

THE NEW JUDICIARY ACT OF PUERTO RICO:  
A DEFINITIVE COURT REORGANIZATION

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## I. THE BACKGROUND

UNDER the impact of a unique indigenous spirit of reform, during the last decade, Puerto Rico has become a truly exciting laboratory for social experimentation. The bold attempt to achieve rapid industrialization of its business and commercial life, dramatized under its slogan "Operation Bootstrap," marked a new era in the economy of the country.<sup>1</sup> The considerable success of this venture, with its particularly intriguing use of taxation or tax-exemption as an assisting prop, has received wide comment.<sup>2</sup> Now governmental developments are keeping pace. Under grant of authority by Congress, the first governor to be elected by the people of Puerto Rico in place of presidential appointment, Luis Muñoz Marin, took office on January 2, 1949. A new constitution, adopted in the Constitutional Convention of Puerto Rico pursuant to congressional authority, was approved by the people and accepted by Congress in 1952.<sup>3</sup> It creates a new body politic known in Spanish as "El Estado Libre Asociado de Puerto Rico," and in English as "The Commonwealth of Puerto Rico," comprised of people who are citizens both of the United States and of the island commonwealth, and having powers different from, and in some respects greater than, either a territory or a

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1. *E.g.*, Chase, *Operation Bootstrap* in PUERTO RICO REPORT OF PROGRESS (1951) (for the NPA Business Committee on National Policy); N. Y. Herald Tribune, Dec. 10, 1948, Puerto Rico Section, pp. 35-8; PERLOF, PUERTO RICO'S ECONOMIC FUTURE (1950); HIBBEN & PICO, INDUSTRIAL DEVELOPMENT OF PUERTO RICO AND THE VIRGIN ISLANDS OF THE UNITED STATES, REPORT OF THE UNITED STATES SECTION CARIBBEAN COMMISSION (1948). For earlier conditions, compare TUGWELL, THE STRICKEN LAND; THE STORY OF PUERTO RICO (1947).

2. See, *e.g.*, Rudick & Allen, *Tax Aspects of Operations under the Puerto Rican Exemption Program*, 7 TAX L. REV. 403 (1952); Baker, *Puerto Rico's Program of Industrial Tax Exemption*, 18 GEO. WASH. L. REV. 327 (1950).

3. Pub. L. No. 447, 82d Cong., 2d Sess. (July 3, 1952), 66 STAT. 327, 1952 U.S. CODE CONG. & ADM. SERV. 3059. In the accepting Act, Congress placed some interesting limitations on the Bill of Rights, ART. II of the Puerto Rican Constitution. They are explained in the Committee Reports, 1952 U.S. CODE CONG. & ADM. SERV. 3423-39. See *id.* at 3435: "Puerto Rico has become the showcase of the Americas." For President Truman's Message submitting the Constitution, with a copy of the Constitution, see *id.* at 1635-1701.

state.<sup>4</sup> It is only natural that innovation in judicial administration should accompany these novel developments. The Judiciary Article of the new Constitution, Article V, drafted after consultation with many leaders of American constitutional thought, represents an advanced outpost in judicial administration in this country. It states as its basic provision: "The courts of Puerto Rico shall constitute a unified judicial system for purposes of jurisdiction, operation and administration." Supplementary provisions grant full authority to the Supreme Court of Puerto Rico to adopt not merely "rules for the administration of the courts," but "rules of evidence and of civil and criminal procedure"; and they command that "the Chief Justice shall direct the administration of the courts," with the assistance of "an administrative director" appointed by him.<sup>5</sup>

This notable basic mandate required legislation for its implementation. So, when it became apparent that the Constitution was soon to become effective, the Attorney-General, the Honorable Victor Gutiérrez Franqui (who had been a Vice-President and a member of the Constitutional Convention), appointed a committee of outstanding members of the bar and government to prepare a draft for submission to the Legislature in special session.<sup>6</sup> The Attorney-General invited the senior author hereof to act as consultant, assisted by the junior as clerk; and they journeyed to San Juan and began work on July 7, 1952. The Committee started to sit two days later and held daily sessions in company with the entire Puerto Rican Supreme Court.<sup>7</sup>

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4. Puerto Rico does not have representation in Congress; its Resident Commissioner has an advisory but not a voting function, with the right to speak on the floor and be a member of the Committees of the House; on the other hand, its collections of income taxes and internal revenue are all retained locally and it obtains substantial revenue from taxation of tobacco and rum brought into continental United States. Otherwise the powers of the Puerto Rican government match those of the States, with plenary power of self-government in local affairs. An article, *The Constitution of the Commonwealth of Puerto Rico*, by Attorney-General Gutiérrez Franqui and Professor Henry Wells—who spent last year on leave from Yale University in research for the Constitutional Convention—is scheduled to appear in the January, 1953, issue of the ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE—a number to be devoted entirely to Puerto Rico.

5. P.R. CONST. ART. V, §§ 2, 6, 7. See 1952 U.S. CODE CONG. & ADM. SERV. 1696.

6. Members of the Committee, in addition to the Attorney-General himself, included Sr. José Trias Monge of the Puerto Rican Bar and a member of the Constitutional Convention; Judge Federico Tilén, Administrative Director-designate of the Puerto Rican court system; and Acting First Assistant Attorney-General Carlos V. Dávila. The Committee was assisted by Assistant Attorney-General Francisco Espinosa. Mr. Trias' doctoral thesis, for which he was awarded the Yale J.S.D. in 1947, was of great assistance to the draftsmen. TRIAS MONGE, LEGISLATIVE AND JUDICIAL REORGANIZATION IN PUERTO RICO (unpublished thesis in Yale Law Library, 1947).

7. The Court at that time was composed of Chief Justice Roberto H. Todd, Jr. and Associate Justices A. Cecil Snyder, Borinquen Marrero and Luis Negrón Fernández. One vacancy then existed. Recently the Legislature, acting upon request of the Court as provided in ART. V, § 3 of the Constitution, has increased the number to seven; and three distinguished citizens of Puerto Rico have been appointed by the Governor with the advice and consent of the Senate, *id.* § 8, to fill the vacancies.

Not only did each member of the Committee actively participate, but so did every justice. Such co-operation—representing a conception of judicial function and duty new to the guests from the States—was vastly stimulating, and it demonstrated that the entire Court was determined to make the new system work and was doing its utmost to secure the best vehicle. The Act was drafted in a week of long daily sessions. Governor Muñoz then submitted the bill, with his endorsement, to the Legislature where hearings and conferences were held with the Judiciary Committees of both Houses and legislative leaders, the Supreme Court justices still participating throughout. The Legislature then gave serious consideration to the proposed legislation and made significant changes, referred to below. The Act was passed in final form on July 24, 1952, and took effect, simultaneously with the Constitution itself, the next day. That day, long significant in local history as "Occupation Day" since American troops first landed there on July 25, 1898, now becomes "Constitution Day" and marks a rebirth of insular political, as well as judicial, institutions.

That any new act concerning the judiciary, particularly one making a fundamental reorganization of the court structure, could have been framed and passed in a time which seems surprisingly short, even allowing for previous spade work,<sup>8</sup> is an intriguing feature for lawyers engaged in the painfully slow, Sisyphean process of improving law administration in the States. But the content of the Puerto Rican legislation is even more noteworthy. For it constitutes the most complete realization yet known of the ideal of a modern and efficient judicial system.

That ideal, of course, became fully crystallized in the Reports adopted by the Section of Judicial Administration and approved by the American Bar Association at its Cleveland meeting in 1938.<sup>9</sup> The reforms recommended there cover all of the processes for administering justice. Most far-reaching,

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8. It should be pointed out that the drafting committee had been studying the matter for some little time; that the majority of the members of the Legislature were also members of the Constitutional Convention which drafted the Judiciary Article of the Constitution and were thus familiar with the contemplated objective of a completely unified judicial system with court administration lodged in the Chief Justice; and that plans for court integration such as that recommended for Connecticut, note 20 *infra*, were available as substantial suggestions.

9. See *Report of the Section of Judicial Administration*, 63 A.B.A. REP. 523 (1938), reprinted in VANDERBILT, *MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION*, App. A, 495-624 (1949). Needless to say, this action by the Bar Association did not spring full-blown out of unseeded soil; the history of court reform and the movement for efficient administration of justice in this court began at least with Roscoe Pound's epic, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395 (1906), 40 AM. L. REV. 729 (1906), 20 J. AM. JUD. Soc'y 178 (1937). See also POUND, *ORGANIZATION OF COURTS* (1940). And since then the movement has been highlighted by the American Judicature Society's Model Judicature Act of 1914, AM. JUD. Soc'y BULL. VII (1914); the adoption of the Federal Rules of Civil Procedure, see Clark, *The Influence of Federal Procedural Reform*, 13 LAW & CONTEMP. PROB. 144 (1948); Clark, *The Federal Rules in State Practice*, 23 ROCKY MT. L. REV. 520 (1951); the establishment of the fed-

perhaps, is the proposal for a fully integrated and efficiently conducted court system. As formally stated, it urged that "provision should be made in each state for a unified judicial system with power and responsibility in one of the judges to assign judges to judicial service so as to relieve congestion of dockets and utilize the available judges to the best advantage."<sup>10</sup> This means that the court structure will be made simple by substituting one inclusive organization—however many subordinate parts or divisions may be necessary or convenient for detailed court adjudication—in place of the usual conflict and confusion of separate courts. And it also means that the court will be run in a businesslike way by a business manager or administrative head, usually the Chief Justice. A court so conducted saves the waste and expense of duplicating governmental agencies; it eliminates litigants' errors in choosing a tribunal; it conserves judicial energy; and it allots and distributes its equipment, human or inanimate, where most needed and efficiently usable.<sup>11</sup>

Along with these fundamental requirements there should be provision also for an Administrative Office for the courts, the staff of which may enable the Chief Justice to perform his vital administrative duties by obtaining periodic work reports from the judges, by marshaling all the facts required for effective disposition of the judicial strength, and by assisting generally in the business and bookkeeping management of the courts.<sup>12</sup> Then, as a "keystone" to the reform advocated,<sup>13</sup> the courts should be given control of their own opera-

eral Administrative Office of the United States Courts, see Chandler, *The Administration of the Federal Courts*, 13 LAW & CONTEMP. PROB. 182 (1948); and the unification of the courts of New Jersey, see Harrison, *New Jersey's New Court System*, 2 RUTGERS L. REV. 60 (1948). Other proposals and partial steps are set forth in Clark & Clark, *Court Integration in Connecticut: A Case Study of Steps in Judicial Reform*, 59 YALE L.J. 1395 (1950), and Clark & Clark, *A Proposal for Court Reform in Connecticut*, 24 CONN. B.J. 385, 400-02 (1950). The most recent reiteration of the program as an entirety is THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, A HANDBOOK PREPARED BY THE SECTION OF JUDICIAL ADMINISTRATION, A.B.A. (3d ed. 1952).

10. Recommendation 1(2), 63 A.B.A. REP. 523 (1938).

11. The dramatic success of such an innovation is shown in New Jersey where the official reports showed that approximately twice as much business was transacted in a year by fewer judges than formerly. WOELPER, ANNUAL REPORT OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS OF THE STATE OF NEW JERSEY 1948-1949, 1-15, with tables at 17-131; *id.* 1950-1951, at 7-22 with supporting tables; PRELIMINARY REPORT Jan. 1-Mar. 31, 1952, 1-13; Vanderbilt, *The Record of the New Jersey Courts in the Second Year under the New Constitution*, 5 RUTGERS L. REV. 335 (1951); *Address of Arthur T. Vanderbilt*, 24 CONN. B.J. 525 (1950); Harrison, *Judicial Reform in New Jersey*, 22 STATE GOVERNMENT 232, 247, 248 (1949); Hartshorne, *Progress in New Jersey Judicial Administration*, 3 RUTGERS L. REV. 161 (1949).

12. MODEL ACT TO PROVIDE FOR AN ADMINISTRATOR FOR STATE COURTS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 167-9 (1948). See also Chandler, *supra* note 9; Shafroth, *Improving Judicial Administration in the State Courts*, 8 MO. L. REV. 5 (1943).

13. THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, *supra* note 9, at 10. See in general Clark & Wright, *The Judicial Council and the Rule-Making Power: A Dissent and A Protest*, 1 SYRACUSE L. REV. 346 (1950) with citations.

tion, by a delegation to them of a full and complete rule-making power.<sup>14</sup> These reforms, mainly affecting the structure and operation of trial courts, should be accompanied by measures raising the standards of minor court justice and simplifying the process of appellate review, including the elimination of the wasteful trial de novo.<sup>15</sup>

This ideal program indicates that at least the leaders of the profession have come to realize that with all the creative energy displayed in developing and rationalizing substantive law of the last century, there nonetheless remains significant dissatisfaction with our administration of justice; these leaders realize also that something should be done about it. Inequitable rules of law and the unpopular decision on the merits are less significant than delay, cost, and incapab judgng as sources of popular irritation. Yet these are merely the by-products of traditional state court systems which put a premium on technical pleading and procedure, inefficient trial courts, congested dockets, and politically dominated or poorly trained judges.

But to the protestations of national and local bar associations, commentators, and judges, the states have responded most slowly. There is no present need to compile a complete box score of the past lack of success of reform in judicial administration; this has already been done by Chief Justice Vanderbilt, in his useful and compelling *Minimum Standards of Judicial Administration*. Suffice it to say that ideal and actuality in this field remain far apart. Only four states and some cities have adopted unified court systems of real meaning in the sense of free assignability of cases and personnel.<sup>16</sup> And much as these experiments are to be applauded, it must be said that none has achieved complete unification of the court system. Thus only New Jersey can boast an office of court administration active in the collection of "live" statistics on the work load of individual judges. Yet even in New Jersey the power to assign and command reports as to case-load conditions and working time extends down the court ladder only as far as the county courts; the local judges of the various municipalities are not available to relieve congested dockets even in an adjacent town. And considerably less than half the states have granted rule-making power of adequate nature to their courts of last resort.<sup>17</sup> In nearly all states appeal from judgments of certain courts of limited jurisdiction, such as the justice of the peace or magistrates courts, regularly takes the form of a complete trial de novo; only in a few courts in a few states is this omitted or restricted.<sup>18</sup> Finally, only a

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14. THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, *supra* note 9, at 17-18; VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 91, 94, 95 (1949).

15. Recommendations 6(1)-(17), 63 A.B.A. REP. 527-9 (1938).

16. VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 57-64 (1949).

17. *Id.* at 94-5.

18. *Id.* at 392, 393, listing sixteen states having some limitations on retrials from at least certain inferior courts. The pattern is variable; for example, there are no retrials on appeal from the District of Columbia Municipal Court, the inferior tribunals of North Dakota and South Carolina and most of such courts in New York, while in New Jersey,

handful of states have acceptable methods of judicial selection, and over half provide comparatively short terms for both trial and appellate judges.<sup>19</sup>

By contrast the Puerto Rican development is truly striking and we count it a privilege to bring before the readers of this JOURNAL, and in this way the profession, an account of it in some detail. Our readers may compare this reform with that proposed for Connecticut and outlined in these pages two years ago by the senior author hereof and Professor Elias Clark,<sup>20</sup> and compare also the swift accomplishment in the island with the hardly discernible progress in the state.<sup>21</sup> The main objectives and much of the significant detail are identical. It must be conceded, however, that certain conditions did tend to simplify and advance the present project. There was no serious problem of probate jurisdiction at all comparable to Connecticut's difficulties with a total of 120 political and fee-ridden local tribunals. In Puerto Rico such jurisdiction was already in the general court. And no proposal for a separate "Family Court" was under consideration. This eliminated two of the five court divisions found necessary in the Connecticut proposals.<sup>22</sup> The problem of jury trial and jury waiver was much simpler; in Puerto Rico juries were

there is no retrial on appeal except for certain inferior courts of limited criminal jurisdiction where the retrial is to the judge without jury. See *id.* at 389: "It is to be recognized that such full retrials have been allowed because of the inadequacies of many inferior courts of limited jurisdiction. The cure for this is not a trial *de novo* on appeal as customarily utilized, but rather improvement of such inferior courts." In accord is the strong recommendation of the Section of Judicial Administration and the American Bar Association. 63 A.B.A. REP. 527, 603 (1938), reprinted in VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 385, 389, 510, 592 (1949); THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, *supra* note 9, at 70-2.

19. VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 10-12, 17-20 (1949).

20. Clark & Clark, *Court Integration in Connecticut: A Case Study of Steps in Judicial Reform*, 59 YALE L.J. 1395 (1950). See also REPORT OF COMMISSION ON STATE GOVERNMENT ORGANIZATION (CONNECTICUT) 61 (1950), with FINAL REPORT OF SURVEY UNIT No. 18 OF COMMISSION ON STATE GOVERNMENT ORGANIZATION (mimeo., 1949); Clark & Clark, *A Proposal for Court Reform in Connecticut*, 24 CONN. B.J. 385 (1950).

21. In two sessions, the Connecticut Legislature has taken no action. The State Bar Association, however, has voted to support the minor court program; and a questionnaire vote of its members gave rather unexpected support to the program for probate reform. The results are stated in Clark & Clark, *Some Further Reflections on Court Reform in Connecticut*, 25 CONN. B.J. 95, 100-104, 114, 115 (1951). Unfortunately some of those interested in at least some reform have come forward with divisive proposals and criticisms. See *Twelfth Report of the Judicial Council of Connecticut*, 25 CONN. B.J. 54 (1951), discussed in Clark & Clark, *supra*; Lyman, *More About Court Reform*, 25 CONN. B.J. 367 (1951), discussed in Communication (Clark & Clark), 26 CONN. B.J. 124 (1952); Locke & Kohn, *Some Additional Thoughts upon Probate Reform in Connecticut*, 26 CONN. B.J. 32 (1952), discussed in Communication (Clark & Clark), 26 CONN. B.J. 223 (1952); Phillips, *A Practical Plan for the Courts*, 26 CONN. B.J. 133 (1952), discussed in Communication (Clark), 26 CONN. B.J. 348 (1952).

22. Perhaps simplification need not have gone quite so far; there is much to be said for a separate and specialized division in family relations. In addition to the discussions with reference to the Connecticut proposals, notes 20, 21 *supra*, see the full symposium in 26 CONN. B.J. 239-313 (1952).

traditionally employed only in criminal prosecutions for felony, and this is the only requirement of the new Puerto Rican Bill of Rights.<sup>23</sup> Civil cases and misdemeanors thus present no jury issues at all. And unification was in the air, since the Organic Act of the Judiciary of Puerto Rico of May 15, 1950, provided for a formal or paper union of Puerto Rican courts.<sup>24</sup> These favorable factors, combined with the youthful spirit of reform and experimentation, led naturally to the Judiciary Article of the Constitution and its compelling mandate for integration, now made effective by the necessary legislation. Such a combination, it must be sadly confessed, is not likely in the conservative Nutmeg State.

In the following pages we shall consider and stress the five features of the new Puerto Rican Act which we think most original and important. These are in order: the simplification of court structure; the discarding of jurisdictional problems attendant upon initiating and conducting litigation; the raising of the quality and prestige of the lower court; the abolition of trials *de novo*; and the provisions for businesslike administration of the whole new judicial system.<sup>25</sup>

## II. BASIC ORGANIZATION OF THE NEW COURT

Judicial innovation, of course, starts within the pattern of the courts. Before 1950, Puerto Rico had the usual diversity of municipal courts and justice of the peace courts on the lowest level, trial courts (called District Courts) in the cities, and the Supreme Court on top. The Organic Act of the Judiciary of May 15, 1950, theoretically united the diverse elements into four strata of courts.<sup>26</sup> At the bottom of the court hierarchy were forty-two Justices of the Peace, considering local misdemeanors in their own towns, constituting what was politely called the Justice of the Peace Court. Next came the Municipal Court, a tribunal of more substantial original jurisdiction trying civil claims up to \$1,000 and misdemeanors; about fifty-five judges sat on this court. In the District Court, twenty-five judges heard felony cases, some misdemeanors, private claims in excess of \$1,000, and appeals from Municipal Courts. Finally, the appeal from the District Court and from various administrative agencies was to the Supreme Court of Puerto Rico.

This fairly simple paper structure, however, not only lacked real integration in action but was also supplemented by several special provisions for cases outside the more usual categories of the civil and criminal law. Thus the

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23. P.R. CONST. ART. II, § 11.

24. P.R. Laws 1949-50, p. 1126, §§ 1, 2, 36.

25. In preparing this article we have had access to the several drafts and final form of the statute in both the English and Spanish versions and have had suggestions from members of the drafting committee, although, of course, we alone are responsible for the opinions expressed. And we have made free use of our detailed *REPORTE* (unpublished), which was presented to the Attorney-General while the bill was in progress through the Legislature.

26. P.R. Laws 1949-50, p. 1126, particularly §§ 1, 2, 36. See also *id.* c. I, The Justice of the Peace Court, c. II, The Municipal Court of Puerto Rico, and c. III, The District Court of Puerto Rico.

District Court, sitting as such, considered divorce actions, the probation of wills, and petitions for extraordinary legal remedies and prerogative writs. The district judges also moved in spirit, if not physical presence, to other sides of the courtroom to sit as the Minors' Guardianship Court, with jurisdiction of such matters as juvenile delinquency, or as the Supplies Appeals Court, dealing with decisions of the government price-fixing agencies. And, finally, also on the District Court level were two special courts composed of independent judges: the Tax Court had jurisdiction of income tax and internal revenue matters, and the Court of Eminent Domain heard judicial actions involving evaluation of property in condemnation proceedings.<sup>27</sup>

All cases originally tried in the District Courts were appealable to the Supreme Court as a matter of right.<sup>28</sup> All cases originally tried in the Municipal and Justice of the Peace Courts were appealable to the District Courts for a complete trial *de novo*; further review was only by discretionary writ of certiorari by the Supreme Court, a writ in fact available for any District Court judgment, decision, or ruling.<sup>29</sup>

The new system of the court continues the Supreme Court as constituted and with no change in its original or appellate jurisdiction.<sup>30</sup> Below the high court is a new Superior Court of thirty judges. For the present it will consist principally of the same twenty-five judges who composed the old District Court and will have as the seats of its various parts the same towns in which the District Court sat.<sup>31</sup> It will hear all civil cases concerning \$2,500 or more and, as before, felonies and some misdemeanors; in addition, it will handle all matters previously brought in the special Minors' Guardianship Court, the Supplies Appeals Court, the independent Tax Court, and the independent Court of Eminent Domain.<sup>32</sup> This paraphernalia of judicial specialization has been discarded and the five Eminent Domain and Tax Court judges have been drawn into the Superior Court in accordance with the constitutional provision that no judge be deprived of his office during the term for which he was appointed.<sup>33</sup> Since the increased efficiency resulting from a judge's experience in a particular field can still be exploited through assignment of certain types of cases to individual judges, the innovation simplifies the system without loss of expert capabilities.

The Act creates a new District Court, staffed initially by the fifty-five judges of the old Municipal Court. This court will consider approximately the same types of cases brought in the old Municipal Court, although with some increase

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27. *Id.* §§ 24, 28(a) (2), (3), (4).

28. *Id.* § 35.

29. *Id.* §§ 13, 23, 28(a) (3), (b) (3), 35.

30. P.R. JUDICIARY ACT §§ 5, 7 (1952).

31. *Id.* §§ 11, 12.

32. *Id.* § 13. The tax jurisdiction now includes cases concerning "all kinds of taxes," stated in some detail, *id.* § 13(a) (2), and with a broadened right of review by appeal to the Supreme Court, instead of by certiorari only as formerly. *Id.* § 14. See note 63 *infra*.

33. P.R. CONST. ART. V, § 13.



in responsibilities.<sup>34</sup> Beyond that, a number of changes, to be considered *seriatim*, have been made which are intended to make the court one of real dignity and ability. As to the Justices of the Peace, a solution was found which avoided the difficult legal and political obstacles to their abolition: they have simply been denied power to adjudicate cases. All misdemeanors previously before them will hereafter be considered by the new District Court.<sup>35</sup>

It will be observed that the new court structure retains as its base two major divisions of trial courts separated in function only by the stated differences in subject matter of the litigation. Perhaps the ideal of the integrated court might theoretically point to a single division of trial courts. But in actual practice a court of two levels of experience and recompense is rather traditional, and the resulting division of court business appears to be a fairly natural one which administrative direction of court affairs will likely tend to approximate. It is hardly worth-while to press unification to the point where it will remain only theoretical.<sup>36</sup>

### III. THE DEMISE OF JURISDICTION

The separation of trial courts into two divisions immediately suggested the possibility of confusion as between the courts in the bringing and adjudication of cases, and of ineffectiveness or invalidity of judgment when rendered by the wrong court. These are the two major problems which inhere in the concept in our law of "jurisdiction," a concept at once so confused and so powerful as to dominate or disrupt judicial administration. Jurisdiction, theoretically a question of delegated judicial competence, has become a fetish in all courts and most exasperatingly so in the federal system. Courts spend all too much of their time deciding whether to decide or, worse still, deciding on appeal whether anything can be saved of a trial already conducted and a judgment entered; moreover they consider the matter of their own motion, even at a time when the parties themselves are begging for decision on the merits. Federal judges thus spend up to half of their time in this unproductive fashion.<sup>37</sup> And although modern extensions of the concept of *res judicata* may help to reduce the failures of justice caused by want of jurisdiction, any

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34. P.R. JUDICIARY ACT § 18 (1952).

35. *Id.* § 22. Other functions of the Justices of the Peace were continued as noted in text *infra* and at notes 42, 43 *infra*.

36. Involved also was the question of appeal, discussed *infra*, and the fear of increasing the docket of the already overworked Supreme Court.

37. Note the usual harsh doctrine, as in *Goldstone v. Payne*, 94 F.2d 855 (2d Cir. 1938), *cert. denied*, 304 U.S. 585 (1938), though somewhat limited as in *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940), and *Neirbo v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165 (1939); note also discussions such as *Keeffe & Others, Venue and Removal Jokers in the New Federal Judicial Code*, 38 VA. L. REV. 569 (1952), Clark, Book Review, 36 CORNELL L.Q. 181, 184 (1950), and Clark, Book Review, 4 VAND. L. REV. 392, 395 (1951).

possible question as to a court mandate tends to make law administration uncertain and undependable.

The draftsmen of the new Judiciary Act were unanimously of the view that jurisdiction had secured too great a stranglehold on judging, in Puerto Rico as elsewhere. Thus they aimed to eliminate both series of major tragedies caused by the current application of the concept. Since a multiplicity of courts causes or intensifies the problem, common sense would suggest its alleviation both by reducing courts and by eliminating conflict and competition between those which remain. So a novel element of basic legal doctrine was introduced into the new Act, one which will either delight or disappoint the lawyers, depending on their degree of addiction to worn and familiar concepts but which, we confidently predict, will be a boon to litigants. As indicated above, the Act allocates business to the two trial courts along conventional lines based on the value and importance of the subject matter of suit. But the judicial power to adjudicate all cases (except for those very few special cases which can be and have been brought originally into the Supreme Court) has been granted to the Superior and District Courts together, which are unified for this purpose as the Court of First Instance; and no case shall fail for lack of jurisdiction or error in venue. The provision, Section 10 of the Judiciary Act of 1952, may well become famous; it deserves quotation in full:

"The Court of First Instance is a court of original general jurisdiction with power to act in the name and by the authority of the Commonwealth of Puerto Rico in all civil and criminal proceedings as hereinafter provided. Every civil or criminal action shall be filed in the part of the court held at the place where it should have been filed under the legislation heretofore in force; but no cause shall fail on the ground that it has been submitted to a division without jurisdiction or authority or to a part of the court of improper venue. Every case may be heard in the division or part where it is brought by agreement of the parties and consent of the judge presiding at the time in such part or, if not so heard, shall be transferred by order of the judge to the appropriate division or part in accordance with such rules as may be adopted by the Supreme Court."

This conceptual change required a semantic adjustment, for in outlining the dividing lines between the subject matter to be submitted to the two divisions of the Court of First Instance, the use of the word "jurisdiction" to limit court action had to be avoided. So the matter was phrased in terms of "scope of power," which, in the official Spanish of the Act as passed, is "*competencia*." Sections 13 and 18 of the Act, setting out the appropriate forum for types of cases, are thus directive rather than completely mandatory provisions. In actual practice they are intended to show counsel and judge which of the two court divisions should consider each specific matter. But if plaintiff fails to heed these directives, or if he is ignorant of them or falls victim to some hypertechnical complication of the sort that has dogged the concept of jurisdiction in the past—and if, as a result, he does institute the

case in the "wrong" forum, no sanction attaches. The cause is not dismissed but is held for adjudication somewhere. There are three likely situations: if the parties consent and the judge sitting in the part and division where the case is filed approves, the case goes on to judgment there; if a question is actually raised as to the place of trial the judge rules either that the case requires transfer or that it does not and acts accordingly; if no question is raised by any one, the case goes on to judgment where brought. In all three situations there can be no question of collateral attack; the ultimate judgment wherever rendered is neither void nor illegal. And even on direct attack by appeal, it would seem that any question as to the court's action should be open only in the second case, where a party has made timely objection at or before trial and been overruled.

Since the judge must approve a trial before him if the sole authorization is consent of the parties, it follows that he may raise the issue and order the transfer of his own motion. And express statutory provisions enable a judge not only to transfer to separate parts or sessions of the court, but also from one of the two trial divisions to another. Such a power to transfer even from division to division is particularly advantageous, since it avoids traditionally frequent conflicts in authority between court levels and resulting error, noticeable sources of irritation to litigants. The power to hear a case by consent in the division where brought is of less obvious necessity. But it too may allay confusion and delay and give the parties the benefit of speedy adjudication before a tribunal made competent by the new standards, a court which the parties are ready to trust. This provision, too, promises to have its sphere of usefulness.

Venue problems receive similar treatment. Naturally enough, there was no intent to permit trial in any part of one of the two courts of original jurisdiction regardless of the locale of the subject matter; rather the Act preserves earlier provisions concerning the proper place of trial in criminal and local actions, as well as certain specialized matters such as administrative rulings reviewed by the Superior Court at San Juan, the capital. But henceforth improper venue cannot be used to substantiate the claim that the judgment is void. Nor can any contention be made that a judgment cannot run throughout the Commonwealth, since the division of Puerto Rico into judicial districts was abolished.<sup>38</sup>

Hence preservation of the contemplated beauty and symmetry of the law will no longer be made at the expense of the litigants. Where necessary, control can be better exercised administratively. Of course, disruption of calendars could result from continuous claims to new judicial territory by subordinate judges. Abuse, however, seems unlikely; superior judges will not be prone to take cases away from the district judges, while the parties are unlikely to be in agreement in encouraging a district judge to be overly ambitious. In an occasional case such trial by consent may be convenient and desirable; a

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38. P.R. JUDICIARY Act § 11 (1952).

habit of so acting, however, may well suggest an excess of free time, to be reduced through assignment to a more crowded docket. A trial judge will probably be well advised, where the matter is clear and comes to his attention promptly, to order a transfer, so as to avoid administrative confusion and the very sort of unprofitable discussion which the section is designed to eliminate.

#### IV. RAISING THE LEVEL OF THE LOWER COURTS

The draftsmen of the Act agreed that a principal goal of the new judiciary system should be a better brand of justice on the first trial level. To ignore this problem would have been indefensible. Especially in a social structure like Puerto Rico, with a distressingly low median income and a vast number of poor persons, the great bulk of decision-making concerns itself with the "minor" case.<sup>39</sup> These small disputes are "minor" in the amounts involved but of immense social importance. If in the legal field the new government and political system is to have any significance at all for the great mass of people, the quality of justice in the courts of first instance must be improved.

Heretofore neither of the two courts with jurisdiction of "minor" civil and criminal cases, the Justice of the Peace and Municipal Courts, could attract competent and energetic personnel in all positions. This was natural enough in view of the fact that the annual salaries were about \$1,000 and \$4,000 respectively. Successful lawyers naturally hesitated to accept a municipal judgeship; within the last year several positions went begging because even recent law school graduates declined them. So the general caliber of the court was not high in terms of legal training. And the judges on this level, with of course some exceptions, lacked energy and initiative. It was a widely known fact that some spent only about half the day in courtroom and chambers. Of course the Justices of the Peace, who were required only to be able to read and write, were in a worse position, having for the most part no legal training whatsoever.<sup>40</sup> And finally, the judges of both courts were far too attached to their community political leaders to be expected to exercise the detached judiciousness that good decision-making demands. A favorite jest in Puerto Rico was one mayor's introduction of the local presiding judge, viz., "Meet

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39. Providing efficient and capable justice on the first level is of course the most serious problem of law administration in the continental United States. See Pound, *A Generation of Improvement of the Administration of Justice*, 22 N.Y.U.L.Q. REV. 369, 384-6 (1947); VIRTUE, *SURVEY OF METROPOLITAN COURTS, DETROIT AREA* (1950); Gibson, *Reorganization of Our Inferior Courts*, 24 CALIF. B.J. 382 (1949). Specifically on the Justices of the Peace, 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). So the administration of traffic cases, which bulk so large quantitatively in current litigation, is most disturbing, involving, as it does, inexperienced personnel, "fixed" tickets and inefficient procedures. See WARREN, *THE TRAFFIC COURTS* (1942).

40. But only one state, Louisiana—so it appears—requires either citizenship or an ability to read and write as qualification for the post. WARREN, *THE TRAFFIC COURTS* 188 (1942).

my judge." As a result, justice on the lower levels was often slow, prejudiced, or technically ill-advised.

Several steps were taken in the new Act to correct this situation. The first, and perhaps most notable, was surgical. It has long been an axiom of court reform that Justice of the Peace Courts are incapable of judging.<sup>41</sup> Public discontent with judicial administration has focused on these courts, in Puerto Rico as well as elsewhere. The draftsmen, facing this fact directly, aimed to eliminate them from participation in the process of judging. So the Act explicitly provides that the Justices of the Peace "may not adjudicate cases cognizable by the District or Superior Courts,"<sup>42</sup> which, as we have seen, jointly share the judicial trial work of the Commonwealth. Certain powers were retained, however. These included the power to fix bonds and to issue warrants of arrest and search and seizure, as well as to conduct preliminary investigation in local crimes—including the interrogation of witnesses—in a combination of prosecuting and judging functions strange to mainlanders. The lawyers who worked upon the draft believed that J.P.s should retain these functions because insular government prosecution staffs and investigatory personnel were only haphazardly available in many rural areas and thus could not be relied on to pay prompt attention to minor law infractions.<sup>43</sup>

Of the means adopted for infusing the District Court (formerly the Municipal Court) with new vigor, the most important, for purposes of increasing the judges' own self-respect and independence, is a rather ingenious provision for a sliding salary scale. This provision was presaged during the previous session of the insular Legislature by the passage of a similar bill, vetoed by the Acting Governor for defects in its enactment rather than its substance. The provision, which the Judiciary Act reinstated, provides a basic salary of \$5,100 for all district judges and calls for an increase in that salary of \$300 for each two years of service after the effective date of the Act, until a top salary of \$5,600 is reached.<sup>44</sup> The efficacy of this method, particularly on the District Court level, is apparent: since an accumulation of years on the bench will henceforth mean not merely growing old in a thankless task, but rather a recognition in monetary terms for increasingly efficient service rendered, the position may be expected to attract young and energetic people interested in judging as a career and a future.

In addition, all salaries of the district judges were made uniform. Previously there had been a differentiation into four grades, depending vaguely on the population of the judge's territory. This, however, was at war with an integrated court system. Assignability of judicial personnel should result in approximately equal case loads for all; hence equal salaries are imperative. Moreover, the new compensation levels meant immediate salary gains for all

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41. Recommendation 6(1), 63 A.B.A. REP. 527 (1938).

42. P.R. JUDICIARY ACT § 22 (1952); see *supra* note 35.

43. Certain other powers, such as that to decide disputes as to the capacity and right to vote, were also left undisturbed.

44. P.R. JUDICIARY ACT § 23 (1952).

district judges except those in San Juan, who already enjoyed the highest income. Concomitantly the appointed terms of the district judges were increased. Previously they had served for four years; they are now appointed for eight.<sup>45</sup> Finally, no judge can practice law during his term and all are required to be lawyers.<sup>46</sup> All these provisions buttress the professional character of the position.

So, too, the Act increases the authority and dignity of the court itself. The dividing line in civil cases to be tried in the District Court as opposed to the next higher original court was increased. Before 1950, the line had been drawn at \$500. By the Organic Act of the Judiciary that year, it was raised to \$1,000, and the Judiciary Act of 1952 continued the trend to \$2,500. The framers felt that by extending the District Court's competence to important cases, substance was added to the protestations about increased dignity and ability. But criminal jurisdiction of the old Municipal (now District) Court, heretofore confined to misdemeanors, was left unchanged.<sup>47</sup>

The court also received a new name. The title "Municipal Court," the drafters believed, smacked too much of a local orientation which previously had unfortunate effects. On the other hand, "District Court" had formerly denoted something important. So this title was transferred to the lower court.<sup>48</sup>

Changes in the former court of general jurisdiction—the new Superior Court—while less drastic, were of comparable importance. The requirements of age, professional competence, and experience and repute are substantial; and the term of office is twelve years.<sup>49</sup> But, most significantly, salaries were raised and also placed on a sliding scale which increases from a minimum of \$8,600 to \$11,600.<sup>50</sup> This novel concept, that judges do not attain their utmost powers by the magic of appointment but increase in capability and merit corresponding recompense, deserves wider acceptance.

Rounding out the provisions looking to improvements in personnel, the Act, implementing a constitutional authorization, contains an important provision for the removal by judicial proceedings of judges of the Court of First Instance for "immoral conduct or neglect of judicial duties." In general the procedure calls for prosecution in the Supreme Court by the Attorney-General—or Secretary of Justice, as he is called in the new Constitution—or some officer of the Court (*i.e.*, lawyer) appointed by the Court itself. Hearing and judgment are before and by the Supreme Court, the justices of which are

45. *Id.* § 17. See pp. 1151-2 *supra* for a comparison with the states.

46. P.R. JUDICIARY ACT § 17 (1952). This applies as well to the superior judges. *Id.* § 12.

47. *Id.* § 18(a, b).

48. *Id.* § 9 and ART. V.

49. *Id.* § 12. These standards for the most part were those reached in the ORGANIC ACT OF THE JUDICIARY §§ 30, 31 (1950). But the new provision makes clear that these are standards for the appointing power and are not grounds for later court attack on the competence of a sitting judge.

50. P.R. JUDICIARY ACT § 23 (1952).

themselves removable only after impeachment as provided in the Constitution. Thus Puerto Rico receives an effective procedure for judicial elimination of judges untrue to their oaths—a solution to a pressing problem which protracted debate and discussion have been unable to solve for federal and most state courts.<sup>51</sup>

#### V. TRIALS DE NOVO AND APPEALS

Quite probably the change of most importance was that which revises the pattern of review of District Court judgments. Puerto Rico, like most of the states, had heretofore tried to cope with the problem of the minor courts by permitting trials de novo. According to prevailing theory, such courts traditionally consider unimportant cases and so themselves are unimportant, and their back-fence justice is all these controversies deserve; but if the parties consider their case sufficiently important and can command the resources to review, they should be entitled to a full and complete retrial in a better court. We have already noted the degrading consequences of such a concept of aristocratic justice. The new Judiciary Act, rejecting this concept, necessarily wiped away any reason for continuing the trial de novo. Henceforth the District Court, with its more capable personnel, is confidently expected to provide first-rate and efficient justice. There is no longer need or justification for wasting judicial effort on a retrial elsewhere and for continuing the important base-line courts in the degrading position of knowing that their judgments may be entirely disregarded.<sup>52</sup>

Thus trials de novo were specifically discarded. All appeals from the judgments of the District Court are by way of review for errors below.<sup>53</sup> The appeal is to the Superior Court. Since this court has also an extensive field of original jurisdiction, it now exercises two functions: a very broad trial function and a quite narrow appellate one. The statutory provision states:

“Hearing and decision of such appeals shall be by either three Superior Judges or a single Superior Judge, as the Supreme Court may by rule establish according to the nature of the case or the amount involved or other reasonable standard in its discretion; and the Chief Justice may

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51. *Id.* § 24, based upon P.R. CONST. ART. V, § 11.

52. See VANDERBILT, *MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION* 339 (1949); note 18 *supra*. See also *Communication* (Clark), 26 *CONN. B.J.* 348 (1952).

53. P.R. JUDICIARY ACT § 19, ¶ 2 (1952). Compare *FED. R. CIV. P.* 52(a), providing for findings of fact in non-jury cases and stating that these shall not be set aside unless “clearly erroneous.” A close copy of this rule was adopted for the civil trial courts by the Supreme Court of Puerto Rico in 1943, see *Rule 52(a)* in 60 P.R. 41 (Supp. 1942); but an effective withdrawal by the Legislature of its grant of rule-making power, through a requirement of legislative approval, has prevented adoption of later amendments. See P.R. Act No. 25 of 1948; Clark, *Experience under the Amendments to the Federal Rules of Civil Procedure*, 8 *F.R.D.* 497, 504 (1949), reprinted in *FEDERAL RULES OF CIVIL PROCEDURE AND NEW TITLE 28, U. S. CODE JUDICIARY AND JUDICIAL PROCEDURE* 1, 14 (rev. ed. 1952). The present renewal of the grant will now permit of correction of this situation.

assign the hearing of the cases under such rule if there is doubt or the parties do not agree."<sup>53a</sup>

Certain local conditions dictated this approach. To the writers hereof, the logical course appeared to be an appeal to the Supreme Court, as from Superior Court judgments; but the crowded docket of the high court made this seem undesirable. The next most natural alternative would be an appellate division of the Superior Court. But a practical question arose as to the best distribution of judicial man power and, specifically, whether it would not be a waste to assign three judges to appeals in petty cases, such as most motor vehicle traffic cases—however useful they might be in intricate contract or tort controversies. And estimates differed as to the likely number of appeals and the probable burden of the appellate function. It was therefore decided to allow for the teachings of experience and to authorize the Supreme Court to make rules which might well provide for more detailed and scholarly consideration of a decree of injunction or specific performance than is necessary for a review of a fine for traffic violation. This approach will allow for a normal development of the practice with respect to this cherished right. Judicial statistics in general show that, however important the right of review is in the traditional conception of justice, numerically appeals do not bulk large compared to the number of cases brought to the trial courts. That has been the experience in Puerto Rico in the past.<sup>54</sup> We confidently expect that it will be even more true in the future in view of the higher quality ensured for the original trial and the narrowed scope of the appellate issue. We shall be vastly surprised if there are as many as 500 such appeals taken or 300 actually heard in a year; in fact, the number may run much lower. With careful study and channeling of cases by Supreme Court rules—the serious cases going to an effective appellate panel, the petty cases to a single efficient judge—we expect the quality of appellate review to approach that had in the Supreme Court of Puerto Rico itself.

The elimination of *de novo* trials presented a further problem, one not peculiar to Puerto Rico alone, as to the nature of the record to be presented to the Superior Court on appeal. Court stenographers have heretofore been provided only in the former District (now Superior) Court, since trial *de novo* on appeals there made unnecessary a transcript of the evidence below. Because funds and personnel were not immediately available to extend this service in the new system, the drafters planned that, where the parties do not employ a stenographer, the district judge will provide a statement of what has transpired at the trial, a method which seems to be working successfully

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53a. P.R. JUDICIARY ACT § 19, ¶ 1 (1952).

54. From statistics supplied by the Puerto Rican Department of Justice it appears that, taking an average for the last three years, appeals were taken in 1.22% of the cases brought, or 2,067 out of 169,902. (No figures are available showing cases tried or appeals actually pressed.)



in some of the lower courts in New Jersey.<sup>55</sup> There was some apparent feeling that the definition of both divisions of the Court of First Instance as courts "of record"<sup>56</sup> necessitated a more formal record. But this is clearly a misunderstanding. The term originally signified merely that a record of what the court had done was enrolled in parchment.<sup>57</sup> That requirement, in modern equivalent, was satisfied even by the courts now displaced under this Act, for a permanent record of their judgments was required and kept. But in modern theory that requirement alone is not considered sufficient to accord a court the greater respect of a court of record; more often looked to are the historical background of the particular tribunal and, now increasingly, the legislative declaration of the status accorded the court.<sup>58</sup> In view of the increased dignity intended for all divisions of the new court system of Puerto Rico, the legislative designation of courts of record was wholly appropriate, whatever the form of statement of the case history for the purpose of appellate review.

So the Act declares that "[i]n every case the Judge shall provide a record of everything which transpired in the case, which record shall be included in the proceedings, unless the party or parties can prepare a transcript of the evidence." And the parties may offer objections to the record "as prepared by the Judge" or the transcript within such time as a Supreme Court rule will provide, and the judge must hear and pass on the objections. Then follows an interesting provision designed to aid in preserving the informality of lower court proceedings—as in traffic cases—while relieving against hardship or harshness: "The Supreme Court shall also provide by rule for granting of new hearings by the District Court upon prompt request in cases where the parties or their counsel have not adequately protected their rights during the original trial of a cause, or where an adequate record has not been provided by the Judge."<sup>59</sup>

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55. N.J. Rules 1:2-23, 7:13-2; and see also FED. R. Civ. P. 75(n) as added in the amendments effective in 1948. Here the initial burden for making up the statement is, however, placed upon the appellant.

56. P.R. JUDICIARY ACT § 9 (1952).

57. 3 BL. COMM. 24, quoted in *Christman v. Metropolitan Life Ins. Co.*, 178 Tenn. 321, 325, 157 S.W.2d 831, 832-3 (1942), and *State v. Allen* 117 Ohio St. 470, 473, 159 N.E. 591 (1927). See also the reasoned discussion in *Board of Health v. New York Cent. R.R.*, 90 A.2d 736, 739 (N.J. 1952).

58. *Ex parte Gladhill*, 49 Mass. (8 Metc.) 168 (1844); *Davis v. Hudson*, 29 Minn. 27, 11 N.W. 136 (1881); *Heininger v. Davis*, 96 Ohio St. 205, 117 N.E. 229 (1917); cases cited *supra* note 57.

59. P.R. JUDICIARY ACT § 19, ¶ 3 (1952). Some have suggested that this is but a transfer of the trial *de novo* back to the original court. If that were all, there would still be a substantial gain in facility, expedition and cost to the parties as well as in dignity to the court. But to the writers, the possibility of a multitude of rehearings seems most remote. Existence of this provision will tend to promote greater care originally on the part of court and counsel and lessen the need for rehearing; with some exceptions, which, however bothersome, are not likely to bulk large in numbers, litigants are not likely to seek or stage rehearings where the outcome is clearly indicated.

Even these safeguards did not appear sufficient to the Legislature. The members feared that busy trial judges would not have time to, or would not, take notes adequate to provide a full statement. Even more they feared some bias, particularly against a defendant in a criminal proceeding; the Commonwealth Department of Justice has not yet been able to supply prosecutors in the first court, and the judge of necessity has to represent the Commonwealth in some degree. So the legislators added a unique requirement, one, we understand, without parallel elsewhere:<sup>60</sup> the use of mechanical recorders to reproduce the District Court trials. This provision deserves quotation in full:

"The Office of Court Administration shall provide each part of the District Court with adequate equipment for recording mechanically the incidents of each case. The Judge may use this recording in preparing his statement of what transpired during the trial, and the same shall be sent to the Superior Court together with the judgment roll, whenever any of the parties so requests. The Superior Court shall, whenever it is alleged that the statement prepared by the district judge is incorrect, use the recording to decide the appeal or to order a new trial in the District Court."<sup>61</sup>

The speed with which this addendum was accepted and the optimism with which all approached the problems of obtaining and then learning how to use these machines left the writers a little breathless. We gladly welcome experimentation; this may well be the solution of many courtroom difficulties and disputes. But we were not sure that the machines were perfected—or the operators skilled—to the point of ready discharge of such responsibilities.<sup>62</sup> In short we wanted assurance that the machines would remain servants and would not become masters determining and settling the fate of the appeals themselves. But a reasonable construction of the provision, to make it operable, may properly reach that conclusion even though it is not specifically

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60. The Judicial Conference of the United States has disapproved of a proposed congressional act providing for the recording of proceedings in one of the courtrooms of the United States District Court for the District of Columbia "by sound-recording equipment" and "the reproduction of the sounds of such proceedings" on appellate review; but it has approved the installation of a sound-recording device there "for experimental and test purposes only." *REP. JUDICIAL CONF. OF THE U.S.* 22, 23 (Sept., 1949). The committee in charge has reported to the conference of September, 1952, that a demonstration was had which "was impressive" and that experimentation continues.

61. *P.R. JUDICIARY ACT* § 19, ¶ 4 (1952). In order to provide time for the supplying of some fifty-five machines to the various courtrooms, the Legislature postponed the effective date of this section to Oct. 15, 1952; meanwhile appeals from the lower court were to follow the former procedure. The rest of the Act took effect with the Constitution, *i.e.*, on July 25, 1952. *Id.* § 37.

62. More recently we have noted expert testimony, indicating the requisite mechanical efficiency, from the noted trial lawyer of fiction, Perry Mason. See *GARDNER, THE CASE OF THE MOTH-EATEN MINK* (1952).

stated in the statute. It is to be noted that in the course of the debate the Legislature decisively rejected a proposed amendment requiring the trial judge always to use a recording in preparing his statement. Unforeseen or fortuitous failure of the mechanical device or its operation should not therefore automatically nullify adjudication.

When we come to review beyond the Superior Court, the pattern is quite simple. All cases originally tried in the District Court and taken on appeal to the Superior Court are further reviewable only by certiorari by the Supreme Court, grantable by that Court in its discretion as to any judgment or ruling of the Superior Court. In all other cases in the Superior Court there is a right of appeal as formerly,<sup>63</sup> but under a procedure to be established by Supreme Court rule.

#### VI. COURT ADMINISTRATION, RULE-MAKING, AND PERSONNEL; LEGAL AID

Before 1952, administration of the court structure was far from ideally efficient. Although the Supreme Court had possessed—and substantially lost—the power to prescribe rules of civil and criminal procedure, it could not write rules of court administration or of evidence; and its written civil procedure rules explicitly covered only trial, and not appellate, practice.<sup>64</sup> The Organic Act of the Judiciary of 1950 made it possible to provide additional Municipal Court and District Court judges according to the volume of court business.<sup>65</sup> The administration of these provisions, however, was entrusted to the Attorney-General with the approval of the Governor, rather than to the Supreme Court or the Chief Justice. And while relief judges were occasionally supplied, they were hardly sufficient to meet the requirements. Finally, by virtue of the fact that the appointment power was lodged almost exclusively with the Governor, the court had little control over the hiring of its secretaries, marshals and other personnel. So an Office of Court Administration had been established in 1945 within the Department of Justice at the urging of the Attorney-General. This office had concerned itself with supervision and management of the personnel of the courts and the rough collation of work load statistics. Actually, however, the office did not assist greatly in court administration service. Because there was no provision for actual assignment and transfer of judges and cases, the study of statistics was more academic than actively useful. Moreover, the office was forced into activities extraneous to judicial affairs, such as the insular property registration system, extradition proceedings, and the investigation of applicants for posts within the Governor's appointing power.

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63. P.R. JUDICIARY ACT §§ 14, 19 (1952). Review of decisions of the former Tax Court, however, was only by certiorari, but now review of tax cases is by appeal as in other cases, and hence is of right and extends to review of questions of fact as well as questions of law. *Id.* § 14.

64. See note 53 *supra*.

65. ORGANIC ACT OF THE JUDICIARY §§ 14, 25 (1950).

Pursuant to the constitutional mandate, quoted above, for a unified judicial system and the further command to the Chief Justice to direct administration of the courts,<sup>66</sup> the 1952 Act has armed the Chief Justice with plenary power to supervise the court operations; he is independent of the Department of Justice and has "responsibility for the efficient operation of its various parts and divisions and for the expeditious dispatch of litigation." It continues: "[H]e shall assign judges to conduct sessions of the Court of First Instance, and may modify such assignments and make reassignments as the need arises within each division or from division to division of this Court."<sup>67</sup> This phrasing comprehends such "external" controls of judicial business as the power to assign a judge's cases to some other judge to equalize dockets, the power to assign a judge to certain specialized subject matter,<sup>68</sup> and the power to assign a judge to a part or division of the court other than his own to equalize work. Moreover, the Act gives the Chief Justice power to order sessions of the District Court to be held in any town on the island—a provision designed to execute the draftsmen's avowed purpose of actually bringing justice to the people.<sup>69</sup> Finally, the reiteration of the constitutional commands just stated implies the power to require a uniform system of judges' records with periodic work reports. These reports may touch on such subjects as individual judges' case loads, docket congestion in particular areas, and even hours spent on various duties each week. This plenary power to secure the "live" data necessary for an accurate picture of court operation is imperative for the exercise of real administrative control.<sup>70</sup>

The Chief Justice's powers also include one interesting and original grant. The present absence of satisfactory statistics prevented a trustworthy prediction of the number of district judges required to operate the new system. So the power to meet the needs of judicial business was in effect lodged with the Chief Justice. At first the number of district judges remains the same as the number of former municipal judges—fifty-five—and in fact the municipal judges serve out their terms acting in the higher capacity. But when the Chief Justice so requests, and accompanies his request with a certificate from the Administrative Director stating the need for additional judges, the number may be increased by appointment up to a maximum of ninety.<sup>71</sup> Such power accorded a court official is unusual by traditional standards; but it allows to the managing administrator discretion which may permit him to take advantage of actual experience in arranging for an adequate judicial staff. Of

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66. P.R. CONST. ART. V, §§ 2, 7; see note 5 *supra*.

67. P.R. JUDICIARY ACT § 3, ¶ 1 (1952); and see also *id.* § 1.

68. A significant phase of the power in view of the absorption of the Tax and Eminent Domain Court judges within the Superior Court. See p. 1154 *supra*.

69. P.R. JUDICIARY ACT § 16 (1952), in connection with *id.* § 3, ¶ 1. See note 67 *supra*.

70. See Shafroth, *Federal Judiciary Statistics*, 13 LAW & CONTEMP. PROB. 200 (1948), and notes 71-4 *infra*; P.R. JUDICIARY ACT §§ 25-30 (1952).

71. *Id.* § 17.

course, funds for these new judges would still have to be provided by legislative appropriation.

The multitude of new functions imposed on the Chief Justice made doubly necessary an efficient and independent staff to assist him.<sup>72</sup> Hence an Office of Court Administration is established,<sup>73</sup> headed by an Administrative Director who has power to appoint his staff, subject only to the approval of the Chief Justice. In this way the Director will be able, within the confines of the appropriation acts, to create an office capable of any and all tasks he finds necessary for proper court administration. This grant of powers is notably broad, though following generally the Model Act to Provide for an Administrator for the State Courts, drafted by the National Conference of Commissioners on Uniform State Laws.<sup>74</sup> Especially in defining the scope of the delegated powers the present provision has improved on the Model Act by substituting a general and inclusive delegation for a particularized grant.<sup>75</sup>

An explicit constitutional provision empowered the Supreme Court to make rules of procedure. The Act reiterates this grant,<sup>76</sup> and plans are already under way to broaden and bring up to date the current rules on civil trial procedure and to provide other authorized rules, such as for criminal procedure, evidence, and appellate procedure as well as the equally necessary rules of court administration. This unusually wide power, as the commentators in the field of court reform have recognized, is an essential ingredient

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72. See Tolman, *The Administration of the Federal Courts: A Review of Ten Years of Progress*, 37 A.B.A.J. 31 (1951); Woelper, *The Administrative Office of the Courts in New Jersey*, 25 N.Y.U.L.Q. REV. 56 (1950); Chandler, *supra* note 9.

73. P.R. JUDICIARY ACT §§ 25-30 (1952); see § 26 quoted *infra* note 75. The office became active as of the effective date of the Act and already important steps have been taken to put it into operation. Physically, office space has been rented and the Director—former District Judge and Assistant Attorney-General Federico Tilén—appointed. In addition, the office has had the benefit of the advice of Mr. Will Shafroth, Chief of the Division of Procedural Studies and Statistics of the Administrative Office of the United States Courts, and of a full report made by a surveying unit of the Public Administration Service as to the office's projected functions under the new Act, together with recommendations as to its office operation.

74. HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 167-169 (1948) and, as approved by the American Bar Association's Section of Judicial Administration, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, *supra* note 9, at 27-34.

75. "The function of the Office of Court Administration shall be to assist the Chief Justice in the administration of the General Court of Justice of Puerto Rico by examining the administrative methods and efficiency of the court personnel, and the state of the dockets and the pending case loads of the courts, collecting statistical and other data as to the court operation, preparing and keeping proper books of accounting, submitting estimates and drawing the necessary requisitions for public funds appropriated for operation of the judicial system, making recommendations to the Chief Justice for the improvement of court operation and the assignment and transfer of judges, and generally performing such tasks and taking such steps as the Chief Justice shall direct for the better administration of the Court." P.R. JUDICIARY ACT § 26 (1952).

76. *Id.* § 2.

of a modern unified judicial system.<sup>77</sup> The Act also authorizes rules for the informal adjudication of claims of \$100 or less, *i.e.*, a small claims procedure.<sup>78</sup>

The selection of subordinate personnel of the courts presented more of a political problem than other phases of the Act. Here reform runs head-on into questions of bread-and-butter patronage; and the local situation required, as might be expected, some compromise. It was originally recommended that the Chief Justice receive power to select and appoint all clerks of the court, marshals, stenographers and others without regard to the personnel laws. But certain changes were later made. Public defenders, clerks and certain officers of the Supreme Court are freely appointed by the Chief Justice; their deputies are appointed by him pursuant to the personnel laws; and all other necessary personnel are selected through competitive examination. But, as before, the marshals are to be appointed by the Governor.<sup>79</sup> This solution may perhaps be considered a reasonable compromise; certainly the result represents a distinct improvement over the traditional political appointment of all court personnel. Many of the states have included within their judiciary acts detailed provisions concerning the duties of these court officials. The Puerto Rican system will be simpler. The Act provides that such duties may be specified by the rules of court administration.<sup>80</sup>

Two other features of the Act deserve mention. The Supreme Court is directed to provide by rule or special order for the holding of conferences of judges and members of the Bar for consideration of "matters relating to judicial business, the improvement of the Judicial System, and the effective administration of justice in Puerto Rico."<sup>81</sup>

Comprehensive legal aid for indigent local litigants may well result from certain definite steps ordered or encouraged by the Act. The public defenders in the Superior Court, to be appointed by the Chief Justice on recommendation of the Administrative Director, are ten in number, an increase made by the Legislature from four, the previous number and the figure stated in the original draft of the bill. It is now provided that defenders shall not practice law during their term of office; and their duties are extended, at least potentially, since the District Court is required to assign counsel for the defense of indigent persons in criminal proceedings and to call on the public defenders of the Superior Court "so far as they may be available."<sup>82</sup> If the

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77. See note 13 *supra*. The express grant of authority as to such matters as evidence and appellate procedure, P.R. JUDICIARY ACT §§ 2, 14, 19 (1952), removes some of the doubts that have arisen in other grants of rule-making power. Mention should also be made of § 4, giving the Court power to provide for the preservation in original and duplicate form of all records of all divisions of the General Court of Justice and to direct the *destruction* of records deemed no longer necessary or useful.

78. P.R. JUDICIARY ACT § 2 (1952).

79. *Id.* § 3; and see also *id.* §§ 8, 15, 20.

80. *Id.* § 2.

81. *Id.* § 29.

82. *Id.* §§ 15, 20.

Legislature will now make the necessary appropriation of the additional salaries, a desirable forward step will have been taken. More generally, the Act states:

“The General Court of Justice and the Office of Court Administration shall encourage the promotion of legal aid for the defense of poor persons with the cooperation of the Bar Association, of the Law School of the University of Puerto Rico, and of all others interested in the adequate protection of the poor.”<sup>83</sup>

As an adjunct of its course of instruction, the Law School is already organizing a Legal Aid Clinic in consultation with authorities from the mainland, and it is available to help in planning legal aid on a more extended scale throughout the Commonwealth. But aid to the indigent is a primary obligation of the lawyer; it is hoped that the reputedly affluent Bar Association of Puerto Rico, receiving unique financial support from a stated portion of each fee paid for the filing of a legal document, will assume responsibility for fostering and supporting this movement.

#### VII. CONCLUSION

The Act does, as we have seen, suggest certain problems. It contains at least one interesting and even paradoxical contrast. That is the continuance of the ancient office of Justice of the Peace after its most important function is gone,<sup>84</sup> while ultramodern methods of court reporting are required for the lowest tribunal alone—the District Court. To consider the desirability of further unification of court divisions is academic; the present structure appears to represent a reasonable allocation of work. And the decision finally reached as to selection of personnel, leaving unchanged the appointment of marshals and deputy marshals but committing the appointment of other personnel to the Chief Justice, subject on the lower levels to the rules of competitive examination, seems to us a perfectly reasonable solution to what might otherwise have proved a ticklish problem. All these issues touch the fundamental substance of the Act only slightly, if at all; if reformers encounter problems no greater than these in achieving fundamental reforms, they may count themselves fortunate indeed.

Although Commonwealth political conditions are not likely to be duplicated elsewhere in the United States, the problems of interest to the Legislature and the legislative history of the Act deserve a brief résumé. Early reports of the project led some district judges, speaking, as they said, for the benefit

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83. *Id.* § 30.

84. The Legislature apparently retained a high conception of the future of this ancient office, for it added a sliding scale of salary for these justices from \$1,200 to \$2,100, rising at four-year intervals, because it was granting such a form of salary raises to the superior and district judges. P.R. JUDICIARY ACT § 23 (1952). To the writers, promotion under the circumstances of reduced activity did seem a trifle anomalous.

of the municipal judges<sup>85</sup> and supported by representatives of the Bar Association, to question the assignment of judges throughout Puerto Rico; they apparently feared a disruption of existing schedules and cross-country journeying so extensive as, in our view, unlikely to, be planned or ordered by any court administrator. While this view was urged at the public hearing of the Senate and House joint committees, we could not see that it had any direct impact upon the members, whose queries concerned other matters. The most serious debate and extensive questioning arose in the House (where the bill originated), concerning the abolition of trials *de novo* in the Superior Court and, particularly, the possible unfairness of a record made up by a judge who had served somewhat the function of a prosecutor. But when Señor Ernesto Ramos Antonini, Speaker of the House and distinguished attorney who had sponsored the bill, took the floor to propose the amendment providing for a recording of the trial by mechanical recorders, there was apparently general approval and the bill soon passed by overwhelming vote.<sup>86</sup> Thereafter the Senate, in an evening session on the eve of Constitution Day, accepted this provision and the general plan of the bill with alacrity, while modifying the selection of personnel by the compromise noted above.<sup>87</sup> The House, reassembling, quickly accepted the modifications, the Governor signed the bill, and the job was done. The consideration given the bill, even though most expeditious, impressed us as highly intelligent. It was difficult to see or trace any purely political motivation. If the method adopted for choosing personnel can be considered a political solution, that did not at all impede the passage of the bill; it seemed in fact to have been the expected outcome practically from the beginning.

What we thus observed of the last stirring legislative day strengthens our belief in both the value and the force of the Act. For the questioning concerned matters of detail—even matters of individual preference—falling far short of issues of policy. It did not attack or touch the substantial objectives upon which all seem to have agreed; nor, seen in retrospect, did it nullify in any aspect the unique results achieved. Here we see a real simplification of structure; genuine unification of agencies under a directing head with effective powers; elevation of the dignity, prestige, and consequently the capacity of even the lowest judicial rung; a novel method for eliminating wasteful retrial on appeals from minor courts; a thoroughgoing grant of court rule-making power; and a unique saving of jurisdiction of any case brought anywhere in the court system. These, together with other details we have noted, constitute

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85. The municipal judges themselves appeared to be silent; they were about to receive increased power, prestige, position and salary.

86. The provision for recorders thus added is quoted and discussed at pp. 1164-5 *supra*; reference is there made to the defeat of the proposal to require the trial judge always to use the recording in making up his statement.

87. Also changed and added were the provisions for more public defenders and for a sliding scale of salaries for Justices of the Peace, text and note 82, p. 1168 *supra*, and note 84 *supra*.



a substantial accomplishment in law reform, an example to be emulated and a model to be followed.

But perhaps the chief lesson the Puerto Rican experience provides is the need and the value of leadership and cooperative effort in reform, so evident in this venture. Whenever matters seemed at all in doubt, the firm and gracious guidance of the drafting public officials, with the valiant support of the Supreme Court justices, set a true course and the legislative ship moved forward. And, the task completed, all (and not least the legislative members) properly share the pride of achievement. Yet it would be perverse blindness to overlook or discount the crucial part played by enlightened lay political leadership. Lawyers alone, it seems, are not likely to achieve court reform; there must be a movement firmly rooted in popular desires and political realities. That we found in real abundance everywhere. At the outset of this article we spoke of the amazing spirit of enthusiastic approach to the future which prevails in Puerto Rico. No one seems to doubt that the stimulus has come from the dynamic personality and constructive thought of its Governor and the youthful coterie of energetic officials he has gathered about him. Their search for the most effective means of administering justice in Puerto Rico was but a part of their larger plan and desire for the best in government in all its branches. That spirit made adventures in seeking new frontiers of court organization exciting and the results satisfying and, it is believed, durable.