Report to

Legislative Research Committee

on

Desirability of Integrating Activities of Municipal Courts and Trial Justices.

(Authorized by Chapter 91, Resolves by 1959)

Selected Excerpts

from Tentative Draft

Institute of Judicial Administration
New York, N.Y.

MAINE REPORT

Outline

* Included in this report

To the Committee on Legislative Research:

The present study was undertaken in September 1959 at the request of your Committee, acting pursuant to Chapter 91 of the Resolves of 1959, which reads in pertinent part as follows:

Resolved: "That the Legislative Research Committee be authorized to study the desirability of creating a district court system integrating the activities of the present municipal court and trial justice system. . . ."

The resolve of the Legislature does not define the term "district court system." We have assumed, as did the Judicial Council in 1957, when similarly directed by the Legislature to "study the desirability of creating a District Court system integrating the activities of the present municipal court and trial justice system," that the plan imported by the term "is believed to contemplate full time judicial appointees who shall serve a district. . . to be the only court of limited jurisdiction within the district created."

In other words the plan contemplated by the resolve of the Legislature envisages the abolition of the present structure of municipal courts and trial justice courts, all locally financed and all served by part-time judges, and the establishment in its place of a single state-supported system of courts manned by a corps of full-time judges.

The municipal courts now number fifty. Their judges, each sitting in a single town, are all lawyers, whose chief source of livelihood is their law practice. In addition, the judicial work of these courts is participated in to a greater or less extent by the recorders attached to all but seven of them. A small minority of these are members of the bar, (and in consequence enjoy the title of associate judge). The

remainder are engaged, as their chief means of livelihood, in a variety of occupations. Whether or not a member of the bar, the recorder may and on occasion does, hold court, performing, as permitted by statute, all the functions of the judge. Of the 24 trial justices, again only a small minority are members of the bar. The remainder are engaged in a variety of occupations.

In the case of a few of the courts, their charters provide for the holding of terms for civil business in additional towns. As will appear, the civil business of these courts is minor, and the civil terms held by these courts pursuant to these provisions are of trifling significance.

In essence the question which the Legislature has authorized your Committee to investigate is this: Would replacement of the ramified structure just described by a corps of full-time judges, necessarily relatively few in number, work an improvement in the administration of justice and in the enforcement of the law?

The Essential Issue

That the admitted weaknesses of the present court system would be greatly minimized by the substitution of a small corps of full-time judges, were that practicable, seems fairly generally admitted; for, other things being equal, it appears to be generally conceded that the full-time judge is superior to the part-time judge. This was recognized by the Committee of the Judicial Council[1] which in 1957, following a request to the Council by the Legislature, reported on the desirability of creating a district court system. The Committee reported unanimously "that where the case load justifies it, the judge should be placedon and paid for full-time application to his duties."[2] The Committee's failure to recommend a state-wide system manned by full-time judges was thus apparently due, not to any doubt as to the superiority of the full-time over the part-time judges "who because of the low judicial salary must devote the major portion of their time to private practice in order to gain a livelihood," but rather to a fear that a system based on full-time service might, in the smaller towns, sacrifice "the proximity of such a Court to the area and people it serves", the Committee declaring that "the strength of the municipal court rests largely in the fact that it is a 'local' court acquainted with the local people and problems."

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1. The Committee consisted of two superior court judges, two municipal court judges and two laymen.

2. Presumably the Committee had in mind the municipal courts in the cities of Portland and Bangor, each of which has a case load which, especially if augmented by that of some of the nearby minor municipal courts, presumably would justify a full-time judge in place of the part-time judge and part-time associate judge who now divide the work. The possibility of creating a sufficient case load by uniting several adjacent courts in a circuit served by a single judge is not discussed by the Committee.

We have here the essential issue around which differences of opinion asto the practicability of a district court system for Maine appear to revolve. That in principle, a small corps of professional judges, free, like the judges of the superior court, from conflicting interests and from other demands on their time is superior to the many-membered group of lawyers and laymen who now dispense local justice part-time is not seriously questioned by any of those whose opinions we have solicited; their doubts or objections arise solely from a belief that, under the conditions of population distribution existing in most parts of the State, the reduced accessibility and the reduced knowledge of local conditions and people, which a reduction in the number of judges presumably entails, are too great a price to pay for the admitted advantages of a full-time judiciary. The problem thus is essentially one of balancing advantages and disadvantages. Are the advantages of a full-time judiciary for the local courts so pronounced as greatly to outweigh any loss of proximity and of local knowledge which a reduction in the number of judges may entail?

Conclusions and Recommendations

Our conclusion is that the advantages greatly outweigh the disadvantages. Specifically, we conclude that the proposed change

1) would result in a more uniform disposition of the traffic cases which constitute the largest single class of cases now disposed of by the municipal and trial justice courts, and that in this and other respects the traffic safety program of the state would be furthered.

2) would result in a more careful, thorough and expert disposition and follow-up of the problem cases now handled by those courts -- the cases of alcoholics, juveniles and broken families.

3) would tend to produce a closer liaison between the courts and the social agencies of the state, including the probation and welfare departments.

4) would make the judicial establishment a force for improvement of the state's social and law enforcement programs.

5) would tend to improve procedures and record-keeping, with resulting assistance to the law-enforcement agencies of the state.

6) would increase respect for the courts and for the law on the part of the citizens of the state.

7) would effect a monetary saving sufficient to provide for the rehabilitation of the needed court-houses and court-rooms.

Impelled by these conclusions we recommend legislation terminating all existing offices of municipal court judge, associate judge and recorder, and trial justice, on the expiration of the terms of the present incumbents; and the creation of a district court of the state of Maine, composed of twelve judges, holding court in thirty places in the state.

Preliminary to an exposition of the basis on which these conclusions and recommendations have been reached, some general comments are appropriate.

Reorganization vs. Reform

In discussion of the subject we have encountered the contention that many of the defects in the administration of justice and in the enforcement of the law admittedly observable in the operation of the present courts should be capable of correction within the present framework. With this contention we in a measure agree; and should your Committee decline, at this time, to concur with our recommendations, a program of legislation designed to correct weaknesses in the present system should promptly be undertaken.

Those who stress the possibility of improvement within the present framework commonly contend further, however, that there is consequently no occasion for a radical change in the system. This contention we are quite unable to accept. Some of the chief weaknesses in the existing ramified part-time system, to which attention will presently be called, are in our opinion inherent in that system and are incapable of correction within the present framework. Even with respect to those defects which are, in theory, susceptible of correction within the present framework, the practical difficulties of enforcing improved standards upon so widely diffused a body of officials, whose chief sources of livelihood and primary interests are elsewhere, make the possibility of even such partial improvement quite dubious.

Those who thus contend that the present system should be improved, not replaced, pose, as their unstated premise, that the burden of proof falls upon those who propose to displace the existing arrangements. However, it is relevant to point out that the existing municipal and trial justice courts represent a marked exception to the principle on

which all other state functions (including the superior court) are conducted -- the principle that the public is best served by public servants who devote the whole of their working time and energy to their public responsibilities; that the plan under which local justice is administered as a sideline by public servants whose chief source of income is elsewhere, and indeed to a certain extent in an area inconsistent with their public responsibilities, is itself a gross exception to this pervasive principle; and that, consequently, the present system rests under the obligation of justifying the making of this exception in its favor. It must be recognized, too, that this exceptional system was adopted at a time when the volume of business of these courts was but a fraction of its present size, and when difficulties of travel made it almost imperative that a court should be available within a few miles of every important settlement; and that hence even if there were no expressed dissatisfaction with the operation of the present system, its exceptional form of organization would thus call for re-evaluation in the light of present-day ease of travel and communication.

Impossibility of General Characterization of the Courts

In collecting opinions on this problem, one is struck with the quite common tendency to include all seventy-four courts, or at any rate all municipal courts, in a single characterization. Manifestly, however, no single characterization of the work of these courts can be valid. Quite aside from the inevitable disparity in the ability and conscientiousness of judges of courts of comparable size, the great disparity in the volume of business handled by the several courts makes generalizations impossible. There is the widest disparity between the courts in the volume of business done (and consequently in the relative importance in the judge's day of his judicial duties as against his private law practice), in the formality of their procedures, the regularity and duration of their sessions, their records and clerical arrangements, their physical setting. The courts in Bangor and Portland have an annual case load of 6,235 and 3,872 respectively. In the Winthrop court, the one which (barring a few virtually inactive courts in the immediate vicinity of large city courts) has the smallest volume of business, there were only 118 cases disposed of in 1959. From the standpoint of cases which went to a hearing the contrast is even more striking, and the same is true of sentences imposed on plea of guilty. Between the extremes, all possible variations are found.[1] There is no need to underscore the contrast between a municipal court in one of the larger cities of the state, with a judge in attendance every day for a substantial part of the day, with dignified quarters, and adequate clerical personnel, and with a probation officer in readily available attendance, on the one hand, and on the other a municipal court in one of

1. See table on next page.

the small towns, where court is held irregularly, in mean quarters or perhaps in the office where the judge practices law, where the clerical work must perhaps be done by the judge himself, and where a probation officer's services can be obtained only with difficulty. Still greater may be the contrast with a trial justice's court, held in a still smaller settlement, only occasionally, and, in surroundings often not even approximating in dignity those of a village law office.[2]

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1. Cases disposed of by Municipal Courts in 1959. (Courts arranged in descending order of number of cases)

Bangor	6235	Kennebec	1148	South Porland	552
Portland	3872	Brunswick	1148	Millinocket	543
Lewiston	3310	Old Town	1116	Brewer	517
Yorkshire	3026	Rumford	1077	Pittsfield	517
Waterville	2776	Lincoln	1040	Calais	449
Caribou	2471	Ellsworth	935	Ft.Fairfield	420
Augusta	1742	Sanford	926	Franklin	404
Western Somerset	1492	Saco	883	Bar Harbor	402
Bath	1403	Town of Lincoln	871	Newport	332
Rockland	1378	Piscataquis	793	Livermore	331
Auburn	1354	Biddeford	769	West.Hancock	311
Houlton	1258	North.Aroostook	732	Lisbon	250
Westbrook	1187	Gardiner	710	Dexter	247
Norway	1177	Madawaska	694	West.Oxford	150
Waldo	1156	North.Cumberland	566	Winthrop	118
				Hallowell	117

2. There is great variation in the case load of the trial justice courts as well, as shown by the 1959 figures, the courts being arranged in descending order of the number of cases disposed of:

Scarboro	1695	Orono	156
York	1288	Fairfield	150
Gray	1043	Baileyville	149
Freeport	877	Bingham	135
Madison	248	Ashland	133
Phillips	219	Rangely	116
Dixfield	217	Limestone	115
Old Orchard Be.	188	So.Paris	110
Jackman	188	Merrill	102
Waterboro	167	Patten	54
		Cornish	20

Traffic Offenses

Traffic cases constituted, in 1959, about 70% of all criminal cases and about 54% of cases of all types (including civil) disposed of by the municipal and trial justice courts. Manifestly, it is by their operation in this field that the present courts must largely be judged. Correspondingly, it is by the extent of its possible superiority in this field that the desirability of a district court system must in large measure be determined.

During the year 1959, 33,458 traffic cases came before the courts. Classified by the nature of the violation involved, their numbers were as follows:

Traffic Cases, Municipal and Trial Justice Courts, 1959

	Total
Moving violations-	
Speeding	8,880
Driving under the influence of liquor	2,186
Reckless driving	1,557
Disregarding stop lights or signs	2,872
Other moving violations	2,834
Violation connected with license and registration, or inspections	9,758
Truck violations	2,492
Other	2,879
Total	33,458

The overwhelming majority of the charges involving danger of serious accident -- speeding, reckless driving and driving under the influence of liquor -- were made by troopers of the state police. Charges by local police officers concerned chiefly non-moving violations -- parking, lack of registration, etc. Prosecution of these charges is almost exclusively in the hands of the troopers themselves. Very rarely does the county attorney participate.

While the enforcement of the traffic safety laws is thus on the

side of policing and prosecution in the hands of an agency acting under centralized state supervision, on the side of judicial enforcement it is in the hands of seventy-four tribunals, each wholly independent of the other and subject to no central supervision whatever. The result is, as might be expected, unequal enforcement on the judicial side, which in turn makes for unequal enforcement on the side of policing and prosecution, despite their centralized supervision.

The inequality of the judicial enforcement of the traffic safety laws stems from the wide discretion given the court in the amount of the fine to be imposed (and in determing whether or not to impose imprisonment) and the lack of any common standards for the exercise of discretion. In the case of speeding, the statute prescribes a fine of from $10 to $100 (imprisonment for 90 days being also provided for, though apparently very seldom imposed). Some of the judges and trial justices appear to follow the practice of imposing a fine of $15, regardless of aggravating circumstances. One judge usually imposes a fine of $5, another in an adjoining court a fine of $35, and still another, quite commonly, a fine of $100. Closer scrutiny of the records would doubtless reveal other variations. The tendency of some of the courts to leniency in turn tends to discourage enforcement by the police. The officer will be inclined to wink at a violation if he feels that the violator will in effect be permitted to shrug off his offense in court by the payment of a trifling fine. Conversely the prospect of an unduly severe penalty may incline the officer to overlook a violation.

For the effective enforcement of the traffic laws of the state, there should be a uniform scale of penalties, worked out by the courts,

and the state agencies responsible for highway safety, and adhered to by all the courts. Such a schedule does not do away with the judge's discretion; it merely furnishes him with detailed standards for the exercise of that discretion. Moreover in this as in other fields, a further well-tried method of promoting uniformity is the compilation of comparative data, so that each member of the corps can observe for himself how much more or less severe he is than his brethren. Such a compilation is meaningful, however, only if the number of cases of each category decided by each judge is substantial. The present arrangement, under which traffic sentences are imposed by seventy-four judges, some of whom pass on as few as 20 cases of all kinds in the course of a year, makes useful comparative data, even were there anyone charged with collecting such data, impossible. With a district court system, each of the judges would, in a year, dispose of a large number of cases, so that an analysis of the penalties imposed by him would become significant.

There is another respect in which the concentration of traffic cases in fewer courts than at present, and in a smaller number of court sessions -- a necessary feature of a district court system -- would strengthen the enforcement of the state's traffic laws. Those most expert in this field strongly recommend that traffic cases be heard separately and apart from other cases, and that each session of court at which traffic cases are heard be regarded as an occasion not merely for penalizing the traffic violators who come before the court, but for educating them as well -- for impressing upon them as a body the necessity for their own safety as well as that of their families and neighbors, of observing traffic laws and rules. Under the present arrangement,

in many of the courts the paucity of traffic cases at any one session of the court, and the informality of the setting and often of the procedure militate very strongly against any attempt to give the proceeding any educational value. In a few of the larger courts, some attempt at impressing upon the traffic offenders before the court the importance of observing traffic regulations is made. In the smaller courts whose proceedings we observed, however, there was no such attempt; and the proceeding was so mechanical that, conducted as it was in some courts in a setting little calculated to impress the offender, it could hardly be expected to have any greater educative value than would a notification to the offender, had he indicated in advance his intention to plead guilty, that he was to pay his fine to the town clerk.

In an ideal program for traffic safety, the judges of the traffic courts should themselves be a major force for the improvement of the safety laws and of their enforcement. But such a role can hardly be expected of the many-headed unorganized local judiciary of today. A small corps of full-time judges would clearly be far more likely to play a significant part in the overall road safety program.

A greater uniformity of sentencing in traffic cases could no doubt be brought about even under the present diffusion of the sentencing discretion among seventy-four judges, were there a statutory organization of these judges, functioning under an authoritative supervision; but under any form of organization the achievement of greater uniformity among so large and diverse a group is far more difficult than it would be among a small tightly-knit corps of full-time judges, meeting periodically under the leadership of their chief.

In summary we conclude that with a small corps of full-time judges there would result an enforcement of the traffic laws more satisfactory to the public, to the law enforcement agencies and to those otherwise engaged in furthering traffic safety. With the greater uniformity of sentences possible under such a court organization, and with the judges removed from local pressures, a more impartial and effective enforcement of the law in this field would ensue and public confidence in the courts would be enhanced.

A major factor in the effectiveness of a traffic court in impressing the offender with a sense that his offense, despite the possible small amount of his fine, is a serious one, is the dignity of the court's setting and the formality of its procedure. In these respects, a number of the present courts are seriously deficient -- a matter to be discussed at a subsequent page.

The effectiveness of traffic courts in improving traffic safety depends also much on the promptness with which the penalty is visited on the offender. In this respect the present system is on the whole satisfactory. With respect to the offense of drunken driving, however -- doubtless the offense involving greater danger to highway safety than any other -- the lack of finality of a conviction in the municipal or trial justice court seriously impairs its effectiveness. If appeal from such conviction is taken to the Superior Court (or if hearing in the municipal or trial justice court is waived and demand made for trial in the Superior Court), the trial must await a criminal term of the Superior Court in the county involved. During the ensuing delay, the respondent's license continues in force. Even in counties in which the Superior Court terms occur very frequently, the failure of the county attorney to bring the case to trial may cause further delay.

Family and Juvenile Cases

We pass now to a branch of the work of the municipal courts which though quantitatively minor is of prime importance. These are the cases in which family troubles are involved. These cases come before the municipal court judges in the exercise of their jurisdiction to order support for wives and children, to make a finding of paternity in the case of an illegitimate child and order its support by the father, to make orders for the commitment of neglected children, and to deal with juvenile offenders, of whom many are in effect the product of improper family conditions (some of them indeed being charged with no specific offense but rather merely with consorting with evil companions.)[1]

In this class of cases the experience of the judge is a prime factor in his effectiveness. The background and training of the typical lawyer to whom these responsibilities are now committed, as a part of his part-time judicial duties, do not equip him to deal wisely with these cases, many of which are truly baffling. Only through study and experience can full effectiveness come. The concentration of these cases in sufficient number to enable the judge who deals with them to become, by study and experience, something of a specialist in family and juvenile problems, is thus a prime desideratum in any plan of court organization. Unfortunately, or perhaps fortunately, any great major concentration in Maine is extremely difficult, owing to the small total number of such cases; but the dispersion of even that small number

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1. In addition to offenses committed by juveniles, the municipal courts have jurisdiction of "the following conduct of juveniles: habitual truancy; behaving in an incorrigible or indecent or lascivious manner; knowingly and wilfully associating with vicious or grossly immoral people; repeatedly deserting one's home without just cause; living in circumstances of manifest danger of falling into habits of vice or immorality" (R.S.ch.152A,sec.4).

among 50 municipal court judges (not to speak of the associate judges) is greatly to be deplored.[2] Their concentration in the hands of a much smaller number would be a significant advance. In addition, as with the cases of habitual drunkenness, the better coordination with social agencies that can be achieved with a small corps of full-time judges than is now possible is a factor of the highest importance in this field as well.

Significant as this factor is, however, we have been even more impressed with another. In well-nigh unanimous agreement, the judges whom we have interviewed have confessed their regret at their inability to devote to the juvenile and family cases which come before them, the amount of time which they felt the cases really required.[3]

We confront here a grave weakness of the institution of the part-time judge which it seems difficult, if not impossible, to correct. The lawyer who is also a judge receives for his judicial duties a fixed salary; whether he gives generously of his time to those duties or performs them in the shortest time possible, is entirely a matter for his conscience.[4] But his earnings as a lawyer (since nearly all the judges are single practitioners) depend primarily on how much time he devotes to his clients' affairs, and on how much of the work of his office he

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2. Although the trial justices seldom hear a non-support proceeding, they too have jurisdiction of such a proceeding.

3. Significantly, the earliest published criticism of the municipal courts that has come to our notice is the statement, in 1952, attributed to the judge of one of the larger of those courts, that a disadvantage of the system is the inability of the judges and recorders to devote the necessary time to their part-time posts. (Judge Frank E. Southard,Jr. of Augusta Municipal Court, as reported in Kennebec Journal, Oct. 17, 1952.)

4. So, too, is the choice between holding court himself, or delegating the task to the recorder for slight cause.

can do himself instead of calling in the help of a brother lawyer. There is thus, in the case of not a few of the municipal court judges (especially, we may say, among those who impressed us as the abler among them), a more or less continuous conflict between the demands made on their time by their court on the one hand, and their practice on the other. The sharpness of the conflict might perhaps be reduced by an increase in the salary of the judge, but it could hardly be eliminated. The conflict between the desire of the judge to give the parties before him a full hearing and his need to return to his law office to meet an engagement or to catch up on unfinished business, between his desire to give further study and investigation to a case awaiting his decision, and the necessity of devoting time to the preparation of a brief or a contract on which a deadline impends, would still remain. The point was well put by the committee of the Judicial Council which in 1957 reported on the desirability of a district court system. To be of service, declared the committee, the judge "must be able to devote patient time to the thorough exploration of the case and its causes. 'Patient' time is more readily available when the emoluments of the office enable the judge to give it without the thought lurking in his mind that he must get back to earning a living."

There is one class of cases relating to family problems which is not within the jurisdiction of the present municipal courts, but which might well be brought within the jurisdiction of the district courts proposed should they be created -- actions for separation and divorce, with their concomitant problems of alimony and of custody of children. The district courts would have little difficulty in handling these cases along with their other business; and with them the district court

would embrace all cases which should be within the jurisdiction of a family court. The interrelation of all classes of cases arising out of family affairs, including actions for divorce and separation, has long been recognized by those who have dealt with the problem. The matter has nowhere been better stated than by Dean Pound when he says that ". . . a juvenile court passing on delinquent children; a court of divorce jurisdiction entertaining a suit for divorce, alimony, and custody of children; a court of common-law jurisdiction entertaining an action for necessaries furnished to an abandoned wife by a grocer; and a criminal court or domestic relations court in prosecution for desertion of a wife and child -- that all of these courts might be dealing piecemeal at the same time with the difficulties of the same family. Indeed one might add an action for alienation of the affection of the wife, actions about receipt of a child's earnings, habeas corpus proceedings to try the immediate custody of the child, a proceeding in a juvenile court for contributing to the delinquency of a child, and another in a juvenile court to determine what to do about certain specific delinquencies of the child."[5]

Quite aside from the desirability of integrating matrimonial actions with the other work of the district court sitting as family court is the fact that the present commitment of divorce actions to the superior court has not given satisfaction. In certain counties that court holds terms so infrequently as unduly to delay the granting of divorce decrees. In 1957 the Judicial Council reported that by reason of the length of time

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5. [The Place of the Family Court in the Judicial System, 5 National Probation and Parole Association Journal, 161-171 (April 1959)].

required in certain of the counties for the disposition of matrimonial actions, it was desirable that jurisdiction of such actions be given to the probate judges of the several counties. This situation has been somewhat but by no means completely ameliorated since that report by the system of special assignments of superior court judges instituted by the chief justice of the Supreme Judicial Court in 1958, under which a justice who has completed the calendar of the term in the county to which he had been assigned may be assigned by the chief justice to another county to dispose there of such matters as can be disposed of in chambers; but the need for speedier disposition of matrimonial actions in certain counties still continues.

In addition, the Judicial Council pointed out that "Very seldom, if ever, does the same Judge have consecutive terms in a given county. This means that recurrent domestic disputes between the same parties are heard by different judges. The needs of dependents and the earning capacity of the husband and father changes from time to time, the needs of the children as to custodial attention varies from time to time. Not only should court service be promptly available but it would be greatly to the advantage of the persons involved and the judge charged with the responsibility of aiding the situation if one judge could follow a given family situation from the beginning to the end of its internal controversy." -- a result obviously much more readily attainable under a district court structure.

The recommendation of the Judicial Council was not acted upon by the Legislature, perhaps for the reason that its proposal contemplated also the transfer to the probate judges of exclusive jurisdiction in

all civil domestic relations matters, while leaving criminal jurisdiction, including juvenile cases, in the municipal courts.[6] We believe that such jurisdiction, and the accompanying staff developments, will be much more appropriately placed in the proposed district court system.

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6. The recommendation of the Judicial Council was "That all domestic relations problems, including that of divorce, invoking civil remedies, be transferred from the Superior Court to the Probate Courts, with progressive attention toward the establishment of a staff or staffs of personnel trained in marriage counselling and family discord analysis as an adjunct to the Probate Court System."

The Judge's Local Knowledge as a Factor in Adjudication

It is doubtless in connection with family courts and juvenile cases that there is most relevant an objection that has been strongly voiced to the supplanting of the present system of municipal courts. This is the contention that these courts have a unique value, arising out of the intimate relation of the judge with the community in which he sits, a relation which gives him an invaluable insight into the circumstances and the personalities involved on the cases that come before him, an insight which a judge not resident in the community could not be expected to have acquired. Thus the committee of the Judicial Council which in 1957 reported to that body its divergent views as to the desirability of a district court system declared that "the strength of the municipal court rests largely on the fact that it is a 'local' court acquainted with the local people and problems"; and the members of the committee who opposed any change in the present system, pointed out that "the proximity of such a Court to the area and people it serves is its strength."

At the outset it should be observed that whatever the validity of this view that the judge's knowledge of local conditions is a value that should be preserved, that value does not in fact inhere in the present system, except to a relatively minor extent. The courts having jurisdiction over a majority of the inhabitants of the state, and handling an overwhelming majority of the cases, are situated in communities much too large to permit the judge to have any greater personal knowledge of any but a very few of the citizens who came before him, or of conditions peculiar to some particular locality than would a full-time district judge periodically holding court in that community, though not there resident. If it is possible to administer justice satisfactorily in Portland, Auburn, Lewiston and Bangor without intimate

personal knowledge of special circumstances and personalities, it should be equally possible to do so in the smaller communities of the state. In point of fact, so far as municipal courts are concerned, only twenty of the smaller towns in which such courts now exist would cease to have court sessions under the district court system we recommend. In each of more numerous remaining towns, court would continue to be held one or more days a week. A district judge from a neighboring town sitting in a small community even one day a week should be able to acquire fairly promptly a serviceable amount of the local lore on which such stress is laid.[1]

Of the twenty places in which a municipal court judge now holds court, and in which court would cease to be held under the district court plan which we recommend may be eliminated from consideration in this connection, both because they are in effect suburban rather than rural and because so few cases in this category are brought before the courts there. The remaining places, which are indeed of such small population that the resident judge might be expected to have some personal knowledge, at least with respect to the village if not of the rural residents, of the families whose troubles and whose undisciplined juveniles may come before him, are also strikingly free from cases of this kind, the aggregate

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1. As to the trial justices, whatever the richness of their local knowledge, the aggregate number of cases before them (traffic cases being excluded) in which such knowledge might be serviceable is too insignificant to weigh at all heavily in any consideration of the overall question.

number for all of them in 1959 being . If the district court plan be thought clearly desirable from other standpoints, the loss in these few cases of the intimate personal knowledge of the parties in this class of cases can hardly weigh very heavily in the balance -- particularly since that loss can in any event be largely, if not completely compensated by the advice of probation officers or of the personnel of other social agencies concerned with the cases.

There is another aspect of this local knowledge of the judge of which notice should be taken. It is urged that the resident judge's service to the community extends beyond the cases that are filed in his court -- that by virtue of his position and his personal acquaintance with the people of the community he is often able to settle disputes among his fellow-townsmen without any case coming to court. Doubtless there is much truth in this; but it may be questioned whether even in communities in which there is no judge, a respected lawyer may not have equal influence in keeping his neighbors out of court; even in large cities this is not unknown. Moreover, in some of the instances to which our attention has been called, the dispute or quarrel was one which would not in any case have been likely to result in court proceedings; a minister or priest or any respected social-minded member of the community to whom appeal might have been made would have served equally well. Mention has also particularly been made of juvenile cases in which, owing to the personal familiarity of the judge with the family and perhaps the juvenile himself, it has been possible to dispose of the case without even an entry on the confidential docket of juvenile cases. Assuming such a disposition to be desirable, there would seem no reason why it might not equally well be made by a non-resident judge before whom the facts had been laid before the filing of a formal complaint --

part of the facts being the opinion of the family and the juvenile held by those resident in the town, which a non-resident judge could ascertain without much difficulty.

One further aspect of the matter of local knowledge should not escape attention. It is the pervasive theory of our judicature that the judge's disposition of a case, . . . is to be based upon the evidence before him, and not on knowledge or impressions gained by personal acquaintance (still less knowledge or impressions gained from hearsay, not to say from gossip, always a factor in "local" knowledge). Indeed such knowledge or impressions may in an extreme case be ground for disqualification of a judge. Admittedly, these pervasive concepts are perhaps less strictly honored in connection with cases of the kind under discussion than in more formal litigated proceedings. Nevertheless, the mother accused of neglecting her child, or the juvenile charged with delinquent behavior is also entitled to an unprejudiced hearing. More than one municipal court judge has told us that, though local familiarity has its value, it not infrequently makes difficult a decision based,as the law requires, on the evidence alone.

The Courts and the Social Agencies

As already pointed out, in the fields of traffic, alcoholism, family relations and juvenile misbehavior the courts are but one of several agencies, public and private, dealing with what are essentially social rather than legal problems. In dealing with them the courts should and do collaborate with these agencies. The work of collaboration is impeded however by the very number of the judges and trial justices, their geographical dispersion, and the fact that they have been chosen of necessity without much reference to their special competence or interest in the problems involved in these fields, and do not ordinarily have at their disposal sufficient time for improving their grasp of those problems by study. The view may be said to be general among the agencies in question that with a small corps of career judges, a more fruitful collaboration with the state and private agencies would result.

It is doubtless true that the state does not in fact now have in all these three fields a comprehensive program in which a corps of career judges may fruitfully participate. To the extent that this may be true, the problem of an effective court system in these fields must all the more be regarded as part of the larger problem. The court system is itself one of the factors making for or retarding the development of a comprehensive state program. To the extent that such a program is lacking or inadequate, the relevant question is whether the existing court system or a district court system is more likely to help toward the development of such a program.

The Municipal Court Judge

In its 1957 report, already referred to, the Judicial Council's committee, composed of two superior court judges, two municipal court judges, and two laymen, declared that "the prestige and respect toward some of the municipal courts is sadly lacking, while others could be greatly improved upon in that phase of their position." (p. 7) The committee did not indicate whether this estimate applied to only a few of the courts or to a number; nor are we in a position to offer our own appraisal. The appraisals of the calibre of particular judges which came to our attention in the course of our studies were too few and scattered to enable us to form any reliable opinion as to the degree of respect in which the municipal court bench is held. Our own impression of the municipal court judges, is that, as a whole, with doubtless some exceptions, they are a conscientious and able body -- abler than might reasonably be anticipated in the light of their meager salaries and of the admitted importance of purely political factors in their selection. On the other hand though we have heard particular judges well spoken of, we have found no marked evidence of respect for the municipal courts as an institution whether on the part of the public or of the state agencies concerned. The failure of the county or town authorities in at least of the fifty courts of the state to make more adequate provision for courtroom facilities and clerical service -- this despite the net revenue which the court in virtually every case produces -- seems to us a reliable index of the lack of high regard which the municipal court as an institution enjoys.

Although we find ourselves unable to make any general statement as to the degree of respect in which the municipal court judges are held, we have found

evidences of public attitudes toward them which are bred almost inevitably by the dual position which they occupy in their communities.

The problem of preserving the confidence of the community in the judicial impartiality of a judge who is, concurrently with his judicial duties, carrying on the practice of law among the very people on whom he sits in judgment, has long been recognized as a serious one. In the Canons of Judicial Ethics promulgated by the American Bar Association, the practice of law by a judicial officer is deplored, to be suffered as a necessary evil only where "the county or municipality is not able to pay adequate living compensation for a competent judge." But the Canons go on to declare that "in such a case one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success." (Canon 31) However upright the lawyer-judge, in the background there always lurks the possibility of his being influenced, however subconsciously, in the disposition of the case before him, by the effect such disposition will have on the possibilities of future retainers by one or another of the parties before him, and, even if he in fact bends over backward, the suspicion of divided loyalty is always in the offing.[1]

The smallness of the community served by many of the municipal courts is doubtless a factor in this situation. The judge is necessarily well-acquainted

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1. That such suspicion may in the present situation have some basis in fact would seem to be indicated by the statement of a high judicial officer of the state that "in instances, the 'part-time' aspect leads the incumbent to permit unconscionably the court to be a feeder for his private practice."

with the more influential members of that community. Still more, they are likely to be, either actually or potentially, among his more desirable clients.[1] In this aspect, the fact that the judge is rooted in the locality, and that he knows the local people -- a circumstance so frequently cited as the chief merit of the present multiplicity of judges -- presents itself instead as a distinct weakness.

Confidence in the complete impartiality of the municipal court judge can moreover hardly be expected when the lawyer before him is himself the judge of a neighboring municipal court, before whom the judge on the bench will in turn perhaps shortly be appearing as a lawyer. The likelihood of this has been much reduced by the promulgation of the rule that the judge may not appear as counsel before another municipal court in the same county[2] -- a rule which, however, is not in all cases observed by associate judges.

Even the relation of the lawyer-judge to his brother attorneys may raise suspicion of his judicial impartiality.[3] The lawyer who appears before him when

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1. Until the promulgation of the new rules of procedure for the municipal and trial justice courts, effective December 1, 1959 there was nothing to prevent a client's being represented civilly by a lawyer who, as judge, had heard a criminal charge arising out of the identical matter; and we have been informed that there have actually been cases in which a municipal court judge sitting in judgment on a defendant involved in a road accident allegedly caused by his unlawful driving, has appeared, not too long afterward, as that defendant's attorney in a civil action arising out of that accident.

2. See above.

3. This is so even in traffic cases, despite the fact that a defendant in such a case is rarely represented by an attorney. Not a few citizens believe that the disposition of a traffic charge may be favorably influenced by the private intervention, on behalf of the defendant, of a lawyer who is on friendly terms with the judge. The present practice which permits the judge to "file" a charge, without requiring the defendant to plead, encourages this belief.

he sits as judge in the morning may be the same one from whom, in a matter having no court aspect, he may be planning to ask for cooperation that afternoon. From the standpoint of the position of the judge and of the court in public esteem it is better that there be a certain visible distance between the judge and the attorneys who practice before him.

Lack of complete confidence in the impartiality of the courts is found in quite another direction -- the feeling that the judge is on the side of the officer rather than an impartial arbiter between the officer and the citizen. This feeling is of course found almost everywhere to a certain extent; but there are in the present situation certain specific contributing factors. One of them is the informality of procedure and the resulting occasion for informal contacts between officers and judges,[1] particularly in connection with the preparation of warrants,[2] contacts which, observed by respondents, arouses understandably, even if unjustifiably, suspicion that the representatives of the two arms of the state are collaborating against the citizen. Another factor is the lack of provision for legal counsel to the officers, causing them to turn to the judge for advice and indeed in a sense for assistance in the prosecution -- a role which some of the judges, far from deploring, seem to welcome.[3]

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1. A few of the judges, recognizing this, refuse to confer with officers in their private law offices. One even requires all conferences to be in open court.

2. As to the needlessness of the issuance of a warrant in a case in which the respondent has been summoned by the officer and has appeared, see p.

3. One judge writes: "We [i.e. the town in which his court sits] support two squad cars and 13 men. They take their cue from the local judge. He advises, assists and damn near joins the posse. The people know him as the highest law enforcement officer."

The lawyer-judge has moreover in the smaller centers occasion for informal contact with the local officers (including the members of the state police assigned to the locality) quite aside from his judicial duties. He may, indeed, as a lawyer, occasionally wish to seek from those officers, cooperation, to use no stronger term, in the interest of a client -- whether the client seeks the aid of the officers (as in recovering stolen property for example), or seeks favored treatment at their hands when himself suspected of a violation of law.[1]

A factor which should not escape mention, though it is by no means necessarily connected with the duality of the lawyer-judge position, and could, at least in theory, be readily corrected within the framework of the present system, is the tradition of political selection which has prevailed in the appointment of the municipal court judge, a tradition no doubt responsible also for the oddity that his term is little more than half as long as that of all other judicial officers, including even probate judges and trial justices. The fact that a municipal court judge is the local party chairman, or that he regularly suspends court when he finds it necessary to attend a party convention or other like gathering does not conduce to confidence in his complete impartiality.

We turn to a final factor in the esteem in which the courts are held -- the community's estimate of the stature of the judges. Here, in addition to the judge's reputation for integrity and impartiality, the factor of professional competence enters; and this factor is, of course, especially important in the esteem in which the judge is held by two important segments of public opinion -- his brethren at

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1. The judge is now prohibited from representing a defendant in criminal cases; but the rules do not prohibit his dealing with the police on behalf of a client.

the bar and the law enforcement officers who come before him. As a group, the municipal court judges appear to be regarded as of adequate stature, though some exceptions are to be made. Among the associate judges the rating is perhaps less generally favorable. The lay recorders it need hardly be said enjoy no significant public esteem.

In considering whether a replacement of the present judges by a small corps of full-time judges is desirable, some account must be taken not only of the present state of the municipal court bench but of its prospective state should the present system be continued. Assessing the prospects, we find reason to fear that it may be increasingly difficult to maintain the present level of quality in the municipal court bench.

Success such as the governor has on the whole had in the past in finding capable lawyers willing to take the office -- a task made very difficult in some of the smaller centers by the small number of lawyers from whom a choice must be made, for only a resident lawyer is as a practical matter, and in most cases as a statutory matter, available -- is likely in the future to become more difficult. The reason lies in the additional restrictions which have recently, and very properly, been placed upon the judge's private law practice. By the practice rules for the municipal courts promulgated in 1959 by the justices of the supreme and superior courts, in the exercise of the authority vested in them by the statute of 1957, a municipal court judge is barred from acting as counsel in any civil case arising out of a state of facts which has already been the subject of a criminal charge before him -- a limitation which bars the judge from representing either the plaintiff or the defendant insurer in a negligence claim arising

out of an automobile accident in connection with which there has been before him any charge of a traffic violation. The serious financial loss to the judge potentially present in this limitation needs no emphasis. In addition, the rule now bars him from all criminal practice.

The opinion has been expressed to us by several of the municipal court judges that these additional limitations on the judge's law practice will greatly reduce the attractiveness of the post. A few have stated that had these limitations existed at the time of their appointment they would have hesitated to accept. It may not be amiss to point out that, eminently proper as this last-mentioned limitation is, it carries with it the danger that the lawyer-judge may be tempted to evade it in spirit while complying with its letter, through a secret arrangement with another lawyer.

In addition to the fact that the office of municipal court judge thus appears to be declining in its attractiveness to the other abler members of the bar in the larger towns, there is in the smaller places the added difficulty that the number of lawyers, from among whom the choice of a judge must necessarily be made, tends to decline. In legal as in medical practice, as indeed in trade and other activities, a continuous erosion of the business of the smaller centers goes on, due to the attractive force of the larger centers in the area.

In sum, the prospect is for a deterioration rather than an improvement in the availability of able lawyers for the post.

In this connection, another factor calls for comment. It is essential that for every municipal judge there be available a substitute to hold court when the judge is ill, on vacation, or necessarily absent from town on professional business.

The statute makes two kinds of provision for this need. In those ten counties in which there are two or more municipal court judges, any one of them may substitute for any other. In practice, however, as might be expected, this provision is but little availed of. Instead, resort is had to the other expedient provided by statute. In the absence of the judge, court is held by the recorder, found in 41 of the 50 municipal courts.[1] Of these recorders, some are not lawyers, and of those who are, a few have been but recently admitted to the bar. The result is that in a number of the municipal courts of the state, a defendant may find himself tried by a layman.[2]

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1. In practice, in two of these courts, the recorder, holding at the same time the full-time office of clerk of courts for the county, does not in fact hold court.

2. Several of the judges have informed us that they are at pains to warn the lay recorder not to proceed should a question of law arise, but to adjourn the case to a date when it can be heard by the judge. That one lacking in legal knowledge may fail to be aware of the emergence of a legal question does not appear to have been considered.

The Trial Justice

Our impression of the trial justices is that though, as a group, they are not wanting in conscientiousness and intelligence, with few exceptions they fall short of the legal knowledge which ought to be possessed by a judge vested with the considerable powers they enjoy. Such knowledge is especially necessary where, as is almost invariably the case in the trial justice's court, the defendant charged with an offense is not represented by an attorney, and where the judge must therefore be especially careful to protect the defendant's legal rights against the zeal, or it may be the animus, of the officer making the charge. This, the trial justice, whose experience with legal questions may indeed well be less than that of the officer, is not equipped to do. In the case of several trial justices who came under our observation, it was in fact clear that, doubtless because of their own insecurity in legal matters, they relied upon the officer -- usually the state police trooper assigned to patrol the area in which the trial justice held court -- to a degree which made an impartial trial of an issue of veracity as between the officer and the defendant well-nigh impossible. This is perhaps the explanation for the apparent preference observable in a few cases on the part of the law enforcement officer for the trial justice court as against the adjacent municipal court.[1]

We heard little praise of the trial justices, and not a little criticism, the latter from lawyers and judges as well as from law enforcement officers. We feel

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1. The trial justice courts are not, as is often supposed, confined to the remoter areas. Several of them are found but a few miles from municipal courts. Thus a trial justice is found at Orono, only miles from Bangor and only miles from Old Town; at Scarboro, only miles from Portland.

satisfied that the trial justice system impedes the development of a proper respect for the courts and the law.

Summary

We conclude that there is need for elevating the local courts of the state (and particularly the trial justice courts) in public esteem generally and in the esteem of the law enforcement officers and social agencies of the state. We believe that the requisite improvement in the physical setting and the procedure of these courts, and in the public image of the judge, are difficult if not impossible to obtain in the present structure of multiple courts manned by part-time judges. While some improvement at particular points is no doubt possible within the present framework, we believe that the elevation of these courts in the public mind to a position approaching that occupied by the superior court -- a consummation by no means beyond early achievement -- requires a fresh start. What is wanted is a new appreciation by the public, and by public officials throughout the state, of the major importance of the thoroughgoing and uniform enforcement of the traffic and game laws, of promptness in dealing with other misdemeanors, of determined handling of juvenile misbehavior and of disregard of family obligations, and of the corresponding importance of the courts dealing with these matters. In our judgment, only a new court system, with a new dignity and with judges of a new stature, will achieve this end.

It is significant that the municipal court seems to enjoy a higher public esteem in the larger cities of the state than in the smaller. This is not in our opinion due to any marked difference in the stature of the judges. It is due rather to the fact that the court enjoys in the larger cities a more dignified setting, more clerical personnel and more business, both of which conduce to greater formality of procedure, and a less close association of the judge with the law enforcement officers

and with the public, giving him a degree of that aloofness which is so essential to the maintenance of respect for the court. It is precisely these features which we believe can more readily be approximated by the district court than by many of the smaller municipal courts.

The Work Load

How can it be expected that twelve judges under the proposed system will be able to handle the work now being done by about 100[1] judges?

The answer must be found in an analysis of anticipated work loads. The number of cases to be heard multiplied by the amount of time required for their disposition will reveal how much judicial manpower is needed. In order to make this computation, certain assumptions are necessary:

(1) That the number of court days available in each district will be 250 per year. It is contemplated that court will be held 5 days a week for 50 weeks a year (2 weeks being allowed for holidays, judges' conferences, and the like). While each judge will be entitled to a month's vacation, his court will nevertheless continue to operate while he is away under substitute judges. (See Sections 13a and d of Statutes). This will mean that each judge will carry from time to time a heavier load than normal by reason of helping his brother judges. However, as will become clear from the subsequent discussion, the additional load will be by no means unsupportable.

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1. There are 50 Municipal Court Judges, 24 Trial Justices, and 41 Associate Judges and Recorders of Municipal Courts. The extent to which the 41 Associate Judges and Recorders perform judicial functions varies widly from one court to another.

(2) That for each court day the judge will be on the bench or otherwise available for judicial business a reasonable length of time. A figure of 4 1/2 hours per day is the average reached by judges in New Jersey (where accurate records have been kept).[1] In view of the fact that the New Jersey judges spend a good deal of additional time in chambers beyond that spent on the bench (drafting instructions to juries, writing opinions and the like), the same figure seems modest for District Court judges in Maine, who can be expected to have relatively little chambers work.

(3) That the number of cases will increase gradually rather than explosively. Maine's population is relatively stable, and there is no reason to anticipate any radical upsurge in judicial business within the next decade. At some time in the future, an increase in the number of judges doubtless will have to be accomplished by legislation; but this will be no more true under the new system than it would be under the old system if that were to remain in affect. For the first few years of the District Court's existence, its judges will not be working at maximum capacity. Consequently they should be able to absorb without undue strain reasonable increases in business.

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1. See "Delay in the Court" by Zeisel, Kalven and Buchholz (Little Brown & Co. 1959) p. 186 et seq.

(4) That the types of cases coming into the court will be substantially similar to those now coming into the Municipal and Trial Justice courts, and that domestic relations cases now going into the Superior Court and Probate Court[1] will remain of substantially the same character after jurisdiction over them has been shifted over to the District Court. In other words, roughly the same ratios between total case loads and particular types of cases -- for example, traffic offenses, game violations and civil cases -- should prevail under the new system as under the old.

(5) That dispositions will follow the same pattern as in the past. Approximately 90% of the criminal cases, it is assumed, will result in pleas of guilty, thus obviating trial and requiring judicial time only for arraignment and sentencing. According to an informed estimate,[2] the time required to handle properly and with dignity, a plea of guilty in a traffic case is about 2 minutes. Since traffic cases are expected to comprise about 3/4ths of the criminal work of the district court, an estimate of about 3 minutes per case seems ample to cover the non-traffic cases (most of which are equally routine) as well as the traffic cases. The other 1/4 of the criminal cases will involve pleas of not guilty and thus require trial. Again, traffic

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1. Actions for separation are now handled in the Probate Court, but the volume of such actions is believe to be so small as not to affect our calculations.

2. "Traffic Courts" by Warren (Little Brown & Co. 1942) pp.33-4.

cases provide a standard for the amount of time needed. The same informed estimate mentioned above gives 12 minutes as the time usually needed for each contested traffic case. If this is increased to 15 minutes, it should be an ample average for all cases, including non-traffic as well as traffic cases.

Preliminary examinations in felony cases are ordinarily simple and expeditious. The sole issue is whether there is probable cause to believe that the defendant committed the crime charged against him. Ordinarily only the prosecution's evidence is heard, and only enough of that to make out a prima facie case. Hence the evidence is less voluminous and the decision less difficult than where guilt or innocence must be determined. If no probable cause is found, the defendant is discharged. If probable cause is found, he is "bound over" for trial in the Superior Court. In neither event does the examining magistrate have to concern himself with what would be an appropriate sentence. Hence the amount of time required is small; an average of 15 minutes per case should be sufficient.

As for civil cases (the overwhelming bulk of which involve bill collections) about 90% of them can be expected to be dismissed, defaulted, or settled, as at present, and so to require very little, if any, judicial time. The other 10% which involve contests (more often than not, merely upon the terms and time of payment), should not take longer normally than 15 minutes per case.

Domestic relations cases follow the same pattern generally as civil cases, with few contests either on the issue of whether there should be a divorce or on other potential issues, such as those involving the custody of children or the amount of support. An uncontested case (about 85% of the proceedings are uncontested)[1] normally takes not more than 10 minutes of a judge's time.[2] A contested case (not more than 15% are contested)[3] should take on the average about an hour.[4] Since divorce jurisdiction is now vested in the Superior Court, with eight judges handling the work for the entire state (along with the Superior Court's normal complement of Civil and Criminal cases), it seems clear that 12 district judges should be able to take over this work in stride if their time is not too fully pre-empted by criminal and juvenile cases.

The time required for processing juvenile cases is harder to estimate, because they fall into less clearly defined patterns than ordinary civil, criminal or matrimonial cases. Nevertheless, based upon conversations with Municipal Court judges, we feel that one hour for each juvenile case will strike a fair average. This should allow sufficient time for conversations with parents and social workers, and for the generally deliberative treatment required.

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1. Estimate by Mr. Frederick Johnson, Clerk of Courts, Cumberland County.

2. Id.

3. Id.

4. Id.

(6) That the new district court will operate efficiently and with improved procedures. This means that cases will have to be scheduled one after another and in groups, so that judicial time will not be lost in unnecessary waiting. It also means that out-moded procedures such as those involving the use of the criminal warrant and complaint in traffic cases will have to give way to more streamlined methods. Under the rule-making power vested by the statute in the justices of the Supreme Judicial Court, there is no reason why simple and sensible procedures cannot be put into effect, taking advantage of the best proven features now found in operation throughout the nation.

Having stated these assumptions, we are now in a position to examine the work load for each judge. For this purpose we shall analyze the district in which the heaviest case load is to be anticipated -- that centered in the city of Portland and covering the southern part of Cumberland County. In this area there are presently functioning three Municipal Courts and two Trial Justices.

In 1959, the criminal case loads (including traffic offenses) for these courts were as follows:

Portland Municipal Court	2116
Westbrook Municipal Court	1168
So. Portland Municipal Court	511
Gray Trial Justice	1043
Scarboro Trial Justice	1161
	5999

Assuming the same volume of business under the new system and according to assumptions stated earlier, 90% of the cases will result in pleas of guilty and 10% in trials. This means annually 600 trials as against 5400 pleas of guilty, or, based upon a court year consisting of 250 days, 22 pleas of guilty and two trials per day. Each plea of guilty should require 3 minutes on the average, or a total of 66 minutes per day for the 22 cases; and each trial would average 15 minutes, or a total of 30 minutes per day. Thus the normal criminal docket would account for 1 hour and 36 minutes of the judge's time per day.

The district court would also handle arraignments for felony cases to be tried in the Superior Court. In the courts now functioning in the proposed eighth district, the following number of such preliminary hearings were held in 1959:

Portland Municipal Court	156
Westbrook Municipal Court	7
So. Portland Municipal Court	9
Gray Trial Justice	0
Scarboro Trial Justice	0
	172

This averages less than one per day, requiring, according to assumptions stated earlier, less than 15 minutes of the judge's time per day.

Juvenile cases would require additional time. In 1959, the Portland Municipal Court handled 115, the Westbrook Municipal Court 12, and the South Portland Municipal Court 20 such proceedings, a total of 147 juvenile cases, or less than an average of 1 per court day. According to assumptions stated earlier, we thus account for less than 1 hour of the judge's time per day..

We then arrive at a figure of less than 3 hours per day needed to dispose of all criminal and juvenile business. If court convened at 9 A.M., the criminal and related business could normally be cleaned up by noon. This would leave the afternoon free for civil and domestic relations business.

As for civil cases, during 1959, the Portland Municipal Court handled 1778 civil claims (1562 ordinary and 216 small claims) and the South Portland Municipal Court handled 12. The other courts in the area had no civil cases. According to assumptions previously stated, about 10% of the cases, or 179 could be expected to be contested. This averages less than 1 per day, accounting for less than 15 minutes of the judge's time.

The anticipated case load for matrimonial cases must be computed on the basis of past experience in the Superior Court. In 1959, the Superior Court of Cumberland County handled 652 divorce cases and 7 annulment cases, some, but not all, involving incidentally petitions for support or custody of children. In addition, 113 petitions under the Uniform Reciprocal Support Act were processed. This makes a total of 772 separate matrimonial proceedings in the entire county of Cumberland, which is

by far the most populous in the state. The district court for the eighth district can be expected to handle a substantially smaller number because it does not include the northeastern portion of the county, centering around Brunswick, or the northwestern portion, centering around Bridgton. However, to make the estimate generous, let us assume that the district court would handle 700 matrimonial actions during the course of the year. 15% of them could be expected to be contested, requiring 1 hour of the judge's time per case. The remainder would be uncontested, requiring not more than 10 minutes of the judge's time per case.

Thus the total amount of time for the year would be computed as follows:

105 contested cases at 1 hour each - 105 hours

595 uncontested cases at 10 minutes each - 100 hours

This yields a total of 205 hours per year or less than 1 hour per court day.

Adding together all of the judges' time per day, we arrive at the following result:

Normal criminal docket	1 hr. 36 min.
Preliminary hearings -less than-	15 min.
Juvenile cases -less than-	1 hr.
Civil cases -less than-	15 min.
Matrimonial cases -less than-	1 hr.
Total -less than-	4 hrs. 6 mins.

Because of previous overgenerous estimates, let us round off the figure at 4 hours per day. This is well within the 4 1/2 hours of bench time expected from the judge, and sufficient to allow for a 10% increase in the business of the court over present figures.

The examples just given concern the district expected to have the greatest amount of judicial business within the new system. Other districts -- for example the Second, the Sixth and the Eleventh -- can reasonably be expected to have about half the amount of work anticipated for the Eighth District. The judges in such districts will be "riding circuit" and holding court in two, three or four places each week, but even with travel time added, none of them will be overworked. To the extent that they have extra time available, they may be called upon by the Chief Judge to help out in the busier districts. The Chief Judge himself, having no regular case load of his own, will also be available to sit whenever there is need for additional manpower. Furthermore, in any locality where business proves to be unexpectedly heavy, the Chief Judge may establish a "Violations Bureau" to relieve the local judge from the burden of handling routine matters. Some cases require the exercise of no judicial discretion, as for example parking offenses or truck overload violations, where the defendant pleads guilty and where the fine is fixed by law. Such cases would be prime candidates for processing in a Traffic Violations Bureau. Finally, during the first year or two of the District Court's operation, some

Municipal and Trial Justice courts will still be in operation, carrying a portion of the case load. All of them will not have gone out of existence until the District Court is fully staffed and operating smoothly.

In short, the system proposed provides adequate manpower and sufficient flexibility to meet all needs which can reasonably be anticipated for the next decade.

Accessibility of Court

The reduction in number, from seventy-four to thirty, in the number of places at which court is to be held under the proposed plan, of course at once raises the question of how much the accessibility of the courts will be impaired by such reduction. Even if the reduction be stated more realistically (since the jurisdiction of the trial justice courts is limited) as a reduction from the fifty places at which municipal courts now sit to the thirty at which district courts will sit, the question of accessibility still presents itself as a large one.

At the outset, it should be emphasized that this question concerns only a part, and much the smaller part, of the total area of the state; for in the larger part of the state, its forest areas, the population is so inconsiderable as to make convenient accessibility impracticable under any plan of court organization including the one now existing. This is strikingly evident from the accompanying map of the state showing the towns with a population of less than 100, and the towns in areas within 15 miles of a municipal court or trial justice court, a map which exhibits strikingly the total absence of local courts over vast areas of the state.

Moreover the question concerns only a distinct minority of the cases now heard by the local courts. A great majority, which may be computed at 60% of the total, will continue to be disposed of by courts in the same places as now dispose of them; for the courts now sitting at places at which court will no longer be held under the district court plan now account for only 40% of all the cases in the state.

Even these figures give a somewhat erroneous impression of the

extent to which the discontinuance of these courts may reduce accessibility; for in about a quarter of these cases the court now disposing of them is so near another place at which court will continue to be held under the district court system -- in some cases as little as three or four miles that the difference in accessibility may be regarded as negligible. A truer estimate of the impact of reduced accessibility under the district court system would doubtless confine it to 25% of all the cases in the state.

How serious a drawback to the towns in question is the reduction in geographical accessibility indicated by these figures? In all public facilities, accessibility is of course to be desired. However, it can in some cases be secured only at the expense of other desiderata -- as strikingly illustrated in the case of schools and hospitals. The extent to which such other desiderata may properly be sacrificed in the interest of greater accessibility obviously varies widely from one type of public facility to another; and an obvious factor in the problem is the frequency with which the facility is visited by those required to visit it. In the case of the court, frequent visits are made by law enforcement officers and lawyers. The citizen, however, has ordinarily very infrequent occasion to visit a court, whether as party or witness. A great majority of the population probably never visits a court in either capacity in the course of a lifetime. The traffic offender, the class of citizen called on to come to the courts in greatest number, frequently comes only once or twice in his entire driving career; so too with the hunter charged with violating the game laws. The same is true of many other types of petty offender, of parties to non-support or other family cases, and of the parent of juveniles brought before the courts.

To all these classes of people, the interruption of their daily lives, and often the emotional stresses involved, are of much greater consequence than the additional time or effort involved in attendance at a more distant court; and if it be thought that the more distant court is likely to dispose of the case in a manner more satisfactory or more helpful than could a nearer and less highly organized court, the additional distance travelled is surely worth while. In civil actions at law, the only remaining significant class of cases now disposed of by the local courts, the proportion of cases in which the defendant defaults is so large that the question of accessibility, being confined to contested cases, is of minor importance. To the witness in any of the foregoing classes of cases, (the number is relatively few) additional distance is no doubt a hardship for which the mileage fees hardly compensate; but again there are not a few witnesses who in any event do not live or work in the immediate vicinity of the place where the occurrence to which they testify took place, so that whether the court house lies ten or fifteen miles nearer or farther in a particular area to which the witness must journey makes relatively little difference. Here particularly what is significant is transportation facilities and road network rather than mere distance as the crow flies.

It is to be remembered also that to say that a court house is more distant is not necessarily the same thing as saying that it is less accessible. Accessibility often involves other factors than mere accessibility. Road conditions may be one; the location of the court house in a center to which one goes on other errands, or in which perhaps one's daily occupation lies, may be another. The hours at which the office of

the court is open for business may be still another; a nearby court house is not convenient if one is not sure of finding it attended when one visits it. From the standpoint of law enforcement officers, whose time is directly paid for by the public, and of lawyers, whose time is indirectly paid for, the concentration of business in a smaller number of court houses within ten or fifteen miles of a place on a main road on which court continues to be held can hardly be regarded as a serious inconvenience.

With respect to the convenience of the defendant, the unstated premise in discussions of accessibility is that the offense has presumably occurred in the vicinity of his home, and he would therefore be convenienced by a hearing near his home. This assumption is doubtful. So far as traffic offenses are concerned -- and they constitute as we have seen the vast majority of the cases, a violation is just as likely, perhaps more likely, to occur at some distance from the offender's home. Particularly is this likely to be so with respect to a violation on a highway in the open country, where most traffic violations occur. In these cases the offender must appear for hearing in a court distant from his home; whether it be five or ten miles more or less distant is ordinarily of little significance to him.

So far as concerns the law enforcement officer, it may be pointed out that his attendance at court in traffic cases, now accounting for so much of his court time, is in large part unncessary. In the great majority of traffic offenses, his presence in court could be entirely dispensed with. The present requirement of Maine law is that a warrant issue even in a case in which the offender has been served with a summons and has in obedience thereto appeared in court on the return day. This requirement -- apparently merely traditional, for no statute imposing it has

been found -- serves no purpose whatever. It is wholly unknown in a number of other states.[1] Quite aside from entailing loss of time on the part of the officer, it imposes on the recorder or the judge a wholly needless burden of clerical work. Even if the existing system of courts is continued, this practice should be discontinued. Only where the respondent fails to appear, in obedience to the summons -- which failure itself should constitute a separate offense -- should a warrant for his arrest issue. Under present procedure, where the officer issues a summons for a traffic offense, he must attend court before the hour at which the summons is returnable (sometimes on the preceding day) in order to request the issuance of a warrant.

Nor is there any need for the attendance of the officer in court in those traffic cases constituting 93% of the whole, in which the defendant pleads guilty. The attendance of the officer in such a case is useful only for the purpose of informing the judge as to the road conditions surrounding the offense which may bear on the gravity or otherwise of the admitted violation, a factor which may be taken into consideration by the judge in imposing sentence.[2] The form of summons

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1. In the form of "Uniform Traffic Ticket and Complaint" devised by the American Bar Association Traffic Court Program, recommended in the Model Rules Governing Procedure in Traffic Cases adopted by the National Conference of Commissioners on Uniform State Laws in 1957, and widely used in a number of states, the copy of which is filed in court is termed a "complaint-affidavit" and contains provisions for a jurat.

2. Even if it be thought that the presence of the officer is necessary, his time could be greatly economized by permitting him to make all summonses issued by him returnable upon a particular day, fixed in advance, as is done in many other jurisdictions. The notion which seems to prevail among some lawyers and judges in Maine that the constitutional guarantee of a speedy trial entitles the respondent, though not in custody, to a hearing on the day following the day on which the officer issues the summons, appears to be quite unfounded. So far as we have been able to ascertain this is nowhere recognized as a rule of law.

may be so designed in itself to furnish all the needed information; or, if preferred, the officer may be required to furnish it promptly after the issuance of the summons to be prepared on a form provided.

Under this procedure, if, upon the return day, a respondent pleads not guilty, his hearing may be adjourned to a later date, at which date the officer will be present. An alternative procedure, which would save the respondent in such a case the necessity of two appearances would be this: the summons could contain a detachable portion which the respondent could file in court, on or before the return day, by registered mail, embodying a plea of not guilty. The summons would also call, in that event, for his appearance in court on a later date. The court, on receipt of such a plea, would notify the officer to attend on the hearing day.[3] In offenses other than traffic offenses, in which a summons has been issued, the same considerations largely govern. In this category also, the number of pleas of guilty far exceeds the pleas of not guilty, being five times as great.

By the introduction of these procedures, the loss of time of police officers from their primary duty of patrol would be very greatly reduced--so much so as to more than compensate for the additional time involved in traveling to a more distant court in the much fewer cases in which court attendance would still be necessary.

A similar economy can be effected, it is believed, in the time of fish and game wardens in those cases, constituting a considerable proportion of the whole, in which they do not make an arrest, but merely

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3. Under this procedure there would not occur, as sometimes it does at, present, the failure of the officer to procure the attendance of necessary witnesses due to his mistaken assumption that the respondent would plead not guilty.

issue a summons.

Needless appearances of the law enforcement officers in court have moreover a consequence much more serious than the mere loss of time from patrol duty. They tend to discourage thoroughgoing law enforcement. The officer debating whether or not to issue a summons will be less ready to do so if its issuance inevitably means time spent in court which he feels would better be spent in patrolling his post.

But though it is possible greatly to reduce the time now spent by law enforcement officers -- whether state police, fish or game wardens or local police -- in court attendance, there will be cases in which such attendance may involve longer travel than it does at present. This will be so particularly in the case of the town police officers in those towns in which court is now held, but will no longer be held under the proposed system. The total number of cases involved is, however, not great, and the financial burden of providing a substitute officer for patrol duty in the town on those relatively rare occasions when it may be necessary to detach an officer from patrol duty for attendance at court elsewhere is relatively minor.

Availability of judge

Quite distinct from the question of the accessibility of the courthouse is that of the availability of the judge. Under the present system there are seventy-four places in the state in which there is a resident judge, presumptively at least available every day. Under the proposed system there will be but twelve.

For the vast majority of cases that come before the present courts, however, the daily availability of the judge is quite unnecessary; indeed the daily sessions of court, which the availability of the judge has made possible, has in many places been the cause of needless expenditure of time, on the part not only of the judge but of the law enforcement officer compelled to attend court, with attendant loss of time in travel and waiting, for a few cases -- sometimes a single case-- the hearing of which could just as well have deferred to a later time by which a sufficient volume of the officer's cases would have accumulated.

That, on the civil side of the court, the daily availability of the judge is quite unnecessary is obvious. It is equally unnecessary on the criminal side except in that small group of cases in which the defendant is in custody, and the unavailability of the judge for immediate hearing of his case may result in his unjust detention. In the overwhelming majority of criminal cases -- as in all cases under the juvenile law -- there is no arrest. The offender being merely given a summons ordering him to appear in court on a subsequent day -- whether that day be the next day, or the next week, is ordinarily of no consequence to him.[1]

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1. The unfounded notion that the constitutional requirement of a speedy trial entitles a defendant not in custody to a hearing on the day following that on which he receives the summons has already been commented on. See p.81.

An exception is the driver summoned for a traffic offense, who is on his way to a distant point, and who would like to have his hearing promptly, if possible at once. The driver in this category is usually a non-resident of the state, on his way out of it; however, even a Maine driver at a distance from home, may be greatly inconvenienced by having to return for hearing to a district in which the summons was issued.

This situation presents to the legislature the problem of whether the requirement of personal appearance of the traffic offender before the court in all cases involving moving violations, undoubtedly in general a very desirable feature of a traffic safety law, is of sufficient importance to warrant insisting upon it even in cases where it causes the offender what may be regarded as disproportionate loss of time, with the frequent concomitant of disproportionate expense.[1] The statutes at present do not specifically require the personal appearance of the traffic offender in cases in which he has not been arrested. Even in cases of speeding and reckless driving, the practice of the courts is to permit a plea of guilty by an attorney; and in a considerable number of cases the out-of-state defendant en route, when unable

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1. It is not the practice of the state police to arrest the out-of-state motorist for a traffic offense even though his state is not one of those which have a reciprocal arrangement with Maine whereby they will suspend the license of a driver who defaults in answering a Maine traffic summons.

to obtain an immediate hearing (as when summoned on a Saturday)[2] arranges for appearance by attorney, authorizing a plea of guilty, and supplying him with the funds to pay the anticipated fine. If this method of thus dispensing with personal appearance in the case of the out-of-state motorist who proposes to plead guilty meets with the approval of the legislature, there would seem to be no reason why every bail commissioner should not be authorized to receive such plea for transmission to the court, and to receive a deposit of the anticipated fine.[3] As to the Maine resident en route to a distant point, should the legislature not see fit to waive his personal appearance, a procedure can readily be devised whereby he may plead guilty in a district court in the district where he resides, and receive the imposition of the penalty at the hands of the judge in that district.

A similar situation is presented with respect to non-resident offenders against the fish and game laws.

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2. Practice appears to vary among the municipal court judges and trial justices with respect to the extent to which they feel themselves obliged, or inclined, to convene court solely for the convenience of the out-of-state motorist. Some will permit the offender to be brought before them at almost any hour of the night. Others refuse to hear any such case on Saturday or Sunday. Clearly there should be a state-wide uniform policy on this point. The present lack of established practice among other things sometimes results in protracted telephone discussion between a law-enforcement officer eager to speed the offender on his way, and the judge unwilling to cooperate in this effort.

3. In New Brunswick, the officer himself is authorized to accept the deposit of the anticipated fine. A case in Maine came to our attention in which a state trooper who telephone a judge in the early hours of the morning to request an immediate hearing for an out-of-state motorist, was induced by the judge, in collaboration with the sheriff (whose responsibility in the premises eludes us) to accept a deposit of the anticipated fine for delivery to the court and presumably to receive authority to enter a plea of guilty.

When we pass to cases in which the offender is taken into custody instead of being merely summoned to appear at a later date, a quite different problem is presented. The largest single class of such offenders comprises those arrested for public intoxication. The arrest of the drunkard, unlike that of other persons arrested for unlawful conduct, does not stem from the seriousness of the offense, and the corresponding likelihood that the offender, if left at large, either will endanger the public safety, or will flee. The drunkard is quite unlikely to do either. He is arrested, ordinarily, because he is not fit to take care of himself. His offense indeed is almost sui generis in our law. He commits no offense by becoming intoxicated; for intoxication is not unlawful. His offense consists in that while intoxicated-- while in a condition, that is to say, in which he was not fully responsible for his actions -- he ventured into a public place.

These considerations suggest the conclusion that as to the resident of the state arrested for public intoxication -- and he constitutes the overwhelming majority of those arrested for that offense in the state -- it would be quite practicable, on his sobering up, if no judge were available to give him an immediate hearing, to release him on his own recognizance under summons to appear at a later date; indeed, even if the judge is available, there is something to be said, from the therapeutic standpoint, for such a delay at certain times. In certain areas of the state -- during the harvest season in the potato country, and during the logging season in the woodland areas -- the Saturday night celebration in the adjacent towns usually yields a proportion of migratory workers charged with public intoxication. It would seem that these too could ordinarily well be discharged on their own recognizance

pending later appearance. Assuming that some, or many, defaulted in appearing, it is not clear that law enforcement has suffered. If a migrant alcoholic under these circumstances therefore gives the town, or better still the state, a wide berth, perhaps so much the better. The state has no real interest in the reform of non-resident alcoholics--and reform should of course be the sole purpose of the court's activity in this field.

There remains the group of cases of persons arrested on other charges than intoxication who are unable or unwilling to furnish bail, and who demand, as the law indeed requires they receive, a prompt hearing. Maine has no constitutional provision fixing a specific time limit for such hearing. With respect to trial, the state constitution requires a "speedy" trial. With respect to the preliminary hearing before the committing magistrate of the person charged with a felony, the statute provides that it shall be furnished the defendant "as promptly as possible." There is a general understanding that these provisions require that the defendant under arrest be given a hearing not later than the day following his arrest. There is of course no basic difficulty in complying with this requirement under the plan proposed. There would be no part of the state, however remote, within reach of a road, which is not easily within a day's travel of a place where a court is that day sitting. In a few cases the distance would indeed be great -- as much perhaps as sixty miles. In most cases, travel of less than thirty miles would be sufficient.[4] Transporting

4. In the county of Charlotte, in the province of New Brunswick, where a single full-time judge (the county magistrate) has replaced the part-time justices formerly found at various points in the county, it has been found practicable to bring the prisoner, when necessary, as much as 60 miles to St. Stephen, where the county magistrate ordinarily sits.

the prisoner for hearing over these larger distances would entail additional expenditure of time and additional expense on the part of the police force. In view of the small number of cases involved, however, (a number which could be still further reduced, no doubt, by the appointment of additional bail commissioners at points now lacking them, and a restudy of bail policies) we do not feel that the expenditure of time and money is more than quite a minor drawback of the proposed district court system.

It should be noted that in eleven of the thirty places in which court is to be held under the plan proposed, the judge will be available daily. In two of those places (Bangor and Portland) he will hold court daily. In each of the remaining nine, where a judge will be resident, he will, on those days on which he does not hold court there, be available, both before he leaves to hold court elsewhere, and after he returns from holding court, for any emergency which requires action that day; for in no case is the distance between the place where the judge resides and any of the places where he is to hold court so great as to require him to spend the night away from home.

Costs

The impression is fairly widespread that the present system of part-time judges is an economical one, and that a corps of full-time judges would of necessity be more costly. We find that, on the contrary, the cost of the present system is substantially greater than would be the cost of the system we propose.

The costs involved are primarily the compensation of the judges and clerks, and the maintenance of court rooms and offices. Other subsidiary expenses, as for supplies, are relatively so minor as to be negligible in this discussion.

The following sets forth the peronnel costs of the present and proposed systems.

Municipal and Trial Justice Courts (1959)

Salaries of judges, associate judges and recorders	$ 201,000.00
Salaries of trial justices	37,409.17*
Salaries of clerks	47,357.67*
Total	$ 285,766.84

Proposed District Courts

Salary of Chief Judge	12,500.00
Salaries of judges (11 at $12,000)	132,000.00
Salaries of clerks (equivalent of 15 full-time clerks at $4,000 each	60,000.00
Travel allowances for personnel serving more than 1 district	6,000.00
Total	$ 210,500.00

The travel allowance indicated for the proposed District Courts is necessitated by the fact that 10 of the 12 judges will hold court in more than one place (the judges

* These figures are incomplete because they do not include salaries paid by Knox and Somerset Counties (no figures available) and because the amounts for Aroostook and Kennebec Counties are based on 1958 figures (1959 figures not available).

in Portland and Bangor will be stationary). An accurate estimate of travel costs is impossible at this time, but a rough figure can be arrived at as follows:

10 judges, each travelling 150 miles per week (this is a high estimate)	1500 miles
1500 miles per week x 50 court weeks	75000 miles
75,000 miles x allowance of 8¢ per mile	$6,000

Even with this added expense, the anticipated cost of running the District Courts is about $75,000 a year less than the cost of running the present Municipal and Trial Justice Courts.

The reason it is possible to provide a corps of full-time judges, with adequate clerical assistance, together with an administrative office, for less than is now paid for part-time judges, some of them unprovided with clerical assistance, and without any administrative supervision, is that the present division of the state's caseload into seventy-four parts produces some courts with so inconsiderable a caseload that despite the small salary paid the judge, the cost per case is high. Some of the judges receiving the smallest salaries are being paid the most per case, or, to state it in another way, are being paid annual salaries for work that could be done in a week or a month.

No estimate is here made as to the cost of maintenance of courtrooms under the proposed system. Though the number of courtrooms would be smaller, their better quality and maintenance would probably cost as much as the present courtrooms. For reasons stated elsewhere in this report, a major program for the improvement of court facilities is clearly in order. Part of the money saved by the new system can and should be used for this purpose.

Some savings to be effected by the new system, while not susceptible of measurement, can be expected to be substantial. Such are the savings in clerical time which can be achieved through substituting the uniform traffic ticket for the criminal complaint and warrant in traffic cases, the savings in police time which can be achieved through dispensing with the presence of officers in uncontested cases, and the savings in accounting and auditing time by concentrating those functions in fewer hands. Another intangible saving may come from postponing the creation of additional Superior Court judgeships by reason of the District Court's relieving the Superior Court judges of the burden of handling matrimonial matters.

The total revenues yielded by the present Municipal and Trial Justice courts total over $1,000,000 annually. An equivalent amount should be produced by the new system, but paid, in the first instance, into the State Treasury rather than into County treasuries. However, insofar as savings are effected, and insofar as net revenues are produced, the counties of the State will be the principal beneficiaries, continuing to receive, as they do now, the lion's share of the difference between revenues and expenses. This excess will be allocated between counties on the basis of their population, rather than, as now, on the more fortuitous basis of where a given case happens to be tried. The state government will not profit financially at the expense of the counties. Its only benefit will come from having a better system of courts.

Administrative Supervision

The role of the Chief Judge in providing facilities and clerical personnel of the courts, in fixing the times of holding court, and in modifying the boundaries of districts and divisions has already been mentioned. In addition, through the power conferred on him by the statute to require reports from the judges, to demand their presence at conferences, to fix vacations and make temporary assignments he will be able to exercise a continuous supervision over the entire bench; and though not vested with any disciplinary power as such, he will have the moral authority to check both arbitrary conduct and slothfulness on the part of any member of the corps.

It will be essential that the Chief Judge be alert for signs that the lawyers or the citizenry of a district are dissatisfied with their judge, so that he can promptly seek to effect improvement. Some of the opinions we have heard stress that under the present system, the civil litigant (or, rather, his lawyer) may (except perhaps in the six counties in which there is only one municipal court) escape an unacceptable judge by bringing his action in some other municipal court in the county; and that the proposed system regrettably does not permit this. It does not. It relies, as it should, on seeking to make each of its small corps of judges thoroughly acceptable. A system like the present one, in which a judge in whose character or professional ability his brother lawyers have lost confidence, may continue unrebuked and unchecked to sit in judgment in criminal cases, is not rendered acceptable by the fact that a plaintiff (but not the defendant) in a civil action may avoid his court. Incidentally, it may be pointed out that under the plan proposed, the Superior Court retains its concurrent jurisdiction in civil actions; and a noticeable tendency on the part of the bar in a given district to bring in the Superior Court actions which might more

conveniently have been brought in the district court, will serve as a clear indication of its lack of confidence in the district judge. Similarly, though not so clearly, a disproportionate number of removals and appeals to the Superior Court will serve as an index of a judge's capacity.

The suggestion has been made that a district judge should not be permanently assigned to any particular district but should move from district to district, so that, if he is unacceptable to the bar of a particular district, its members can seek to delay matters till he moves on to another district. How this will benefit those citizens who come before the court, as most do, without the assistance of counsel, is not clear. Aside from the inconveniences that arise in any judicial system from a change of judges while matters are pending before the court, the itinerant life which a judge would lead under this system would make the post distinctly less attractive. The district judge would not, like the Superior Court judges, enjoy frequent recesses which he can spend in his home city; he would be almost continuously away from home. We recommend the permanent assignment of the judge to a single district, ordinarily the district in which he already lives, with perhaps an occasional assignment that will serve to stimulate and refresh him and at the same time serve to knit the several districts into a single system.

Continuance of Municipal Court Judges and Trial Justices in Office

It would be entirely practical, from the standpoint of the administration of justice, to abolish all municipal courts and trial justice courts on the day when the district court system goes into effect. Such a course would however raise legal as well as moral questions with respect to the rights of those municipal court judges and trial justices in their unexpired terms. We believe that these questions can be avoided at relatively small monetary cost, by permitting those judges and justices who desire to complete their unexpired terms to do so. Until the expiration of their terms they would continue to exercise their present jurisdiction concurrently with the district court. Since the great majority of the cases before them are initiated by law enforcement officers, the extent to which cases should continue to be brought before them by such officers could be determined by a policy formulated by the law enforcement agencies in concert with the Chief Judge.

In addition to thus preserving the rights of the judges and justices in their offices, the plan proposed has the advantage that it will in some areas afford time for working out the problems created by the greater distance involved in travel to the new district court.

It is proposed that the new court open at some time after January 1, 1962, the court to be established in each district at a time determined by the governor. To guage the cost involved in the transition, let it be assumed that the court will be functioning in all districts by January 1, 1963. If all the judges and trial justices now in office whose terms expire after that date are at that time still in office, their unexpired terms, and the salary payable to them during such unexpired term, will be about $35,000.[1]

1 Footnote on next page.

The terms of municipal court judges and trial justices now in office will expire prior to the date mentioned. It is proposed that the governor be empowered, by appropriate legislation, to extend the terms of these officers to a date to be determined by him, where a district court has been established to take over their jurisdiction.

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1. The following are the municipal court judges and trial justices at present in office whose terms expire after January 1, 1963, with the date of expiration of their respective terms, and the amount of salary each will be entitled to, at his present rate of salary, during the period of his unexpired term after January 1, 1963:

Municipal Court Judges

County	Name	Term Expires	Amount Payable
Aroostook	Alfred E. LaBonty, Jr.	October 1963	$ 2,000
Cumberland	Arnold S. Lane	September 1963	1,275
Hancock	Charles J. Hurley	March 1963	750
Kennebec	Roland J. Poulin	March 1963	925
Knox	Christy C. Adams	April 1963	800
Penobscot	Peter Briola	September 1963	1,875
Somerset	John B. Furbush	March 1963	625
Washington	Wesley E. Vose	February 1964	2,800
York	Hilary F. Mahaney	December 1963	1,800
Trial Justices			
Aroostook	Donald Atwater	February 1965	1,080
Aroostook	Raymond J. Bushey	February 1965	1,950
Aroostook	Leroy Gardner	November 1966	800
Cumberland	Bertha E. Rideout	March 1964	4,000
Franklin	Lee Ricker	November 1965	600
Franklin	Cony Hoyt	March 1965	2,025
Franklin	Coleman Mitchell	October 1964	735
Oxford	Rupert F. Aldrich	November 1965	1,167
Penobscot	Llewellyn Michaud	October 1963	1,500
Washington	Walter E. Beers	September 1966	1,125
Washington	Donald Mercier	March 1966	975
York	Lester M. Bragdon	May 1965	4,833
York	Wesley M. Mewer	January 1964	650
York	John P. Waite	July 1964	316
		Total	$ 34,606

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MAINE DISTRICT COURT STATUTE

Sec. 1. There is hereby established a District Court for the State of Maine.

Sec. 2. The District Court shall possess the jurisdiction now exercised by all Trial Justices and Municipal Courts in the State, and, in addition, jurisdiction over all actions and proceedings for divorce, separation or annulment of marriage, and for support.

Sec. 3. The state is divided into 30 judicial divisions, named and defined as follows, and with places for holding court therein as follows:

Northern Androscoggin consists of the towns of Turner, Leeds, Livermore, and Livermore Falls. The District Courtfor Northern Androscoggin shall be held at Livermore Falls.

Southern Androscoggin consists of all other towns in Androscoggin County not included within the division of Northern Androscoggin. The District Court for Southern Androscoggin shall be held at Lewiston.

Western Aroostook consists of the towns known as Grand Isle, T17 R4, T16 R5, T15 R6, T14 R7, T13 R8,T12 R9, T11 R9, and all other towns in Aroostook County lying to the west of these. The District Court for Western Aroostook shall be held at Fort Kent.

Eastern Aroostook includes the towns known as T9 R8, T9 R7, Oxbow Plt., T9 R5, T9 R4, T9 R3, TD R2, Cox Patent Bridgewater, and all other towns in Aroostook County lying to the north of these up to the boundary of the division of Western Aroostook. The District Court for Eastern Aroostook shall be held at Caribou.

Southern Aroostook consists of all towns in Aroostook County not included within the divisions of Western Aroostook and Eastern Aroostook. The District Court for Southern Aroostook shall be held at Houlton.

Northern Cumberland consists of the towns of Yarmouth, Pownal, Freeport, Brunswick and Harpswell. The District Court for Northern Cumberland shall be held at Brunswick.

Southern Cumberland consists of the towns of Standish, Casco, and all other towns lying to the south and east of these in Cumberland County up to the boundaries of the division of Northern Cumberland. The District Court for Southern Cumberland shall be held at Portland.

Western Cumberland consists of all towns in the County of Cumberland not included within the divisions of Northern and Southern Cumberland. The District Court for Western Cumberland shall be held at Bridgton.

Northern Franklin consists of Twp E, Madrid, Mt. Abraham T4 R1, Kingfield, and all other towns in Franklin County lying to the north of these. The District Court for Northern Franklin shall be held at Rangeley.

Southern Franklin consists of all towns in Franklin County not included within the division of Northern Franklin. The District Court for Sourthern Franklin shall be held at Farmington.

Hancock consists of the entire county of Hancock. The District Court for Hancock shall be held at Ellsworth, .

Northern Kennebec consists of the towns of Wayne, Readfield, Belgrade, Sidney, Vassalboro, Winslow, Albion and all other towns in Kennebec County lying to the north of these. The District Court for Northern Kennebec shall be held at Waterville.

Southern Kennebec consists of all other towns in Kennebec County not included in the division of Northern Kennebec. The District Court for Southern Kennebec shall be held at Augusta.

Knox consists of the entire county of Knox. The District Court of Knox shall be held at Rockland City.

Lincoln consists of the entire county of Lincoln. The District Court for Lincoln shall be held at Damariscotta.

Oxford consists of the entire county of Oxford. The District Court for Oxford shall be held at Rumford.

Northern Penobscot consists of the towns of Long A, TA R8, & R9, Hopkins Academy Grant, TA R7, Medway, and all other towns in Penobscot County lying to the north of these. The District Court for Northern Penobscot shall be held at Millinocket.

Central Penobscot consists of the towns of LaGrange, Edinburgh, Passadumkeag, Lowell, Burlington, T3 R1, Lakeville Plt., T5 R1 and all towns in Penobscot County lying to the north of these up to the boundary of the divisions of Northern Penobscot. The District Court for Central Penobscot shall be held in Lincoln.

Southern Penobscot consists of the towns of Alton, Old Town City, Glenburn, Hermon, Hampden, and all other towns in Penobscot County lying to the east of these and south of the division of Central Penobscot. The District Court for Southern Penobscot shall be held at Bangor.

Western Penobscot consists of all towns in Penobscot County not included within the divisions of Northern, Central or Southern Penobscot. The District Court for Western Penobscot shall be held at Newport.

Piscataquis consists of the entire county of Piscataquis. The District Court for Piscataquis shall be held at Dover Foxcroft.

Sagadahoc consists of the entire county of Sagadahoc. The District Court for Sagadahoc shall be held at Bath.

Northern Somerset consists of the towns known as Flagstaff T4 R4, T3 R4, Pierce Pond T2 R4, Bowtown T1 R4, The Forks Plt., East Moxie T2 R4 and all other towns in Somerset County lying to the north of these. The District Court for Northern Somerset shall be held at Jackman.

Southern Somerset consists of all towns in the county of Somerset not included within the division of Northern Somerset. The District Court for Southern Somerset shall be held at Skowhegan.

Waldo consists of the entire County of Waldo. The District Court for Waldo shall be held at Belfast.

Northern Washington consists of the towns known as T36 M.D., T37 M.D., T26 E.D., Crawford, Cooper, Charlotte, Pembroke, Perry and all other towns in Washington County lying to the north of these. The District Court for Northern Washington shall be held at Calais.

Southern Washington consists of all towns in the county of Washington not included within the division of Northern Washington. The District Court for Southern Washington shall be held at East Machias.

Eastern York consists of the towns of Hollis, Lyman, Kennebunk, Wells, and all other towns in York lying to the east of these. The District Court for Eastern York shall be held at Biddeford.

Southern York consists of the towns of South Berwick, Eliot, Kittery and York. The District Court for Southern York shall be held at York.

Western York consists of all other towns in York County not included within the divisions of Eastern York and Southern York. The District Court for Western York will be held at Sanford.

Sec. 4. The judicial divisions are organized into 11 districts, as follows, with the place for holding court shown in parenthesis after the name of each division:

The first district consists of the divisions of Eastern Aroostook (Caribou) and Western Aroostook (Fort Kent).

The second district consists of the divisions of Southern Aroostook (Houlton), Northern Penobscot (Millinocket) and Central Penobscot (Lincoln).

The third district consists of the division of Southern Penobscot (Bangor).

The fourth district consists of the divisions of Hancock (Ellsworth), Northern Washington (Calais) and Southern Washington (East Machias).

The fifth district consists of the divisions of Northern Kennebec (Waterville), Southern Kennebec (Augusta) and Waldo (Belfast).

The sixth district consists of the divisions of Sagadahoc (Bath), Lincoln (Damariscotta) and Knox (Rockland).

The seventh district consists of the divisions of Northern Cumberland (Brunswick), Northern Androscoggin (Livermore Falls) and Southern Androscoggin (Lewiston).

The eighth district consists of the division of Southern Cumberland (Portland).

The ninth district consists of the divisions of Eastern York (Biddeford), Western York (Sanford)and Southern York (York).

The tenth district consists of the divisions of Northern Franklin (Rangeley), Southern Franklin (Farmington) Oxford (Rumford) and Western Cumberland (Bridgton).

The eleventh district consists of the divisions of Piscataquis (Dover Foxcroft), Northern Somerset (Jackman), Southern Somerset (Skowhegan) and Western Penobscot (Newport).

Sec. 5. (a) A juvenile proceeding or criminal (including traffic) prosecution shall be brought in the division in which the offense charged took place, but if the proceeding involves two or more offenses committed in different divisions, it may be brought in any one of them.

(b) An action for forcible entry and detainer or replevin or any action commenced by attachment shall be brought in the division in which the property involved is located.

(c) An action for divorce, separation or annulment of marriage or for support may be brought in the division where either the plaintiff or the defendant resides.

(d) Any other civil action or proceeding shall be brought in the division where any defendant resides, but if all defendants are non-residents of the state, it may be brought in any division of the plaintiff's choice.

(e) A corporation shall be deemed a resident of any district in which it maintains a place of business.

(f) Notwithstanding the provisions of the foregoing subdivisions of this section, all parties, with the approval of any district judge, may consent to any proceeding being brought and determined in any division.

(g) If any action, civil or criminal, is brought in the wrong division, the court, upon motion or its own initiative, shall transfer it to a proper division. Any objection to improper venue is waived unless asserted by motion to transfer the case made before the commencement of trial or, in the event of default in appearance or answer, before the entry of judgment.

(h) The court may also, upon motion or its own initiative, transfer any case to another division for the convenience of parties or witnesses or in the interest of justice.

Sec. 6. All process of the District Court shall run throughout the state, and may be served outside of the division from which issued with the same effect as if served within such division.

Sec. 7. (a) Every District Judge shall conduct his court and his professional and personal relationships in accordance with the Canons of Judicial Ethics adopted by the American Bar Association.

(b) The justices of the Supreme Judicial Court are hereby empowered to make and amend rules of procedure for the District Court, adopting to the extent they deem desirable and practicable, the "Model Rules Governing Procedure in Traffic Cases" promulgated by the National Conference of Commissioners on Uniform State Laws in 1957 and the recommendations made in 1957 by the Public Officials Traffic Safety Conference and approved in 1958 by the American Bar Association and the Conference of Chief Justices of State Supreme Courts.

(c) Pending promulgation of new rules as provided in the foregoing subdivision:

(1) All proceedings shall be conducted by a judge alone, without a jury.

(2) The judge while holding court shall wear a judicial robe.

(3) Warrants for arrest and search warrants may be issued by any District Court Judge, by any judge, associate judge or Recorder of any Municipal Court, by any trial justice or by any justice of the peace.

(4) The rules of procedure now in effect for cases and proceedings within the jurisdiction vested by this act in the district court shall apply.

Sec. 8. (a) Any party to a civil or matrimonial action who did not intentionally suffer judgment by default may appeal. Any defendant in a juvenile, traffic or criminal case who did not plead guilty may appeal. No other appeal shall be allowed.

(b) Any appeal shall be taken to the Superior Court for the county embracing the division in which the judgment was rendered.

(c) An appeal shall not automatically stay execution of judgment. Execution of a criminal judgment involving a fine alone or a civil judgment for money alone shall be stayed upon the posting of cash bail in the amount of such fine or money judgment. Execution of a judgment involving any other punishment or any other relief may be stayed only in the discretion of the District Court upon such terms and conditions as it may determine. Such determination shall be subject to review in the Superior Court only for abuse of discretion.

Sec. 9. (a) The Governor, with the advice and consent of the Council, shall appoint one Chief Judge and 11 Judges of the District Court, one for each district. Each shall have a term of office of seven years. The Chief Judge shall receive a salary of $12,500 per annum, and each Judge shall receive a salary of $12,000.

(b) To be eligible for appointment as a District Judge (as herein and hereinafter used, unless the context indicates otherwise, this term shall include the Chief Judge), a person must be a member of the bar of the state of 10 years standing.

(c) A District Judge shall devote full time to his judicial duties. He shall not practice law during his term of office.

(d) Each District Judge shall be entitled to 30 days vacation each year, to be taken at such time or times as may be fixed by the Chief Judge.

(e) The provisions of Sections 3 and 4 of Ch 106 of the Revised Statutes, now applicable to Justices of the Superior Court, are hereby made applicable also to Judges of the District Court.

Sec. 10. For each division and for the office of the Chief Judge, the Chief Judge shall appoint one chief clerk and such other clerks as may be necessary. Each clerk shall be compensated by the state at a rate comparable to that paid other State employees performing substantially similar service, as determined by the Chief Judge. If the business in any division does not require the full time service of a clerk, the Chief Judge shall appoint as a part time clerk for such division the Town Clerk or some other official or employee of the town or county working in the place where the District Court sits for such division.

Sec. 11. (a) In each division, the place for holding court shall be located in a state, county or municipal building designated by the Chief Judge, who, with the advice and approval of the Bureau of Public Improvements, is hereby empowered to negotiate on behalf of the state, the leases, contracts and other arrangements he considers necessary within the limits of the budget and the funds available under Sec.12c of this act to provide suitable quarters, adequately furnished and equipped for the District Court in each division.

(b) The facilities of the Superior Court in each county when that court is not in session shall be available for use by the District Court of that division in which such facilities are located. Arrangements for such use shall be made by the Chief Judge.

Sec. 12. (a) All fines, bail forfeitures and fees collected in the District Court of any division shall be paid to a clerk thereof, who shall deposit them in a special account with 72 hours of their receipt. Once each month, he shall remit such sums to the State Treasurer, who shall deposit them in a special fund, to be known as the "District Court Fund."

(b) Out of such fund, the State Treasurer shall pay, in accordance with a budget submitted each year by the Chief Judge, the expenses of the District Court, and all sums of money produced by cases brought in the District Court which shall become due to state departments and agencies, municipalities, and state, county and municipal officers. Any sums heretofore payable to counties by reason of such cases shall be paid to them not under this subsection, but under subsection (d) of this Section.

(c) After paying such expenses or providing sufficient reserves for their payment, the State Treasurer shall establish a special "District Court Building Fund" to be used solely for the building, remodelling and furnishing of quarters for the District Court, as determined and certified by the Chief Judge. The sum of $4,000 per month shall be deposited in this fund until the Chief Judge certifies to the State Treasurer that physicial facilities for the District Court throughout the state are such that further deposits in said special building fund are no longer necessary.

(d) After paying or setting aside the sums hereinabove described, the State Treasurer shall pay semi-annually the balance remaining in the District Court Fund to the counties of the state in the proportion which the population of each bears to the total population of the state, according to the latest available Federal Census.

Sec. 13. The Chief Judge shall be responsible for the operation of the District Court and for the efficient use of its manpower. To this end he shall:

(a) hold court in any division when he deems it necessary by reason of illness, absence or disability of the judge regularly assigned or by reason of an excessive case load in any district;

(b) fix the days and hours for holding court in each division;

(c) determine the times for the taking of vacations by all district judges;

(d) temporarily assign judges to hold court in districts or divisions outside of their own districts;

(e) authorize for any division the establishment of a "Traffic Violations Bureau" in accordance with the "Model Rules Governing Procedure in Traffic Cases" promulgated by the National Conference of Commissioners on Uniform State Laws in 1957;

(f) prescribe the records to be kept and destroyed and the reports to be made by each district judge;

(g) collect and publish such statistics pertaining to the business of the district court as he deems desirable;

(h) prepare and submit an annual budget for the District Court;

(i) render to the Chief Justice of the Supreme Judicial Court an annual report on the state of business in the District Court and on the conferences held pursuant to subdivision (k) of this section;

(j) make necessary arrangements for proper courtroom facilities for all branches of the district court pursuant to Sec. 11 of this act, and establish his own headquarters with appropriate facilities at Augusta;

(k) convene at least once annually at such time and place as he may deem appropriate, a conference of District Court Judges to consider and take action upon or make recommendations with respect to current problems in the operation of the District Court, including but without being limited to the following topics:

(1) uniformity of sentences;

(2) standardized and simplified forms;

(3) judicial workloads and assignments;

(4) records, reports and statistics;

(5) relations with law enforcement agencies, social agencies and other courts;

(6) needed changes in procedural and substantive law.

(7) could recommend to Legislature.

The expenses of District Court Judges attending this conference shall be defrayed by the state.

(l) authorize, at the state's expense and within the financial limits of the budget, the attendance of such District Judges as the Chief Judge considers desirable at traffic law institutes and other similar seminars, schools or conferences for judges.

Section. 14. The Chief Judge, with the approval of the Chief Justice of the Supreme Judicial Court may, in the interests of public convenience, and without regard to county boundaries,

(a) redefine the boundaries of judicial divisions and districts as initially established in Secs. 4 and 5 of this Act;

(b) relocate the places for holding court in each division as initially fixed in Sec. 4 of this Act.

Sec. 15. This act shall take effect on January 1, 1962 and the Chief Judge shall be appointed as soon thereafter as reasonably possible. The appointment of other district judges provided in Sec. 9 shall be made during a two-year period thereafter, as need exists in the judgment of the Governor. After the passage of this Act, no trial justice and no judge, associate judge or recorder of a Municipal Court shall be appointed or reappointed, but all such existing officers shall continue to serve and to exercise the jurisdiction vested in them, concurrently with the District Court. Whenever any Municipal Court or Trial Justice Court ceases to exist by reason of the offices of its judicial personnel becoming vacant, all cases pending in such court and all of its records shall be transferred

to the District Court for the division embracing the territory formerly served by such Municipal Court or Trial Justice Court, or, if a District Judge has not been appointed for such division, to the Chief Judge of the District Court.