



## Notre Dame Law Review

Volume 30 | Issue 2

Article 3

3-1-1955

# Essentials of a Modern State Judicial System

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### Recommended Citation

Laurance M. Hyde, *Essentials of a Modern State Judicial System*, 30 Notre Dame L. Rev. 227 (1955).

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# ESSENTIALS OF A MODERN STATE JUDICIAL SYSTEM

## INTRODUCTION

Our state judicial departments were based on the eighteenth century pattern of the English courts which had developed on a haphazard basis through the centuries with many local, specialized and overlapping tribunals. Dean Roscoe Pound says of that period: "It is not too much to say that English judicial organization at that time was at its worst."<sup>1</sup> Thereafter, under pressure of urban, commercial and industrial developments, England simplified, unified and modernized its judicial system by the Judicature Act of 1873, which combined its principal courts into one Supreme Court of Judicature with both trial and appellate branches.<sup>2</sup> The judges, being all judges of this one court, are subject to assignment to either trial or appellate work. The Supreme Court of Judicature is composed of the Court of Appeals and the High Court of Justice, which is its trial branch and which is divided into Queens Bench (for law cases), Chancery (for equity cases), and probate, divorce and admiralty divisions. Thus, for more than three-quarters of a century, most of the important judicial business of England has been handled by a single unified court. Much trial time has been saved by a system of appointed masters, who handle the preliminary stages of cases so that the essential issues are clarified by methods similar to the discovery and pre-trial conference practice more recently de-

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<sup>1</sup> Pound, *A Generation of Improvement of the Administration of Justice*, 22 N.Y.U.L.Q. REV. 369, 383 (1947).

<sup>2</sup> 36 & 37 VICT. CHAP. 66 (1873) supplemented by 38 & 39 VICT. CHAP. 77 (1875).

veloped in this country.<sup>3</sup> Because both the trial and appellate branches are divisions of the same court, an appeal does not (as has too often been the case in our practice) require a series of technical steps to go from one separate court to another, the failure as to any one of which could prevent a hearing on the merits. Unfortunately, our state court organization is still more like that of eighteenth century England than of modern twentieth century England.

Most of our state judicial departments were organized during pioneer days when our country was constantly expanding into unsettled territory. Their development was also on a haphazard basis, of adding unrelated, separate, new courts as population increased. In pioneer times, local communities had to be self-sufficient and people had few contacts with other parts of the country. Thus courts and judges were isolated from each other and most state judicial departments were composed of a group of completely separate courts. Court systems lacked unity and flexibility. There was no real responsible head to the system, and provisions for transfer of judges were lacking or inadequate. If some courts were unable to keep up with their dockets, while others had insufficient work, there was neither responsibility nor authority to do anything about it. The usual remedy was to add more local or specialized courts but this only added to the inefficiencies and inequalities of a hodgepodge of separated courts. These conditions were the principal cause of many cases being decided on technicalities of jurisdiction, venue, and trial and appellate procedure, instead of on the merits. In many states, at least until very recently, courts have continued to operate almost as completely separated and unrelated as in pioneer times; and this has usually resulted in congestion of dockets

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<sup>3</sup> Hyde, *From Common Law Rules to Rules of Court*, 22 WASH. U.L.Q. 187, 198 (1937).

<sup>4</sup> For the situation in the states see MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 29 *et seq.* (Vanderbilt ed. 1949).

causing unnecessary expense and delay to litigants.<sup>4</sup> Modern conditions require a flexible, unified system and that is the real remedy. Our courts should no longer be handicapped in efforts to maintain public respect for the law by being forced to attempt to keep up with the pace of modern business and industry without the organization and facilities necessary to do so.

Although much thought has been given by bar associations<sup>5</sup> to better organization of state judicial departments, very little was accomplished prior to World War II in the actual adoption of modernized judicial articles in state constitutions, providing for unified court systems. In 1945, Missouri adopted a new constitution containing a revised judicial article which provided a unified court system by giving responsibility and control to the Supreme Court. There was no change made in the existing courts (except to abolish justice of the peace tribunals) but the Supreme Court was given authority to transfer judicial personnel from one court to another, to establish rules of practice and procedure for all courts, and to transfer to it cases decided by the courts of appeals.<sup>6</sup> Thus the Supreme Court was made the head of the judicial system with the responsibility for its efficient operation without changing the names or organization of the existing courts. Fortunately, Missouri had not built up as complex a system of courts as some states, because some of its earlier established specialized courts had previously been abolished.<sup>7</sup> In 1947, New Jersey adopted a new constitution which went further in its judicial article by replacing its existing courts with a new and simpler system of courts. These were limited to a Su-

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<sup>5</sup> See AMERICAN BAR ASSOCIATION HANDBOOK, SECTION OF JUDICIAL ADMINISTRATION, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE (3d ed. 1952).

<sup>6</sup> MO. CONST. ART. V, §§ 4, 5, 6, 7 and 10.

<sup>7</sup> See Hyde, *Historical Review of the Judicial System of Missouri*, 27 VERN. ANN. MO. STAT. 1 (1949).

preme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction which might be established, altered or abolished by law.<sup>8</sup> The Supreme Court was given the power to make rules of practice and procedure and to regulate admission to practice of law and bar discipline.<sup>9</sup> However, the greatest advances for unification of the judicial department were the provisions for the Supreme Court to make rules governing the administration of all courts in the state and for the Chief Justice to be the administrative head of all the courts of the state with authority to appoint an Administrative Director, to transfer judges, and to assign judges to the Appellate Division of the Superior Court for terms fixed by rules of the Supreme Court.<sup>10</sup> Illinois, in 1953, proposed an even more far reaching and comprehensive plan for a unified judicial department than either Missouri or New Jersey had accomplished. This new judicial article did not obtain the necessary two-thirds majority of both houses of the Illinois Legislature, required for its submission to the people as a constitutional amendment, but the effort to obtain its submission is being continued. Under the proposed Illinois judicial article there would only be a Supreme Court, an Appellate Court and Circuit Courts; and there would be no power in the Legislature to create additional courts of any kind.<sup>11</sup> The work of present county courts, municipal courts and other courts of limited jurisdiction would be handled by associate judges and magistrates as officers of the circuit courts under the supervision of the chief judge of the circuit designated by the Supreme Court. The Supreme Court was to be given general administrative authority over all courts, including temporary assignment of judges; and the chief justice given

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<sup>8</sup> N.J. CONST. ART. VI, § 1, par. 1.

<sup>9</sup> N.J. CONST. ART. VI, § 2, par. 3.

<sup>10</sup> N.J. CONST. ART. VI, § 7, pars. 1 and 2.

<sup>11</sup> *Draft of Proposed Judicial Article*, U. OF ILL. LAW FORUM 592 (Vol. 1952).

the appointment of an administrative director and staff to assist him in his administrative duties. This proposed article is unique in consolidating all original trial jurisdiction in the circuit courts and thus goes beyond even the English Judicature Act in the unification of all trial courts.

From experience in New Jersey and Missouri, and the example of the English Judicature Act, seven essentials of a modern unified state judicial system are suggested. These are centralized administrative authority, an administrative office, the rule making power, regulation of bar admission and discipline, nonpartisan selection and tenure of judges, adequate compensation and retirement, and respectable courts of limited jurisdiction. These will be further discussed in the order named.

## I

### CENTRALIZED ADMINISTRATIVE AUTHORITY

Modern conditions of our urban, commercial, and industrial civilization require that there must be some head to a state judicial department. Some judge or court should be charged with responsibility for the efficient operation of the whole system.<sup>12</sup> This should be the highest court in the state because it can best furnish respected leadership and already has the authority to determine the law of the state. Its chief justice should be the administrative head of the judicial department because efficient supervision of administration must necessarily be the function of a single person.<sup>13</sup> Rotation in the office of chief justice for short terms as is the custom in many courts is a great handicap to efficient administration and real leadership in improv-

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<sup>12</sup> See recommendations in *Report of Committee on Judicial Administration*, 63 A.B.A. REP. 530 (1938).

<sup>13</sup> For results that can be obtained under such administration, see Vanderbilt, *The First Five Years of the New Jersey Courts Under the Constitution of 1947*, 8 RUTGERS L. REV. 289 (1954); see also Part I, *The Conference of Chief Justices and An Integrated System of State Courts*, 9 F.R.D. 629 (1949).

ing the administration of justice. The chief justice should have full authority to transfer temporarily, judges from courts where the work is light to courts that are overburdened. It is also essential that his court should have authority to make rules for the administration of all courts and the entire judicial department. The supreme court and the chief justice can be greatly assisted in this administrative work through the organization and periodic meetings of a state judicial conference which will bring all of the judges together and build a spirit of friendly cooperation in the work of the whole judicial system. The operation of the judicial system can be continuously surveyed and tested through such judicial conferences; and smaller judicial councils organized for that purpose and for research have been found to be most helpful.<sup>14</sup>

## II

### AN ADMINISTRATIVE OFFICE

For the highest court of the state to properly supervise and coordinate the entire judicial system, as well as to keep its its own docket current, it should have the benefit of a full time administrative office with an adequate staff.<sup>15</sup> The administrator of such an office should work under the supervision of the chief justice and relieve him and the other judges of the details of the business of the courts. He should be the executive secretary of the judicial conference; and should perform investigative and management functions such as examining the state of the dockets of all

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<sup>14</sup> See HANDBOOK OF THE NATIONAL CONFERENCE OF JUDICIAL COUNCILS 1940, 1941 and 1942; Nims, *Four Judicial Councils*, 27 CAN. B. REV. 29, 31 (1949); Pirsig, *A Survey of Judicial Councils, Judicial Conferences and Administrative Directors*, 47 PHI DELTA PHI BRIEF 181 (1952).

<sup>15</sup> For functions of an administrator for the courts see, MODEL ACT TO PROVIDE FOR AN ADMINISTRATOR FOR THE STATE COURTS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 167 (1948).

courts and arranging for transfer of judges to courts that need assistance. He could also collect and compile statistics on the state of business of the courts, prepare and submit their budget estimates, do their accounting work, supervise the research work required for rule making by the supreme court and publish the official reports. Thus the time of the judges would be saved for their judicial work and complete information concerning the operation of the entire judicial system would be available at all times. The Administrative Office of the United States Courts has been in operation since 1939 and has resulted in better use of judicial personnel, adequate information as to conditions, much less delay and fewer congested dockets.<sup>16</sup>

### III

#### RULES OF PRACTICE AND PROCEDURE

The judicial department should have the authority to make the rules of practice and procedure for both civil and criminal cases.<sup>17</sup> Rules of procedure are the working tools of lawyers, and should enable them to develop actual issues clearly and bring about prompt decision of cases on the merits. Like other good tools they should be the latest and best models. Rules of substantive law establish fundamental rights and state the principles upon which they are based. They determine what rights an individual shall have. They should not be changed without most careful and extended deliberation and then only when such a change is a vital necessity to prevent future injustice. Rules of procedure only determine how and when a dis-

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<sup>16</sup> See Vinson, *The Business of Judicial Administration: Suggestions to the Conference of Chief Justices*, 35 A.B.A.J. 893, 33 J. AM. JUD. Soc'y 73 (1949).

<sup>17</sup> See MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 91 *et seq.* (Vanderbilt ed. 1949).



pute about such rights shall be brought to an issue. Whenever a procedural rule operates to prevent bringing such a dispute promptly to an issue it ought to be abolished. Whenever such a rule can be improved, to bring disputed questions to definite issues in a clearer way within a more reasonable time, it ought to be amended. When the judicial department has the rule making power, it is possible to get prompt, intelligent action, which will provide timely, essential changes and keep them in harmony with the whole procedural code.<sup>18</sup> To keep procedural rules up-to-date, it is necessary that they be constantly surveyed and tested in the light of experience. This can be done best by the bench and bar working together with authority to make necessary changes. Advisory committees appointed by the supreme court, composed of lawyers and judges, can determine from experience how the rules are working and recommend the changes that are needed. Changes made by legislation often add new technicalities as obstructive as those replaced and continue to compel the courts to operate in the straight-jacket of rigid procedural rules. As stated by Justice Cardozo: "The legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend."<sup>19</sup>

#### IV

### REGULATION OF BAR ADMISSION AND DISCIPLINE

It is the responsibility of the judicial department to govern admission to the Bar, its discipline, and to make and

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<sup>18</sup> See Hyde, *From Common Law Rules to Rules of Court*, 22 WASH. U.L.Q. 187 (1937); Hyde, *Modernization of Procedure*, 2 TEXAS B. J. 201 (1939); Hyde, *Simplification of Missouri Procedure*, 7 U. OF K.C. L. REV. 225 (1939).

<sup>19</sup> Quoted in an article by Mitchell, *Reform in Judicial Procedure*, 24 A.B.A.J. 197, 198 (1938).

enforce rules of professional and judicial ethics. This authority should be exercised by the highest court in the state, with provision for the chief justice to supervise its administration. Lawyers are officers of the courts and are as important to the administration of justice as judges. High standards of ability and integrity of lawyers are essential to justice. The courts must depend to a great extent on the ability and industry of lawyers to properly prepare the cases they must decide. The courts can only decide cases brought to them by lawyers and the best decisions are most likely to result from thorough, earnest and sincere presentation by the lawyers involved. Lawyers can also render great service to the courts and the public by serving on advisory committees to assist the court in its rule making power, in formulating and enforcing its canons of ethics and in performing its other administrative and supervisory functions. An integrated, all inclusive bar, organized under court rules as in Missouri and many other states, can be most helpful to the courts, the profession and the public in improving law and the administration of justice. As hereinabove pointed out, this function of the highest court is specifically stated in the 1947 New Jersey Constitution. However, it was declared a proper function of the Supreme Court of Missouri by a decision<sup>20</sup> prior to the adoption of the new Missouri Constitution of 1945. Admission to the bar is controlled through the Board of Law Examiners appointed by the court.<sup>21</sup> Discipline is under the Missouri Bar Administration, headed by a State Advisory Committee and having local committees in each judicial circuit, all appointed by the court. This organization not only investigates complaints and brings disbarment actions, but also suppresses unauthorized practice and issues official opinions interpreting rules and canons of

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<sup>20</sup> *In re Richards*, 333 Mo. 907, 63 S.W.2d 672 (1933).

<sup>21</sup> For admission requirements and procedure see Mo. Sup. Ct. Rule 8, MO. ANN. STAT. § 8.01 (Vernon 1953).

ethics.<sup>22</sup> A salaried executive officer gives his full time to this work and employs attorneys and investigators to assist him.

## V

### NONPARTISAN SELECTION AND TENURE OF JUDGES

Modern conditions require higher qualifications for the successful operation of government. Certainly, there is no branch of the government in which high qualifications are more important than in the judicial branch. To attain higher standards, most states need better methods for selection and tenure of judges than they now have. Judges, the same as persons in other positions requiring special knowledge and training, should improve with experience in doing their work, but in many states men are turned out of judicial office about as soon as they have learned how to do the job well. The party primary and election system may work well in rural districts of small population where the voters can have personal acquaintance with the candidates for judicial office; but voters can have little informed basis for their decisions on judicial officers elected on state-wide tickets or in large cities and therefore, take little interest in them. The results often turn on issues other than the ability, record, or qualifications of the judicial candidate. Moreover, the politically minded too frequently consider a judicial office, like any other office, as mainly a reward for the faithful and are likely to overlook the necessity for other qualifications. It has been well stated that a politician may make a good judge if he can cease to be a politician when he goes on the bench but that the great handicap of the party election system

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<sup>22</sup> For the procedure of these committees see Mo. Sup. Ct. Rule 5, MO. ANN. STAT. § 5.01-§ 5.24 (Vernon 1953).

is that it usually requires a judge to be a politician to remain a judge.

John Marshall once stated his belief "that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary."<sup>23</sup> It is significant that the great Chief Justice placed these three things in the same category. Certainly the foundation of our whole legal system must be the respect of our people for the law and this must depend mainly upon confidence in the independence, integrity and ability of the judges who apply it. Requiring judges to run on party tickets with other candidates who are partisans of the political party supporting them is surely not the ideal way to create such confidence or to maintain judicial independence.<sup>24</sup> There must be no partisanship in the administration of justice and there should be none in the selection and tenure of judges.

There are three basic problems of judicial selection and tenure, namely: How to select a man who is competent to be a judge? How to keep him on the bench if he does become a good judge? And how to get rid of him if he does not? A good judge must have three essential qualities: Personal integrity, judicial temperament and adequate legal training.<sup>25</sup> The matter of proper selective methods is most vital to the maintenance of a well qualified judiciary. As Dean Roscoe Pound has commented: "Too much thought has been given to the matter of getting less qualified judges off the bench. The real remedy is not to put them on."<sup>26</sup> Some of our older states have attained high standards by the method of appointment by the Governor

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<sup>23</sup> 4 BEVERIDGE, *THE LIFE OF JOHN MARSHALL* 495 (1919).

<sup>24</sup> For a discussion of these factors see Hyde, *Judges: Their Selection and Tenure*, 22 N.Y.U.L.Q. REV. 389 (1947).

<sup>25</sup> Hall, *The Selection, Tenure and Retirement of Judges*, 3 J. AM. JUD. Soc'y 37 (1919).

<sup>26</sup> See introduction to Haynes, *THE SELECTION AND TENURE OF JUDGES* (1944).

with confirmation by the State Senate or a Council. However, the greatest problem is in states where judges must run as political party candidates.<sup>27</sup>

Missouri adopted a new plan, by a constitutional amendment in 1940, intended to make possible the recognition of the essential judicial qualities in selection and to make tenure depend upon satisfactory service.<sup>28</sup> This is based on the plan recommended by the American Bar Association in 1937 and provides three distinct steps for the selection of judges, as follows:<sup>29</sup>

1. Judges are nominated by nonpartisan, nonsalaried commissions, composed of both laymen and lawyers, who hold no public office or political party position.

2. A judge is appointed by the Governor from a list of three candidates, nominated by the appropriate nonpartisan selection commission, for the particular office to be filled.

3. After a trial period (of at least twelve months), the judge must be voted on, and approved, by the people in order to remain in the office to which he was appointed.

The selected list is proposed by a commission which has no other function and upon which both the Bench and Bar are represented, with representation as well of the viewpoint of those who are not lawyers. Full publicity is given when a vacancy exists and suggestions from the Bar and the public are invited. Thus, this commission is well adapted to receive and consider impartially both the views of the public and the appraisal of the legal profession as to the ability of lawyers under consideration for selec-

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<sup>27</sup> See comment on operation of political elective system of judges in 4 BRYCE, *THE AMERICAN COMMONWEALTH*, 480-489 (REV. 2d ed. 1889).

<sup>28</sup> Now MO. CONST. ART. V, § 29.

<sup>29</sup> This is substantially the plan recommended by the American Bar Association in 1937. See 62 A.B.A. REP. 1033 (1937); and for further studies of this plan see 63 A.B.A. REP. 420 (1938) and 65 A.B.A. REP. 246 (1940).

tion.<sup>30</sup> Furthermore, at regular periods (appellate judges 12 years, trial judges 6 years) after original confirmation by the electorate, the judge must be voted on again to get another term. The judge runs against no opponent or political party but solely on his record on the bench. The voting (yes or no) on a separate judicial ballot is on the question of whether the judge shall be retained in office and the people may retire a judge by a majority vote against his further retention in office. This is a great incentive to all judges at all times to make a good record and provides an easier way than impeachment to terminate the service of one who does not. Moreover, since tenure depends solely upon the test of satisfactory service, judges know that their tenure is secure, if they do good work, and may count on making the judiciary their life career, with practically the same assurance as under the federal "good behavior" standard. Thus judges may give their full time to their judicial duties and always be working on the next case instead of on the next election.<sup>31</sup>

This plan utilizes the best features of both the appointive and elective systems, but provides safeguards lacking in either of them. It is more democratic than the usual appointive system because it gives better opportunity for consideration of the views of the Bar and the people in selection, and requires the executive appointment to be confirmed by the vote of all the people rather than by only that of one house of the Legislature. Likewise, the people have the opportunity at regular intervals to decide the question of further service; and thus the people apply the standard of good behavior.

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<sup>30</sup> For operation of commissions in detail see Mo. Sup. Ct. Rule 10, mo. ANN. STAT. § 10.01-§ 10.08 (Vernon 1953).

<sup>31</sup> For operation of the plan see Hyde, *The Missouri Plan for Selection and Tenure of Judges*, 9 F.R.D. 457 (1949).

<sup>32</sup> See Mitchell, *The Judicial Salary Crisis: An Increase is Urgently Needed*, 39 A.B.A.J. 197 (1953):

## VI

## ADEQUATE COMPENSATION AND RETIREMENT

Adequate judicial salaries and a reasonable judicial retirement system are necessary to attract lawyers of outstanding ability to accept judicial appointments.<sup>32</sup> Recent experience of the Missouri Judicial Selection Commissions in making nominations for vacancies has shown that some of the best qualified lawyers have declined to have their names considered for vacancies on the bench because they did not feel they could give up the financial rewards of their practice for the lesser compensation of the judiciary. Excellent judges have left the bench because of greater opportunities in the practice for financial security. The same situation exists even in the federal judiciary with its better retirement provisions. The primary purpose of a retirement system is not to reward the judges but to promote the administration of justice by attracting the best qualified lawyers to accept the duties and responsibilities of the bench and to induce judges, who have served faithfully for many years but have passed the peak of usefulness, to retire with the knowledge that they will continue to be rewarded by the state to which they have devoted their best years. Thus both selection and tenure are adversely affected by inadequate provisions. Many retired judges can render valuable part time service and provisions should be made for this in the retirement plan.

## VII

## RESPECTABLE COURTS OF LIMITED JURISDICTION

Low standards, favoritism, political or otherwise, and lack of dignity should not be tolerated in any court. Efforts for improvements must not be limited to appellate courts

or in trial courts of general jurisdiction. There must be no weak link in the judicial chain. No courts are more important than those which try infractions of traffic laws, hear misdemeanor cases, determine small claims and causes, and hold preliminary hearings in felony cases.<sup>33</sup> They should not be thought of or referred to as inferior or minor courts merely because they do not decide controversies involving large amounts of money, or try felony cases of great public interest. Their great importance is that they are the courts which most of our people actually see in operation. Many will have no contact with any other courts. It is unusual to have more than a half-dozen visitors at the arguments of cases in our state supreme courts, even in cases involving great issues or large amounts of money or property. But traffic courts, municipal courts, magistrate courts and justice of the peace courts will frequently be crowded with many spectators. More important still, the youth of our nation, our workers and many citizens of ordinary means get their first impression, and often their only impression of our whole judicial system, from these courts. This molds their views of the administration of justice. They judge all government (both state and national) by what they see there. If their experience in these courts gives our people a bad impression of their judiciary, it cannot be removed by high sounding speeches. That is why we must strengthen these courts of limited jurisdiction and see that they are conducted with dignity, and deal out justice fairly.<sup>34</sup> This is vital to gain for the judicial department the respect it must have to make our institutions of democracy work properly.

There are many ways this can be done. In Missouri's 1945 Constitution an advance has been made by abolishing

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<sup>33</sup> For a discussion of these problems see Frost, *The Traffic Court Improvement Program*, 33 J. AM. JUD. SOC'Y 166 (1950); see also Warren, *TRAFFIC COURTS* (Judicial Administration Series 1942).

<sup>34</sup> INSTITUTE OF JUDICIAL ADMINISTRATION, *TRAFFIC LAW ENFORCEMENT AND THE SIXTEEN RESOLUTIONS OF THE CHIEF JUSTICES AND THE GOVERNORS* (1953).



justice of the peace courts and substituting magistrate courts with the requirements that the judges of these courts must be members of the Bar, be full time judges not permitted to practice law, and be compensated by salaries paid by the state instead of fees collected from parties.<sup>35</sup> However, this still leaves municipal courts to be established by statute and city ordinances and they can be another weak spot in the judicial structure. New Jersey has raised the standards of its courts of limited jurisdiction by the provisions of its 1947 Constitution, making its chief justice the administrative head of all courts and bringing these courts under his direct supervision.<sup>36</sup> In California, a constitutional amendment, adopted in 1950, reorganized all municipal and minor courts so that there would be a single court for each district, city or rural, and brought them under supervision of the state judicial council.<sup>37</sup> In Illinois, as previously stated, the most far reaching plan has been proposed of taking away from the legislature the power to create any minor courts and making all local judges and magistrates a part of the organization of the circuit courts. Certainly the real remedy is to make all courts an integral part of the state judicial department under the supervision of the highest court and the chief justice with power to make rules and fix standards for them. Of course, the abolition of the fee system of compensating judicial and law enforcement officers is essential.

## CONCLUSION

The details of court organization have not been discussed. This is a subject that requires lengthy treatment.<sup>38</sup>

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<sup>35</sup> MO. CONST. ART. V, §§ 16, 17, 18 and 24.

<sup>36</sup> N.J. CONST. ART. VI, § 7, par. 1.

<sup>37</sup> For details of the plan see 34 J. AM. JUD. Soc'y 58 (1950).

<sup>38</sup> See Pound, ORGANIZATION OF COURTS (1940).

In the larger states, intermediate appellate courts are necessary to dispose of the case load; and the highest court, if it is to have time for its administrative and supervisory duties, must be able to limit its docket to the most important cases. In the smaller states, one supreme court may be adequate for all purposes. The principle to be followed is a court organization that does not waste its judicial manpower. Dean Pound pointed this out almost fifty years ago in his speech at the 1906 annual meeting of the American Bar Association, saying: "Our system of courts is archaic in three respects: (1) In its multiplicity of courts, (2) in preserving concurrent jurisdictions, (3) in the waste of judicial power which it involves."<sup>39</sup> Simplification of state court organization to give unity and flexibility to the judicial system is the goal to be attained. Methods of selection and tenure that will make the bench attractive to the most able lawyers, with adequate compensation and retirement provisions to permit them to make the judiciary a lifetime career, will furnish the qualified personnel required to meet twentieth century needs. Simplified court structure with authority in the judicial department to make rules of procedure will result in simplified procedure that will eliminate expense and delay by making it possible to get prompt correct results, instead of doing things over and over again by trials and retrials. Responsibility and authority in the highest court of the state for efficient operation of all courts and for maintenance of high standards of the bar will increase the confidence of the people in the courts and raise the prestige of the bar. More than that, the preservation of our heritage of freedom depends on the successful operation of our constitutional government. Our way of life, based on liberty and equal justice under law, is challenged by communistic dictatorship, threatening us both by force from without and by subver-

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<sup>39</sup> Pound, *The Causes of Popular Dissatisfaction With the Administration of Justice*, 29 A.B.A. REP. 395, 409 (1906).

sive influences from within. This makes it especially important to strengthen the institutions of democracy in these perilous times. None of these are more important, or more essential to the preservation of our American form of government, than those responsible for the administration of justice; and most of our people must depend upon their state courts for justice in their daily lives and personal affairs. Improving our state courts will strengthen the nation.

*Laurance M. Hyde\**

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