii's judicial system.

These involve a merit plan for selection of judges, improved compensation and tenure for judges, and a commission on discipline.

The text of the letter from Paul E.B. Wainwright, foundation president, to the delegates follows:

The Citizens' Administration of Justice Foundation presents its conclusions for your earnest consideration in the deliberations on the judicial section.

The foundation grew out of the Citizens' Conference on the Administration of Justice sponsored in Honolulu in January, 1967 by Governor John A. Burns and Chief Justice William S. Richardson with these organizations cooperating: Judicial Council of the Supreme Court of Hawaii; Bar Association of Hawaii; Young Lawyers Section of Bar Association of Hawaii; National College of State Trial Judges; and the American Judicature Society.

Ninety lay leaders of Hawaii, representing a wide cross-section of community organizations and interests, participated in the conference, which attracted such national figures as then U.S. Supreme Court Associate Justice Tom Clark, other distinguished jurists and Glenn R. Winters, executive director of the American Judicature Society, Chicago.

(The American Judicature Society is composed of more than 29,000 lawyers, judges and laymen in all 50 States and 44 other countries. It was founded in 1913 to promote the efficient administration of justice and is universally respected as a nonpartisan leader in the field of judicial reform. Its activities include maintaining an information and consultation service; conducting institutes, seminars and conferences; and publishing the journal "Judicature").

The conference at its close adopted the attached consensus statement. Its final recommendation resulted in the formation of the non-political, non-partisan, non-profit, lay (non-lawyers) organization "to provide for the continuing improvement and public understanding of the judicial system."

The foundation, chartered by the State on July 20, 1967, has as its long-range purpose the promotion through broad community education of continuing improvement in Hawaii's administration of equal justice under law.

Long-range goals include modernization of court facilities and procedures to ensure justice without delay; utilization of modern management devices such as mechanization and computerization to speed the administration of justice; and the study of statutory revisions necessitated by changing conditions within our society.

The foundation's immediate interest is revision in the judicial section of the Hawaii State Constitution, to ensure improvement in the systems for selection, compensation, tenure and discipline of judges. The Foundation believes the current Convention provides an opportunity for highly con-

structive action in this field which may never recur.

Recommendations:

Accordingly, to implement the recommendations of the Citizens' Conference on the Administration of Justice and the identical goals of the foundation, it has concluded that the Judicial Article should be amended, as necessary, to achieve the following, consonant with the clear and heartening national trend toward judicial improvement, and the maintenance of a truly independent, as well as competent, judiciary:

1. To assure selection for the bench of those attorneys best qualified in terms of personal integrity, judicial temperament and adequate legal training and experience, a merit plan method of judicial appointment be established.

An independent judiciary, everyone will agree, is the keystone of constitutional government, but independence requires a reasonable insulation from partisan politics.

Under such a plan, the Governor of Hawaii would fill judicial vacancies from a list of names submitted by an impartial, non-partisan nominating body whose duties would be to seek out and interest the best qualified candidates.

This body would consist of highly regarded representatives of the bar and the laity — holding neither public office nor official position in a political party — with the chairmanship possibly vested in the Chief Justice of the Hawaii State Supreme Court.

The foundation is not recommending any specific number of persons on the nominating body, nor a proportion as between bar and laity, nor any specific method of the members' appointment, but confines itself to the principle of the merit plan method of judicial selection, which it feels combines the advantages and eliminates the faults of both the elective and present appointive methods.

Attention is invited to an attached summary paper in judicial reform prepared for the Con/Con Conference of last January by Glenn R. Winters of the American Judicature Society.

2. To encourage and attract the interest of those best qualified for the bench, the tenure of Hawaii's judges be made dependent upon satisfactory service in office.

In his address to the Citizens' Conference here last year, then Associate Justice Clark said that 21 States provide longer tenure than Hawaii for State Supreme Court justices and 18 states provide longer tenure for circuit court judges. Attention is further invited to the attached Winters paper.

3. Make compensation, retirement and pension provisions that will achieve the goal of maintaining a thoroughly qualified and independent judiciary.

The Journal of the American Judicature Society has noted "a growing realization on the part of lawyers, civic leaders and legislators that adequate judicial salaries are not just a favor to judges, but a necessary investment for quality judicial service . . . Salaries (however) are only one element of three that make up the total compensation picture. The other two are retirement compensation and that vague but increasingly important package which has come to be known as fringe benefits."

Thus, judicial compensation must be recognized as having a three-fold character and treated accordingly. Attention again is invited to the attached Winters paper and to charts from the February, 1968 issue of the Journal of the American Judicature Society, showing judicial salaries in major trial and appellate courts and in courts of limited jurisdiction in the 50 states.

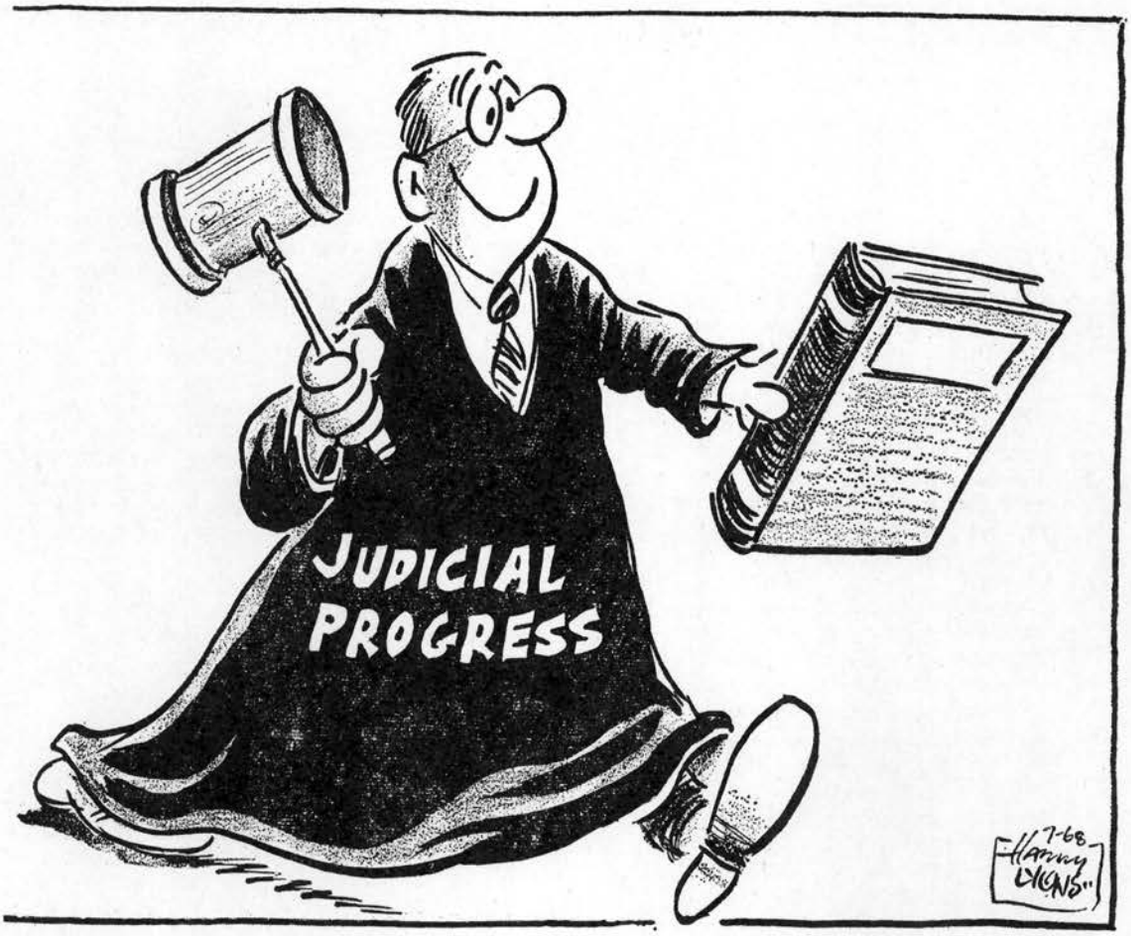
Our studies indicate a separate pension plan dependent solely on service on the bench (in addition to other benefits arising from government service) will be of benefit in attracting candidates.

4. A non-partisan commission representing bar, bench and laity — with members holding neither public office nor official position in a political party — be established to receive, investigate and hear in confidence complaints against judges and in appropriate cases to recommend to the State Supreme Court censure or removal of the judge concerned, with final power vested in the Supreme Court.

Again attention is invited to the Winters paper.

The foundation will be pleased to provide such detailed information and studies as delegates individually or collectively may wish concerning judicial sections in other State Constitutions and the experience thereunder.

Further, the foundation will welcome the opportunity for its representatives to appear before the appropriate committee



Here Comes the Judge

or committees of the convention to further discuss and answer questions concerning the above matters within the scope of its Charter.

In closing, we of the foundation firmly share Chief Justice Richardson's view, expressed to the Citizens' Conference on the Administration of Justice, that "our courts can be only as good as our judges. Our job is to be constantly aware of the need to establish the judiciary at a level where it is respected by all segments of the community so as to attract the best qualified lawyers to the bench.

"Methods of selecting judges from the candidates who aspire to the bench must be improved to assure that only the best qualified are selected."

The foundation's proposals are submitted in this spirit. We beseech your support and action to enable Hawaii to join those states which have moved to the forefront of judicial improvement."