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## COURT INTEGRATION IN CONNECTICUT: A CASE STUDY OF STEPS IN JUDICIAL REFORM

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OF late the impetus to procedural reform resulting from the interest created by the adoption in 1938 of the new federal rules of procedure has tended more and more to emphasize a re-examination of the basic court structure. This is a natural and a desirable trend. While pleading is a detail in judicial administration, a very important one in the light of our legal history, it still remains a detail. Its simplification will improve the administration of the particular court to which it applies; it will not unite into a single coherent scheme of businesslike character all the innumerable diverse, but overlapping and conflicting, tribunals so much a part of the American scene. Since the situation is usually at its worst with the so-called minor courts, the courts actually nearest the people, it is but natural that reform groups should busy themselves increasingly with this fundamental problem. And there is now at hand a solution, carefully thought through and widely supported by a rapidly increasing body of legal literature. It is the plan of the unified or integrated court, a single court of varying departments under competent administrative direction. In 1949 the present writers had the opportunity, by virtue of a directive from a state government reorganization commission, to point out how the Connecticut lower courts exemplified the usual evils to a degree and to blueprint a plan of integration carrying the views of the experts to their logical conclusion. This article is therefore offered as an account of this venture and as, perhaps, a case study of at least a sober beginning to court reform in a state in real need of it.

### I. THE MOVEMENT FOR COURT INTEGRATION

For an understanding of our present story, some note must be taken at once of the background of the movement, both nationally and locally. The first great impetus toward reform through integration came from the sweeping changes instituted by the English Judicature Act of 1873, when the vast historic accumulation of English courts was replaced by a single integrated Supreme Court of Judicature.<sup>1</sup> The success of the British re-

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1. 36 & 37 Vict. c. 66.

forms stimulated immediate interest in the United States. It was Dean Roscoe Pound of Harvard who first gave expression to that interest some forty or more years ago by pointing out the desirability of the integrated court system as applied to the various courts in this country.<sup>2</sup> He proposed a unified court, effective business management of the judicial establishment under an administrative chief justice armed with full rule-making power for the entire system, and transfer of minor court functions from fee-paid, lay justices of the peace to a system of district or county-wide minor courts, each one large enough to afford a salaried law-trained judge. Early support for his proposals came from the American Judicature Society, which drafted a Model Judicature Act in 1914,<sup>3</sup> and later from the National Municipal League, which drafted a Model State Constitution to include an integrated judiciary.<sup>4</sup> More recently the American Bar Association's Section of Judicial Administration has advocated these reforms as basic minima for the improvement of local court organization.<sup>5</sup>

These administrative reforms were initially applied in the federal judiciary, at first by the interchange of judges between districts and circuits, and then, in 1939, by the creation of the Administrative Office of the United States Courts.<sup>6</sup> This office performs the business functions of the federal courts, maintains current statistics on the operation of all the courts, and makes recommendations for changes in the allotment of judges as the pressure of business requires. It has so effectively demonstrated its usefulness that in 1948 the National Conference of Commissioners on Uniform State Laws drafted a Model Act to Provide for an Administrator for State Courts.<sup>7</sup>

In the states, integrated courts were first set up at the municipal level, in several large cities, including Chicago and Cleveland.<sup>8</sup> District or county court systems for minor courts have begun to appear in a few states;<sup>9</sup> and

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2. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice* (an address given before the American Bar Association in 1906), 29 A.B.A. REP. 395 (1906), 40 AM. L. REV. 729 (1906), 20 J. AM. JUD. SOC'Y 178 (1937); POUND, ORGANIZATION OF COURTS 273-294 (1940).

3. AM. JUD. SOC'Y BULL. VII (1914).

4. NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION Art. VI and Explanatory Article at 35 (5th ed. 1948, originally published 1921).

5. THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, A HANDBOOK PREPARED BY THE SECTION OF JUDICIAL ADMINISTRATION, A.B.A., 17-31 (1949).

6. 28 U.S.C. §§ 601-610 (1948), 53 STAT. 1223 (1939); Shafroth, *Improving Judicial Administration in the State Courts*, 8 MO. L. REV. 5 (1943); Chandler, *The Administration of the Federal Courts*, 13 LAW & CONTEMP. PROB. 182 (1948).

7. HANDBK. OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 167-169 (1948).

8. For a description of the development of these courts see POUND, ORGANIZATION OF COURTS 263-269 (1940); VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 51 (1949).

9. VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 306-316 (1949).

in Massachusetts the district court system has been recently placed under the comprehensive central authority of an administrative committee.<sup>10</sup> The first state to achieve a completely integrated judiciary, from the Supreme Court down to the Municipal and District Courts, is New Jersey, under its new 1947 constitution and subsequent statutes.<sup>11</sup> A substantial measure of at least unified direction has also been achieved in California, District of Columbia, Maryland, and Missouri,<sup>12</sup> while in the first state, California, a proposal for more concrete unification is being voted on this fall.<sup>13</sup> Proposals to integrate their respective judicial establishments are now under consideration in such widely separated states as Minnesota,<sup>14</sup> Arkansas,<sup>15</sup> Colorado,<sup>16</sup> Texas,<sup>17</sup> Mississippi,<sup>18</sup> and Illinois,<sup>19</sup> with professional interest undoubtedly yet more widespread, although not yet the subject of available published comment.<sup>20</sup>

10. MASS. GEN. LAWS c. 218, § 43A (1932), as amended L. 1941, c. 682, and L. 1943, c. 101.

11. N. J. CONST. ART. VI (1947); N. J. STAT. ANN. §§ 2:1A-1—2:16A-6 (1949); Harrison, *Judicial Reform in New Jersey*, 22 STATE GOVERNMENT 232 (1949); Harrison, *New Jersey's New Court System*, 2 RUTGERS U. L. REV. 60 (1948); Hartshorne, *Progress in New Jersey Judicial Administration*, 3 RUTGERS U. L. REV. 161 (1949); *Convention Committee Describes New Judicial System Adopted in New Jersey*, 31 J. AM. JUD. SOC'Y 138 (1948); *The Record of the Courts of New Jersey, 1948-1949*, reprinted from N.J.L.J., Sept. 1, 1949.

12. VANDERBILT, *op. cit. supra* note 8, at 57-64.

13. *State-Wide Minor Court Reorganization Will Appear on November Ballot in California*, 34 J. AM. JUD. SOC'Y 58 (1950), stating that the plan for the reorganization of the inferior courts to be voted upon is one on which the State Bar Association, the Judicial Council, and other interested organizations have been working for ten years.

14. REPORT OF THE COMMITTEE ON UNIFICATION OF THE COURTS TO THE JUDICIAL COUNCIL OF MINNESOTA (1943); Doherty, *Plan for Reorganization of Judicial System of Minnesota*, 24 DICTA 72 (1947).

15. *The Arkansas Court Plan*, 30 J. AM. JUD. SOC'Y 15 (1946); *Report of Court Reorganization Commission*, 2 ARK. L. REV. 174 (1948).

16. Henry, *The Thirty-Seventh General Assembly*, 26 DICTA 105 (1949); Johnson, *The Judiciary Committee Plan and the 1949 General Assembly*, 25 DICTA 281 (1948); Van Cise, *A Report from the Judiciary Committee*, 26 DICTA 139 (1949); Young, *Integration of State Judiciary Recommended*, 23 J. AM. JUD. SOC'Y 233 (1940).

17. Sample, *Proposed Amendment to the Judiciary Article of the Texas Constitution*, 25 TEX. L. REV. 492 (1947); *Proposed Amendment to Article V of the State Constitution Relating to the Judicial System of Texas*, 9 TEX. B.J. 347 (1946); *Texas Judicial Council Publishes Court Organization Plan*, 31 J. AM. JUD. SOC'Y 15 (1947).

18. ETRIDGE, *MODERNIZING MISSISSIPPI'S CONSTITUTION*, Bureau of Public Administration, Univ. of Mississippi, 1-116 (1950).

19. A newly created Section on Judicial Administration and Reorganization of the Illinois State Bar Association, under the chairmanship of Floyd E. Thompson, former Chief Justice of the Illinois Supreme Court, has been studying since June of this year the possibilities of a complete reorganization of the Illinois court structure. Letter dated May 22, 1950, from Albert E. Jenner, Jr., President of the Illinois State Bar Association, to the senior author of this article.

20. Thus examples of such interest may be cited from Virginia, REP. OF THE JUD.

It is true that the number of states where integration and other reform proposals have been advanced far exceeds the number where they have been put completely into effect. The frankly political opposition, more successful in the local arena than within the federal judiciary, presents a formidable obstacle. It can be considered fairly routed in a headlong conflict in only a single state, New Jersey. There, although much remains to be done for the complete knitting together of the lowest tribunals in order to avoid unnecessary overlapping, yet both the power and the pattern have been made available and the results to date in increased court effectiveness are remarkable.<sup>21</sup> This is an inspiring example of accomplishment for the other states and justified us in hoping, as was reiterated on numerous occasions, that what New Jersey had accomplished Connecticut could at least attempt.

## II. THE STUDY PROJECT AND ITS IMMEDIATE BACKGROUND

In Connecticut, as is pointed out more in detail later, the court system presents particular evils in a duplicating system of courts of substantially general jurisdiction, an unusual number—for so small a state—of justice-of-the-peace, town, city, and borough courts, and a unique probate setup of

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COUNCIL FOR VIRGINIA 16, 17 (1949) (recommendation of a statute for an administrative officer for the courts); Rhode Island, HULL, CHALLENGE TO THE LAW (1949) (reprint of a series of articles on the law and the courts appearing in *The Providence Journal-Bulletin* followed by discussion before the State Bar Association, participated in by the senior author hereof); and Louisiana, where the Louisiana State Law Institute is working upon the revision of the Civil Code, the Code of Practice, the General Statutes, and the Constitution of Louisiana. Letter dated February 25, 1950, from J. Denson Smith, Director of the Institute, to the senior author. The aliveness of the topic is shown continuously in the current issues of the *Journal of the American Judicature Society*.

21. A comparative analysis of the performance of the New Jersey courts from September 15, 1948, to June 30, 1949, with comparable periods of the old courts, gives conclusive proof of the success of the New Jersey reforms. In its first year of operation the present appellate system (Supreme Court and Appellate Division of the Superior Court) disposed of 60% more appeals in 73% less time as compared with their predecessor. Six judges of the Chancery Division of the Superior Court heard an average of 152 cases as against the average of 46 per judge in 1947-1948. Thirteen judges (one of whom was absent more than six months due to illness) of the Law Division of the Superior Court disposed of 7,673 cases as against 3,878 in the same comparable period by thirteen judges of the former courts of similar jurisdiction, an increase of 98% in cases disposed of by the new court. The County Court judges disposed of 4,135 cases between September 15, 1948, and June 30, 1949, compared with 2,332 by the old Courts of Common Pleas in a comparable period—an increase of 77%. As to the over-all picture, approximately twice as much business was transacted in a year by fewer judges, with substantial savings in expense and time, than had ever been transacted in a comparable period by the former courts. Harrison, *Judicial Reform in New Jersey*, 22 STATE GOVERNMENT 232, 247, 248 (1949); WOELPER, ANNUAL REPORT OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS OF THE STATE OF NEW JERSEY 1948-1949, 1-15, with statistical tables 17-131. This excellent record is being even bettered this year: WOELPER, PRELIMINARY REPORT OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS OF THE STATE OF NEW JERSEY 1949-1950.

the amazing total of 120 courts supported by fees and showing, seemingly, at once the best-paid and the worst-paid judges of the country, if not of the globe. Although this situation has brought forth deserved criticism, the various attempts at reform described later proved abortive because of divided counsels and lack of a unified desire for the complete overhauling of structure to which these repeated calls for new reform committees or commissions and new or further studies seemed obviously to point. The writers feel that they had a real opportunity not available to these previous bodies, since the terms of their commitment permitted them to cut loose from all entangling alliances and compromises and to follow the logical path to its conclusion. In the first instance they had only themselves and the research associates of their study unit to convince; in the second instance they had only the commission members, five distinguished business and professional laymen to whom they reported, to persuade. On other terms the task would not have been attractive and probably would not have been undertaken, at least by us. Now the proposal is in the hands of the public. Whatever the outcome, there is now at hand at least a model to present an aim and an ideal.

The present project developed as a result of the creation, by legislative act and gubernatorial appointment, of a Commission on State Government Organization, charged with the duty to "study all the functions of the state government."<sup>22</sup> This commission has been likened in methods of operation and aspirations to the Hoover Commission, of present national fame. In many respects this comparison is apt; there are, however, some significant differences. Perhaps the most important difference is in the respective areas of governmental activity which were surveyed. The federal commission, like most of its state prototypes, was restricted to a study of the executive branch, while this Commission interpreted the broad terms of the legislative mandate to mean what it appeared to say, and hence organized a study of all three state departments—executive, legislative, and judicial.

Pursuant to this broad authority, the Commission in July, 1949, set up as one of its specialized survey groups Survey Unit No. 18 to examine and make recommendations concerning the Connecticut judicial system, with the senior author hereof as Project Director, the junior author as Associate Director, and a staff of legally trained research associates. The Survey Unit concentrated its research on three main topics—the existing Connecticut system, previous recommendations for reform in this state, and experience in other states and the teachings of the experts. The results of this research led to several conclusions: first, that there was a genuine need for reform of the Connecticut court organizations; second, that this need had not been lessened by the temporary panaceas which had been tried as a

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22. § 3, Conn. Special Act 28, 1949.

result of the previous attempts at reform; and third, that the solution to the problem of reform, in its scientific and scholarly aspects, had already been worked out to the satisfaction of students and jurists in what has come to be known as the system of an integrated court for the entire state. These conclusions, plus a comprehensive plan for the reorganization of the Connecticut courts, were transmitted to the Commission in December, 1949.<sup>23</sup> That body, after some months of independent deliberation upon this and the other reports before it, adopted and published its report in February, 1950, accepting the broad outlines of the Survey Unit's proposal as Chapter Nine, "Strengthening the Courts," of its Report to the Governor and General Assembly.<sup>24</sup> The Commission did not ask for immediate execution of the court proposals, but rather sought general approval and the creation of a new commission to work out the details over a longer period of time. The special session of the legislature called by the Governor to consider the Report took little action of any kind<sup>25</sup> and none at all with reference to these proposals. They are, however, the subject of study by bar association groups at the present time. As we point out below, it seems clear that the proposals are not dead, but are probably progressing as far and as rapidly as their complete nature and the prevailing conservative atmosphere of the state would make likely.

We shall turn, therefore, to the conclusions set forth in the Report<sup>26</sup> as to the special features of the problem in Connecticut, the previous impotent attempts at cure, and the specific reorganization here projected for the courts of the state.

### III. THE PROBLEM IN CONNECTICUT

Recent high priests of judicial reform have stated their case in this way: "In our form of government no institution is more fundamental than the courts. Unless our courts can be kept strong and high in public esteem, individual liberty cannot long endure. For this reason, then, the improvement of judicial procedure is not an unimportant side issue, but is vital to the defense of democracy."<sup>27</sup> Nevertheless it must be conceded that at

23. FINAL REPORT (Mimeographed), SURVEY UNIT #18 OF COMMISSION ON STATE GOVERNMENT ORGANIZATION (1949), accompanied by two supporting studies, not printed, of which Part I was entitled "The Existing Connecticut Judicial System," and Part II "Experience in Other States and the Teachings of the Experts."

24. REPORT OF COMMISSION ON STATE GOVERNMENT ORGANIZATION 61 (1950).

25. See the account in Dean Fordham's informative review of the Report, p. 1541 *infra*. The Democratic State Central Committee has issued its own statement entitled THE SET-BACK FOR GOOD GOVERNMENT IN CONNECTICUT (1950), signed by Governor Bowles, Senate Majority Leader Wechsler, and House Minority Leader Cotter.

26. Although not printed, the REPORT proper is available in mimeographed form, as stated in note 23 *supra*.

27. THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, A HANDBOOK PREPARED BY THE SECTION OF JUDICIAL ADMINISTRATION, A.B.A., 3 (1949).

this crucial moment in world history our courts are at some considerable distance from this ideal. Judicial processes are criticized as inefficient, slow, unnecessarily complex and costly, both to the litigants and to the governmental units which support them. The Connecticut courts cannot avoid these general charges, plus some special difficulties flowing from their unusual organizational defects.

Two specific criticisms can be directed at the Connecticut judicial system. First, it is not a system at all in the sense that system connotes "orderly organization." Second, there are deficiencies in the organization, make-up, and jurisdiction of several of the groups of courts which are included in the system. The reference in this later criticism is to the anomalous position of the Court of Common Pleas in the hierarchy of courts and the unprofessional administration of justice in the minor and probate courts.

#### *Lack of Organization of the Courts*

It would be a simple matter to draw an organizational chart of the Connecticut judiciary. The chart would contain eight separate boxes, each bearing the label of one court or group of courts. There would not be the spider web of crisscrossing lines which represent the co-ordinating lines of authority on the typical organizational chart. For all practical purposes the eight sets of courts are wholly independent of each other.

This is, of course, an oversimplification. The pattern is not one of complete disorganization. For instance, the Chief Justice of the Supreme Court of Errors exercises some very limited controls over the entire judiciary both through the prestige of his position and through statutory powers to assign judges in the higher courts.<sup>28</sup> It has, however, been the tradition that the Chief Justice should use these powers very sparingly on his own initiative. Then, too, in 1937 Connecticut took an important initial

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28. See CONN. GEN. STAT. §§ 7678, 7679, 7681, 7624, 7600, 7653, 7609 (1949). Actually this situation compares rather favorably with the general disorganized status of American courts. In fifteen states other than Connecticut (Alabama, Idaho, Illinois, Louisiana, Maine, Massachusetts, Michigan, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Virginia, and West Virginia) power in the highest appellate court to assign judges within some, but not all, of the inferior courts is the only type of central control that exists within the respective systems. The lack of organization in the state courts of this country is illustrated by the fact that even this limited control represents more central authority than is found in the judicial departments of eleven states (Arizona, Arkansas, Colorado, Delaware, Georgia, Indiana, Mississippi, Nevada, Vermont, Wisconsin, and Wyoming) where there are substantially no elements of external control, and of seventeen states (Florida, Iowa, Kansas, Kentucky, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and Washington) where there are almost no elements of effective control. In only five jurisdictions (California, District of Columbia, Maryland, Missouri, and New Jersey) is there a substantial degree of control exercised over all or almost all the courts. VANDERBILT, *op. cit. supra* note 8, at 29-64.

step toward the centralization of the business administration of the five state-maintained courts in one office. A secretary of the Judicial Department was appointed with limited authority to audit all bills, maintain current accounting records, prepare budgets, act as purchasing agent, and serve as pay roll officer.<sup>29</sup>

Except for these particulars the chart is an accurate representation of the Connecticut judiciary. The judicial department consists of eight courts or groups of courts; five of these, the Supreme Court of Errors, the Superior Court, the Court of Common Pleas, the Juvenile Court, and the Traffic Court of Danbury, are maintained by the state; the other three, the minor courts, the trial justice courts, and the probate courts, are supported by the towns, cities, boroughs, or districts in which they are located. Each of those courts operates as a separate and independent establishment.

This lack of organization means less efficient, slower, and more costly administration of justice. A more detailed analysis would include the following basic criticisms: First, without a central co-ordinating authority which collects and compiles statistics on the operations of the various courts it is impossible to maintain uniformly high standards of judicial personnel and production throughout the judiciary. Second, without integration of the court system it is impossible to equalize the workloads of the various judges and to relieve congestion by assigning judges among the various courts as the pressure of business requires. Third, unless the business administration of the courts is centered in one office, there is a needless duplication of effort with a resulting loss of money in the handling of such matters as purchasing, pay rolls, personnel, budgeting, and accounting. And fourth, without a unified court it is impossible to maintain uniform standards, rules, and procedures for all the courts. These are the general arguments for the system; they have special pertinence here in view of the political complexion of and job-scramble in the minor courts and the demoralizing effect of the fee system in the probate courts.

An indication of the benefits which might result from a more highly organized system is demonstrated by the degree of success which the office of the Executive Secretary has already had in bringing greater efficiency to the business administration of the state courts. This is only a beginning. The logical next step is further expansion in the same direction.

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29. CONN. GEN. STAT. § 7661 (1949). This office has been filled with extreme capability by Mr. Edward C. Fisher of Hartford since its creation in 1937. Similar offices have been created in Missouri, West Virginia, Pennsylvania, and New Jersey. Recommendations for such an office have been made in Arkansas, Colorado, Iowa, Mississippi, New York, Texas, and Virginia. REPORT OF THE SPECIAL COMMITTEE ON MODEL ACT TO PROVIDE FOR AN ADMINISTRATOR FOR THE STATE COURTS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 161-168 (1947); THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, A HANDBOOK PREPARED BY THE SECTION OF JUDICIAL ADMINISTRATION, A.B.A., 22-29 (1949).

*The Court of Common Pleas*

There is no question as to the Supreme Court of Errors and the Superior Court except perhaps as to means further to conserve and fortify their accomplishments by complete rule-making authority and the full administrative directive in the office of the Chief Justice. The Court of Common Pleas, the next in the hierarchy of courts, does, however, present problems which need clarification. It is now in the anomalous position of being both a "replica of the Superior Court" and an "inferior court" in the constitutional sense.<sup>30</sup>

When originally constituted in 1869, 1870, these courts were established as county, not state, courts in four counties only. Their subsequent history has been one of steady encroachment on the jurisdiction of the Superior Court. This development was not uniform throughout the state, but rather varied from county to county. By 1941 it had become apparent that the process of independent growth of these courts by counties could not continue unabated without disrupting the entire system and that a redefinition of the status of these courts within the judicial organization was required. The legislature was confronted with two choices: either the several Courts of Common Pleas could be relegated to the status of minor courts or they could be modeled along the lines of an inferior Superior Court. It is questionable whether these alternatives presented a real choice. The Courts of Common Pleas were already operating as junior Superior Courts, and it is axiomatic that a legislature can expand authority more easily than it can curtail it. Furthermore, the hope was voiced that an expanded Court of Common Pleas would serve to relieve the pressure of business then existing in the Superior Court.<sup>31</sup> In any event, the legislature chose to organize the Court of Common Pleas in the image of the Superior Court.

Under the reorganization act of 1941, the court was established as a state court, with the judges, originally fourteen in number, now reduced by statutory direction to ten, doing circuit duty as do the Superior Court judges.<sup>32</sup> The jurisdiction of the court is in some important matters exclusive, in others concurrent with the Superior Court on the one hand and with the minor courts on the other. Thus according to the statute it has exclusive jurisdiction of "equitable" actions to \$2,500 in amount and, except for the jurisdiction it shares with municipal courts, in "legal" actions from \$100 to \$2,500<sup>33</sup> and of all appeals from municipal boards and com-

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30. *Walkinshaw v. O'Brien*, 130 Conn. 122, 32 A.2d 547 (1943).

31. The system of creating new courts of concurrent jurisdiction to relieve congested dockets in existing courts is not a new one. For the experience in Illinois, Maryland, and Virginia see POUND, ORGANIZATION OF COURTS 243 (1940).

32. CONN. GEN. STAT. § 7595 (1949).

33. CONN. GEN. STAT. § 7740 (1949), "subject, however, to the provisions of section 7579," note 37 *infra*.

missions and the state liquor control commission;<sup>34</sup> and it hears civil appeals de novo from municipal courts and trial justices in cities or towns of less than 15,000 population.<sup>35</sup> It has concurrent jurisdiction with the Superior Court in all actions from \$2,500 to \$5,000 and for the foreclosure of mortgages and liens regardless of the extent to which the demand exceeds these amounts;<sup>36</sup> and it has concurrent jurisdiction with municipal courts in legal actions from \$100 to \$1,000.<sup>37</sup> On the criminal side in five counties it considers de novo appeals from municipal courts and trial justices and cases of nonsupport in which the accused has been bound over from a lower tribunal.<sup>38</sup>

It will be seen that these lines of demarcation are quite illogical. Roughly speaking, the importance of the cause or charge is the basis of the test. At best it is difficult to evaluate a case by such variable standards as the values which may be claimed by the parties or the charges made by the prosecutor. The problem is made doubly difficult when the issue turns upon technical legal distinctions, now largely outworn, of "equity" or "law" or the like.

Question was immediately raised as to whether or not the legislature could constitutionally elevate an inferior court to a status where it was but a "replica of the Superior Court." In 1943, the Supreme Court by a divided vote held, "not without considerable hesitance," that the statute did not exceed the limits of constitutionality. There was, however, an implicit warning in the majority opinion that any further encroachments on the jurisdiction of the Superior Court would not be looked upon with favor.<sup>39</sup>

Today the Court of Common Pleas has reached another turning point in its development. First, the experience of the past few years has demonstrated that there is no need for a circuit Court of Common Pleas in the rural counties.<sup>40</sup> Second, the pressure of business in the populous counties has increased to such an extent that the courts will have to be expanded, both as to facilities and personnel, in order to keep pace with the demands upon them.<sup>41</sup> And third, the expanded Court of Common Pleas has failed

34. CONN. GEN. STAT. § 7742 (1949).

35. CONN. GEN. STAT. § 7584 (1949).

36. CONN. GEN. STAT. § 7741 (1949).

37. CONN. GEN. STAT. § 7740 (1949), together with § 7579, conferring jurisdiction up to \$1,000 in places of 15,000 or more population, otherwise \$500, and including land actions for legal or equitable relief within the same limits.

38. CONN. GEN. STAT. § 8742 (1949), as amended by § 696a (Supp. 1949).

39. *Walkinshaw v. O'Brien*, 130 Conn. 122, 32 A.2d 547 (1943).

40. During the period September, 1947, to June, 1948, the court sat for civil cases, excluding short or motion calendar, 6 days in Windham, 18 in Tolland, 31 in Middlesex, 44 in Litchfield, 74 in New London, and 84 in Waterbury as opposed to 276 days in Fairfield, 248 in Hartford, and 196 in New Haven. ELEVENTH REP. CONN. JUD. COUNCIL 25 (1948).

41. At the conclusion of the court year 1941-42, the first year of the reorganization of the Court of Common Pleas, there were 2,004 civil cases undisposed of in Fairfield, 1,965 in New Haven, and 1,622 in Hartford; at the conclusion of the court year 1948-49 there

to diminish the pressure of business in the Superior Court.<sup>42</sup> Thus it would seem that the time has come for a reclarification of the role which the Court of Common Pleas is to play in the judicial system. Once again there are two alternatives: The court can be reduced to the status of a minor court or it can be expanded anew at the expense of the Superior Court. It is suggested that wise policy favors the former course. There is no justification for maintaining two circuit courts distinguished only by illogical and arbitrary lines of jurisdiction. An expanded Court of Common Pleas has shown no ability to reduce the congestion in the Superior Court, and any further encroachment on the Superior Court's jurisdiction may very well be found constitutionally defective. Consequently, reform at this time should move toward the utilization of the structure of the Court of Common Pleas as a foundation for an improved minor court system, leaving the Superior Court, with the absorption of the present common pleas business, as the sole circuit court of general jurisdiction.

### *The Lower Courts*

The most direct contact of the ordinary citizen with the judiciary is through the operation of the minor and trial justice courts. These are the peoples' courts where the troubles and the faults which involve the everyday matters of daily life are adjudicated. From the human standpoint, at least, they are the most important courts. Yet it is true in Connecticut as elsewhere that these courts are the orphans of the judicial system. A prime concern of modern judicial reform is to give them a capability and a prestige commensurate with their intrinsic importance.

It is safe to say that there has never been any real satisfaction in the organization or operation of the town, city, and borough courts established by special acts or city charters in 66 of the 169 towns or cities of the state.<sup>43</sup> Throughout the nineteenth century, as the character of the state changed from a predominantly rural community to a community of towns and cities, it became increasingly clear that the justice-of-the-peace system was wholly inadequate to handle the multitude of cases arising in the urban centers. As a result, a variety of town, city, borough, and police courts, organized and maintained by the local municipalities, mushroomed throughout the state to supplement or supersede the justices of the peace in the adminis-

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were 2,952 civil cases undisposed of in Fairfield, 3,483 in New Haven, and 2,953 in Hartford. In 1941-42 there were fourteen judges; as of March, 1950, there are ten judges. Statistics obtained from the office of the Executive Secretary of the Judicial Department.

42. At the conclusion of the court year 1940-41, the year before the reorganization of the Court of Common Pleas, there were 9,578 civil cases undisposed of in the Superior Court; at the conclusion of the court year 1947-48 there were 12,695 civil cases undisposed of. ELEVENTH REP. CONN. JUD. COUNCIL 19 (1948).

43. For a listing of these courts see CONNECTICUT STATE REGISTER AND MANUAL 215-221 (1949).

tration of minor causes. There was no plan or pattern for this development. As the need for a court arose, one was established. A necessary result of this haphazard development was the utmost variation in practice, procedure, and jurisdiction.<sup>44</sup> For years there was a persistent clamor from the lawyers who had to practice in this confusion for legislation which would bring some uniformity to the system.<sup>45</sup>

In 1939 the legislature made an attempt at solution through the standardization of the jurisdictional limits of these courts. A distinction was made according to population. Thus a court in a town, city, borough, or district having a population of 15,000 or more has jurisdiction of legal and equitable actions where the matter in demand does not exceed \$1,000, while in communities of less than 15,000 the limit is \$500. Comparable distinctions based on the punishment which can be given appear in the criminal jurisdiction of these courts.<sup>46</sup> At best the 1939 legislation can be described as only a first step. These courts are still independent of each other, responsible only to the municipality which maintains them. It is obvious that no single statute can bring a common practice or common standards for the administration of justice to these courts.

Even more universal has been the criticism of these courts for the method by which their judges are selected. Until 1949, the judges were chosen for two-year terms by the General Assembly.<sup>47</sup> Now by constitutional amendment they are appointed, on terms to be set by statute, by the General Assembly on nomination of the Governor.<sup>48</sup>

As is well known, a chief impetus for the change in method of selection of these judges came from public disgust with the scramble for these appointments at each session of the legislature. Because of the extremely political nature of the offices a complete turnover of the entire personnel of a local court each two years was an accepted thing. Under such conditions a trained and experienced personnel was impossible. A position as prosecutor, clerk, or judge would be sought or accepted by a lawyer as a tempo-

44. For some of the problems caused by this haphazard and illogical development of minor courts see POUND, *ORGANIZATION OF COURTS* 263-269 (1940); POUND, *CRIMINAL JUSTICE IN AMERICA* 174-196 (1930); Kross and Grossman, *Magistrates' Courts of the City of New York; Suggested Improvements*, 7 *BROOKLYN L. REV.* 411 (1938); SMITH, *JUSTICE AND THE POOR* 42, 43 (1924). Even though the New York situation seems particularly chaotic, attempts at reform in the last session of the legislature failed. SIXTEENTH REP. N. Y. JUD. COUNCIL 58-66 (1950); Statement of Robert P. Patterson, President of the Assoc. of the Bar of the City of New York, 5 *THE RECORD* 2-4 (1950); Denonn, *Minimum Standards of Judicial Administration*, 5 *THE RECORD* 137 (1950); *N.Y. Times*, March 22, 1950, p. 7.

45. See Brown & Doherty, *Connecticut Courts of Limited Jurisdiction. A Survey*, 14 *CONN. B.J.* 230 (1940).

46. *CONN. GEN. STAT.* §§ 7579, 8733 (1949).

47. *CONN. CONST. ART. 5, § 3*; *CONN. CONST. AMEND. XX*; *CONN. GEN. STAT.* § 72 (1949).

48. *CONN. CONST. AMEND. XLVII* (1948).

rary matter to build prestige and aid a budding law practice. In fact, many of the positions were held by laymen. There was a proper fear of the misuse of the criminal processes to support the private civil business of the court officer; there was also the aroma of adjustment of traffic and other minor violations through the political forces ultimately responsible for the judicial appointments.<sup>49</sup> As a result of these abuses the Judicial Council and others for years advocated a change in the method of selection to that successfully followed in the high courts, and the constitutional amendment became effective with the favorable vote upon it at the 1948 election.

As yet the reform has not been able to prove itself. The political division in the two houses of the legislature and the disagreement of the House with the Governor resulted in the failure of the 1949 Assembly to enact any enabling legislation as the amendment contemplated. The Governor therefore named his choices after the legislature adjourned, the sitting judges claimed the right to hold over, and litigation was necessary, resulting in a victory for the Governor's appointees under the construction of the law made by the Supreme Court.<sup>50</sup> This dispute obviously did not add to the prestige of these courts, although it is hardly a fair test of what the system may accomplish when properly implemented. But the handicaps of both an unfortunate past and a dissipation of jurisdiction among so many and so diverse tribunals are sure to dog these courts in the future so that even the establishment of a substantial term of office to carry out the system of selection will probably prevent an accomplishment at all comparable with that of the high courts. Only a complete break with the past will assure courts of a dignity, prestige, and high professional standing commensurate with the importance of the matters before them.

Prior to 1939 all petty causes, civil and criminal, arising in localities where there was no town, city, or borough court were handled by local justices of the peace. Today the jurisdiction of these justices is restricted to civil actions in which the matter in demand does not exceed \$100.<sup>51</sup> Statutes provide that justices of the peace be elected biennially for each town by a plurality of the voters of that town;<sup>52</sup> and each town is required to elect justices to a number equal to one-third the number of jurors to which that town is entitled.<sup>53</sup> Inasmuch as the average jury list includes a very substantial number from each town, justices of the peace are elected in large

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49. This condition has been vividly set forth in *FOURTH REP. CONN. JUD. COUNCIL* 5-8 (1934). See also Brown & Doherty, *Connecticut Courts of Limited Jurisdiction. A Survey*, 14 *CONN. B.J.* 230, 231 (1940); Maltbie, *The Appointment of Judges of Town, City, Borough and Police Courts*, 17 *N.H. COUNTY B.A. BULL.* 40-48 (1934); Maltbie, *Appointment of Municipal Court Judges*, 17 *CONN. B.J.* 29-38 (1943).

50. *State ex rel. Rundbaken v. Watrous*, 135 *Conn.* 638, 68 *A.2d* 289 (1949); Braden, *The Case of the Late Afternoon Judges*, 23 *CONN. B.J.* 217 (1949).

51. *CONN. GEN. STAT.* § 7739 (1949).

52. *CONN. GEN. STAT.* § 7545 (1949).

53. *CONN. GEN. STAT.* § 7546 (1949).

numbers, ranging from five to sixty per town and totalling into the thousands for the entire state.<sup>54</sup> In none of the towns is there sufficient business to keep so many judicial officers occupied. As a practical solution to this problem the custom developed whereby many of the elected justices refrained from taking the oath of office, leaving what business there was to those justices who do qualify. This custom, however, did not face or solve the underlying problem. Potentially, each elected justice is, at his own option, a separate and independent court. It is obvious that the very number of these courts precludes the possibility of maintaining a high standard of justice.

The faults of the justice-of-the-peace system are legion.<sup>55</sup> The vast majority of the justices are not lawyers; they are elected in such large numbers that a voter cannot properly adjudge their qualifications. Not surprisingly, therefore, they differ greatly in judicial ability. The justices hold sessions at irregular times and places. Their actions are not publicized; nor are the justices responsible, save for the formal appeal allowed the parties in a particular case, to any higher authority or directing control. They make no reports, and the court records remain permanently in their personal possession. In civil litigation the justices are still paid by fees assessed against the parties. Customarily, a merchant directs his frequent small claims to the justice who is "accustomed to handle them." As the 1944 Report of the Commission To Study the Integration of the State Judicial System pointed out, it would be strange "if a justice who received a regular flow of fees from a given source could regard each of these actions with cold and indifferent scrutiny."<sup>56</sup>

In 1939 the legislature, following the recommendations of the "Committee to Study the Minor Court System," passed a statute which provided that in communities where there was no municipal court criminal jurisdiction be conferred exclusively on a single "trial justice" or, in the event that he was unable to act, an "alternate trial justice"; that these two offices be filled by the selectmen of each town from the elected justices of the peace; that the trial justice appoint a "prosecuting grand juror" and an "alternate prosecuting grand juror" whose duty it would be to make investigations and bring complaints; and that all of these officials be paid a salary by the

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54. For a listing of these officers see CONNECTICUT STATE REGISTER AND MANUAL 273-416 (1949).

55. The justice of the peace is the most common judicial officer in America, but also the most criticized. For a sampling of the literature on the evils of the justice-of-the-peace system see SMITH, JUSTICE AND THE POOR (1924); Howard, *The Justice of the Peace System in Tennessee*, 13 TENN. L. REV. 19 (1934); Smith, *The Justice of the Peace System in the United States*, 15 CALIF. L. REV. 118 (1926); *What About the People's Courts?* 17 J. AM. JUD. SOC'Y 100 (1933); Lummus, *Justice in Minor Courts Appraised by Expert*, 22 J. AM. JUD. SOC'Y 38 (1938).

56. REPORT OF THE COMMISSION TO STUDY THE INTEGRATION OF THE STATE JUDICIAL SYSTEM 14 (1944).

selectmen.<sup>57</sup> This statute was aimed at concentrating all the criminal jurisdiction in one, presumably more qualified, officer and abolishing the evils of the fee system. Pursuant to this statute there are now 102 trial justice courts operating in the 103 towns not served by a municipal court.<sup>58</sup>

The 1939 partial reform was important in that it made the outworn justice-of-the-peace system at least partially workable. This may perhaps be considered a major fault, for it tended to postpone the day when thoroughgoing reform would be demanded. No revamping of a fundamentally defective system by refining only details can work a substantial and lasting improvement. Left still in operation is a veritable multitude of courts, each differing from the others in practice, standards, and competence of personnel. Most of the evils of the justice-of-the-peace system have thus survived this reorganization. Genuine reform can come only from a complete break with the past and the creation of a new minor court structure, state-wide in operation, supported by the state, and directed by the experienced administrators of the unified state judicial system.

### *The Probate Courts*

The probate courts present the most difficult problem of all—they are the courts which most need reform,<sup>59</sup> but are the most firmly entrenched politically.

Originally the probate courts were organized on a county-wide basis; but beginning in 1719 came the establishment of probate districts of less than a county in area.<sup>60</sup> This process has continued apace until now there are 120 districts, many only coextensive with the towns where they are situated. Almost every session of the legislature brings forth new bills for the division of the larger and richer districts. Thus two new districts were authorized by legislation in 1947.<sup>61</sup> This modern proliferation of districts is particularly remarkable in that it has occurred in defiance of re-

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57. CONN. GEN. STAT. § 7566 (Appointment of trial justices), § 7568 (Jurisdiction of trial justices), and § 7569 (Appointment of prosecuting grand jurors) (1949).

58. For a listing of these courts see CONNECTICUT STATE REGISTER AND MANUAL 222-225 (1949). No court is listed for the Town of Wolcott.

59. This opinion is shared by several of the leading experts in the field of probate court organization. In a letter to the Survey Unit dated November 15, 1949, Professor Thomas E. Atkinson of New York University wrote: "Under its present system Connecticut is just about at the bottom of the list so far as its probate court system is concerned. This is not to say that in some or perhaps many of your probate courts the actual administration of estates may not be satisfactory or even excellent. However, the county-superior court plan would, in my opinion, clean up the bad spots and increase efficiency in the handling of probate business throughout the state." See also Simes & Basye, *The Organization of the Probate Court in America*, 42 MICH. L. REV. 965, 43 *id.* 113 (1944).

60. For a history of the development of the Connecticut probate courts see CLEVELAND, HEWITT & CLARK, *PROBATE LAW AND PRACTICE OF CONNECTICUT* (1915) and App. II, *History of Connecticut Probate Jurisdiction*, 917-923.

61. CONN. GEN. STAT. § 1284i (Deep River), § 1285i (Colebrook) (Supp. 1947).

peated warnings by observers of the system that the number of districts was already too excessive to be manageable.

· Districting by towns bears no relation to population or wealth. As a consequence there is extreme variation in the judicial burden among the 120 courts; the judges in the large municipalities are hard pressed to keep abreast of the pressure of business; contrariwise, the judges in the small towns are only infrequently called upon to open their courts. Despite the efforts of the Connecticut Probate Assembly to establish uniformity, it is obvious that in a system where each judge is a court unto himself no amount of reform can standardize practice and procedure. These variations in procedure place a particularly onerous burden on parties to the administration of a large estate which involves property situated in several districts.<sup>62</sup>

Since colonial times Connecticut has followed the early English view that probate courts are traditionally of an inferior status to other courts.<sup>63</sup> This attitude, plus the fact that much of the probate work is administrative and not judicial, accounts in large measure for the distinction, both in terms of qualifications for office and informality of proceedings, made between the probate courts and the other courts. Probate judges are elected and now serve for four years.<sup>64</sup> There is no requirement that they be lawyers; and, in fact, about two-thirds of them are laymen.<sup>65</sup> True, the absence of legal training is not a mark of incompetence. Nevertheless, it is obvious that a layman, no matter how conscientious, cannot be expected to comprehend fully the many technical legal aspects of estates law upon which the disposition of many thousands of dollars may depend.

It has been said that the probate courts are "peoples' courts." In keeping with this characterization the proceedings of these courts are informal to a degree, often being conducted in the judge's front parlor. Most estates are administered without the aid of counsel. Defenders of the system urge that in the great majority of cases the probating public depend upon the court or its staff for legal advice. But this surely presents a problem in judicial impartiality. A judge can hardly determine objectively issues emanating from papers and accounts which he himself has prepared.

The same informality is applied to record keeping. Each judge is

62. Smith, *Some Comments on the District Probate System*, 7 CONN. B.J. 56 (1933).

63. Simes and Basye state that in about two-thirds of the states the probate court is a separate court, but relegated to an inferior position in the judicial systems of those states. Simes & Basye, *The Organization of the Probate Court in America*, 42 MICH. L. REV. 965, 995 (1944).

64. CONN. CONST. AMEND. IX (1850), AMEND. XXI (1876), AMEND. XLIV (1948).

65. For a listing of the probate judges see CONNECTICUT REGISTER AND MANUAL 226-237 (1949). In the majority of states there is no requirement that the probate judges be lawyers. Simes & Basye, *The Organization of the Probate Court in America*, 43 MICH. L. REV. 113, 138-140 (1944).

charged with the responsibility for the records of his court.<sup>66</sup> Oftentimes these important records, which are muniments of title to real estate and define many important attributes of personal status, are carelessly or improperly kept.<sup>67</sup> This vital defect may be accentuated when a judge dies and his successor tries to uncover the records so as to initiate an orderly judicial administration.

Against this background it is not surprising to find that a probate decree is not accorded conclusive effect.<sup>68</sup> Appeals lie to the Superior Court, where the entire issue may be tried de novo.<sup>69</sup> There is no provision, and there could hardly be, considering the caliber of the courts, for definitive trial by jury, as in the New York Surrogate's Court.<sup>70</sup> It has long been the law that, while Connecticut must give full faith and credit to the probate decrees of another state, such as New York, the other states need not give a like effect to the judgments of these limited courts of our own state.<sup>71</sup> A recent statute assumes to say that a probate decree shall not be thus subject to collateral attack;<sup>72</sup> whether dignity can thus be acquired by mere statutory fiat, without added powers to the court itself, has not yet been tested.

We refer again to the reliance made by protagonists of the present system upon the informality of these courts as their greatest virtue, because the question this raises is so fundamental. Thus it is said that the people want a neighborly, over-the-back-fence type of justice, administered by judges who are friendly and readily approachable. Does this mean that success in adversary proceedings turns on which party is closest to the judge? The Supreme Court of the United States in a famous case paid its respects to a fee-supported system of criminal justice.<sup>73</sup> Without going so far as did

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66. CONN. GEN. STAT. § 6820 *et seq.* (1949).

67. CONN. GEN. STAT. § 6822 (1949) requires each probate judge to keep the records in a fireproof safe, vault, or building. Even if widely observed, this requirement may insure protection of the records from fire, but does not affect their contents or how they are judicially filed.

68. Probate proceedings in Connecticut, Florida, Maine, Maryland, Vermont, and Wisconsin are not entitled to the usual presumptions of regularity and validity accorded to courts of general jurisdiction. Simes & Baysé, *The Organization of the Probate Court in America*, 42 MICH. L. REV. 965, 990, 991 (1944). Compare, in general, Hopkins, *The Extraterritorial Effect of Probate Decrees*, 53 YALE L.J. 221 (1944).

69. CONN. GEN. STAT. § 7071 (1949); *Slattery v. Woodin*, 90 Conn. 48, 96 Atl. 178 (1915); *Dunham v. Dunham*, 97 Conn. 440, 117 Atl. 504 (1922). Twenty-six states permit a trial de novo in the court of general jurisdiction on appeal from a decree of the probate court. Simes & Baysé, *supra* note 63, at 995, 996.

70. N.Y. Surr. Ct. Act §§ 68-70 (1950).

71. See *Palmer v. Palmer*, 31 F. Supp. 861, 866 (D.Conn. 1940); *Plant v. Harrison*, 36 Misc. 649, 74 N.Y. Supp. 411 (1902); In *Willets' Appeal*, 50 Conn. 330 (1882); CLEAVELAND, HEWITT & CLARK, *PROBATE LAW AND PRACTICE OF CONNECTICUT* 131, 132 (1915).

72. CONN. GEN. STAT. § 6817 (1949).

73. In *Tumey v. State of Ohio*, 273 U.S. 510 (1927), the Court in a unanimous decision

the Court, it is reiterated that the friendly, helpful attitude to humble suitors is more properly the function of the clerks and registrars serving in the court than the judge who must ultimately pass on the legal merits of the issues presented.<sup>74</sup>

The Connecticut probate organization is most notorious for the fee system by which its courts are supported.<sup>75</sup> This system, a hang-over from colonial days, has been repudiated as completely outworn by all but a handful of courts in this country.<sup>76</sup> Formerly it was impossible to calculate with any degree of accuracy the gross receipts of an individual court. In 1941 a statute was passed requiring each probate judge to file with the Secretary of State an annual statement showing the gross receipts and itemized costs of his office.<sup>77</sup> Each year the people of the state are shocked anew by the published statistics. The figures for 1948<sup>78</sup> indicate that the total gross income of all the probate courts was \$812,881.17. Of this total, \$361,818.22 was spent on operating expenses, and the balance of \$451,062.95 was retained by the 119 judges as compensation. Gross receipts varied from highs of \$99,757.03 in Hartford, \$76,033.19 in New Haven, and \$64,900.82 in Bridgeport to lows of \$133.85 in Cornwall, \$135.90 in Killingworth, and \$112.65 in Marlborough.

Each court is a separate business establishment unto itself—a fact which serves to underline the nondescript character of these courts. A judge must be his own purchasing agent; in the districts of any size he must employ a staff whose tenure and salaries are set at his pleasure. But all of his expenses must be met out of the receipts from fees. There are sur-

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delivered by Mr. Chief Justice Taft held conviction of a defendant by a tribunal supported by fees and costs from the conviction to be violative of the Fourteenth Amendment to the Constitution of the United States.

74. As in the neighboring state of Massachusetts. The example of Massachusetts is cited not only because of the uniformly high standing of these state probate courts of county-wide jurisdiction, see Simes & Basye, *supra* note 59; Atkinson, *The Development of the Massachusetts Probate System*, 42 MICH. L. REV. 425 (1943), but because there has seemed to be a disposition to put our probate courts above those of our neighbor. The writers have not been able to ascertain a concrete basis for those opinions and believe they must have developed without either theoretical study or practical acquaintance with these courts, both of which would show that only a few of the best of our probate courts could at all compete with the Massachusetts courts in accomplishment, and then only with the very heavy schedule of fees, comparatively speaking, upon which the local courts rely. The senior author hereof has served since 1924 in various capacities as guardian, executor, and trustee under Massachusetts appointment or qualification and can testify from personal experience as to the worth of these neighboring courts.

75. CONN. GEN. STAT. § 3636 (1949), as amended by § 406a (Supp. 1949).

76. The fee system has been preserved, in whole or in part, in the probate courts of Alabama, Connecticut, Florida, Georgia, Kentucky, Missouri, North Carolina, Rhode Island, South Carolina, and Texas. Simes & Basye, *The Organization of the Probate Court in America*, 43 MICH. L. REV. 113, 143-145 (1944).

77. CONN. GEN. STAT. § 6834 (1949).

78. These are the latest figures available at the time of the preparation of the report.

prising variations in the amounts attributed to expenses. For instance, in Hartford expenses are listed at \$81,010.23, while in New Haven they are \$49,936.80 and in Bridgeport \$30,138.43.<sup>79</sup> Inasmuch as each judge is his own auditor, it is impossible to determine how comparable these figures are.

The balance remaining after the deduction of expenses goes to the judge as compensation. Here again there are tremendous variations in amounts. In Bridgeport the net income is reported at \$34,762.59, in New Haven \$26,096.39, in Greenwich \$23,081.42, in Stamford \$20,686.76, and in Hartford \$18,746.80, while in Cornwall it is but \$105.51, in Killingworth \$65.23, in Hampton \$61.00, and in Lyme 0.00.<sup>80</sup> Such was the public reaction to these statistics that the legislature in 1947 passed a statute aimed at the recapture of approximately \$30,000 of these fees.<sup>81</sup> But \$30,000 out of total net receipts of \$451,062.95 could hardly be called coming to grips with the basic evils of the fee system. The fact that these courts, whose decrees are not considered worthy of full faith and credit, are manned by judges some of whom are among the highest paid judicial officers in the world carries its own touch of irony.

#### IV. PREVIOUS REFORM ATTEMPTS

If there is anything in the old adage that the criminal is irresistibly drawn back to the scene of his crime, then the previous abortive attempts at reform can be considered as at least important admissions of weakness or infirmity, whatever else they were not. In fact this is probably the most significant thing about them. There has been, it is clear, a very real and manifest concern for some years on the part of responsible citizens as to the defects in the state judicial organization. Of this the legislature has become so aware that, in addition to the Judicial Council, it has created a series of committees or commissions to give special study either to the general problem or to some particular aspect of it. Scarcely a year of recent times has passed when some official body is not earnestly grappling with the problem. It is a matter of melancholy interest to realize how so

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79. The size of the amount in Hartford is to be explained, in part, by the fact that the Hartford judge has established a retirement and pension system for his clerks and employees. Expenses in New Haven will probably increase as a result of new policies adopted by the judge in that district.

80. The pattern of net income in 1948 was as follows:

\$10,000 and over	13 districts
5,000 to 10,000	16 districts
3,000 to 5,000	16 districts
2,000 to 3,000	7 districts
1,000 to 2,000	22 districts
500 to 1,000	26 districts
under 500	19 districts

81. CONN. GEN. STAT. § 6833 (1949).

much devoted effort of so many people has produced so little beneficial results, not to speak of some positive losses. The moral seems quite clear. Such minor tinkering is of so little value that the demand for improvement is hardly stilled for a moment and is soon vigorously renewed. Halfway palliatives are worse than none at all.

The bodies active in judicial reform include first, the Judicial Council,<sup>82</sup> a steady and patient worker since its creation in 1927, and second, the three legislative commissions set up since 1938 for study of the courts or various aspects of them.<sup>83</sup> A survey indicates that only two improvements can be attributed to these attempts at reform. First, as a result of the persistent efforts of the Judicial Council dating from its initial report in 1928, a change in the selection of the minor court judges from the General Assembly to nomination by the Governor with Assembly confirmation was achieved with the adoption of a constitutional amendment to that effect in 1948.<sup>84</sup> Second, following the recommendation in 1939 of the Committee to Study the Minor Court Systems,<sup>85</sup> the "trial justice" system was adopted as a substitute for indiscriminate trial of criminal cases by any elected justice of the peace.<sup>86</sup>

In an over-all appraisal of these reform movements it must be said that these two limited improvements are not sufficiently substantial to offset the disappointing, not to say detrimental, results of the activities of the two most recent Commissions. At no time in the past was there such an auspicious opportunity to achieve substantial reform as in 1943, when the legislature authorized the creation of the Commission to Study Integration of the State Judicial System.<sup>87</sup> The operative section of the enabling statute directed the Commission to "study the integration and reorganization of the judicial system of the state," including all the courts, "to determine the most efficient and economical methods of integrating and reorganizing the same into one judicial system."<sup>88</sup> In spite of this broad directive, and over the stated objections of its chairman, Associate Justice Newell Jennings, a majority of the Commission came to the conclusion not to recommend a complete integration of the Connecticut judicial system. It was felt that such a plan would meet with favor neither in the legislature nor with the

82. CONN. GEN. STAT. § 7659 (1949).

83. These commissions, listed in the order in which they were created, are: The Committee to Study the Minor Court System, Report of the Legislative Council vii (1938); The Commission to Study the Integration of the State Judicial System, Conn. Special Act 218, 1943; and The Commission to Study the Probate Court System, Conn. Special Act 217, 1945.

84. CONN. CONST. AMEND. XLVII (1948). See note 48 *supra*.

85. *Report of Committee to Study the Minor Court System*, JOURNAL OF THE HOUSE 195 *et seq.* (1939).

86. CONN. GEN. STAT. § 7566 *et seq.* (1949). See p. 1408 *supra*.

87. Conn. Special Act 218, 1943.

88. § 4, Conn. Special Act 218, 1943.

people of the state, that "each subdivision of the judicial system has grown up more or less independently," and that "the character of Connecticut people tends rather to an individualistic point of view than to centralization and integration."<sup>89</sup> After this summary disposition of important arguments, all hope of a thoroughgoing reorganization of the judiciary, as contemplated in the statute which created the Commission, was lost.

The 1943 Commission failed to satisfy the public demand for reform because it refused to make any substantial recommendations. The 1945 Commission to Study the Probate Court System failed because it did make recommendations—recommendations which, under the guise of reform, have made a bad situation even more intolerable. This latter Commission was appointed because its predecessor was unable to agree on any over-all plan for the improvement of the probate courts.<sup>90</sup> No such indecision marked the deliberations of this body. It decided forthrightly, taking its cue and quoting from the statement to it of the powerful Probate Assembly, that the probate system had given general satisfaction and met with general approval of the people.<sup>91</sup> As to reform, the Commission again quoted the Assembly to the effect that any attempt to streamline these courts or to set up the Massachusetts or New York systems "will meet violent, determined and insurmountable opposition."<sup>92</sup>

With such premises it was natural that the Commission should make no recommendations for organizational changes in the probate system. It was, however, concerned, as had been the earlier commission, by the public criticism of the excessive remuneration received by some of the probate judges. It hit upon an ingenious solution, namely the recapture of net earnings in accordance with a graduated scale.<sup>93</sup> The funds so obtained would be used to meet the expenses of a standing probate commission, composed of four members of the Probate Assembly and three citizens appointed by the Governor, to study the probate administration of the state, and, *inter alia*, to prepare "a simple, clear and concise schedule of probate fees." Any surplus was to be allotted back to the probate districts in proportion to the gross income received.<sup>94</sup>

In 1947 the legislature adopted this recommendation with some changes of detail and one of important substance.<sup>95</sup> That was to substitute the already powerful Probate Assembly itself in place of a separate probate commission as both the custodian and beneficiary of the Probate Fund.

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89. REPORT OF THE COMMISSION TO STUDY THE INTEGRATION OF THE STATE JUDICIAL SYSTEM 4 (1944). Justice Jennings' statement appears at *id.* 18.

90. *Id.* at 10.

91. REPORT OF THE COMMISSION TO STUDY THE PROBATE COURT SYSTEM 3 (Ingalls Printing Co., Danielson, Conn., 1947).

92. *Ibid.*

93. *Id.* at 13.

94. *Ibid.*

95. CONN. GEN. STAT. §§ 6831-6836 (1949).

By this statute the legislature approved and financed a group which for fifty years has represented the private interests of the probate judges. In effect reform of the probate system was entrusted to that group of persons which has the most interest to oppose any substantial change and which has shown itself alert and powerful to do so. It is another bit of irony that all the serious movements for probate reform should have led to this firmer entrenchment of an outworn system in the fundamental law of our state.

This recital of the sorry history of Connecticut judicial reform does not mean that the efforts of all the persons who served on these various bodies have been entirely wasted. On the contrary, many of the opinions put forward either as minority reports or as recommendations which the legislature rejected were noteworthy contributions to the cause of reform. Indeed, some of the recommendations suggested herein are but developments of these earlier ideas. For instance, the Judicial Council in its 1932, 1934, 1936, and 1938 reports urged that a District Court be created to supplant all the courts below the Superior Court, leaving only three courts, the Supreme Court, the Superior Court, and the District Court, all state courts.<sup>96</sup> The Committee to Study the Minor Court System recommended that the Court of Common Pleas be organized into two divisions, an appellate division and a circuit division.<sup>97</sup> The former was a continuation of the existing court; the latter was a substitute for all the minor courts except the justices of the peace, or, in effect, a district court organization within the common pleas framework. The views of several of the members of the 1943 Commission disclosed possibilities for future consideration. Thus, Chairman Jennings urged study of the Minnesota plan for the integration of the courts of that state, pointing out that the plan seemed adaptable to conditions here.<sup>98</sup> Two distinguished lawyer members offered plans for the reorganization of the probate courts, cutting down sharply on the number of districts and staffing the courts with salaried judges.<sup>99</sup> Indeed a substantial majority of the Commission recommended that the probate courts be made

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96. For the details of the Judicial Council's District Court Plan see FIFTH REP. CONN. JUD. COUNCIL (1936).

97. *Report of the Committee to Study the Minor Court System*, JOURNAL OF THE HOUSE 198 *et seq.* (1939).

98. REPORT OF THE COMMISSION TO STUDY THE INTEGRATION OF THE STATE JUDICIAL SYSTEM 18 (1944); see also Jennings, *The Commission to Study the Integration of the Judicial System*, 17 CONN. B.J. 212 (1943). It may be noted that shortly before this Commission was organized, its vice-chairman, Judge Kenneth Wynne, had advocated absorption of the Court of Common Pleas by the Superior Court. Wynne, *Court Reform in Connecticut*, 16 CONN. B.J. 179 (1942).

99. See the article by Mr. Warren F. Cressy, *Proceedings and Report of the Judicial Study Commission As It Affects Probate Courts*, 18 CONN. B.J. 160 (1944), which sets forth, *inter alia*, the views of himself and of Mr. Hugh Meade Alcorn, Jr., as indicated in the text.

state courts and that all the judges be placed on a salary fixed by the legislature and paid by the state.<sup>100</sup>

Beyond the significance of these individual opinions is of course the powerful argument thus given by these successive failures for a more forthright attack upon the problem.

#### V. THE RECOMMENDED SOLUTION—DETAIL FOR AN INTEGRATED COURT

It seemed therefore to the Survey Unit that, in the light of the general experience, the chaotic conditions in the lower Connecticut courts and the various abortive attempts at reform both pointed directly toward a single definite solution of the problem: the unification of all the courts in one system directed and controlled and generally supported as an instrumentality of the state itself. While the details of this may vary, the trend and purpose are clear. Specifically there would be one judicial department under the administrative direction of the Chief Justice and such staff as may be necessary for control and allocation of personnel, fiscal and financial payments and accounting, and the collection of statistics of court business and operation (now so sadly lacking as to all the minor courts). The Division for the trial of cases of general jurisdiction would be limited to the Superior Court, which would absorb the present trial jurisdiction of the Court of Common Pleas. The Division for the trial of cases now heard by the municipal and justice courts would be that of the Common Pleas Court of sufficient territorial extent and judicial power to command the services and justify the salaries of competent judges. The probate Division should follow a similar course, with, quite obviously, abandonment of the notorious fee system of support of the judges. Special divisions, such as that for the Juvenile Court, could be incorporated into or added to the department as policy demands.

Details of a proposed system embodying these general specifications follow.

#### *Administrative Direction of the System*

Under the general plan, each link in the state court system would be definitely geared into the Judicial Department as a part of a particular division of that department. While the Chief Justice would act as administrative director of the entire organization, he would not himself need to engage in the details of operation of each division. Thus each division would have its own chief judge, and all of these would sit with the Chief Justice as the Department's executive committee. This committee, in turn, would be assisted by an administrative office—perhaps the present office of the Executive Secretary expanded so as to become the actual directing head of

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100. REPORT OF THE COMMISSION TO STUDY THE INTEGRATION OF THE STATE JUDICIAL SYSTEM 10, 11 (1944).

the courts, as well as its fiscal, financial, and accounting agency. This office would maintain current statistics and be able at all times to advise the Committee of any organizational or operational changes needed to secure the smooth functioning of the system and the fullest use of judicial personnel. Upon its recommendations the Chief Judges of the several divisions would assign judges within their divisions as the pressure of business required. The Chief Justice would necessarily be responsible for the assignment of judges between divisions.

#### *The Supreme Court Division*

The Supreme Court would function much as at present. Since, as hereinafter pointed out, the present system of many trials de novo in the various courts would be eliminated, it is possible, although not necessarily probable, that the number of direct appeals to the Supreme Court would be increased. Were the burden to become too great, it would not then be difficult to organize an intermediate appellate division of the Superior Court, in analogy to the system in operation in many states, including New York and New Jersey.

#### *The Superior Court Division*

Basically the Superior Court would remain unchanged except that its jurisdiction would be expanded to include all the trial jurisdiction now in the overlapping Court of Common Pleas. To offset this increase in burden the intermediate appellate jurisdiction of the present Superior Court would be removed and its divorce jurisdiction transferred to the Juvenile Court as expanded into a family court. The over-all increase in business remaining should not be greater than can be handled by probably not more than five additional judges.

#### *The Common Pleas Division*

This Division, utilizing the facilities and to some extent the personnel of the present Court of Common Pleas, would be assigned the criminal and civil jurisdiction now exercised by the town, city and borough courts and the trial justice courts. This new court would then have criminal jurisdiction over petty offenses and also sit to determine probable cause for binding over those accused of felonies for trial in the Superior Court. It would have exclusive civil jurisdiction of both legal and equitable claims up to \$1,000 in amount.

The court should operate on a state-wide basis; and its judges should be appointed as state officers, although it would desirably hold sessions in more local areas than do the present high courts. It should have as many judges as are required for the efficient performance of its activities. It is thought that on the present basis of business a total of thirty judges should

be adequate, with activities normally distributed as follows: eight sitting in New Haven County, including Waterbury; six in Hartford County; five in Fairfield County; three in New London County; two in Litchfield, Middlesex, and Windham counties; one in Tolland County; and the chief judge at large and sitting wherever needed. While the judges would be appointed from the state as a whole and be eligible to be assigned to any part of the state, it would probably be generally more convenient that they be assigned to certain counties and go on circuit for the most part only in the counties to which they are assigned. Thus in New Haven County court would be held continuously in the large cities, and occasionally, say once or twice a week, in other convenient locations. The type of cases to be heard makes it desirable that there be had at least this much localization of minor criminal cases, preliminary hearings for the determination of probable cause in more serious criminal offenses, the disposition of small claims, the trial of the small civil cases, and, as later pointed out, the probate hearings. Details of these assignments would, however, be in the control of the Administrative Office.

The time-consuming and expensive system of allowing appeals to some higher tribunal, with a complete trial *de novo* from these courts, should be eliminated. A substantial reason for these retrials—beyond an implication that the courts of first instance are not adequate to dispose finally of these causes where litigants object—seems to be the preservation of the right of jury trial in both civil and criminal matters. Provision therefore should be made for holding both civil and criminal jury sessions of the courts of common pleas as those may be needed. Such sessions may well be limited in time and place—as to the larger centers and at only certain periods of the judicial term—since under the system of jury waiver the jury calendar may be reasonably expected to be short.

In the Survey Report there was also set forth a possible form of organization of a district court system along territorial lines for combined minor court and probate jurisdiction accompanied by a statement of the reasons why the state-wide organization above outlined was preferable. Since the problems of setting proper territorial limits to a district and of making judicial work and compensation at all uniform are so obviously insuperable, we do not take the space here to repeat those reasons as advanced in the Report.

#### *The Probate Division*

This Division should be a state system of courts, in place of the present local and fee-supported tribunals. Its organization would correspond to that just stated for the Court of Common Pleas. It is believed that twenty judges would be adequate, sitting more or less as follows: five each in New Haven and Hartford counties, four in Fairfield County, two in New London County, and one each in the remaining counties. Although they would

be state officers and subject to be assigned throughout the state as court business required, normally the judges in the more populous counties would go on circuit in their own counties only according to schedules and in places where their presence would be really needed. Presumably here the sittings would be held in the larger places, but subject always to the control and direction of the administrative officers of the department.

In order to make available to the public the more personal attention which it has been urged would be lost by a change from our present system, it would be desirable to have a sufficient number of clerks and registrars sitting in various places in each county to be generally available to the public. Nevertheless it is not thought necessary that there be such an office in every town or in each of the present probate districts. Location of such offices in the larger cities and in a combination of the smaller towns would seem sufficient. This would provide for adequate keeping of the records, a most important function of the new arrangement. The statutes should provide, however, for the greater disposition by the clerks of uncontested matters than now, for those are largely ministerial in nature; and the activities of the judges should be reserved for contested matters or those involving a large measure of discretion.

In keeping with the earlier suggestions as to avoiding duplicating trials, some provision must be made to take care of the present appeals and trials de novo in the Superior Court, with jury trials available on certain issues, such as those of testamentary capacity or undue influence in the making of wills. The same suggestion is made here as before, namely, that these courts would now be of sufficient standing so that their trials should be final, save for the usual appellate review of questions of law. This would mean that on such issues as may be tried to a jury, a jury trial should be made available in the probate Division, just as it is now, for example, in the Surrogate's Court of New York. In practice, the probate jury calendar would obviously be shorter than that for the common pleas; and limited jury sessions could be more easily arranged by the Administrative Office.

#### *The Family Court Division*

The present Juvenile Court would become a division of the new Judicial Department, retaining its present jurisdiction over juvenile delinquency and having added to it jurisdiction over divorce and non-support problems generally. To these, too, should be added bastardy complaints, now in the jurisdiction of the various minor courts. This division would then become a true family court. In order to handle this increase in business the number of judges should be increased from 3 to 6.

#### *Judicial Selection and Tenure*

These organizational changes will give the judicial office sufficient dignity and prestige to attract lawyers of high caliber to them. Conditions of employment, primarily selection, salary, and tenure, should be raised to a

level commensurate with the new importance of the office. Consequently the recommendation of the Report was that either all the judges of the state integrated court, from the highest to the supposed lowest, should be appointed and serve under the same conditions, or, if any differentiation at all was to be made, it should depend only upon experience and proved capacity and should be organized as a system of promotion, rather than of distinction in rank or title. That is the necessity to bring the lower courts to the level of public confidence; that, in the writers' judgment, is also the practical method, and the only practical method, of achieving that desired result.

This being the objective, the Survey Unit carefully refrained from pressing for changes in the selection or tenure of the high court judges. Since these are universally respected, there seemed no reason to raise an issue here, without any popular demand, particularly since extensive reform of the entire lower court structure was so pressing a need. If, however, there ever develops a demand for change with respect to these courts, then of course selection of all the other judges of the single integrated court must be changed in order that they be kept on the same plane for the reasons we have stated. This is all that needs be said at this time as to judicial selection; we do venture to add two comments because of certain public discussion stimulated by the Report.

The first is with reference to the so-called Missouri plan of selection of judges sponsored by the American Bar Association.<sup>101</sup> This in substance is the system by which the appointing officer selects a judge from a panel built up by a more or less permanent body of judges and lawyers created for the purpose, and the judge so selected thereafter runs for the office at a stated interval only against his own record and not against some other candidate. It has obvious uses in a state ridden by political judges. While the writers have no desire to go counter to any strong movement for such a system here, we do suggest that no great need for it in this state has been as yet disclosed. The record of our high court judges persuades strongly otherwise; the all-too-brief experience with the minor courts under the new system of choice does not prove the contrary, so clearly was this involved in and controlled by their past history and immersion in politics. Moreover,

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101. MO. CONST. ART. 5, §§ 29(a)-29(g) (1945); THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, A HANDBOOK PREPARED BY THE SECTION OF JUDICIAL ADMINISTRATION, A.B.A., 75-83 (1949); VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 3-28 (1949). This proposal has been widely commented on. See articles cited by VANDERBILT, *loc. cit. supra*; also extensive bibliography in HAYNES, SELECTION AND TENURE OF JUDGES 238-303 (1944), covering all proposals. See also Lyman, 23 CONN. B.J. 355 (1949); Lashly, *The Missouri Plan for Selection and Tenure of Judges*, 21 CONN. B.J. 288 (1947). For views supporting the Connecticut system of appointment to the higher courts, see the two articles by Chief Justice Maltbie, *supra* note 49; Robinson, *Selection of Judges*, 15 CONN. B.J. 291 (1941); Inglis, *The Selection and Tenure of Judges*, 22 CONN. B.J. 106 (1948); and compare Sinn, *On Raising the Quality of Our Judges*, 22 CONN. B.J. 390 (1948).

the recommended system must inevitably raise doubts at its central feature of a selection directed and controlled by a select group of successful members of the profession. It may be thought that judicial conservatism, at various crucial times in American history, has been more productive of doubt as to the court system than perhaps any other single thing, and that this system, whatever its other advantages, does present serious questions in its natural tendency to solidify the normal conservative trends of the bench.

The second is with reference to tenure. On this no more need be said than as above, except that a—to us—wholly surprising misunderstanding arose as to a recommendation of the Survey Unit charged with the duty of studying the state constitution. It was not a part of the function of the judiciary Survey Unit to study this problem; nor, in view of the limited changes constitutionwise needed for the court reforms, was it anxious to take on the extra burden of constitutional reform. Yet it did seem the part of courtesy to respond to the request of those who made the constitutional study for some expression of view as to the proposed judiciary article of their draft of a constitution, as stated by them in an article recounting the fate of their proposal.<sup>102</sup> The chief problem arose as to the term of office for the judges, for there were local precedents for eight, four, and two years. None of these is theoretically appropriate; all are too short to insure the independent tenure which is essential for the judicial function. It is true, however, that by strong tradition the eight-year term has really been translated into life tenure until the retiring age of seventy; and it is that tradition we need to utilize to safeguard also the minor courts. But since that step had never been taken for these courts, since the latest expression of the legislative and popular view was in the widely supported constitutional amendment giving the Governor the right to nominate the minor judges for appointment by the General Assembly "for such term and in such manner as shall be by law prescribed,"<sup>103</sup> it was thought that this should be the constitutional provision which would most quickly and directly allow for the raising of standards of tenure to keep pace with the hoped-for developing tradition. That such a provision, with such a background, could have been construed, as it was in some quarters, as an attack on the independence of the judiciary has left us completely mystified. There seemed an upside-down character to the contention thus advanced against a serious movement to raise the standards of the minor judges, not to lower those of the high judges. It is perhaps a further tribute to our judiciary that so many could have rushed so hastily to the defense of the judges without taking the pains to see if they were really under attack.<sup>104</sup> But we could wish that the

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102. Braden & Cahill, *A New Constitution for Connecticut*, 24 CONN. B.J. 121, 167 (1950).

103. CONN. CONST. AMEND. XLVII (1948). See notes 48, 84 *supra*.

104. Even had there been a concealed and sinister purpose behind all this, it is difficult to see how practically it could be effectuated or the threat made real. Conceivably three

matter had been viewed more dispassionately, since there is a problem how best to translate the Connecticut tradition into formal conventional language and that problem has not even been considered in the heightened atmosphere which the suggestion seemed to engender. In view of this *con-cretemp*s the best which can be suggested at the moment appears to be that the terms of *all* judges of the proposed integrated court should be at least eight years, and preferably longer.

## VI. THE LOW COST OF EFFICIENT JUSTICE

It must be obvious to all that the lower courts are, for natural reasons, the revenue-producing elements of our judicial system. The fines for the petty criminal offenses, particularly for traffic violations, run into immense sums each year, even excluding that newly-found gold mine for hard-pressed cities, the revenue from parking meters.<sup>105</sup> No such comparable revenue can be expected from the class of crimes in the particular control of the high courts. As for the revenue from the probate courts, that is traditionally a lawyer's dream. To date this revenue has been dissipated among the cities and towns and the officials themselves. Collected entirely by the state, it would furnish revenue sufficient to operate an exceedingly high-grade system of state courts.

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courses to effect it might be thought of. Of these the power of impeachment—available for the removal of judges, CONN. CONST. ART. 5, § 3, ART. 9, § 3 (1818); AMEND. XII (1856)—is so well known and so hedged about with safeguards as hardly to constitute a threat to the judiciary. The further provision, ART. 5, § 3, that "the Governour shall also remove them [the Supreme and Superior Court judges] on the address of two thirds of the members of each house of the General Assembly," repeated in AMEND. XII, has not proved a threat in the past, and, in view of the standard political divisions of the State, is hardly likely to do so in the future. But if, as believed, the provision is already practically obsolete, it might be well to have it removed completely, particularly for the assurance of those who think a Rhode Island incident, *Recent Legislative Election of Supreme Court Justices in Rhode Island*, 21 A.B.A.J. 306 (1935), might conceivably be repeated here, even though the governing provision of the Rhode Island Constitution is wholly unlike that of Connecticut. The third possibility, sudden abolition of or change in judicial terms, seems not only politically impossible, but also unworkable, even if attempted, since existing judicial terms are not for uniform time periods, but only from the occurring of vacancies caused by death or retirement of sitting judges. Legislation directed against a particular judge before his term expired could have no more standing under the proposed constitution than it would have now. See acute demonstration of the insubstantiality of these fears by Messrs. Braden & Cahill, *supra* note 102.

105. Receipts from fines in criminal cases and costs in civil cases (the latter a relatively small item) in the municipal courts were \$554,307.09 in 1939-40, \$561,650.79 in 1940-41, and \$726,382.57 in 1941-42, the last year for which statistics are available. Included therein for "parking violations" were 0.00 in 1939-40, \$23,968.50 for 1940-41, and \$91,749.75 for 1941-42. Total receipts for the justice courts were \$62,842.66 for 1939-40, \$56,069.49 for 1940-41, and \$88,721.33 for 1941-42. Because of the failure of some courts to report and the restricted use of automobiles at that time, these figures are undoubtedly understated. Even if returns from parking violations are deducted, the amounts must have substantially increased over the ten-year period, having in mind the increase in population and the disturbing growth of automobile traffic. An estimate of a total of one million dollars for 1951-52

In advance of a definite program established by the legislature, perhaps no more than this should be said. There has been no tradition in this state of niggardliness in the administration of justice and there is no reason to suppose that there is any wide support for viewing effective justice strictly from the financial end. But in response to a demand for illustration of the substantial savings envisaged, the Survey Unit set up a tentative budget purely for illustrative purposes. We repeat it here, also repeating the same warnings. It is only for the purposes of illustration; it is designed not to prove that justice should be cheap, but only that the large sums now coming from our people for court support can be used to better advantage. As will be seen, we have provided large leeway in various important items to provide for unexpected charges. There must, of course, be a period of trial and error; the advantage of the administrative unification of the court system is that the administrative office can ascertain the results of experience and recommend the changes which may be needed.

#### *A Budget Estimate*

With these caveats we turn to the suggested budget. Relying on the most recent figures available, it seemed that a moderate and modest estimate would set the figure of two million dollars, one each from the probate and from the other minor courts, as the potential court receipts by 1951 or 1952.<sup>106</sup> The cost of the present court of common pleas was \$374,947.86 for 1948-49; it is due for a substantial increase for later years because of an increase in salaries. This will be saved; but against it should be charged roughly about \$100,000 for additional superior and family court judges as recommended. There should therefore be no new drain upon state finances until and unless the cost of the new court structure exceeds two and a quarter or two and a half million dollars.

The proposed budget for the new divisions of the integrated court as set forth in the Report was as follows:

Salaries of judges .....	\$625,000
of clerks and assistant clerks of common pleas..	175,000
of clerks, assistant clerks, and registrars of pro- bate .....	225,000
of assistant prosecutors .....	200,000
Supplies .....	75,000
Other expenses .....	200,000
	\$1,500,000

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is therefore very moderate. Statistics obtained from the office of the Executive Secretary of the Judicial Department.

106. Gross receipts by probate judges for 1948 were \$813,007.07. This is a constantly increasing figure, representing a gain of some \$175,000 over the previous six-year coverage;

These are believed to be reasonably generous estimates, providing for 50 judges, some 8 or 9 clerks, and 24 assistant clerks in the common pleas Division, a like number, plus 30 registrars, for the probate Division, some 50 assistant prosecutors, and 80 to 100 clerical and other assistants of various kinds and grades, with a large allowance for supplies. But whether these individual items are generous or not, it should be noticed that on the basis of the receipts as estimated there would still remain unexpended upward of \$500,000 of expected court revenue and of \$300,000 of savings from the abolition of the present common pleas setup. These various margins seem so generous as to avoid any real chance of substantial underestimate.

### *Criticism and Response*

Some speakers at the legislative hearing were disposed to attack these figures; but the suggestions made, in our judgment, tend on the whole to show their soundness. It was pointed out that the state would assume responsibility for a personnel which hitherto had been no part of its burden as a governmental unit, and that the estimate took no note of retiring allowances either for judges or for court personnel. Both these points are of course obvious and not to be denied. As to the latter, it is not the program of the state to set up retiring reserves. Hence initially there would be no increase in the estimates for these purposes; what the costs might amount to twenty or fifty years hence would be difficult to guess uniquely for this one department alone; but the margin between expected receipts and expenditures should be adequate. As to the former, of course the state will assume the responsibility which hitherto has been diffused and rendered meaningless among many towns, cities, and individuals. That, indeed, is the keystone of the reform. It is not to be doubted that some towns will profit by the change, by transferring a burden to the state; while others, situated on through highways, will lose some profitable revenue from traffic offenses. (It is not proposed to take for the state any of the rich revenue from parking meters.) And some probate officials may lose high profits while the system is made uniform as to all. But all this revenue comes eventually from the people of the state; it is fitting and proper that it should be used to maintain state courts worthy of the dignity of the state. Our demonstration is directed to the point that this can and should be done without increase of financial burden on the state or on its citizens. This seeming miracle can be accomplished by ordinary businesslike methods providing for one closely knit state organization with co-operating units in place of the hundreds of diverse and conflicting political organisms now fighting to occupy the field.

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it should be one million dollars by 1951 or 1952. For an analysis of receipts from the minor courts see note 105 *supra*.

## VII. MECHANICS OF ACHIEVING THE REFORM

Except in one particular, all the changes recommended above are within the constitutional power of the legislature.<sup>107</sup> The selection of probate judges by popular election is embedded in the Constitution.<sup>108</sup> That should be changed by constitutional amendment. Otherwise a comprehensive statute defining the integrated Judicial Department as here visualized is alone necessary.

It is, of course, true that a neater job of tying loose ends, consolidating constitutional amendments, and stating straightforwardly in one place all the provisions concerning the judiciary would have its advantages. For example, the justice of the peace is already an outworn official, save for the designated trial justice in each town having no municipal court. It would be better to abolish this office altogether than to retain the formal remnants as at present. But the perils of remaking the Constitution seem many. We have already referred to the tempest-in-a-teapot set forth by an innocent provision taken from the existing Constitution itself.<sup>109</sup> Perhaps it may be the part of wisdom to limit the constitutional changes to a minimum. If so, that minimum is as stated.

## VIII. THE FUTURE OF THE PROPOSAL

As has been stated, the special session of the legislature, sitting in the spring of 1950, took no action whatsoever with respect to these proposals. But that was not wholly unexpected and certainly is not to be construed as their definite rejection. At this writing there seem definite grounds for hope that the bar and bench of the state will give serious study and consideration to the problem. Clearly it requires the attention of the best minds of the profession; and no one scheme should be put forward as definitive and final.

The most significant development is in connection with the State Bar Association. The high command of that organization, its sixteen-member Council, appeared to be taken somewhat by surprise; its first reaction was the lawyerlike plea for more time. So on February 20, 1950, the Council voted, and the president requested of the Governor and legislative leaders, that legislative action on the proposed court reorganization be postponed for at least one year. The Council's reasons for this request were that the recommendations were of such magnitude as to require "extended study and debate" before enactment.<sup>110</sup> But at the same time the organization showed an open-minded attitude toward the proposal by taking steps for

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107. CONN. CONST. ART. 5, "Of the Judicial Department," providing, *inter alia*, for "such inferior courts as the General Assembly shall, from time to time, ordain and establish."

108. CONN. CONST. AMEND. IX (1850), AMEND. XXI (1876), AMEND. XLIV (1948).

109. See notes 102-104 *supra*.

110. N.H. Evening Register, Feb. 21, 1950, p. 1, col. 2.

its careful consideration. For it arranged for the creation of a committee, composed of distinguished lawyers and judges, to give independent study and consideration to the proposed reforms.<sup>111</sup> The chairman of the Commission at once replied to the president of the Association to point out that the Association's request and plan for study by a committee coincided with the Commission's schedule and plans for future action. It was the Commission's plan that the recommended legislation which was to be presented to the General Assembly on March 9 would not include detailed specific plans for changes in the existing court system, but only a basic framework upon which a second commission could build. Ample opportunity would be given to both the bench and the bar for their participation in the preparation of this second-stage legislation.<sup>112</sup> Accordingly, the committee set to work to study the proposal, and a report should be forthcoming shortly—probably before this article appears in print.

Interest in the Report has undoubtedly been stimulated by the political developments with respect to it. This is an election year for state officials, of more than usual importance, because for the first time the Governor will be elected for a four-year term, instead of the previous two-year tenure. The Republicans in their program for the campaign pledged advance acceptance of the Bar committee's recommendations as "the basis" for court reform, and the Republican candidate for the governorship has reiterated this position in response to a questionnaire of the League of Women Voters.<sup>113</sup> The Democratic Party is already committed to court reform along the general lines of these proposals, first by action of the Democratic leaders in the General Assembly and then by their party platform for the fall campaign.<sup>114</sup> On the basis of the campaign promises, therefore, it would seem that some reform is due; the Bar committee members may well be the key figures in determining whether it is to be responsive to the needs and not merely another in the recurring weak attempts which have failed to satisfy the public for improvement.

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111. The membership of this committee consists of Supreme Court Justice Inglis as Chairman, Justice O'Sullivan, Dean Sturges of the Yale Law School, Mr. Samuel A. Persky, a former President of the New Haven County Bar Association, and Messrs. Charles M. Lyman and Charles W. Pettengill, both former Presidents of the State Bar Association.

112. The text of Mr. Atkins' letter is given in N.H. Evening Register, Feb. 24, 1950, p. 1, col. 3.

113. The Republican Party Platform is stated in N.H. Evening Register, June 12, 1950, p. 1, cols. 2, 3; the statement of Representative Lodge, the Republican candidate for Governor, appears in N.H. Evening Register, Sept. 15, 1950, p. 1, col. 6. See also, A POSITIVE PROGRAM BY CONNECTICUT REPUBLICANS, THE REPUBLICAN POLICY COMMITTEE 20 (1950); and 11 The Connecticut Voter No. 2 (1950).

114. For a statement of the Democratic Platform see N.H. Evening Register, July 25, 1950, p. 19, col. 1; for the position of Governor Bowles, the Democratic candidate for reelection, see, in addition to his messages to the special session of the legislature, the pamphlet cited in note 25 *supra*.

In addition to this main study project, local bar committees have been constituted with like purpose, although in all probability they may await the report of the state group. There seems to be substantial interest in the subject, distinguished for quality, if perhaps not for quantity. The day-long hearing on these proposals before the joint committees of the House and Senate on April 20, 1950—said to be one of the most thorough of the two-month session—demonstrated as much. There the widespread character of the demand for some kind of reform was again made manifest. Distinguished lawyers and judges, as well as representatives of semiofficial groups, appeared and showed their concern while giving at least qualified support to the particular reform proposed.<sup>115</sup> The Administrative Director of the New Jersey Courts was good enough to appear and to explain the benefits of integration as seen in New Jersey.<sup>116</sup> In the long session there were only four heard definitely in opposition—all representatives of the Connecticut Probate Assembly.<sup>117</sup> For a land of "steady habits" not prone to change the showing was impressive.

The history of judicial reform has not been one of a people's rising; it is too much to expect that the populace generally can follow and appraise the defects of a highly specialized system such as the law and its courts. Instead improvement will come, as it has in the federal courts and in the courts of other states, from the informed leadership of the judges and lawyers who are most intimately concerned with the successful operation of the system.<sup>118</sup> The responsibility of the local bar in this matter is made particularly acute by the announcement by the Republican Party of its support of the Bar Association's findings, whatever they may be. The rest would seem to be in the hands first of the distinguished committee and second of the rank and file of the bar. This is, after all, quite as it should be. Court reform, to be intelligent, sophisticated, and lasting, must be the product of the best effort of our profession. That is a truth which has become

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115. These included former Chief Justice William M. Maltbie, Associate Justice Newell Jennings, Judge William S. Gordon, the Judicial Council, and the State Bar Association, as well as Judge James A. Shanley of the important New Haven Probate Court. N.H. Evening Register, Apr. 21, 1950, p. 1, col. 1.

116. Mr. Willard G. Woelper, whose yearly reports as Administrative Director of the New Jersey Courts are already setting a standard for other courts to follow. They follow the path blazed by the Annual Reports of the Administrative Director of the United States Courts. See Shafroth, *Federal Judicial Statistics*, 13 LAW & CONTEMP. PROB. 200 (1948); *Report of Committee on Judicial Statistics*, 7 FED. B.J. 292 (1946). See note 21 *supra*.

117. N.H. Evening Register, Apr. 21, 1950, p. 1, col. 1.

118. A notable example of leadership bringing reform to the courts of a state is Chief Justice Arthur T. Vanderbilt's success in New Jersey. See Harrison, *Judicial Reform in New Jersey*, 22 STATE GOVERNMENT 232 (1949); Clark, *Code Pleading and Practice Today*, in DAVID DUDLEY FIELD CENTENARY ESSAYS 55, 70-72 (1949); Clark & Wright, *The Judicial Council and the Rule-Making Power: A Dissent and A Protest*, 1 SYRACUSE L. REV. 346, 348-351 (1950); Sunderland, *The English Struggle for Procedural Reform*, 39 HARV. L. REV. 725 (1926).

increasingly apparent to the bar associations of the country, whose interest in the unified court was noted at the beginning of this article. Yet acknowledgment of this responsibility must become even more widespread and response to it still more active if the quite stupendous job of bringing the American courts to the proper level of organizational efficiency is to be successfully completed. Hence the Connecticut challenge has more than local implications. If the local bar can and does rise to the opportunity, then, indeed, we shall have here a case study, worthy of emulation, in the initiation of judicial reform.<sup>119</sup>

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119. After this article was prepared, the Bar committee filed its report accepting and recommending active support for all the proposals of the Commission except those concerning the probate courts. As to the latter a majority accepted the substance of the Commission proposals (without so conceding), but recommended a plan whereby contested probate matters should be tried by superior court judges instead of by a probate Division as recommended by the Commission. The minority (Messrs. Inglis and Pettengill) would retain the "father-confessor" attributes of the present probate judges, while advocating the cutting down of the number of probate districts and of excessive receipts of fees. At its meeting October 17, 1950, the State Bar Association voted approval of the Report and support of its recommendations, except as to probate matters; as to these, it voted for a referendum by mail of its members. While this hesitancy as to the system of quite partial justice exemplified in the probate courts shows again their deep local roots, yet the unanimity of support for the other comprehensive and far-reaching reforms augurs well for future court improvement.

The report will be discussed by the present authors in an article, *A Proposal for Court Reform in Connecticut*, scheduled to appear in the CONNECTICUT BAR JOURNAL for December, 1950.