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Judicial Reform in Pennsylvania

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JUDICIAL REFORM IN PENNSYLVANIA

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PENNSYLVANIA'S antiquated and archaic judicial system has been the subject of much scrutiny in recent years.[1] This is part of a nationwide movement toward judicial reform, a movement which has found expression in one form or another in numerous states within the last decade.[2]

The "spark that kindled the white flame of progress" in judicial reform was Roscoe Pound's address to the Annual Meeting of the American Bar Association in 1906.[3] Pound's now famous analysis of "the Causes of Popular Dissatisfaction with the Administration of Justice" has stood the test of time. There are some, he said, who are dissatisfied with any legal system because of the mechanical operation of legal rules, the difference in the rate of progress between law and public opinion, the popular assumption that the administration of justice is an easy task for which anyone is competent and the popular impatience of restraint. There are others, he said, whose dissatisfaction is peculiar to the Anglo-American system of law because of the individualist spirit of the common law; the common law doctrine of con-

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1. SCHULMAN, TOWARD JUDICIAL REFORM IN PENNSYLVANIA (1962). REPORT, GOVERNOR'S COMMISSION ON CONSTITUTIONAL REVISION (Pa. 1964); JOINT COMMITTEE ON THE EFFECTIVE ADMINISTRATION OF JUSTICE AND PA. BAR ASS'N, CONSENSUS ON THE PENNA. JUDICIAL SYSTEM (1964); France, *Judicial Reorganization — A Solution to Congestion?*, 68 DICK. L. REV. 143 (1964); PA. BAR ASS'N, IN SUPPORT OF THE PENNSYLVANIA PLAN FOR THE SELECTION AND TENURE OF JUDGES (1961), (the Association committee on this subject was created in 1948); Keefe, *Judges and Politics: The Pennsylvania Plan of Judicial Selection*, 20 U. PITT. L. REV. 621 (1959); REPORT, COMMISSION ON CONSTITUTIONAL REVISION (Pa. 1959); Kenworthy and Banks, *Judicial Administration In Pennsylvania: A Comparison With The Minimum Standards Established By The American Bar Association*, 22 PA. B.A.Q. 240 (1951).

2. New Jersey (1948), Hawaii (1950), Alabama (1950), Puerto Rico (1952), Alaska (1956), Ohio (1957), Kansas (1958), Connecticut (1959), Arizona (1960), New York (1961), California (1961), Iowa (1962), North Carolina (1962), Illinois (1962), Colorado (1962), Idaho (1962), Nebraska (1962), Michigan (1964); Nims, *Judicial Reform Is No Sport For The Short Winded*, 46 A.B.A.J. 159 (1960); Waterman, *Recent Reforms in Judicial Administration*, 46 J. AM. JUD. SOC'Y 69 (1962); Winters, *The National Movement to Improve the Administration of Justice*, 48 J. AM. JUD. SOC'Y 17 (1964).

3. Pound, *The Causes of Popular Dissatisfaction With The Administration of Justice*, 46 J. AM. JUD. SOC'Y 55 (1962); See also Wigmore, *The Spark That Kindled The White Flame of Progress — Pound's St. Paul Address of 1906*, 46 J. AM. JUD. SOC'Y 50 (1962).

tentious procedure which tends to make litigation an endless game; the political jealousies which put political issues into the courts under our doctrine of supremacy of law, and the lack of any general legal philosophy which results in petty tinkering instead of comprehensive reform. There are still others, he said, whose dissatisfaction is peculiar to judicial organization and procedure in the United States because of our multiplicity of courts, our preservation of concurrent jurisdictions and our waste of judicial power arising out of rigidity of districts, excessive attention to procedural points and unnecessary retrials. And there are still others, he said, whose dissatisfaction arises from the environment of judicial administration in the United States because of a popular lack of interest in justice; the strain on our laws because they also have to do the work of morality; the involvement of our courts in politics; the tendency of the legal profession to become a trade, and the public ignorance of the real workings of the courts due to ignorant and sensational press reports. Judicial reform has been a slow process, but Pound lived to see the reform movement take hold and spread wide and far.

The problems in Pennsylvania have centered on three areas: (1) the selection and tenure of judges; (2) the administration and efficient organization of the judicial system; and (3) the minor judiciary. It is not the purpose of this article to demonstrate the need for judicial reform in Pennsylvania, since this is well known to most of the readers of this Review and has been amply set forth elsewhere.[4]

The Pennsylvania Bar Association has for several years been working intensively on a program of constitutional reform for Pennsylvania. This program has been popularly known as "Project Constitution," and central to its work has been revision of Article V, the Judiciary Article, of the present Constitution of 1874.

While the method of constitutional revision in Pennsylvania is not the subject of this article, it is important to point out that the efforts of the Pennsylvania Bar Association, and at present all efforts in Pennsylvania, are directed toward revision by the "Article by Article" method.[5] (The voters of Pennsylvania have repeatedly rejected the call of a Constitutional Convention to rewrite the entire Pennsylvania Constitution, most recently in November, 1963.)

The revision of Article V proposed by the Pennsylvania Bar Association was considered by the Pennsylvania State Legislature during 1964 and rejected. It will, in all probability, be resubmitted

4. See SCHULMAN, *op. cit. supra* note 1.

5. See Witwer, *Action Programs to Achieve Judicial Reform*, 43 J. AM. JUD. SOC'Y 162 (1960).

with some revisions in 1965. It must be passed by a majority of each House of two successive General Assemblies and by a majority of the electorate of the Commonwealth.[6]

I.

SELECTION AND TENURE OF JUDGES[7]

Under the present Constitution, all of Pennsylvania's judges are elected by the partisan competitive method in primary and general elections for terms of 10 years in the lower courts and 21 years on the Supreme Court.[8] There is no provision for retirement. Vacancies are filled by the governor by appointment to continue until the next general election.[9] There is no limitation on the governor's choice in filling vacancies, and candidates for election to judgships are chosen in the same manner as candidates for all other elective offices in the Commonwealth. This means that the polictical parties play a major role in choosing candidates, and judgships are too frequently regarded as plums for the repayment of political debts.

The basic evil is the competitive election of Pennsylvania judges.[10] With the exception of some cantons in Switzerland, no democracy, other than the States of the United States, elects its judges.[11] In fact, from 1776 until 1838, Pennsylvania's constitutions provided that all judges be appointed with life tenure on good behavior, and thereafter, as part of a national movement toward popular control of government, judges became elected officials.[12] It has been said that popular election of judges is deceptive democracy and tends only to confuse the voter.[13] This feature of Pennsylvania's constitutional system has been minimized to some degree by the so-called "sitting judge principle," by which a judge currently in office, either by appointment or by election, who must stand for election or re-election, will not be opposed by a candidate from the other political party. This principle has found its greatest strength in Philadelphia, and it has been applied more at the local level than at the statewide level. However, the prin-

6. PA. CONST. art. XVIII (1874).

7. For a good history of this problem, see Nelson, *Variations on a Theme — Selection and Tenure of Judges*, 36 So. CAL. L. REV. 4 (1962).

8. PA. CONST. art. V, §§ 2, 15.

9. *Id.* at art. V, § 25.

10. See SCHULMAN, *op. cit. supra* note 1, at 19–28.

11. PA. BAR ASS'N, IN SUPPORT OF THE PENNSYLVANIA PLAN FOR THE SELECTION AND TENURE OF JUDGES 3 (1961).

12. *Ibid.*

13. *Id.* at 5. In 1937 in Philadelphia there were 106 candidates for 14 judgeships.

ciple has never had universal acceptance in Pennsylvania (or even in Philadelphia), and has been followed only sporadically.[14] It definitely has not cured the defect in the judicial system.

The proposal presented by the Pennsylvania Bar Association embodies the "Pennsylvania Plan."[15] Under it, when a vacancy exists in the office of judge of an appellate court or in a court of record in Philadelphia or Allegheny Counties, the Governor shall fill it by appointment from a panel of three persons nominated to him by a nonpartisan Judicial Nominating Commission. If the Governor fails to act favorably on any of these nominees within 60 days, the Judicial Nominating Commission will nominate a second panel of three, and if the Governor shall fail to nominate a person from the second panel within 30 days, the appointment will be made by the Chief Justice from the persons nominated in either panel.

The Judicial Nominating Commission, composed of one judge, three members of the bar selected by a plan to be promulgated by the Supreme Court and three lay citizens appointed by the Governor, all for three year terms, is the core of the Pennsylvania Plan. There is to be one commission for the appellate courts, chosen from the Commonwealth at large, and another for each judicial district is chosen from that district, except that the judge may be chosen from outside the district.

During his term of service, which is to be without compensation except for expenses, no member of the Judicial Nominating Commission may hold any office in a political party organization, and only the judge may hold public office or salaried appointment. Such a commission has been used already in Pennsylvania, having been appointed by Governor Scranton in January 1964 to fill five vacancies in Philadelphia. It has also been used to fill vacancies in New York City and Denver.[16]

Each judge appointed by the governor serves a trial period of at least 24 months, and thereafter at an appropriate election (general

14. See SCHULMAN, *op. cit. supra* note 1, at 28–31. A graphic example of the evils of partisan election of judges has been related by W. St. John Garwood, a retired Associate Justice of the Supreme Court of Texas. In the 1948 Texas primary Judge Garwood's opponent was a man named Jefferson Smith, who had previously run unsuccessfully for minor statewide offices, had no listed law office or any noticeable reputation as a lawyer and who was known as a lawyer to "hardly one out of 50 lawyers" in his home town; Smith's name was regarded as more attractive politically, because it had no disadvantageous religious connotation, as did Justice Garwood's name; furthermore, the hero of a television show which was popular at that time in Texas was also named Jefferson Smith. Judge Garwood was elected by only a handful of votes. Garwood, *Judicial Selection and Tenure — The Model Article Provisions,* 47 J. AM. JUD. SOC'Y 21 (1963).

15. PA. BAR ASS'N, PROPOSED NEW JUDICIARY ARTICLE (Oct. 1964).

16. Winters, *supra* note 2, at 21.

for appellate judge and municipal for local judge), the name of the judge, if he so chooses, is submitted, unopposed, to the voters on a separate ballot without party designation. The single question is whether the judge shall be retained in office.

If a majority of voters who mark the judicial ballot favor the retention of the judge in office, he serves for a full term and at its expiration may run again, unopposed, for another term. He runs on his record only, rather than against a political opponent. If the voters decide the judge is not to be retained, the vacancy is filled by appointment from a panel of three names nominated to the Governor by the Judicial Nominating Commission as set forth above.

At any municipal election the qualified voters of any judicial district, other than Philadelphia and Alleghany Counties (where it will be mandatory), may elect to adopt this plan, or, having adopted it, may elect to discontinue it. Either of these questions may be placed on the ballot for any judicial district by petition signed by not less than 200 qualified electors of the district. Upon adoption of the Article, all sitting judges in the courts affected will be subject to the provisions of the plan. The Plan embodies features of both the federal and the elective systems. Its appointive features will tend to insure the selection of judges of the highest possible competence. Popular control by the electorate is retained, but partisan political contests are eliminated.

The proposal also provides that the term for judges of all courts shall be ten years, except on the new Community Courts, where the term can be less if so set by the General Assembly. The Chief Justice of Pennsylvania is to be elected for five year terms by the members of the Supreme Court, and may succeed himself. The Chief Justice may resign without resigning from the Court. The Chief Justice shall appoint the President Judges of all courts covered by the Pennsylvania Plan, except that the President Judges of the Community Court and of any division of the District Court shall be appointed by the President Judge of the District, to serve in each case at the pleasure of the appointor.

The Plan would be a vast improvement for Pennsylvania. The one weak feature of the Plan is that it is not mandatorily applicable to local judges in counties other than Philadelphia and Allegheny. It should be.

The proposal of the Pennsylvania Bar Association also suggests significant changes with respect to compensation and retirement of judges. While Pennsylvania has generally provided by statute quite

adequate compensation for its judges,[17] it has been silent on the question of retirement. Under the proposal, judicial salaries shall be set by statute. The General Assembly may, under the proposal, provide for retirement of judges at an age not less than 70 years; it may also provide that retired judges may receive compensation and may, with their consent, be assigned by the Supreme Court to render such judicial service as may be prescribed by Rule of the Supreme Court.

The proposal also provides that a judge's office will be forfeited if he becomes a candidate for an elective non-judicial office, is convicted of misbehavior in office or is disbarred as a member of the Supreme Court. Retirement for mental or physical incapacity and impeachment are also provided for. A judge may be removed, suspended or disciplined for professional misconduct.[18]

The proposal also prohibits the imposition upon the Courts or upon judges thereof of non-judicial duties or responsibility for making appointments, except those related to the judicial power or the administration of the courts.[19] No judge may make any contribution (except to a member of his family) to or hold any office in a political party or organization, nor, while in office, become a candidate for any elective non-judicial office.

Judges are prohibited from practicing law and from engaging in any other employment for compensation. This prohibition, however, does not extend to lecturing, teaching, writing, acting as an officer in a non-profit professional organization or acting as a fiduciary of the estate of a member of his family.

Judicial duties cannot be efficiently and effectively discharged until judges are free of political duty, including those required by campaigns for election and re-election. The proposed "Pennsylvania Plan" is similar to that which has been in effect in Missouri since 1940 and more recently, and with some variations, in other states.[20] It is also similar to the provisions for selection and tenure of the American

17. The Chief Justice of the Supreme Court receives annual salary of $33,000, associate justices $32,500. The President Judge of the Superior Court receives $31,000, associate judges $30,500. Judges of the Courts of Common Pleas (who also serve as judges of the Courts of Quarter Sessions) and judges of the Orphans' Courts receive $21,500 to $25,000, depending on the population of the judicial district (Dauphin County, $27,500). The President Judge of the County Courts receives $23,000, associate judges $22,500. The Chief Magistrate of Philadelphia receives $15,000, other magistrates $12,500. Act of June 1, 1956, P.L. (1955) 1959, §§ 2–8, as amended, 17 P.S. §§ 830.24–830.30. Act of June 15, 1937, P.L. 1743, No. 368, § 37, as amended, 42 P.S. § 1138B.

18. For a good analysis of the California approach to this problem, see Frankel, *Judicial Conduct and Removal of Judges For Cause In California*, 36 So. CAL. L. REV. 72 (1962).

19. For the non-judicial burdens presently borne by Pennsylvania judges, see SCHULMAN, *op. cit. supra* note 1, at 250–76.

20. Alaska, Iowa, Kansas, Nebraska. Winters, *supra* note 2.

Bar Association's Model Judiciary Article.[21] There are, however, some significant variations from the Model Article.

First, in the Model Article, only one panel of three nominees need be presented to the Governor before the Chief Justice may act, whereas the Pennsylvania Plan provides for two, thus offering greater opportunity of choice to the Governor.

Second, magistrates under the Model Article are appointed by the Chief Justice for three years, whereas the Pennsylvania Plan provides for appointment in the same manner as other judges for terms of ten years or less, as determined by the legislature. There does not seem to be any sound reason why the minor judiciary should not be appointed in the same manner as other judges, and doing so will increase the prestige and respect, so desperately needed, for the minor judiciary.

Third, under the Model Article the trial period of an appointed judge is three years, instead of two. The difference seems inconsequential.

Fourth, the minimum retirement age under the Model Article is 65, instead of 70. If it is thought necessary to state an age for retirement in the Constitution, age 65 would seem to offer greater latitude to the state legislature and therefore seems preferable. It is provided in at least one state constitution that retirement be mandatory at age 70.[22]

Fifth, the Model Article provides that judicial salaries shall not be less than the highest salary paid to an officer of the executive branch of the State government other than the governor, and pensions (not less than 50% of the salary at retirement for those of ten years or more service, widows included) are constitutionally established. This seems unnecessary to a basic law and has been eliminated from the Pennsylvania proposal.

Sixth, under the Model Article, the Chief Justice is selected by the Judicial Nominating Commission, instead of by the members of the Supreme Court. There are good arguments for both of these proposals. A Chief Justice must work closely with the members of the Supreme Court and therefore should be someone with whom they are compatible. On the other hand, the Chief Justice is to have important state-wide administrative responsibility, the capacity for which might be better judged by a commission.

Seventh, the judge on the Judicial Nominating Commission under the Model Article must be the Chief Justice of the State, a provision

21. Holt, *The Model State Judiciary Article in Perspective*, 47 J. AM. JUD. SOC'Y 6 (1963); Rosenman, *A Better Way to Select Judges* (Am. Jud. Soc'y 1964).
22. Quinn, *Judicial Administration and Selection — Old Problems in Our Newest State*, 44 J. AM. JUD. SOC'Y 86, 88 (1960).

which would seem to impose heavy time-consuming and unnecessary burdens on the Chief Justice. Pennsylvania's plan permits greater flexibility and sharing of the load. Under it, the Supreme Court is permitted to choose that judge who is best suited to serve.

Finally, the Model Article provides that members of the Judicial Nominating Commission shall receive compensation as set by the legislature, whereas the Pennsylvania Plan specifically prohibits compensation. The Pennsylvania Plan would seem to be better designed to attract members to a Commission motivated by public service.

The proposal of the Pennsylvania Bar Association also provides that all judges shall at the time of selection be residents of and continue to reside in the Judicial District for which they shall be selected.[23] This means that a person who practices law in one county but resides in another county may be selected to be a judge only in the county where he resides but does not practice law. It is a device apparently designed to keep out carpetbaggers, but, since all judges must be retained in office only by the consent of the electorate, would not they be deprived of their office by the electorate if they were regarded as unworthy carpetbaggers? On the other hand, is the Commonwealth not likely to be deprived of able judges from time to time if it cannot choose persons who may live in a county other than that where their principal professional contacts exist? The proposed article would seem to be stronger if this residence requirement were left out, or, at least, left to the General Assembly. If some limitation is deemed necessary, would it not be more meaningful to limit a judge to the county where he regularly practices law, or where he is admitted to the bar of the District Court? The Model Judicial Article contains no such restriction, though a similar limitation was contained in recent reform in Illinois.[24]

The Pennsylvania Plan is, however, a big step forward from reform recently adopted in Illinois, where the Plan was conditioned on adoption by two-thirds of the members of each house of the state legislature and subsequent approval by a majority of the voters; the whole concept of the Judicial Nominating Commission was eliminated, and the Plan applied only to *re*-election, leaving each judge's initial election open under all circumstances to the usual process of partisan politics.[25]

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23. They must also be citizens of the Commonwealth and members of the Bar of the Superior Court.

24. *Proposed Judicial Article*, 50 ILL. B.J. 60, 63 (1961).

25. *Proposed Judicial Article*, 50 ILL. B.J. 60, 62, 63 (1961). For an excellent review of the situation in other states, particularly Colorado, see McHendrie, *Qualifications, Selection and Tenure of Judges*, 33 ROCKY MT. L. REV. 449 (1961).

The theory of the plan is that there shall be responsible democratic control over the judiciary. Traditional partisan election is not responsible and does not insure quality. Complete unfettered control in the hands of the chief executive is thought by many not to be democratic. A combination of the two, with appropriate checks and balances, efficient and responsible, is what is proposed.

II.

THE ADMINISTRATION AND EFFICIENT ORGANIZATION OF THE JUDICIAL SYSTEM

Under the present Constitution, Pennsylvania has a Supreme Court, which, in addition to appellate jurisdiction, has original jurisdiction over certain causes. The Constitution also establishes, in great detail, Common Pleas Courts, Courts of Oyer and Terminer and General Jail Delivery, Courts of Quarter Sessions of the Peace, Orphans' Courts, Magistrates Courts and "such other courts as the General Assembly may from time to time establish." There is no unified system of judicial administration, the necessary concomitant of the modern judicial system well adapted to an urban and industrial society.[26]

The proposal presented by the Pennsylvania Bar Association[27] establishes a Supreme Court, a Superior Court, District Courts, Estates Courts in certain counties and Community Courts. All of these courts will be subject to the administrative supervision of the Supreme Court acting through the Chief Justice and local supervision by the chief judges of each of the individual courts which are created. The District Courts are created as courts of original jurisdiction, which is where court congestion is greatest and efficiency is most needed. Other courts may be established by the General Assembly after certification of their necessity by the Supreme Court.

There are to be seven justices of the Supreme Court, one of whom shall be Chief Justice of Pennsylvania. In his absence, the senior member of the Court shall serve in his place. Original jurisdiction in the Supreme Court is abolished, but the Supreme Court may assume jurisdiction of any action pending in another court at any stage of the proceedings. Direct appeals from the District Court may be made as of right only in cases of judgments imposing sentences of death or life imprisonment; otherwise appeals shall be only in accordance with rules prescribed by the Supreme Court.

26. Pound, *Principles and Outline of a Modern Unified Court Organization*, 23 J. AM. JUD. SOC'Y 225 (1940).

27. PA. BAR ASS'N, PROPOSED NEW JUDICIARY ARTICLE (Oct. 1964).

The Superior Court is to have nine judges, with additional judges assignable from the District Courts or the Estates Courts by the Supreme Court, and the number of judges may be changed by the General Assembly after certification of necessity by the Supreme Court. The Superior Court may act in panels of three or more judges, and it shall have no original jurisdiction. Its jurisdiction shall be strictly appellate, in cases assigned to it by Supreme Court rule or in cases where the rules are silent as to appeal. The President Judge of the Superior Court is appointed from the Court by the Chief Justice of Pennsylvania, and in the absence of the President Judge the senior judge shall act in his place.

There is to be one District Court for each judicial district. The districts, and their judges, are to remain as at present, but may be changed by the General Assembly upon recommendation of the Supreme Court. There is to be a President Judge of each District Court appointed by the Chief Justice of Pennsylvania. In each district which now contains a separate Orphans' Court and in such others as may be determined by the General Assembly upon recommendation of the Supreme Court, there will be an Estates Court with the same powers and duties as the present Orphans' Courts. The District Courts and Estates Courts will have unlimited original jurisdiction except in such cases as may be assigned exclusively to the Community Courts by rule of the Supreme Court, in which latter cases the District Courts are to have such powers of review as may be provided by the Supreme Court Rules.

In Allegheny and Philadelphia Counties and other districts where a majority of the voters so decide, the minor judiciary is abolished and superseded by Community Courts, whose jurisdiction and the number of judges for which shall be established by Supreme Court Rule. The President Judge of the District Court shall appoint Commissioners to accept bail, issue warrants and otherwise assist the judges of the Community Court of the District.

The Supreme Court is to have general supervisory and administrative authority over all the Courts of the Commonwealth. Judges may be temporarily assigned from one court or district to another.[28] The Chief Justice is to exercise his court's powers of administration, and the Supreme Court is to appoint an administrative director and staff to assist the Chief Justice. The Supreme Court is given the rule making power. Rules are to have the force of law and shall suspend all statutes with which they are inconsistent.

28. See Sutton and Linn, *The Intercourt Assignment of Judges in Colorado*, 33 ROCKY MT. L. REV. 480 (1961).

Clerks of Court and other non-judicial personnel are constitutionally established, and may be appointed by the respective courts with respect to which they are to act, except that the Supreme Court may otherwise provide by rule with respect to the District Courts and Estates Courts. The Supreme Court may also prescribe a merit system for appointment, promotion, removal, discipline and suspension of non-judicial personnel.

The Supreme Court is also to establish a Judicial Council in accordance with its rules to conduct studies for improvement of the administration of justice for law reform and for such other purposes as provided by Supreme Court Rule.[29]

The capstone of any judicial reform is the unification of the system of justice. In this respect the Pennsylvania proposal adheres closely to the Model Judicial Article suggested by the American Bar Association.[30] The significant differences which exist are as follows:

First, the Model Article does not contemplate any separate Estates Courts as under the Pennsylvania Plan, but would rather include them as divisions of the District Courts. This is a major and unfortunate concession. It is undoubtedly due to the fact that Pennsylvania's Orphans' Courts and the judges who adorn them are in general, highly respected, efficient and capable. There is a feeling that their integrity will be diluted if their independent status is not retained. If, however, the proposed plan is adopted, the entire judiciary should rise to the standard now enjoyed by the Orphans' Courts. In that event, if the Estates Courts were divisions of the District Courts rather than separate entities, the cause of modern efficiency would seem to be advanced.[31]

Second, under the Model Article, appeals directly to the Supreme Court are allowed where a sentence of 25 years or more has been imposed, in addition to sentences of death or life imprisonment, which are as far as the Pennsylvania proposal goes. The difference is one of degree, and a small difference at that.

Third, under the Model Article, the intermediate Appellate Court is to sit in divisions as determined by the Supreme Court, with each division corsisting of three judges. The net result may be about the same as under the Pennsylvania proposal, which provides for one Court which may sit in panels of not less than three judges.

Thus, it can be seen that, with the exception of the major concession made to the Orphans' Courts, the Pennsylvania proposal follows closely the Model Judicial Article proposed by the American Bar Asso-

29. Kenworthey and Banks, *supra* note 1, at 245–47.
30. Holt, *supra* note 21.
31. SCHULMAN, *op. cit. supra* note 1, at 146–47.

ciation. In this respect, it closely approximates the reform which occurred in New Jersey in 1948, Puerto Rico in 1952, Alaska in 1956, Kansas in 1958,[32] Arizona in 1960,[33] Iowa and New York in 1961,[34] North Carolina[35] and Illinois in 1962.[36]

III.

THE MINOR JUDICIARY

The system of Magistrates, Justices of the Peace and Aldermen in Pennsylvania has long been the subject of angry indignation. Pennsylvania is unique in that its minor judiciary has not been required to be learned in the law, and, as numerous investigations have proved, it is a judiciary too often quite unlearned in the law, though most experienced in the art of politics.[37] It is not a judiciary of record.

The proposal of the Pennsylvania Bar Association is to abolish all existing courts not of record in Allegheny and Philadelphia Counties and other judicial districts where a majority of the voters so decide and supersede them by Community Courts, which are to be courts of limited jurisdiction exercised through divisions established by Supreme Court Rule. The Supreme Court is also to determine the number of judges for the Community Courts in each district, and the judges are to be selected in the same manner as judges of the District Court, and have the same qualifications, including membership in the Bar of the Supreme Court of Pennsylvania and residence in the judicial district for which they are selected.[38]

Under the proposal, the President Judge of the District Court is empowered to appoint Commissioners for the district to accept bail, issue warrants or otherwise assist the judges of the Community Courts as prescribed by Supreme Court Rule. The Supreme Court is to prescribe the qualifications and restrictions for Commissioners, except that Commissioners must be citizens of the Commonwealth and residents of the judicial districts for which they are appointed.

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32. Waterman, *Recent Reforms in Judicial Administration*, 45 J. AM. JUD. SOC'Y 69 (1962).

33. *Ibid*; Douglas, *Arizona's New Judicial Article*, 2 ARIZ. L. REV. 159 (1960).

34. *Court Reorganization Reforms — 1962*, 46 J. AM. JUD. SOC'Y 110 (1962).

35. Comment, *Court Reform*, 42 N.C.L. REV. 858 (1964).

36. Chandler, *The New Judicial Article for Illinois*, 50 ILL. B.J. 654 (1962); Hershey, *The Proposed New Judicial Article*, 50 ILL. B.J. 466 (1962).

37. See SCHULMAN, *op. cit. supra* note 1, at 88–137; BUREAU OF MUNICIPAL RESEARCH AND PENNSYLVANIA ECONOMY LEAGUE, THE MAGISTRATES COURTS OF PHILADELPHIA (1958); ERVIN, THE MAGISTRATES COURTS OF PHILADELPHIA (1931). The attorney general of the Commonwealth is currently conducting a wide-ranging investigation of the Philadelphia magistracy.

38. For the qualifications, see *supra*, p. 263.

The American Bar Association's Model State Judicial Article establishes a trial court of limited jurisdiction known as the Magistrate's Court, and it is to have the number of judges determined by the Supreme Court. There is no residence requirement. The court's jurisdiction is to be established by Supreme Court Rule, and appeals may, by Supreme Court Rule, lie to the District Court. Magistrates are appointed for three-year terms by the Chief Justice and must be licensed to practice law in the courts of the state. Considerably less attention is given to magistrates than to judges on the questions of tenure, compensation and retirement.[39]

The Pennsylvania proposal would seem, in some respects, to be an improvement over that of the Model Article. Firstly, it is wise, in view of the sad reputation of Magistrates Courts in Philadelphia, to abolish the name, and Community Courts is a new and descriptive appellation.

Secondly, it is important to give Community Courts the same status as other courts with respect to selection of judges, tenure and retirement.

However, Pennsylvania's plan is weak in two respects: First, it is only optional outside Allegheny and Philadelphia Counties; and, second, it contains a residence requirement which is as unnecessary for Community Court judges as it is for judges of the District Court.[40]

The reform of the minor judiciary should be mandatory for all counties. This should be even more true where the fee system of justices of the peace still obtains than in Philadelphia and Allegheny Counties, which are the only counties where the minor judiciary is salaried. The complete integration of the minor judiciary into the administration of the Commonwealth's judicial system should greatly aid the correction of the evils so frequently demonstrated.[41]

Reform of the minor judiciary has occurred in a number of other states in recent years.[42] As an example, in Illinois' recent reform, justices of the peace (including a fee system) were abolished, and magistrates are to be appointed by the circuit judges in each circuit to serve at their pleasure; but magistrates need not be lawyers, nor are they required to devote full time to the job.[43]

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39. Holt, *supra* note 21.
40. See *supra*, p. 264.
41. See *supra*, note 37.
42. Tennessee (1937–60), New Jersey (1948), California and Hawaii (1950), Puerto Rico (1952), Alaska (1956), Ohio (1957), Connecticut (1959), Arizona (1960), New York (1961), Illinois, North Carolina, Colorado (1962). Winters, *The Judicial Reform Movement in America Today*, CONSENSUS, JOINT COMMITTEE ON THE EFFECTIVE ADMINISTRATION OF JUSTICE AND THE PA. BAR ASS'N 53, 57–58 (1964).
43. Giese, *Why Illinois Proposes To Abolish Justice Of The Peace Courts*, 50 ILL. B.J. 677 (1962).

Reform of Pennsylvania's minor judiciary seems inevitable in the not too distant future. It would appear that Pennsylvania might not make the mistake in compromising quality qualifications for its minor court judges which was made in Illinois. It should not, however, deprive 65 of Pennsylvania's 67 counties of the benefits of the reform by limiting its applicability.

CONCLUSION

No solution is perfect, and it is not suggested that the present proposal of the Pennsylvania Bar Association is an exception. The important feature of judicial reform in Pennsylvania today is that there exists a proposal on which there is a greater consensus than any other ever advanced. It is a proposal which, if adopted, would constitute a great step forward. It is to be hoped that it may even be strengthened in several important respects, such as state-wide application of the plan for judicial selection and of reform of the minor judiciary and elimination of separate Estates Courts, prior to adoption.