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PROBLEMS OF JUDICIAL SELECTION AND TENURE

by

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PROBLEMS OF JUDICIAL SELECTION AND TENURE

I - Method of Selection

Independence of the judiciary is the fundamental principle of our American court systems. How to achieve that independence is a problem still unsolved in the 48 states. The first step, all agree, is to find the right method of selection of judges which will insure a bench free from the influence and control of party politics, individuals or pressure groups.

The variety of selection methods used in the 48 states, and the variety of methods used even within a single state,¹ indicate the dissatisfaction with the systems.² It also indicates that we are still searching for the right system.³ The great majority of the states nominate and elect their judges by popular vote, and these elections take place on partisan ballots. The movement for nomination and election by non-partisan ballots, however, continues to grow and we find these non-partisan trends stronger in the West and in the North. Other elective methods include election by popular vote after nomination by a special commission, and election by the legislature.

Selection by appointment is maintained in 11 states, including New Jersey. Variations of the appointive method provide for nomination by the governor with confirmation by majority vote of the senate,⁴ appointment by the governor with

confirmation by his council, appointment by special commission, and appointment by members of the judiciary.

Although selection by election still prevails in approximately three-fourths of the states of the Union, the demand for either a return to the appointive system or adoption of some compromise method of appointment and election keeps recurring. Some years ago the American Bar Association sent out a questionnaire on judicial selection to Bar Association committees in the several states. The replies indicated that lawyers in the states where judges are appointed by the governor or chosen by the legislature are strongly opposed to changing to the election system, while the profession in those jurisdictions where the judges are elected is unsatisfied with the present methods and wants something else.⁵

The dramatic incidents which attended the nomination and election of a New York Supreme Court Justice several years ago focused attention on the necessity for better procedure in nominating and electing judges of the state courts. Although it became public knowledge within a short time after the bipartisan nomination of New York City Magistrate Thomas A. Aurelio to the Supreme Court that he was closely associated with the notorious racketeer Costello, the election machinery, once put in motion, could not be checked and Aurelio was elected. Popular outcry brought a pledge from New York's Governor Dewey that the "drafting of better methods of judicial selection will receive prompt study from my administration in Albany."⁶ Advocating the change from elective to appointive selection, the New York Herald Tribune declared that:

"It is not compatible with either the usefulness or the dignity of the Bench that its members engage in public contests for their posts; their function is not a party function, nor even, in the narrow sense, a political function. Hence, many judges are appointed: since those of the New York State Supreme Court are not, the practice of bi-partisan nominations arose with the laudable intent of taking the administration of justice out of politics... It was not alone the specific choice of Aurelio which showed that system to be at fault; the whole atmosphere of secret trading, of catering to special groups and interested individuals demonstrates that the bi-partisan system of judiciary nominations has failed. Centralized and open responsibility is the answer--judges must be appointed by an elected executive."⁷

The New York Times also took up the fight for a change in New York, urging that "it is important to correct the system by which this sort of nomination is possible" and stating further,

"We believe that appointment by the governor, subject to approval by two-thirds of the state senate, would raise the level of the judiciary. Another method, which may be immediately more practicable, was suggested to the constitutional convention of 1937 by a Committee of the Association of the Bar of the City of New York, headed by Paul Windels. The Windels committee proposed that in each judicial department one candidate be named for each post by a nominating board consisting of the Presiding Justice of the Appellate Division, two resident lawyers appointed by the Court of Appeals and two resident laymen appointed by the governor. Other candidates could be nominated, if enough voters wished, by petition. The 1937 Convention rejected this proposal. It deserves consideration."⁸

Another voice of protest came from PM. In a signed editorial, urging a change of political leadership, Max Lerner proposed still another solution. He said

"The second step will be to rethink the whole question of how the members of the judiciary are nominated and elected. I don't think that appointments are the answer; they would only be an abdication of the democratic process. But I do know that the bi-partisan system, whereby judges are selected in two back rooms instead of one, has an unmistakable stench about it. I should suggest some method of combining bar association choices with the election machinery."9

Summarizing the proposals for improving the method of selection in New York which stemmed from the Aurelio scandal, the American Bar Association Journal stated

"The proposals chiefly under consideration, by way of an improvement, start with a plan rejected in the last state constitutional convention in 1938. The basic idea is that official nominating boards be created to make nominations, but not to have power to elect or appoint. The people would still elect whichever nominees, named by the official nominating boards, they preferred. There would be a board for each judicial district, to consist of the Presiding Justice of the Appellate Division, two lawyers to be appointed by the Court of Appeals and two laymen to be appointed by the Governor. Members of the board would serve for fixed terms, without compensation, and would be selected without regard to political affiliations."10

II - The Situation in New Jersey

New Jersey remained one of the few states in the Union to resist the popular movement for election of judges which spread through the country in the second quarter of the 19th Century. From the earliest days of established government,

when New Jersey was divided into the Provinces of East and West Jersey, through the period as a Colony, and then as a State, her judges have always been appointed by the Chief Executive, with a few exceptions mentioned below.

To-day, the majority of our state judges are appointed by the Governor with the advice and consent of the Senate.¹¹ In the Court of Chancery, the Chancellor, appointed by the Governor and confirmed by the Senate, appoints his own assistants without confirmation. This exclusive power of appointment has been vested in the Chancellor by legislative enactments and at the present time ten Vice-Chancellors and 14 Advisory Masters are so selected.¹² Indeed, the Legislature in enacting such measures, has merely been implementing the power granted to the Chancellor when the Court of Chancery was established by the Ordinance of 1770.¹³ The only exceptions to appointive officers in our judicial system are the justices of the peace whose election is provided for by the Constitution,¹⁴ and those local magistrates, who by particular municipal ordinances, may be elected by some group in the local governing body, if not appointed.

Apparently, New Jersey is, by and large, satisfied with the appointive method of judicial selection. Outside of a few scattered demands for changing to an elective system,¹⁵ such dissatisfaction as has been expressed over the years involves mainly the influence of partisan politics due to the machinery of our appointive system, and the exclusive appointing power of the Chancellor.

Apparently, too, there is general agreement that partisan politics does enter into the selection of judges in some of our courts.¹⁶ As a matter of fact, the Legislature has provided that judges of the Court of Common Pleas and judges of the District Court must be selected on a bi-partisan basis, thereby ruling out all possible consideration of any but members of the two dominant political parties.¹⁷ The Governor, then, finds himself bound by bi-partisan machinery in his approach to the problem of nominations.

Further evidence of the intermingling of partisan politics and judicial appointments is the accepted practice, in some of the courts, of judges contributing to the party "war chest." It is a custom of long standing that office-holders contribute to the political party which was instrumental in securing their appointments, and judges have not been entirely exempt from that custom. Although such a contribution is not considered as unethical, it still creates a practical working relationship between the judge and the party.

Another factor, perhaps more personal than partisan, which operates in the machinery of confirmation of a Governor's nomination, is the matter of senatorial courtesy. A judicial appointment must run the gamut of the Senate, which, in practice, means that it must be acceptable to the Senator who represents the nominee's county. This unwritten but effective "gentleman's agreement" in the New Jersey Senate is almost certain to bar the confirmation of any judicial candidate not pleasing to the home Senator. He need give no reason

for his disapproval. The Governor's nominee may be of the most highly qualified type, the rest of the Senate may approve of the selection, nevertheless, senatorial courtesy is a powerful instrument and if the home Senator says "thumbs down" it has been thumbs down, with very few exception.

Considerable criticism has been levelled at the Chancellor's exclusive power of appointment, but as has been indicated, the courts have upheld such power. In supporting the proposal (Art. V, Sec. V, Par. 1 of the revised Constitution proposed in 1942) of the Hendrickson Commission for the appointment of all state judges in a unified court system by the Governor, with the advice and consent of the Senate, one speaker declared:

"The most obvious of the changes is the shearing off of the Chancellor's power of appointment that has grown in magnitude over the last forty years until it is lushly attractive to the political machinist. Regal are these appointments, made without the advice or consent of any openly acknowledged power. As it stands now, the appointments are of ten men at \$18,000 and fourteen men at, say, \$16,000, not to speak of the more numerous underlings and the vast deal of patronage which inheres in Chancery's jurisdiction in the appointment of receivers and trustees, the making of references and the allowance of substantial counsel fees. The proposal checks and channelizes the course of these appointments through our usual democratic processes. The controversy over the Chancellor's loss of this power will not be much talked of but it will underlie much that is talked of." 18

III - Some Proposals to Improve Selection Methods

No subject has elicited more suggestions and aroused more interest among lawyers and bar associations in the United States than the subject of selection of judges. The issue of election versus appointment to the judiciary has pretty generally narrowed down to the issue of appointment versus appointment plus popular ratification.¹⁹ Austin F. Macdonald in his "American State Government and Administration" says:

"Students of government and members of the bar are generally agreed that the judges of all courts should be appointed by the chief executive and not forced to engage in the hurly-burly of an election campaign. 'Popular election' is likely to be synonymous with 'political selection'; therefore judges chosen by popular vote may reasonably be expected to be cogs in the dominant political machine. Judges should be experts--technicians of the highest order; but experts cannot be obtained by popular election, except at rare intervals and under unusual circumstances. It is an axiom of public administration that appointment should be used when skill is desired, and that election should be employed only to secure representation."²⁰

An international authority on the technique of judicial appointment, discussing the variety of systems in the states and criticizing the elective systems in particular, writes:

"I believe, therefore, that the nomination of judges by the executive is the only feasible **system** of appointment. But it is clearly undesirable to leave it in the hands of the unfettered discretion of any executive politician to make a choice so momentous as this. Personal friendship and political eminence would exert far too great an influence on him.

"The active power of nomination might be resident in the governor * * * ; the governor would be

assisted by a committee of judges of the Supreme Court, together with the State Attorney-General and the President of the State Bar Association. It would be necessary of course to transform all state judicial tenure into a permanent tenure. The maxim that judges should hold office 'quamdiu se bene gesseret' is of the essence of their independent position; and the danger that they might cling to their position too long could easily be met by a provision for compulsory retirement at 70 or 75."²¹

No state in the Union grants the governor complete control of nomination and confirmation of judges. It is generally acknowledged that selection by the governor needs a check, but many groups feel that the legislature is too politically partisan to do the checking. The answer to this is the suggestion which has come from many sources, that a special commission be established - - a group politically "uncapturable" because of its diversity in makeup - - to confirm the judicial nominations.²² The composition of such a commission, the manner in which its members are selected, and the terms of the members, have been the subjects of many and varied proposals. The general theme of the proposals, however, seems to set a pattern of membership which would contain the highest judicial offices of the state, a number of lawyers selected by the State Bar Association and an equal number of laymen selected by the governor. Other plans would use such a commission to make the nomination to the governor, or to submit a list of several nominees for the governor's selection.

Two states in the Union which have heretofore used the election system for the selection of judges have adopted a combination system of appointment and election. California,

by constitutional amendment in 1934, has provided that justices of the Supreme Court and of the District Court of Appeals, and judges of the Superior Court in any county where the electors have adopted the provisions of this optional constitutional amendment, shall be appointed for a full term of six years by the governor, with confirmation by a small commission on qualifications.²³ This commission is composed of (1) the Chief Justice of the Supreme Court, (2) the Presiding Justice of the District Court of Appeals of the district in which the judge is to serve, and (3) the Attorney-General. The judge so appointed and confirmed must run on his own record for re-election every six years. He must file a declaration of his candidacy and he runs unopposed. The only question for the voters to decide is whether or not he should be returned to office. If the majority of voters voting upon such a candidacy vote "yes", such person is elected; but if a majority vote "no", he is not elected and may not thereafter be appointed to fill any vacancy in that court. If the incumbent judge does not file a declaration of candidacy to succeed himself, the governor must nominate a suitable person, or if the majority of voters vote against his continuation in office, the governor must appoint a suitable person, with the confirmation of a majority of the commission on qualifications, to fill the vacancy until the next general election.

Missouri's "non-partisan court plan" was adopted by constitutional amendment in 1945.²⁴ It differs from the California system in that a non-partisan judicial commission takes the initial step in presenting a list of three names of

candidates for the judgeship to the governor, and the governor making the appointment from that list. The California method gives the governor the first step in making the selection, and the commission on qualifications the final act of confirmation. Otherwise the systems are alike: the incumbent judge filing a declaration of his candidacy to succeed himself, an unopposed election, and the voters determining whether or not he shall be returned to office.

As pointed out above, both of these methods developed from the elective system of selecting judges in the respective states. Both have received endorsement and high commendation from national, state and local bar associations throughout the country and from civic organizations and legal publications on a nation-wide scale.

A plan that fits in with New Jersey's present method of selection, without bringing the element of popular election into play, is the proposed amendment for the Washington Constitution. There the incorporated bar of the state sponsored a provision to place the appointment of judges in a commission composed of the governor of the state, seven members of the Board of Governors of the Bar Associations and three laymen chosen by the governor.²⁵ Another plan which excludes all element of election is the one suggested in the proposal for reorganization of the Illinois judiciary. Here it was advocated that the governor appoint the chief justice from among the members of the Supreme Court for a term co-extensive with his own; the chief justice thereafter would appoint all of

the judges for life, upon the advice of a judicial council representing the bench, the bar and the public.²⁶

A special plan for New Jersey was submitted to the New Jersey State Bar Association some years ago.²⁷ This provided for the establishment of a non-political state board to recommend judicial appointments to the Governor, the board to be composed of the president of the State Bar Association and officers of other state associations including commerce, labor, etc. An interesting reaction to this plan was the immediate response of the then gubernatorial candidates who telegraphed to the annual meeting of the State Bar Association that they would welcome such recommendations on judicial appointments.

An analysis of the current proposals for the selection of judges has revealed that any plan which would combine all of the best features would probably be one such as follows: Appointment by the governor from a list of eligible lawyers selected by a commission consisting of representatives of the various courts, the legislature, the bar, labor and commercial groups; appointments to vacancies in the courts above the trial court restricted to those judges who have had a certain minimum of experience in the trial courts, with all appointments to be announced 30 days before going into effect and subject to withdrawal during that period by the Governor; appointments to be for a definite term, at the end of which time the judge would be a candidate for election without opposition, the question on the ballot being whether or not

he should continue in office; the nominating commission to be organized on a permanent basis with definite terms for its members (unpaid, but with a salaried staff), and responsible for the efficient operation of the courts; this commission to have full power to investigate the conduct of any judge and, after investigation, to bring charges of misconduct or of incapacity to conduct the affairs of his office against him directly in the Supreme Court.²⁸

IV - Qualifications, Salaries and Terms

Once the method of selecting a judge has been determined, the next question is, what should his qualifications be? The majority of the states require that judges must be citizens of the United States and a resident within the state for a certain period of time. A minimum age is also established in a majority of the states, which ranges from a minimum of 35 to 21 years, with 20 of the states setting up a 30-year age minimum.

The requirement of legal experience is more prevalent than any other single qualification. Thirty-nine jurisdictions require that the judges must be "learned in the law," while 25 demand actual legal experience or admission to the bar. Good character is a pre-requisite in four states and North Carolina requires that he "believe in God."²⁹

There are no constitutional requirements for qualifications for New Jersey judges, and no statutory qualifications for the law judges, but in the Chancery courts there

is a statutory provision which requires a Vice-Chancellor to be a counsellor-at-law of at least ten years standing. There seems to be growing support for the requirement of legal experience for our judges. The Report of the Commission on Revision of the New Jersey Constitution in 1942 provided that

"Each justice of the Supreme Court shall, prior to his appointment, have been a justice of the Superior Court for at least one year. Justices of the Superior Court shall, prior to their appointment, have been counsellors at law in good standing for at least ten years."³⁰

And in the revised Constitution for the State which the New Jersey Legislature adopted in 1944 there is a lesser provision that:

"The Chief Justice and each Associate Justice of the Supreme Court and each Justice of the Superior Court shall, prior to his appointment, have been an attorney-at-law of this State in good standing for at least ten years."³¹

According to the American Municipal Association "formal educational and professional requirements are not of too great importance." W. Brook Graves in his "American State Government," says:

"The unwritten and informal qualifications are likely to be more important than those specified. Many efforts are made to divorce judges from politics, yet in many jurisdictions it is impossible for a lawyer to get the support necessary to be elected (or appointed) ³² unless he is active politically. After he becomes a judge, his political activity becomes an even more serious problem. The American Bar Association has taken a strong stand to require members of the bench seeking political office to resign from the bench. Most such candidates now do resign, but there are occasional situations when judges refuse to resign. A memorable example of this was Arthur H. James, a member

of the Superior Court in Pennsylvania. He was nominated for Governor of Pennsylvania in 1938, refused to resign from the bench, continued to draw his Eighteen-thousand-dollar a year salary while campaigning, and after his inauguration as Governor handed his resignation as Judge, to himself as Governor. Fortunately, such violations of judicial ethics are not common."³³

Several plans to pass upon the judicial character of a candidate and to continue to pass upon his fitness once he has qualified have been recommended by the American Bar Association. One, a non-political veto council on judicial character and fitness, was advocated by Judge Finch of New York. This council, consisting of laymen, leaders in the various activities of the state and community, would have the power to veto any nomination or appointment to judicial office on the ground of the candidate's lack of fitness and character. This plan, it is argued, would take the election or appointment to judicial office out of politics.³⁴ Another proposal provides that an official commission on qualifications should "keep book" on the judges, compiling statistical information showing the number of cases tried, the number of reversals, and the capacity, diligence and devotion to duty of each judge. This commission would determine at least 30 days before the end of the term whether the judge should be retained, and a recommendation from this committee would be binding upon the governor.³⁵

The salary for a judge should be commensurate with the position:

"The very stability of our system of government, a government of laws rather than of men, depends upon the confidence and respect of the

people for those who hold the scales of justice in their hands and, therefore, depends upon the character and wisdom of the judges. The ablest and best of our citizens and those most learned in the law are needed to fill these positions of power and responsibility.... Adequate salaries are a necessary part of any plan to keep competent men in the courts. Membership in the Judiciary is an honor, but honor alone cannot compensate; it is more a question of economic competition. If men of worth and capacity are to be induced to accept and to continue in judgeships, there must be an available monetary compensation sufficiently attractive to the caliber of men desired."³⁶

New Jersey agrees with the above theory of adequate salaries for judges in the upper court brackets. There are only two states in the Union paying higher judicial salaries in the upper courts--New York and Pennsylvania. The Presiding Justice of the New York Court of Appeals receives a salary of \$29,500 and the Associate Justices \$29,000; in the Pennsylvania Supreme Court, the Chief Justice received \$20,000 and the Associate Justices \$19,500; in New Jersey the Chief Justice of the Supreme Court and the Chancellor receive \$19,000 and the Associate Justices and Vice-Chancellors, \$18,000.³⁷ The Circuit Court Judges, Advisory Masters, and Common Pleas Judges in the first and second class counties fare proportionately as well, but the County Judges in the third and fourth class counties, the District Court Judges in all but the metropolitan districts, and the Municipal Court Judges do not fare as well. Judges in the upper courts and first and second class county courts of New Jersey are prohibited by statute from practising law during their terms as judges; but judges in the lower courts, where the great

mass of litigation is carried on, are forced by economic circumstances to continue their private practice. It has been suggested that a few full-time judges in the lower courts, in place of the present numerous part-time judges, would be more beneficial to the parties most interested, the litigants. It is interesting to note that in each of the constitutions proposed by the Hendrickson Commission in 1942 and the 168th Legislature in 1944, mentioned heretofore, all the judges in the unified court system were to serve full time and were prohibited from practising law during their tenure in office.^{37a}

Although New Jersey ranks high among the states in the matter of judicial salaries, she ranks lower than average in the length of the terms of the judges. In colonial times and under the original thirteen state constitutions the judges enjoyed life tenure during good behavior. However, that same upsurge of democracy during the second quarter of the 19th Century which brought about a change in most of the states in the method of selection, from appointment to election, also brought about a great decrease in the length of the term. It was believed that a short term was the only democratic way to represent the people. In some of the jurisdictions the judicial terms dropped to two years. The pendulum is now swinging back and the tendency in recent years has been to increase the length of the term. "There is no justification for a short term"-- the function of the court is "not supposed to be a matter of determining the present public policy and therefore there is no need of direct representation to reflect the public pulse."³⁸

The terms of judges vary amongst the states from

two years in one state (Vermont) to indefinite tenure on good behavior in three states (Massachusetts, New Hampshire and Rhode Island, New Hampshire requiring retirement at the age of 70, and Rhode Island having life tenure in only the highest courts). The terms also vary within each jurisdiction, according to the court. It is customary to provide the judges in the upper courts with longer terms. For example, in New York State the Supreme Court Judges serve 14 years, while the County Judges (except within New York City) serve 6 years; Pennsylvania's Supreme Court Judges have a 21-year term and all other judges 10 years; New Jersey's Court of Errors and Appeals and Supreme Court members have 7-year terms, while the county and district courts have 5-year terms.³⁹ The two recently proposed revised Constitutions for New Jersey provided that Justices of the Supreme Court were to hold office during good behavior and the Justices of the Superior Court for an initial term of seven years and, if reappointed, for good behavior. Retirement was to be at the age of 70.⁴⁰

The movement for increased tenure for judges still meets with disapproval in many quarters. The arguments advanced for a short judicial term emphasize that it is a more democratic system; it makes the judge more responsible to the will of the people; it doesn't saddle the people with a man unfit for the bench for too long a period; it makes the judge more conscious of his responsibilities and prevents a tendency to grow lax in the discharge of his duties, and it provides machinery for periodic check-ups by the people on their judges.

On the other hand, students of government and leaders in the legal profession are fairly well agreed that security of tenure is essential to judicial independence:

"Permanent tenure is necessary in order to attract competent men to the bench and to give incumbents that independence which will insure fair and impartial performance of judicial duties. The common argument against permanent tenure takes the form of an objection to giving the corrupt or incompetent judge a secure berth for life. Of course, if our methods of selection function as they should, there is little danger that a corrupt or incompetent individual will obtain a judicial place; the danger is reduced to a minimum. And even if an occasional mistake be made and a weak or inferior judge does pass through the selective sieve and secures a permanent job, the advantages of secure tenure may still predominate. We are not without our weak, corrupt and incompetent judges at the present time. The general average of capacity on the bench is what really counts - the proportion of strong to weak judges on the bench as a whole. If secure tenure helps to draw more good men to the bench and results in a higher general average of ability, it will still be preferable to the present system of election for short terms, whose net effect is merely to produce a more frequent turnover among men of second-rate ability.

"Nevertheless, this advantage of secure tenure furnishes only an indirect answer to the objection to giving the unfit judge a life job. The direct answer is that secure tenure, or as it is more commonly called, tenure during good behavior, should not mean tenure for life. It should mean tenure for so long as the judge is fit to hold judicial office. Judicial tenure should be secure, but it should be subject to termination whenever the incumbent becomes incapacitated by reason of age or mental or physical disability, or whenever he proves to be incompetent, or whenever he willfully neglects the duties of his office, or whenever he misconducts himself in such way as to show that he is morally unfit to be a judge. That these four general grounds - disability, incompetence, neglect of duty and moral unfitness - justify removing a judicial incumbent from office, all would agree. The crucial problem

is to devise right methods of retirement and removal. If these methods are in operation, little if any force is left to the objection that secure tenure gives the bad judge a life job." 41

Recognizing the popular prejudice against long tenure, but holding that "moderately long tenure is not only desirable but necessary for the proper conduct of judicial business," an eminent Chicago Attorney, Albert Kales, wrote:

"It is a grave mistake to suppose that judges exercise their judicial power in a distasteful and arbitrary manner merely because they hold for life or during good behavior. An arbitrary or disagreeable course of action by a judge arises principally from the fact that he is subject to no authority which can receive complaints against him and act upon those complaints by way of private or public criticism and correction of the judge. The best protection against arbitrary and disagreeable actions by judges is a duly constituted body of fellow judges who hold a position of superior power and authority and to whom complaints as to the conduct of judges may be brought and who may investigate those complaints and exercise a corrective influence. When a considerable number of judges in a metropolitan district are provided with a chief justice and organized for the efficient handling of a great volume of business, the means of securing the exercise of a corrective influence over their conduct at once appears." 42

One further practical problem arises in connection with long tenure for judges, and that is the matter of promotion. If, because of life or long tenure, there appears little opportunity for advancement for members of the bench, there is a danger of judicial stagnation, due to lack of incentive. There is no custom in many of the jurisdictions, including New Jersey, which raises a judicial incumbent to the higher courts automatically, upon the creation of a vacancy in that higher court. Judges are picked from the group of

practising lawyers as frequently as they are picked from the bench, to sit in the higher courts. The solution which has been offered to this problem is to establish a system of promotion, reserving the highest positions for men already on the bench. Such a system would necessarily entail the creation of a judicial committee on promotions, or the extension of the functions of an existing commission on judicial appointments or of the Judicial Council.

V - Retirement and Removal

The question of when a judge should retire from active service on the bench is one which the courts, the legislatures and the lawyers have been struggling with for a long time. Twenty-six states have some provision about judicial retirement, but only four of them have established a compulsory retirement age. It is a problem that is as vital to the public as it is to the judge. When a judge reaches the age when he becomes mentally or physically incapacitated, the public should be protected from decisions which bear evidence of this incapacity. On the other hand, a man who has given long and honored service on the bench is reluctant to relinquish his post, especially when he believes himself to be still mentally and physically capable of continued service, and especially, too, if he faces the future without any financial assurance.

It is a dual problem: there is first, the question of the right age for retirement, and second, the question of compensation after retirement.

Retirement ages vary in the states which have legislated on the subject, from 65 to 80 (Louisiana is the only state setting 80 as the limit), with the majority setting the limit at 70.⁴³ With the exception of the four states which provide for compulsory retirement, these ages represent the minimum age at which a judge may retire. New Hampshire, Connecticut, Louisiana and New York compel retirement by constitutional provisions. Although Maine has a statutory provision for voluntary retirement at 70, it is practically mandatory in effect since the statute grants compensation for life but with the provision that the compensation shall be forfeited unless it is accepted within one year from the commencement of eligibility.

The period of service a judge must have given before he is eligible for retirement with compensation varies in the states from 10 to 30 years. In some states the amount of retirement compensation is determined by the length of service, in others by the salary of the last court the judge served in, and in still others by an arbitrary statutory sum.

In New Jersey, the Chancellor, Chief Justice, any Associate Justice of the Supreme Court, Judge of the Circuit Court or Common Pleas Court, or Vice-Chancellor who has served in one or more of these positions for at least 14 years, and is 70 years of age or over, may retire from service on a pension equal to one-half the annual salary received. Appointed Judges of the Court of Errors and Appeals may retire on a pension of \$6000 annually, after serving in judicial office in the State for at least 15 years in the aggregate and having reached the age of 64.⁴⁴

The methods of removal of a judge are far less satisfactory in the various states than the methods of retirement. Outside of death, resignation and retirement, the removal process may consist of impeachment, recall, concurrent resolution of the legislature, or action by the Supreme Court:

"In the United States impeachment is the most common method used for removing judges of higher courts. The United States Constitution and all the state constitutions except two, provide for the impeachment of judges. The impeachment proceeding consists of two parts: (1) a charge of misconduct presented by the lower house of the legislature, and (2) a hearing and decision on the charge by the upper house (senate) sitting as a court of impeachment.

"As a method of eliminating unfit judges, impeachment has not proved effective. The houses of the legislature are not equipped to try and investigate questions of judicial misconduct, incompetency, neglect of duty or disability. These legislative bodies do not have time to handle such matters along with their other business. The senate is usually too large to act in a judicial capacity. And the houses of the legislature do not meet frequently enough to give judicial disciplinary cases the careful consideration or the immediate attention which they demand.

"Impeachment has almost always been regarded as a penal proceeding. This character is given to impeachment by the nature of the causes for removal which are specified in the constitutional provision. These causes are commonly restricted to various forms of misconduct, and sometimes even more narrowly, to misconduct in office. * * * But however liberally we may interpret the meaning of the usual impeachment clauses, they all fall short of embracing causes for judicial removal unconnected with moral delinquency or wrong-doing. In most states the disabled or incompetent judge cannot be impeached.

"Impeachment is a tool which easily falls into the hands of partisan politicians. The houses of the legislature are not organized in a way to eliminate partisan bias. Consequently this form of removal may be used to intimidate or get rid of able and independent judges. That this danger

is inherent in impeachment is well attested by by many instances in the early history of the courts of this country. * * *

"However, leaving aside the dangers of possible abuse, impeachment is not an adequate remedy for the removal of unfit judges, both because of its cumbersomeness and because of the narrow grounds of removal which are usually specified in the impeachment clauses of our constitution."⁴⁵

Of the 12 states that use the recall for the removal of elective offices, four of them specifically exclude judges from recall (Idaho, Washington, Michigan and Louisiana). There are serious objections to submitting the judiciary to a recall election. When former President Taft vetoed a joint resolution of Congress providing for the admission of Arizona into the Union in 1911, he did so because of the provision in the Arizona Constitution which provided for recall of the judges by the electorate. In a special message to Congress, President Taft declared:

"This provision of the Arizona Constitution, in its application to county and state judges, seems to me so pernicious in its effect, so destructive of independence in the judiciary, so likely to subject the rights of the individual to the possible tyranny of a popular majority and therefore to be so injurious to the cause of free government, that I must disapprove a constitution containing it."⁴⁶

Another serious objection to the system of judicial recall is that it can be a threat to minority rights:

(Judges)"are charged with the protection of the rights of the individual, and in the performance of their duties they may frequently find it necessary to safeguard minority rights, guaranteed by federal and state constitutions, against momentary desires of a majority of voters. Thus they are the representatives, not merely of the dominant element in the commonwealth, but of

every element. And their decisions must be based on law - not on popular notions of right and wrong. This theory, the theory of an independent judiciary, is the basis of the American judicial system. The recall, however, as applied to judges, is predicated upon an entirely different assumption. It implies that judges shall be the representatives of the majority and subject to majority rule, since they may be removed from office at any time by a vote of the majority of voters. Fortunately, in those states where recall has been adopted it has been used with great moderation. But it is an ever-present menace to judicial independence.

"Of course, there is another side to the story. It can be argued, with reason, that secure tenure for judges operates to the benefit of the incompetent as well as the competent, and sometimes keeps men on the bench who have amply demonstrated their unfitness for public office. But the danger of keeping some judges too long seems less serious than the danger of rendering the entire judiciary subservient to the whims of popular fancy. And no way has yet been found to make good judges independent, while subjecting bad judges to the constant necessity of retaining the support of the voters."⁴⁷

Twenty-eight of our states provide a method of removal of judges by concurrent resolution of the legislature, or "joint address."

"The constitutions of those states always restrict this form of removal in many ways. Usually an address requires a vote of two-thirds of the members elected to each house of the legislature. The person to be removed is entitled to notice as well as an opportunity to be heard. And the cause or causes of removal are required to be entered on the journals of both houses . . . Most of the constitutions specify the causes for which a judge or other officer may be removed, - 'for reasonable cause,' 'for good cause,' 'for cause,' etc. * * * But whatever may be the scope of the power to remove judges by joint address . . . it seems clear that the power to remove by address is a wider power than the power of impeachment

"Like impeachment, address might, and perhaps has sometimes been used for political ends. But address has tended in the same way as impeachment to become a quasi-judicial proceeding.

"In conclusion, it may be said that while both legislative methods of removal are cumbersome and ineffective, there is not sufficient reason for abolishing them. They should be supplemented by some method of removal by judicial action."⁴⁸

Impeachment proceeding is the only method which New Jersey has to remove unfit judges.⁴⁹ Even the Chancellor, who has sole control over the appointment of Vice-Chancellors, may not remove a Vice-Chancellor.⁵⁰ It would seem that some other fairer and more effective way of removing judicial officers could be developed, that would fit in with New Jersey's system of appointments.

Removal by judicial action provides a method of calm, deliberative and investigatory action by a judge's peers. A few states have already adopted by constitution this system for removal of judges in the upper courts.⁵¹ Others have adopted it by statute for inferior courts.⁵² Shartel, in the quoted article on "Retirement and Removal of Judges" (note 41) says:

"The supreme court or an administrative council composed of judges would be the proper tribunal to be vested (with such jurisdiction).

"Judicial removal proceedings might be initiated in one or all of several ways. The attorney-general might be authorized to initiate proceedings; or such proceedings might be started by state or local bar associations; or they might depend upon the petition of a certain number of attorneys. Or finally, the chief justice might have authority to initiate such proceedings, especially if he were charged with the general supervision of the judicial system.

"The method of removal by judicial action has important advantages. A tribunal constituted of judges is able to dispose of disciplinary matters expeditiously; it is fitted by training and experience to try questions of fact. It is closely associated with problems of administering justice and is confronted daily by problems of judicial ethics which should give it the proper appreciation of the conduct of any judge accused of malfeasance in office, as well as a sound estimation of those qualities which would be involved in a compulsory retirement on account of age or health. Cases of retirement and removal necessarily involve discretion. They cannot be settled by stiff and arbitrary rules. No one is so well qualified by training and experience to exercise discretion fairly as a court consisting of supreme court judges. By comparison, existing methods of removal furnish no adequate test of the incumbent's fitness or capacity. For example, a senate, or a state legislature, which tries an impeachment charge consists almost entirely of men untrained in judicial matters. In its hands discretion readily degenerates into a mere partisan or emotional determination. And, of course, the other prevailing method of removal, to wit, the defeat for reelection, is even less discriminating; it results too often in injustices either to the public, or to the incumbent, or both. A judicial removal proceeding is the only form which is entirely consistent with security of judicial tenure."⁵³

SCHEDULE A

"The Book of the States"

SELECTION OF JUDGES*

State	Selection of Judges ^a					Filling of Vacancies ^a	
	Partisan Ballot	Non- partisan Ballot	Chosen by Legislature	Appointed by— Governor	Other	Gover- nor	Other
Alabama.....	AT	....	....	....	....	AT	....
Arizona.....	AT	AT	....	....	....	AT	....
Arkansas.....	AT	....	....	....	....	AT	....
California.....	....	T	....	....	A ^b	AT	....
Colorado.....	AT ^c	....	....	....	....	AT	C ^d
Connecticut.....	P	....	AT ^e	....	I ^f	AT	....
Delaware.....	....	....	....	AT	....	AT	....
Florida.....	A	....	....	T	....	AT	....
Georgia.....	AT ^c	....	....	C	....	AT	....
Idaho.....	....	AT	....	....	....	AT	pd
Illinois.....	AT ^c	....	....	F	....	AT	AT ^e
Indiana.....	AT ^c	....	....	M	I ^b	AT	....
Iowa.....	AT ^c	....	....	....	....	AT	....
Kansas.....	AT ^c	....	....	....	....	AT	....
Kentucky.....	AT ^c	....	....	....	....	AT ⁱ	....
Louisiana.....	AT	....	....	....	....	AT	T ^j
Maine.....	P	....	....	AT	....	AT	....
Maryland.....	AT	....	....	J	....	AT	....
Massachusetts.....	....	....	....	AT	....	AT	....
Michigan.....	....	AT	....	....	....	AT	....
Minnesota.....	....	AT	....	....	....	AT	....
Mississippi.....	AT	....	....	....	....	AT	....
Missouri.....	TC	....	....	AT ^k	....	AT	....
Montana.....	....	AT	....	....	....	AT	....
Nebraska.....	....	AT	....	....	....	AT	....
Nevada.....	....	AT	....	....	....	AT	....
New Hampshire.....	....	....	....	AT	....	....	....
New Jersey.....	....	....	....	AT	E ^l	AT	....
New Mexico.....	AT	....	....	....	....	AT	....
New York.....	AT ^c	....	....	A ^m	A ^m I ⁿ	AT	....
North Carolina.....	AT	....	....	S ^o	I ^a	AT	....
North Dakota.....	....	AT	....	....	....	AT	....
Ohio.....	....	AT	....	....	....	AT	....
Oklahoma.....	AT ^c	....	....	....	....	AT	....
Oregon.....	....	AT	....	....	....	....	AT ^p
Pennsylvania.....	AT	....	....	....	....	AT	....
Rhode Island.....	....	....	A	T	P ⁿ	AT	....
South Carolina.....	....	....	AT	C	....	AT	....
South Dakota.....	....	AT	....	....	....	AT	....
Tennessee.....	AT ^c	....	....	....	....	AT	....
Texas.....	AT ^c	....	....	....	....	AT	....
Utah.....	AT	....	....	....	....	AT	....
Vermont.....	....	PC ^q	AT	....	....	AT	....
Virginia.....	PC	....	AT	....	....	AT	....
Washington.....	....	AT	....	....	....	AT	....
West Virginia.....	AT	....	....	....	....	AT	(^r)
Wisconsin.....	....	AT	....	....	....	AT	....
Wyoming.....	....	AT	....	....	....	AT	....

^a Explanation of symbols:

- A—Appellate court judges
- C—County court judges
- E—Equity Courts
- F—Judges of Court of Claims
- I—Inferior court judges
- J—Juvenile Court judges
- M—Municipal Court judges
- P—Probate judges or surrogates
- S—Superior Court judges
- T—Trial court judges

^b Nominated by governor to a judiciary commission; if the commission confirms the nomination, the judge serves until the next general election when his appointment must be reconfirmed by a majority of the voters. Method applies only to Appellate Court judges, although counties may adopt it for trial judges if they desire to do so.

^c Independent ticket or non-partisan nomination permitted.

^d Board of Commissioners.

^e Nominated by governor.

^f Selectmen of town choose trial justices; chief justice of Supreme Court appoints if selectmen fail to do so.

^g Special election if more than one year until next general election.

^h Judge of magistrates court chosen by judge of Circuit Court. Court of Appeals and Circuit court judges. County judges by vote of justices of the peace of county.

ⁱ Special election if more than one year of term left.

^j Appellate Court judges and judges of trial courts in St. Louis and Jackson county are appointed by the governor from a panel presented by a judicial selection commission, representing the bar, the bench, and the public; appointment must be confirmed by a majority of the voters.

^k Vice-chancellors are selected by the chancellor.

^l Appellate division judges chosen by governor; appellate term judges chosen by appellate division judges.

^m Local officers select inferior court judges.

ⁿ Special judges of Superior Court chosen by governor.

^o Special election.

^p Assistant judges of County Court.

^q Special election if more than two years of term left.

* Prepared by Rodney L. Mott, Director, School of Social Sciences, Colgate University, Hamilton, New York. Revised for publication in March, 1945, by William E. Hannan, Legislative Reference Librarian, New York State Library.

SCHEDULE B

"The Book of the States"

QUALIFICATIONS OF JUDGES*

State	U. S. Citizenship			Residence			Minimum Age			Experience		
	Supreme Court	Superior Court	Others†	Supreme Court	Superior Court	Others†	Supreme Court	Superior Court	Others†	Learned in Law	Legal Experience‡	Good Character
Alabama.....	★	★	5 yrs.	.....	5 yrs.	25	.....	25	★ ^a	.....	.....
Arizona.....	5 yrs.	2 yrs.	.....	30	25	.....	★	★	.....
Arkansas.....	★	★ ^b	2 yrs.	.....	2 yrs. ^b	30	.....	(^c)	★	★	★
California.....	★	★	★	5 yrs.	5 yrs.	.....	.....	.....	.....	★	★	.....
Colorado.....	★	★	2 yrs.	.....	2 yrs.	30	.....	30 ^d	★	.....	.....
Connecticut.....	★	★	★	★	★
Delaware.....	★	★	(^e)	.....	.....	.....	★	★	.....
Florida.....	5 yrs. ^f	25	.....	25 ^g	★	.....	.....
Georgia.....	★	★	★	3 yrs.	3 yrs.	.....	30	30	.....	★	★	.....
Idaho.....	2 yrs.	.....	2 yrs.	30	.....	30	★	.....	.....
Illinois.....	★	★	★	5 yrs.	5 yrs.	5 yrs.	30	.....	25	.....	.....	.....
Indiana.....	★ ^h	.....	.....	5 yrs. ^h	.....	.....	30 ^h	★ ^h	★ ^h	★ ^h
Iowa.....	(ⁱ)	.....	.....	.....	.....	★^j	.....
Kansas.....	(ⁱ)	30	.....	30 ^d	★	★	.....
Kentucky.....	5 yrs. ^k	.....	2 yrs. ^b	35 ^k	.....	35 ^b	★	★	.....
Louisiana.....	★	★ ^k	yrs.	.....	2 yrs. ^k	35	.....	.....	★	★	.....
Maine.....	★	★
Maryland.....	5 yrs.	5 yrs.	5 yrs.	30	30	30 ^l	★	.....	★
Massachusetts.....	(^m)	.....	.....	.....	★	★	.....
Michigan.....	★
Minnesota.....	(ⁿ)	.....	.....	.....	★	.....	.....
Mississippi.....	5 yrs.	.....	5 yrs.	30	.....	26 ^o	★	.....	.....
Missouri.....	★	★	5 yrs.	.....	(^p)	30	.....	(^q)	★	.....	.....
Montana.....	★	★	2 yrs.	.....	1 yr. ^d	30	.....	25 ^d	★	.....	.....
Nebraska.....	★	★	3 yrs.	.....	3 yrs. ^d	30	.....	30 ^d	★	★	.....
Nevada.....	2 yrs.	.....	2 yrs.	25	.....	25	★	.....	.....
New Hampshire.....	★ ^r	★ ^r	.....
New Jersey.....	★ ^r	★ ^r	.....
New Mexico.....	3 yrs.	.....	3 yrs. ^d	30	.....	30	★	★	.....
New York.....	★	★	yes	.....	yes	21	.....	21	★ ^s	★ ^s	.....
North Carolina.....	★	★	1 yr.	.....	1 yr.	21	.....	21	★	★	★ ^t
North Dakota.....	★	★	3 yrs.	.....	2 yrs. ^u	30	.....	25 ^u	★	.....	.....
Ohio.....	(^v)	.....	.....	.....	★	★	.....
Oklahoma.....	★	★	★	2 yrs.	2 yrs.	2 yrs.	30	.....	25 ^d	★	★	.....
Oregon.....	★	★	3 yrs.	.....	3 yrs.	.....	.....	.....	★	.....	.....
Pennsylvania.....	★	★	★	1 yr.	1 yr.	1 yr.	21	21	21	★	.....	.....
Rhode Island.....	★	★	★	2 yrs.	2 yrs.	2 yrs.	21	21	21	.....	.....	.....
South Carolina.....	★	★ ^b	5 yrs.	.....	5 yrs. ^b	26	.....	26 ^b	★	★	.....
South Dakota.....	★	★	2 yrs.	.....	1 yr. ^w	30	.....	25 ^w	★	.....	.....
Tennessee.....	5 yrs.	.....	5 yrs. ^x	35	.....	30	★	.....	.....
Texas.....	★	★ ^k	★	.....	.....	2 yrs. ⁱ	30	30 ^k	25 ^d	★	★	.....
Utah.....	5 yrs.	.....	3 yrs. ^l	30	.....	25 ^d	★	★	.....
Vermont.....	★
Virginia.....	★	★	(ⁱ)	21	.....	21	★	★	.....
Washington.....	★	★	★	1 yr.	1 yr.	1 yr.	21	21	21	★	★	.....
West Virginia.....	5 yrs.	.....	5 yrs.	30	.....	30	.....	.....	.....
Wisconsin.....	★	★	1 yr.	.....	1 yr.	25	.....	25	★	.....	.....
Wyoming.....	★	★	3 yrs.	.....	2 yrs. ^d	30	.....	28 ^d	★	★	.....

† The star (★) in this column applies to all or to a majority of the other courts in the state, except as indicated below.

‡ Legal experience includes either the actual practice of law for a specified or unspecified number of years, or simply admission to the bar.

^a Except probate judge.

^b Judge of circuit court.

^c Circuit judge, 28; county judge, 25.

^d District court judge.

^e Court of common pleas, 5 years residence in New Castle County or resident of Kent County.

^f Civil court of record.

^g Circuit, criminal, and civil court of record.

^h Appellate court.

ⁱ District judge shall be resident of district.

^j Superior court.

^k Court of appeals.

^l Judges of all courts of record.

^m Probate judges must be residents of county.

ⁿ District and probate judges must be residents of district.

^o Circuit, county, and chancery judges.

^p Court of appeals, 5 years; circuit courts, 3 years; probate and county courts, resident of county 1 year.

^q Court of appeals and circuit court, 30; probate and county courts, 24.

^r Vice-chancellor, 10 years legal experience.

^s Justice of court of claims, 10 years experience.

^t Must believe in God.

^u District and county courts.

^v Court of common pleas judges must reside in district.

^w Circuit and county judges.

^x Circuit and chancery judges.

* Prepared by Henry Synek, University of Chicago Law School. Revised for publication in March, 1945, by William E. Hannan, Legislative Reference Librarian, New York State Library.

F O O T N O T E S

1. New York, for example, uses four different methods in the various courts.
2. For methods used in each state see annexed Schedule A, "Selection of Judges," taken from the Council of State Governments' The Book of the States, 1945-46, p. 445. See also Table III and Table IV, pp. 16-24, in State Court Systems, published by the Council Sept. 1940.
3. For an excellent summary on the selection and tenure of judges in all state and federal courts, see Evan Haynes, Selection and Tenure of Judges, Chapter II, "Present State of Affairs," pp. 27-50, published by the National Conference of Judicial Councils.
4. All members of the judiciary in New Jersey are appointed by this method, with the exception of the Vice-Chancellors and Advisory Masters appointed solely by the Chancellor the local magistrates selected according to local ordinances, and the justices of the peace elected by constitutional provision. See New Jersey Constitution, Art. VI, Sec. VII, Pars. 1 and 2, and Art. VII, Sec. II, Par. 7, for election of justices of the peace, and R. S. 2:2-3 and 2:2-14 for Chancery appointments.
5. "The Bars' Opinion on Judicial Selection," Amer. Bar Assn. J., Vol. XX, p. 529, Sept. 1934.
6. "New York's Experience Shows Need for Better Method of Selecting Judges," Amer. Bar Assn. J., Vol. XXIX, p. 690, Dec. 1943.
7. Editorial, Nov. 2, 1943.
8. Editorial, Nov. 2, 1943.
9. Editorial, Nov. 2, 1943.
10. Amer. Bar Assn. J., Vol XXIX, p. 694, Dec. 1943.
11. New Jersey Constitution, Art. VII, Sec. II, par. 1, but see also the following Par. (2). This anomaly results from the fact that when the amendment providing for the appointment of Common Pleas judges was adopted in 1875 no provision was made for striking out of the Constitution Par. (2) providing for legislative action on those same judges. Consequently contradictory provisions for selection of Common Pleas judges exist in adjacent paragraphs in our fundamental law. It is interesting to note that although an amendment to strike out the old method was

submitted to the electorate at several special elections after 1875, it was always defeated, the last time being in 1927.

For appointment of judges not mentioned in the Constitution see R. S. 2:5-4 (Circuit Court), R. S. 2:8-9 (District Court).

12. See R. S. 2:2-3 for appointment and tenure of Vice-Chancellors, and R. S. 2:2-7 for their jurisdiction. That Vice-Chancellors are "constitutional officers" even though they are not mentioned in the Constitution, and act as independent judges in Chancery, see Scranton Button Co. v. Neonlite Corporation of America, 105 N. J. Eq. 708.

For appointment and tenure of Advisory Masters, see R. S. 2:2-14, as amended by P. L. 1941, c. 307.

13. In re Vice-Chancellors, 105 N. J. Eq. 759, where the court held that the Ordinance of 1770 concerning the establishment of the Court of Chancery is still in full force and effect, and that one of the powers it confers on the Chancellor is the appointing of all officers of the court, including the Vice-Chancellors.
14. New Jersey Constitution, Art. VI, Sec. VII, Pars. 1 and 2; Art. VII, Sec. II, Par. 7.
15. For arguments for the election of judges in New Jersey, see "Record of Proceedings before the Joint Committee of the New Jersey Legislature," 1942, Part I, the legislative committee which held public hearings on the Report of the Commission on Revision of the New Jersey Constitution, commonly referred to as the Hendrickson Commission. See pp. 352-3 for statement of Manuel Cantor representing the Communist Party of New Jersey, and pp. 364-5 for statement of Morris Isserman representing the C. I. O. and the American Labor League.
16. Feightner, Milo N., "Judicial Selection and Tenure," Indiana Law Journal, Vol. 15, p. 215. See New Jersey abstract on p. 222.
17. As to Common Pleas judges, R. S. 2:6-4; District Court judges, R. S. 2:3-9.1 to 9.4.
18. Statement of Alfred E. Clapp, "Record of Proceedings before the Joint Committee of the New Jersey Legislature," 1942, pp. 297-8.

19. Haynes, op. cit., in a chapter entitled "Are Elected Judges with Short Terms More Liberal than Appointed Judges with Secure Tenure?" pp. 184-216, disproves the theory that elected judges are more liberal than those appointed. A comprehensive survey of decisions of appointed and of elected judges throughout the Union on subjects which would show the liberalism or conservatism of a judge provides an enlightening comparison.
20. Rev. ed., 1940, p. 232.
21. Laski, Harold J., "The Technique of Judicial Appointment," Mich. Law Rev., Vol. 24, No. 6, April 1926.
22. New York State Constitutional Convention Committee, 1938, Report, Vol. IX, Chap. XIV, p. 994.
23. California Constitution, Art. VI, Sec. 26, (approved, Nov. 6, 1934).
24. Missouri Constitution, Art. V, Sec. 29 (a) to (g).
25. 18 Journal of American Judicature Society 141 (1935).
26. McCormick, Charles T., "Proposed Reorganization of the Illinois Judiciary," 29 Illinois Law Review 31 (1934).
27. "Minutes of the Annual Meeting," 1 New Jersey State Bar Association Quarterly 56 (July, 1934).
28. This summary was prepared by Paul H. Sanders, a member of the Texas bar and assistant to the Director of the National Bar Program; "Appointment of Judges, etc." -Amer. Bar Assn. J., Vol. 22, p. 131, Feb. 1936.
29. Book of the States, op. cit., pp. 439-442, and Table on p. 454. The Council of State Governments has published a comprehensive series of charts on state court systems, and this contains a digest of constitutional and statutory provisions with respect to qualifications of judges. See State Court Systems, pp. 3-15. It was, however, published in 1940 and hence may not be as up-to-date as the Book of the States charts.
30. Proposed Constitution of the State of New Jersey, Art. V, Sec. V., Par. 2, as contained in the Report, p. 48.
31. State of New Jersey, Revised Constitution for the State Agreed upon by the One Hundred Sixty-eighth Legislature, 1944, Art. V, Sec. V, Par. 2.
32. Parenthetical words supplied.
33. Rev. ed., 1941, p. 608.

34. Finch, E. R., "A Non-Political Veto Council on Judicial Character and Fitness for Those About to be Nominated or Appointed to the Bench," Amer. Bar Assn. J., 144-7 (1934).
35. New York State Constitutional Convention Committee, Report, Vol. IX, p. 993. This is the plan of John Perry Wood, member of the Los Angeles Bar. His plan is described at length in Edward Martin's "Role of the Bar in Electing the Bench in Chicago," 1936.
36. "How to Get and Keep Competent and Independent Judges," Amer. Bar Assn. J., Vol. 31, p. 631, Dec. 1935.
37. Ibid. For salary charts, see p. 633.
- 37a. Art. V, Sec. V, Par. 5, and Art. V, Sec. V, Par. 6, respectively.
38. Graves, op. cit., p. 609.
39. See Schedule B. annexed, taken from the Book of the States, p. 443; also Table IV, State Court Systems, op. cit., pp. 17-24.
40. Report of Commission on Revision of the New Jersey Constitution, 1942, Art. V, Sec. V, Par. 3. Revised Constitution of the State, Agreed upon by the One Hundred Sixty-eighth Legislature, Art. V, Sec. V, Par. 3.
41. Shartel, Burke, "Retirement and Removal of Judges," 20 Journal of the American Judicature Society, pp. 133-4, Dec. 1936.
42. Kales, Albert, "Methods of Selecting and Retiring Judges in a Metropolitan District," Annals of the Amer. Acad. of Pol. and Soc. Science, March 1914, pp. 1-12. See also an article on the address delivered in the New York Constitutional Convention of 1853, entitled "Rufus Choate on Judicial Tenure," Journal of the American Judicature Society, July 1933, pp. 10-20.
43. See Table VI. "Provision for Judicial Tenure and Retirement in the Various States," State Court Systems, op. cit., pp. 33-4-5.
44. R. S. 43:6-3 and 43:6-7.1.
45. Shartel, op. cit., pp. 144-6.
46. Special Message to Congress, August 15, 1911, House Document No. 106, 62nd Congress, 1st Session.
47. Macdonald, op. cit., pp. 235-6.

48. Shartel, op. cit., pp. 146-7.
49. New Jersey Constitution, Art. VI, Sec. III, Pars. 1-3.
50. In the Matter of the Petition of New Jersey State Bar Association, 112 N. J. Eq. 606, it was held that the Chancellor did not have the power to remove a Vice-Chancellor from office on the ground that a Vice-Chancellor is a constitutional officer and as such could only be removed according to the constitutional provision for impeachment.
51. Alabama, Texas, Louisiana, Oregon.
52. California, Idaho, Oklahoma, New York. New York also has a constitutional amendment to be voted on in the general election in 1947 which creates a "court on the judiciary" to try cases of removal or compulsory retirement of judges of the Court of Appeals, justices of the Supreme Court, judges of the Court of Claims, General Sessions, county judges and surrogates. The court on the judiciary consists of the chief judge of the Court of Appeals, the senior associate judge of the Court of Appeals and one justice of the Appellate Division in each department. Removal shall be for cause only, and retirement for mental or physical disability. The chief judge may convene the court on the judiciary upon his own motion and shall convene the court upon written request by the governor, or by the presiding justice of any Appellate Division. or by a majority of the judicial council or a majority of the executive committee of the New York State Bar Association. The legislature is given the power to prefer the same charges "for cause" only (not for disability), and if it does so, by impeachment, the action of the court on the judiciary is stayed until the determination of the legislature. Concurrent Resolution of the Senate and Assembly, No. 313 in Assembly, Jan. 14, 1947.
53. Shartel, op.cit., pp. 140-1.

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