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A REPORT TO

THE LEGISLATIVE RESEARCH COMMITTEE

OF MAINE

ON

The Desirability Of Integrating Activities Of The Probate Courts Of Maine Into The Superior Court

BY

THE INSTITUTE OF JUDICIAL ADMINISTRATION

NEW YORK, N. Y.

Legislative Research Committee

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January 22, 1969

To the Members of the 104th Legislature:

The Legislative Research Committee is pleased to transmit herewith a study on the Desirability of Integrating Activities of the Probate Court of Maine into the Superior Court pursuant to a directive of the 103rd Legislature.

This report, which was contractually studied for the Committee, under the authority of the Legislature, contains the findings and recommendations of the Legislative Research Committee as developed by The Institute of Judicial Administration of New York, N. Y.

The Committee sincerely hopes the information developed herein and implementing legislation to follow will prove of great benefit to the Members of the Legislature and the people of the State of Maine.

Respectfully submitted,

KENNETH P. MACLEOD,
Chairman

C O N T E N T S

REPORT

November 29, 1968
(as revised January 15, 1969)

INSTITUTE OF JUDICIAL ADMINISTRATION

RE: THE PROBATE COURTS OF MAINE

I. Introduction

The present study was authorized by a concurrent resolution of both houses of the Maine legislature on July 8, 1967:

A PROBATE DISTRICT COURT SYSTEM

WHEREAS, under the present probate court system, one judge is elected in each county and is paid on the basis of a part-time position; and

WHEREAS, it is becoming difficult to secure the services of qualified attorneys as probate judges, especially in the smaller counties where the salary is lower, and restrictions are placed on the law practice of an attorney who is also probate judge; and

WHEREAS, the Legislature requires for its use comprehensive factual information concerning the operations of the probate courts in the 16 counties in order to consider the feasibility of establishing a Probate District Court System of full-time judges to be appointed by the Governor, with the advice and consent of the Council; now, therefore, be it

ORDERED, the House concurring, that the Legislative Research Committee be directed to study the feasibility of establishing a Probate District Court System with full-time judges to be appointed by the Governor, with the advice and consent of the Council; and be it further

ORDERED, that the study shall include but not be limited to a review of current workload as well as trends in the work of the 16 present probate judgeships; a translation of case load into manhours of the time of the probate judges; consideration of travel time and other factors implicit in full-time judgeships; the administration, staffing, structure, organization and operation of the probate court system; and be it further

ORDERED, that the committee be authorized to employ such consultants as necessary to carry out the purposes of this order; and be it further

ORDERED, that the committee report the results of its study with recommendations to the 104th Legislature; and be it further

ORDERED, that there is appropriated to the committee from the Legislative Appropriation the sum of $10,000 to carry out the purposes of this order.[1]

Pursuant to the resolution, the Legislative Research Committee of the State of Maine, with Senator Horace A. Hildreth, Jr., as Chairman, met in Executive Session at the State House on February 20, 1968, to decide how the study of the probate courts should be made. It was the consensus of the members of the Committee that the study should relate primarily to the probate court, and to the registers of probate only in so far as it was necessary in making recommendations about an effective court system.

Chairman Horace A. Hildreth, Jr., by letter dated February 26, 1968, asked the Institute of Judicial Administration to undertake the study. Professor Delmar Karlen, Director of the Institute, by letter dated March 14, 1968, agreed that the Institute would make the study and would submit a report by December 1, 1968. The Institute retained Mr. Russell D. Niles to direct the project.[2] The Institute also arranged to have Professor Delmar Karlen, and other members of the Institute staff coordinate the new study with the one that resulted in the report dated January 1961, entitled "A District Court for Maine."[3] In addition, the

Institute retained Mr. John P. Vose,[4] South Portland, Maine, to assist in the field investigations.

During the late spring and early summer, Mr. Niles visited all of the county seats in Maine (except for Oxford County)[5] and discussed the problems of the probate courts with the 15 judges of probate now in office and also talked to all the registers except two. Mr. Vose also visited all of the county court houses and talked to the registers in all of the counties and to almost all of the probate judges. Mr. Niles also had conferences with Chief Justice Robert Williamson and with several of his colleagues on the Supreme Judicial Court, with Senator J. B. Campbell and with Mr. Samuel S. Slossberg, director, and Mr. David S. Silsby, assistant director of the Office of Legislative Research. Both Mr. Niles and Mr. Vose interviewed representative attorneys in all of the localities visited and also representative trust officers.

Various statistical tables have been compiled, sometimes as supplements to the tables that were prepared in a preliminary study of the probate courts by the Bureau of Public Administration for the University of Maine, dated May 10, 1967.[6] In the preparation of the present report, free use has been made of the preliminary report and, while the Institute accepts responsibility for all of the recommendations of the present report, the Institute acknowledges the valuable work that was done by Professor Paul C. Dunham and by William S. Cohen, Esq.

II. The Probate Courts

The probate courts of Maine are local courts (i.e. county courts) with a special and limited jurisdiction.[7] They are statutory courts and their judgments are void and subject to collateral attack unless the records of the courts' proceedings show explicitly the precise facts upon which jurisdiction depends.[8] There is no presumption of regularity or validity to cure the omission of a jurisdictional fact in the record.[9]

The probate courts were first organized in 1820 and were then clearly inferior courts.[10] In 1869 they became "courts of record"[11] but did not become equal to the common law courts of record because the probate courts remained creatures of the statute, having only a special and limited jurisdiction.[12]

Although the probate courts have equity powers within their special jurisdiction[13] (concurrent with the superior court) they continue to be inferior courts because the appeal from their decrees is to the superior court, sitting as the supreme court of probate, with a trial de novo in that court.[14] There is a direct appeal to the law court (i.e. the supreme judicial court) only by agreement of the parties and then on an agreed statement of facts or upon evidence reported by the judge of probate.[15]

III. The Judges and Registers of Probate

The judges of probate were appointed officers from 1820 until 1855.[16] In the latter year, pursuant to the then prevailing Jacksonian philosophy,[17] they became elective officers and have since been elected

on partisan tickets in each county for relatively short periods (i.e. four years).[18]

At the present time the judges of probate of the various counties must be lawyers but since they are expected to devote only part of their time to their judicial duties they are paid on a part-time basis. The amount of time that judges spend on their judicial duties varies in proportion to the size of the population of each county and the number of separate items of judicial business that come before each court.[19] The salaries for the probate judges vary from $2,000 in Franklin County to $8,000 in Cumberland County.

The incumbent judges differ from each other in many respects. Some of the judges are young lawyers just starting to establish their law practices and they serve as probate judges for one or possibly two terms to get experience in probate practice or to become known and respected in their communities. These judges are usually quite able and render competent service as soon as they acquire the necessary experience but they do not make the judiciary their permanent careers. Other judges, at the opposite end of the age spectrum, are either nearing retirement age, or are beyond the age of retirement of other judges in Maine, and they are willing to serve as judges in semi-retirement at the salary that is available. At least some of these judges would not be serving if they had been in an adequate pension system. The judges in the middle age

brackets either serve because they believe it their civic duty to do so or because they like this type of judicial work and are willing to make a sacrifice to have the opportunity. It is quite clear that most lawyers with established practices make a financial sacrifice to accept a part-time probate judgeship since they are, during their term of office, unable to handle probate matters, at least in the same county in which they sit.[20] This disability extends to the partners of probate judges.

In some counties, especially the less populous counties, it is already difficult to find a lawyer of the requisite standing who is willing to be a candidate for election or to accept an interim appointment.[21] In some counties judges and lawyers have expressed the opinion that they do not know how the bar associations and the county political leaders can recruit competent replacements when the incumbent judges resign or retire.

All of the present judges have been asked (1) whether or not they recommend a change to full-time professional judges, (2) whether or not they would oppose such a change and (3) whether or not they would be willing to be considered for designation to the new judgeships. Almost all of the judges are in favor of a change and none of the judges interviewed will oppose such a change. At least three or four of the present judges would welcome an opportunity to devote their full time to judicial office if a reasonably adequate salary were available. While the notes taken by

Mr. Niles and Mr. Vose will reveal the opinions of the various judges and will record the shadings of enthusiasm or acquiescence, it is not thought proper to set out the personal and often confidencial views of the judges in this report.

The registers are also part-time county officers and are elected for periods of four years.[22] The registers need not be lawyers although several of them are. At the present time over half of them are women and most of those who are women devote substantially all of their working time to their official duties. The men either have law practices or businesses or other types of part-time employment. While the registers are subject to the general supervision of the probate judge of the county, and all of the present registers seem to cooperate with the judges, nevertheless the registers being elected by the people might consider themselves directly responsible to the people and might not work in as close harmony with the judges as they would if they were selected in some way other than by popular election. Some registers spend only an hour or so each day at the registry (except on term days) but, as indicated earlier, other registers are at the registry during all usual working hours.

IV. Probate Jurisdiction in Maine and in Other States

The courts of Maine represent a rather curious hybrid of two types of court structures that are commonly found in the United States. In twenty-one states[23] (other than Maine) the probate court is an inferior court, often having no equity powers and having legal powers of a very

limited nature. Indeed, the judges in such probate courts are sometimes not lawyers. Because of the limited jurisdiction of such probate courts, and the limitations on the legal abilities of some of the judges, there is an appeal as of right from the probate court to a court of general jurisdiction and a trial de novo in that court. The higher court has equity jurisdiction and the ability to try contested matters either with or without the aid of a jury.[24]

In a majority of American jurisdictions the probate courts are now merged with or are coordinate with the trial courts of superior jurisdiction.[25] In twenty-two states probate jurisdiction is vested in the trial courts of superior jurisdiction and judges serve in probate matters by assignment either in rotation or according to their preferences or the needs of different localities. Some judges may be regularly assigned to probate work, especially in metropolitan centers.[26] In seven states the probate courts are coordinate with the courts of superior jurisdiction, but are separate, even though the same judges may serve in more than one capacity in less populous areas.

In Maine the jurisdiction that might in other states be vested in a probate court is distributed in a unique fashion among three courts: the probate court; the superior court, both as a court of equity and as the supreme court of probate;[27] and the supreme judicial court, with a single justice sitting as a judge in equity and usually submitting the matter "on report" for decision by the full court. In other words, certain equity

matters relating to wills or trusts might be litigated initially in any of three courts.

The probate court in Maine has original jurisdiction over decedents' estates, including probate of wills, the supervision of probate bonds, the granting of widows' and children's allowances, the descent and distribution of the estates of intestate decedents, the appointment of executors and administrators, including special administrators. It has jurisdiction over the discovery of property, inventory and appraisal of decedents' estates, debts of the estate, debt due the estate; the partition of real estate, licenses to sell real estate; accountings, distribution, and compromise of claims. The probate court also has jurisdiction over the estates of missing or absent persons, infants or incompetents, including the sale of the wards' real estate and the accounting of guardians. It also has jurisdiction over the appointment of testamentary trustees and the administration of testamentary trusts and in certain cases over inter vivos trusts. It also has jurisdiction over adoptions, separations, changes of name, involuntary hospitalization of the mentally ill, and commitment to Pineland Hospital and Training Center.[28] In matters within its statutory jurisdiction, its decrees are conclusive and not subject to collateral attack.[29]

The superior court and also the supreme judicial court have original jurisdiction in equity matters that relate to wills and trusts such as bills in equity to construe wills or trust instruments, proceedings to

instruct a trustee, or to determine a trustee's powers.[30]

Any attempt to reorganize the jurisdiction of the probate court must take into consideration the present jurisdiction of other courts in matters relating to estates and trusts. The work load of new full-time judges presumably should include matters which may now be initiated in higher courts.

V. Trust and Estate Cases 1946-1965

The unusual division of judicial work in cases involving estates and trusts can be better understood by analyzing cases over a period of time.

In the twenty years from the beginning of 1946 through 1965, 100 cases involving probate, trust and related matters reached the supreme judicial court. Fifteen, or 15%, of these cases were heard initially by a single justice of the supreme judicial court.[31] These were mostly will construction cases, some of great difficulty and involving a substantial amount of time to hear. In deciding these cases the court was not aided by the taking of testimony below or by the considered opinion of a judge at the trial level. Thirty-three cases, or 33%, were initiated in the Superior Court.[32] Four of these were tax cases. Of the twenty-nine non-tax cases, twelve were taken to the supreme court on report, five on exceptions, and twelve by appeal. Of the balance of the cases that originated in the probate court,[33] fourteen were tax cases, and thirteen of them went up to the supreme judicial court on report, one on exceptions. Seven non-tax cases were taken directly from the probate court

to the supreme judicial court, five on report and two by appeal. Only thirty-one non-tax cases that were initiated in the probate court were appealed to the supreme court of probate before being taken to the supreme judicial court, four on report, three by appeal and twenty-four on exceptions.

There are presumably historical and perhaps practical reasons why the supreme judicial court is willing to accept so many cases initially or on report, but an outside observer must doubt that the only appellate court in Maine can long continue this tradition. Certainly it is inefficient to have cases tried in the probate court and again in the supreme court of probate. And occasionally a litigant in order to get complete justice has had to proceed by separate actions in both the probate court and the superior court.[34]

This case study will be referred to later when the Institute proposes a plan that would eliminate the duplication involved in hearings in both the probate court and the supreme court of probate, and would minimize the burden now placed on the supreme judicial court in hearing evidence and making decisions without the aid of a record made below or a prior reasoned decision.

VI. Criteria for Modern Probate Courts

There would probably be little disagreement with certain general criteria for modern probate courts.[35]

First, the judges must have the confidence of the public. They

must be persons of the highest integrity because they have the responsibility to safeguard the estates of persons who are dead, to protect the surviving spouses, dependent children and other relatives of decedents, and to protect and to conserve the property of young or incompetent persons. It is the responsibility of these judges to hold executors, administrators, testamentary trustees, guardians and conservators to a high standard of accountability. Public confidence is dependent not only on having upright judges but judges who give the appearance of independence and impartiality.

Second, judges assigned to probate work must command the respect and confidence of the bar. Although these judges do not have to be specialists, they must be able trial judges with a standing in the profession equal to that of judges of the trial court of general jurisdiction. They should have a long tenure so that the experience they gain can be of benefit to the people.

Third, the probate registry should be conveniently located and probate records should be kept near the registry of deeds. Lawyers and the public should have ready access to these records. There should be an officer of the probate court available during all regular business hours to receive papers, to furnish information and to transact the non-judicial business of the probate court. The probate judge is not needed every day, but he should be available in the probate court at regular stated times and be available in chambers at other stated times. If a

register is on duty in the probate office during the regular hours of each working day and the register is deputized to perform duties within his competence, it should be sufficient (except for occasional emergencies) to have the judge available either on the bench or in chambers only as many hours a week as the business of that county requires.[36]

VII. Reasons for Dissatisfaction with the Present Probate Courts.

The field studies conducted by the Institute support the general opinion of the bar that the present part-time probate judges in Maine are honorable and conscientious men. There are, nevertheless, many valid reasons for concern about the present system.

The most serious criticism is that judges are only part-time judges and are paid as such and, therefore, must spend part of their time, and usually most of their time, in the practice of law. As pointed out by Senator Campbell, it is not good policy to have a man be a judge one day and a lawyer the next.[37] The probate judges now must deal with the other lawyers in the county as brother lawyers during part of the week and as judges the balance of the time. Although some judges say they do not recognize any conflict, nevertheless, as probate judges they must approve accounts submitted by their colleagues at the bar and must pass on their fees and allowances. Some judges do feel embarrassment and are sensitive to a possible conflict. From the point of view of the public it is difficult for a part-time judge to seem to be impartial and independent and free of conflicting interests when he is continuously negotiating and dealing with his fellow lawyers in two quite different capacities.

As already suggested the present system of part-time judges tends to attract very young judges who do not stay in office very long, elderly judges who are in semi-retirement, or judges in the middle years who are at the height of their careers in private practice and cannot afford to give a substantial amount of time to the court. Fortunately, there seems to be a concensus in favor of full-time judges to replace the present part-time judges and the 1967 resolution[38] supports this conclusion.

Each judge runs his court and the registry office over which he has supervisory powers without any necessary concern about how other probate courts are operated in Maine or in other parts of the country. Although there has been some effort to attain uniformity in probate forms and procedures, it must be conceded that the efforts in the past have had little effect on the sixteen decentralized county systems.

According to modern standards in states that have conducted recent studies and have attempted to modernize their probate procedures, the system in Maine is, to say the least, old fashioned. Fortunately, the procedures are simple and flexible and in that sense are modern, but nevertheless the statutes, rules and forms are demonstrably in need of reconsideration in the light of the recent experience in other states. The need for a thoughtful review is especially clear in the light of the careful study that preceded the drafting of the Model Probate Code,[39] the exhaustive work of several state revision commissions,[40] and the imaginative and thorough study now being devoted

to the proposed Uniform Probate Code.[41]

VIII. Proposals for Changes in the Court Structure

The Institute makes three preliminary recommendations which are not thought to be controversial: (1) The sixteen probate judges now serving on a part-time basis should be replaced by full-time professional judges. (2) The court with probate jurisdiction should not be an inferior court with an appeal from its decrees for a trial de novo in a trial court of general jurisdiction. (3) There should continue to be a register and a registry office in each of the sixteen counties and the probate registry should be conveniently near the registry of deeds.

If these recommendations are acceptable, it will then be necessary to decide the harder questions about the relationship of the judges who have probate jurisdiction to the other judges in the state.

The directions that were given to the Institute under the concurrent resolution of July 8, 1967[42] contemplated the establishment of a probate district court system with full-time judges each serving one county or a group of counties. As will be pointed out later, the Institute made a study of a probate district court system for Maine and considered several variants on such a system. As the field investigations progressed and as the representatives of the Institute studied the legislative history and the judicial experience in Maine, it became

clear to the Institute that there was a better plan than the one contemplated in the concurrent resolution.

IX. Recommended Plan

The recommended plan is substantially the one that is supported by the definitive studies of probate court organization in the United States that were made in preparation for the drafting of the Model Probate Code.[43] It is essentially the organizational structure recommended by Dean Roscoe Pound in his book "Organization of Courts."[44] It is the plan that has often been adopted in states that have recently modernized the organization of their probate courts.[45]

The plan is simplicity itself. The suggestion is that Maine adopt a three-tier court structure. The first tier would be the district court system as it now exists. The third tier would, of course, be the supreme judicial court as now constituted. In between the district court and the supreme judicial court there would be a single trial court of superior jurisdiction, called as at present the superior court. The superior court that now sits as a court of equity in matters relating to trusts and estates and also sits as the supreme court of probate, would simply take over the balance of the jurisdiction of the present probate courts.

The number of judges of the superior court would be increased so that there would be sufficient manpower to accept responsibility for the probate jurisdiction.

The most obvious advantage of the plan to merge the probate court into the superior court would be that neither the judges of the superior court nor the judges of a separate probate court would have to ride the circuit either as far or as often as superior court judges do now, and therefore all judges could devote more of their time to their judicial duties. This plan would not mean, of course, that judges could not be assigned throughout the state as needed, or that judges could not be assigned to service that would give them reasonable familiarity with conditions in other parts of the state. In the interest of uniformity and in the avoidance of provincial or parochial attitudes, some circuit riding is desirable.

As will be shown in the next section of this report, the recommended plan would be less expensive, more flexible, and more readily adaptable to future change than any separate probate court system.

X. Why Probate District Court Plan Was Rejected

A separate probate court — either as an independent court or a part of the superior court — was rejected only after careful investigations were made and several alternative plans were considered.

It was first determined that probate districts would have to include whole counties so that registries could be continued on a county basis along with registries of deeds. The sixteen counties of Maine do not yield readily to groupings so that each judge of a probate district would have a workload approximately equal to other judges. Computations were made of the average number of certain items of judicial business in each county each year over the period from 1962 to 1967.[46] Counties were then grouped so that the workload of all judges would be roughly equal and so that all districts would have approximately the same number of inhabitants. Tables in the Appendix show four possible groupings, one with six districts,[47] two with seven districts,[48] and one with eight districts.[49] The plan for six districts would require a burdensome amount of travel. The plans for seven districts would be more convenient and would permit a more congenial grouping of counties. The plan for eight districts is patently wasteful. The Institute did not believe that any of the groupings were satisfactory from the point of view of efficient use of judicial manpower.

The concurrent resolution directed the Institute to review the current workload of the sixteen present probate courts and to translate

the caseload of each judge into man hours and to estimate the travel time that would be required of full-time judges. The Institute attempted to comply with these directions. Each judge was asked to indicate the number of hours that he devoted to the work of the probate court each week — the time spent on the bench, in his chambers at the courthouse, and in his own office or home. The results are shown in the Appendix.[50] Each judge was also asked to estimate the amount of time a full-time judge would have to devote to the incumbent's county and to nearby counties. The results, in terms of percentages of a regular work week are set forth in the Appendix.[51] There is an obvious discrepancy between the two tables, explainable in part by the time needed for travel and perhaps for professional reading and research. In the judgment of the Institute the various tables demonstrate that any division of Maine counties into probate districts is wasteful and inefficient.

The Institute also considered a district probate court coordinate with the present district court or with a position between that of the district court and the superior court. The idea of a probate court with a statutory jurisdiction as a fourth tier in the court system was rejected because such a court would not relieve either the superior court or the supreme judicial court in the cases where the equity jurisdiction of the three courts overlap. Furthermore, a judge in an inferior probate court who did not have a full workload would not be useful in either the

district court or the superior court.

A probate court that was coordinate with the superior court but was a separate part thereof was rejected because it would be wasteful of manpower and extravagant in terms of travel requirements. At the present time the ten superior court judges are said to be over-extended — no doubt in part because they must hold court in all sixteen counties. The Institute is informed that one or two new superior court judges will have to be added to help with the present work of the court. A separate probate court of seven judges — whether inferior or coordinate — would also have to hold court and supervise registries in sixteen counties. The travel burdens of two courts covering the same counties would be substantially reduced if the two courts were merged into one court of general jurisdiction. In a merged court, in the judgment of the Institute, five new superior court judges (not counting the judges to be added for other reasons) would be equivalent to seven judges in a separate court. A superior court with a total of sixteen or seventeen judges, it is submitted, could better serve the people of Maine than a superior court of eleven or twelve judges and a probate court of seven.

XI. Trends for the Future

The concurrent resolution suggested that trends for the future be considered. Unfortunately there is little statistical evidence of any trend. From 1962 until 1967 there was little change noted in the volume of judicial work in any of the counties.[52] For the present Maine seems

to have a rather stable population. There is, however, opinion evidence that the volume of probate work in Maine will increase, especially in the coastal counties. There is a great land boom all along the coast as far up as Washington County and waterfront land is selling at a great premium. It is probable that there will be many new summer residents of Maine and it is likely that an increased number of these residents will retire in Maine and eventually their estates will be administered in Maine.

Perhaps the trends within the law are more important than the trends in population growth. There is an incipient trend toward fewer testamentary trusts and more inter vivos trusts including those which will be receptacles into which testamentary assets will be "poured."[53] This trend could cause a shift of judicial business away from separate probate courts to other courts of equity, and is therefore an argument against separate probate courts.

Another prediction may be hazarded. The one hundred cases considered earlier are remarkable for the relative absence of judicially settled accounts of fiduciaries and hence of objections to accounts and attempts to surcharge fiduciaries. Apparently the trust companies in Maine do not normally seek a judicial settlement of their accounts. It is not likely, however, that this type of litigation will be lacking if there should be a severe turn in the economic cycle. The period from 1946 to 1965 has been one of unparalleled prosperity and mild inflation.

Surcharge cases thrive in periods of recession. Trustees may again want the security of judicially settled accounts, and if so, an added burden will be imposed on courts of equity and will make an efficient system more important.

XII. Cost of New Court Plans

The salaries of the present probate judges total about $72,000.[54] The recommended plan would add five superior court judges at a cost of approximately $100,000 for salaries. More important than the difference in cost would be the adjustments necessary in the probable shift from county to state financial support. The administration of the merged court, including the assignment of judges to supervise the sixteen probate registries, would place an increased burden on the Chief Justice. This burden should not be too heavy, especially if the Chief Justice is ultimately given a court administrator to assist him.

XIII. Registers

The concurrent resolution directed a study of the registers only as it might be necessary in connection with a complete court system. The Institute believes it proper, however, to make a few recommendations which are closely related to an efficient court system.

First, the Institute recommends that registers be full-time county officers. With probate judges riding the circuit it will be necessary for the register to be a primary and continuing point of contact with the local bar and with the residents of the county. While it is not necessary under the most scientific recent studies that the register be a

lawyer, it is necessary that the register take more responsibility and be trained to perform some important although non-judicial functions.[55]

It is also recommended that registers be appointed by the Chief Justice, as court clerks are now appointed. It will become even more important in the future that the register work in close collaboration with the judge, especially when the judge is absent from the county. While the present registry system seems to be working reasonably well and most of the elected registers seem to cooperate with the judges, there have been instances of friction and failure to cooperate and that likelihood is always present. The Chief Justice would obviously be influenced by the recommendation of the judges and a better working arrangement would probably result if registers were appointed.

If registers are full-time officers they will, of course, have to receive higher compensation. This higher compensation will be somewhat minimized by the fact that the registers will spend a full working week at their duties and hence presumably will need less clerical assistance. It is also possible, in the opinion of most of the probate judges, to reconsider the schedule of fees now charged in the registries so that any increased cost could be minimized or perhaps fully met.

All of the incumbent probate judges think that registers should be full-time officers,[56] but the judges vary widely in their recommendations as to a suitable salary.[57] The Institute recommends that the salaries of registers be fixed by the Legislature, as the salaries of court clerks now are.

XIV. Transition

It is assumed in this report that any probate judge or register who was elected in 1966 or in November 1968 would be permitted to complete his term of office if he should choose to do so. The Institute has been advised by a number of judges that if the new system were put into effect, they would be willing to resign. Other judges would hope to be appointed as full-time judges. A few, mostly over-age judges, would probably resign if some pension benefits could be made available to them.

A difficult constitutional issue might be encountered if judges (and perhaps registers) were not permitted to continue in office for the terms for which they have been elected. The issues have recently been litigated in Connecticut.[58] It is suggested that it would be fairer and would cause less opposition and confusion to transfer the jurisdiction of the probate court of each county only when the judge's term expires or the judge dies or retires. The superior court would accept responsibility for each county as the probate judgeship became vacant.

Since under the recommended plan the register would become a full-time employee at a higher salary, it is likely that most registers would resign their elective offices to be reappointed on the new basis. Where either the register or the Chief Justice would be unwilling to enter into the new arrangement with respect to a particular county, the elected register should complete his elective term on the present basis.

XV. Conclusion

The Institute started this study and completed most of its field investigations with the expectation that it would recommend a new probate court system with full-time probate judges, with each judge responsible for an assigned district of from one to four counties. The Institute has concluded, however, that the best plan for Maine is to merge the probate court completely into the superior court. This is the plan that is gaining favor in other states and seems destined to be the most widely accepted plan in the future. As suggested earlier, twenty-two states now have merged the probate jurisdiction into that of the trial court of superior jurisdiction, and seven others have separate but coordinate courts. The twenty-one states (other than Maine) that have probate courts inferior to the court of general jurisdiction are mostly states that have not changed their court structure for many years.

The modern trend is to make the probate judge a full-time judicial officer — free of the administrative work that can be done as well or better by a trained and supervised register. The judge should have the standing and respect of a judge of the trial court of general jurisdiction.

In summary the Institute recommends:

1. That the present part-time probate judges be replaced (as vacancies occur) by full-time judges.

2. That the supreme court of probate be abolished.

3. That probate registries be maintained in each county, conveniently close to the registry of deeds.

4. That the jurisdiction of the present probate courts be added to the jurisdiction of the superior court.

5. That the present part-time registers be replaced (as vacancies occur) by full-time registers appointed as clerks of court are now appointed.

6. That new superior court judges be appointed as needed.

FOOTNOTES

1. S.P. No. 710 (July 8, 1967).

2. Former President, The Association of the Bar of the City of New York; former Chairman, Section on Real Property, Probate and Trust Law, American Bar Association; Professor, former Dean, School of Law, New York University.

3. Legislative Research Committee, Publication No. 100 - 4, January, 1961.

4. Member of the bar of Maine, former trust officer and former President of the Corporate Fiduciaries Association of Maine.

5. After the death of the late Judge Robert T. Smith, Judge John B. Roberts of York County has been serving both Oxford and York Counties.

6. Project Report No. 67 - 1, May 10, 1967.

7. 4 Maine Revised Statutes Annotated (hereafter MRSA) 201 et seq.; Fairfield v. Gudliver, 49 Me. 360 (1860); Towle v. Coe, 63 Me. 245 (1875); Taber v. Douglas, 101 Me. 363, 64 A. 653 (1906); Paine v. Folsum, 107 Me. 337, 78 A. 378 (1910); Appeal of Waitt, 140 Me. 109, 34 A.2d 476 (1943); In re Edward's Estate, 161 Me. 141, 210 A.2d 17 (1965).

8. Colledge v. Allen, 82 Me. 23, 19 A. 89 (1889); Snow v. Russell, 93 Me. 362, 45 A. 305, 309 (1899); Paine v. Folsum, 107 Me. 337, 78 A. 378 (1910); Clough v. Newton, 160 Me. 301, 203 A.2d 690, 693

9. Appeal of Waitt, 140 Me. 109, 34 A.2d 476 (1943); Simes & Basye, "The Organization of the Probate Court in America," Problems in Probate Law, Chicago, 1946, 385, 416. [Originally printed in 42 Mich. L.Rev. 965, 43 Mich. L.Rev. 113 (1944)]

10. 1820 Session Laws ch. 51, § 1.

11. 1869 Session Laws, ch. 8, § 1.

12. In re Dean, 83 Me. 489, 22 A. 385 (1891).

13. 4 MRSA § 252.

14. 4 MRSA § 401.

15. Ibid.

16. Revised Stat. 1856, ch. 210.

17. Niles, The Popular Election of Judges in Historical Perspective, 21 Record , Assoc. of the Bar of the City of New York, 523 (1966).

18. Constitution, Art. VI, § 6 before its repeal in 1967 (S.P. 238 - L.D. 563).

19. See Tables I, VI and VII.

20. 4 MRSA § 307.

21. This fact is pointed out in the concurrent resolution, supra n. 1.

22. Constitution, supra n. 18.

23. According to IV Martindale-Hubbell, Part V (1968), the states are: Alabama, Arkansas, Colorado Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Maine, Michigan, Minnesota, New Hampshire, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont.

24. Simes & Basye, "The Organization of the Probate Court in America", supra n. 9.

25. According to IV Martindale Hubbell, Part V (1968), the states are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Louisiana, Montana, Nebraska, Nevada, New Jersey, North Carolina, Oklahoma, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, District of Columbia.

26. According to IV Martindale-Hubbell, Part V (1968), the states are: Maryland, Massachusetts, Mississippi, Missouri, New Mexico, New York and Oregon.

27. 4 MRSA §§ 252, 401.

28. The statutory jurisdiction is found in the following sections: Title 18, MRSA; 4 MRSA §§ 251, 252, 304; 19 MRSA §§ 531-538, 581-588, 781; 34 MRSA §§ 2151, 2334.

29. Potter v. Webb, 2 Me. 257 (1823); Moody v. Moody, 11 Me. 247 (1834); Pierce v. Irish, 31 Me. 254 (1850); Clark v. Pishon, 31 Me. 503 (1850); Simpson v. Norton, 45 Me. 281 (1858); Coburn v. Loomis, 49 Me. 406 (1862); Arnold v. Mower, 49 Me. 561 (1861); Thurlough v. Chick, 59 Me. 395 (1871); McLean v. Weeks, 65 Me. 411 (1876); Harlow v. Harlow, 65 Me. 448 (1876); In re Thompson, 116 Me. 473, 102 Atl. 303 (1917); Chaplin v. National Surety Corp., 134 Me. 496, 185 Atl. 516 (1936); In re Neely's Estate, 136 Me. 79, 1 A.2d 772 (1938).

30. 4 MRSA §§ 105, 252; Norris v. Moody, 120 Me. 151, 113 A. 24 (1921); Eastern Maine General Hospital v. Harrison, 135 Me. 190, 193 A. 246 (1937); In re Neely's Estate, 136 Me. 79, 1 A.2d 772 (1938). See also footnotes 31 and 32.

31. Busque v. Marcou, 147 Me. 289 (1952); U.S. Trust Co. of New York v. Boshkoff, 148 Me. 134 (1952); Dutill v. Dana, 148 Me. 541 (1952); Strout v. Little River Bank & Trust Co., 149 Me. 181 (1953); Wing v. Rogers, 149 Me. 340 (1953); Belfast v. Goodwill Farms, 150 Me. 17 (1954); New England Trust Co. v. Sanger, 151 Me. 295 (1955); Pierce v. How, 153 Me. 180 (1957); Linnell v. Smith, 153 Me. 288 (1957); Grigson v. Harding, 154 Me. 146 (1958); Berman v. Frendel, 154 Me. 337 (1959); Jordan v. Jordan, 155 Me. 5 (1959); First Portland v. Kaler-Vaill, 155 Me. 50 (1959); Gannett v. Old Colony Trust, 155 Me. 248 (1959); Swasey v. Chapman, 155 Me. 408 (1959). The Supreme Judicial Court has found it necessary to protect itself against a tendency to report cases which present no questions of law of sufficient importance or doubt to justify the practice. Hand v. Nickerson, 95 A.2d 813 (1953).

32. Merrill Trust Co. v. Perkins, 142 Me. 363 (1947); Butler v. Dobbins, 142 Me. 383 (1947); U.S. Trust v. Douglas, 143 Me. 150 (1948); Blue v. Borsvert, 143 Me. 173 (1948); Thaxter v. Canal National Bank, 144 Me. 176 (1949); Davis v. American Surety Co., 144 Me. 187 (1949); Cassify v. Murray, 144 Me. 326 (1949); Cassidy v.

Murray, 145 Me. 207 (1950); Dow v. Bailey, 146 Me. 45 (1950); Sard v. Sard, 147 Me. 46 (1951) (Part of case); First Universalist Society of Bath v. Swett, 148 Me. 142 (1952); Mellen v. Mellen, 148 Me. 153 (1952); Guilford Trust v. Inhabitants of Guilford, 148 Me. 162 (1952); Hand v. Nickerson, 148 Me. 465 (1953); Giquere v. Webber, 149 Me. 12 (1953); City of Bangor v. Merrill Trust Co., 149 Me. 160 (1953); Davis v. Scavone, 149 Me. 189 (1953); Dunton v. Maine Bonding & Casualty Co., 150 Me. 205 (1954); 151 Me. 283 (1955); Dutch v. Schribner, 151 Me. 354 (1955); Berman v. Shalit, 152 Me. 266 (1956); Fiduciary Trust Co. v. Brown, 152 Me. 360 (1957); Eaton v. MacDonald, 154 Me. 227 (1958); Bragdon v. Worthley, 155 Me. 284 (1959); Old Colony Trust v. McGowan, 156 Me. 138 (1960); Wilson v. Wilson, 157 Me. 119 (1961); First Portland Nat. Bank v. Rodrique, 157 Me. 277 (1961); Canal Nat. Bank v. Chapman, 157 Me. 309 (1961); Murray v. Sullivan, 158 Me. 98 (1962); Patterson v. Patterson, 158 Me. 253 (1962); Stetson v. Johnson, 159 Me. 37 (1963); Clough v. Newton, 160 Me. 301 (1965); Holbrook Island Sanctuary v. Brooksville, 161 Me. 477 (1965).

33. Murray, Appellant, 142 Me. 24 (1946); Kimball, Petitioner, 142 Me. 182 (1946); MacDonald v. Stubbs, 142 Me. 235 (1946); Canal Bank v. Bailey, 142 Me. 315 (1947); Hallett v. Bailey, 143 Me. 1 (1947); Whorff v. Johnson, 143 Me. 198 (1948); Smith, Appellant, 144 Me.

33. 235 (1949); Cote, Appellants, 144 Me. 297 (1949); Estate of Meier, cont'd
144 Me. 358 (1949); Jensen, Appellant, 145 Me. 1 (1950); Knapp, Appellant, 145 Me. 189 (1950); Dantillon v. Walker, 146 Me. 168 (1951); Heath, Appellants, 146 Me. 229 (1951); Gould v. Johnson, 146 Me. 366 (1951); Weeks v. Johnson, 146 Me. 371 (1951); D'Aoust, Appellant, 146 Me. 443 (1951); Sard v. Sard, 147 Me. 46 (1951); Crockett, Appellant, 147 Me. 173 (1951); Wyman, Appellant, 147 Me. 237 (1952); Sleeper, Appellant, 147 Me. 302 (1952); Paradis, Appellants, 147 Me. 347 (1952); Spear, Appellant, 148 Me. 256 (1952); Richburg, Appellant, 148 Me. 323 (1952); Stewart v. Stewart, 148 Me. 421 (1953); Knapp, Appellant, 149 Me. 131 (1953); Thirkell v. Johnson, 150 Me. 131 (1954); Legault v. Levesque, 150 Me. 192 (1954); Boston Trust Co. v. Johnson, 151 Me. 152 (1955); Waning, Appellant, 151 Me. 239 (1955); Wattrich v. Blakney, 151 Me. 289 (1955); Thibault v. Estate of Fortin, 152 Me. 59 (1956); Royal, Appellants, 152 Me. 242 (1956); Williams, Appellant, 154 Me. 88 (1958); Swan v. Swan, 154 Me. 276 (1958); Thaxter, Appellant, 154 Me. 288 (1958); Wagner, Petitioner, 155 Me. 257 (1959); In re Moody, 155 Me. 325 (1959); Gould v. Johnson, 156 Me. 446 (1960); Casco Bank & Tomuschat, Appellants, 156 Me. 508 (1960); Joyce Estate, 158 Me. 304 (1962); Chevvis v. Chivvis, 158 Me. 354 (1962); Caswell v. Kent, 158 Me. 493 (1962); Ferguson v. Johnson, 159 Me. 4 (1963); Fiduciary Trust Co. v. Silsbee, 159 Me. 6 (1963); Merrill Trust Co. v.

Johnson, 159 Me. 45 (1963); Barton v. Beck Estate, 159 Me. 446 (1963); Estate of Foss, 160 Me. 215 (1964); Estate of Mardegian, 160 Me. 221 (1964); Will of Edwards, 161 Me. 141 (1965); Hayes v. Johnson, 161 Me. 239 (1965); Fitanides v. Stickney, 161 Me. 343 (1965); Eastman v. Johnson, 161 Me. 387 (1965).

34. Sard v. Sard, 147 Me. 46 (1951).

35. Atkinson, "Organization of Probate Courts and Qualifications of Probate Judges," 23 J. Am. Jud. Soc. 93 (1939); Simes & Basye, "The Organization of the Probate Court in America," supra n. 9, 486.

36. Uniform Probate Code (National Conference of Commissioners on Uniform State Laws, Second Tentative Draft (Fourth Working Draft), August 1, 1968, § 1 - 201 and Comment.

37. See statement of Senator Joseph B. Campbell, Minutes of Executive Session, Legislative Research Committee, Feb. 20, 1968. He said that all Judges of Probate should be on a full-time basis and not judge one day and lawyer the next.

38. Resolve, Proposing a Constitutional Amendment Repealing the Offices of Judges and Registers of Probate as Constitutional Offices, S. P. 238 - L. D. 563, Approved July 5, 1967 by the Governor.

39. Niles, "Model Probate Code and Monographs on Probate Law: A Review," 45 Mich. L. Rev. 321 (1947).

40. Temporary State Commission on the Law of Estates, Sixth and Final Report. March 31, 1967 (Legislative Document [1967] No. 19). See also, Simes, "Ten Probate Codes", 50 Mich. L. Rev. 1245 (1952).

41. Uniform Probate Code with Prefatory Note and Comments; Second Tentative Draft (Fourth Working Draft, July-August 1968).

42. Supra n. 1.

43. Simes & Basye, supra n. 9, 385, 482. The conclusions of the authors are as follows:

> "The standards for an ideal probate court will be considered from three standpoints: first, the place of the court in the judicial organization; second, the subject matter of the jurisdiction of the court; and third, the personnel of the court.
>
> First, the probate court should be given a place in the judicial organization fully coordinate with the trial court of general jurisdiction. Historically, that has been the course of development in England; and that is the trend in the United States. The nature of the business of the probate court, the fact that it handles estates unlimited in value and character, and that its jurisdiction may well include the specific administration and distribution of both the real and the personal property of the estate, all point to a conclusion that a superior court is needed. If such a court is set up, then appeals with trial de novo in the court of general jurisdiction would necessarily be eliminated. The only appeals would be to the appellate courts to which appeals are made in actions at law and suits in equity.
>
> Second, the probate court should be the same court as the court of general jurisdiction or should be a division of it. This does not mean merely a unification of judges, such, for example, as is the plan in certain counties in Ohio and Pennsylvania. It means a unification of *courts*. Indeed, this unification should be so complete that, if, after a proceeding is begun, it is found to come under the equity or common-law jurisdiction of the court, it can be transferred to another docket of the court or to another division, without beginning the proceeding anew. * * *

43. cont'd

This type of judicial organization can be adapted to operate both in metropolitan areas and in rural districts. Without doubt, in large cities there will be a number of judges selected for the trial courts of general jurisdiction. Statutory provisions should set up some sort of judicial council, or other administrative machinery, whereby these judges can be assigned to particular specialized matters. Just as some may be assigned solely to criminal matters or to domestic relations cases, so others should be assigned to the probate work of the court. This is in fact done in certain metropolitan areas in California. But the writers would advocate going even a step farther than does the California system. In that state, the superior court, when it hears a probate matter, is the "superior court sitting in probate." While it is not another court, still its jurisdiction is so different that a proceeding cannot ordinarily be transferred from its probate to its civil jurisdiction, but would have to be started anew. The probate jurisdiction of the trial courts in the state of Washington is to be preferred in this particular. In that state, as has been seen, there is not a court "sitting in probate." It is all a part of the same jurisdiction whether the subject matter be civil or probate.

In rural areas of sparse population objection may well be raised to a separate judge of probate if he is to have the same qualifications and salary as the judge of the trial court of general jurisdiction. It may be felt that the small amount of probate business does not justify such an expensive court. But when the probate jurisdiction is added to that of the civil and criminal jurisdiction of the trial court, not only is this objection eliminated, but the advantages of a unified court are also obtained.

If the objection is made that in many states the unit for the trial court is a district which may include several counties and that the emergency character of some kinds of probate business may well require a judge in each county, the answer is that the trial judge may be assigned to a circuit which includes a number of counties; but clerks may be elected or appointed in each county to take care of routine business under the supervision of the judge, and, of course, the court can sit in each county.

43. cont'd

What should be included in the subject matter of the jurisdiction of the ideal probate court? Certainly if we have the unified court, then this question becomes less important. If it is the same judge or a division of the same court, it becomes much less important whether he is sitting in equity or in probate as to the particular question before him. Nevertheless, in the interests of efficiency and simplicity of administration, it would seem that all matters directly connected with the administration of the decedent's estate should be within the probate division of the court. Such has been the definite trend of legislation in the United States even where probate courts are entirely separate from the trial courts of general jurisdiction. And it is believed that that trend is sound. In that particular the English judicial system might profit by imitating some American models.

As to matters other than decedents' estates, it is clear that the probate jurisdiction should include guardianships and matters closely related, such as adoptions. But this jurisdiction should not be weighted down with all sorts of irrelevant administrative matters, such as are sometimes assigned to county courts which sit in probate matters.

Third, what can be said as to the personnel of the court? Obviously, if the judge is a judicial officer of the trial court of general jurisdiction, he should have, and will have, the same qualifications as that judge, with a corresponding tenure and salary. But even if that were not the case, the nature of probate jurisdiction calls for such qualifications. He should be a member of the bar, preferably with experience in practice or on the bench.

44. (1940). At page 281 Dean Pound said in part:

"The second branch, the Superior Court, should be given complete jurisdiction of first instance, civil and criminal, the civil jurisdiction, for reasons set forth in preceding chapters, to include law, equity, and probate. Certainly there should be no mandatory setting off of these types of cases to separate divisions. But the organization of this branch should be so flexible that if experience showed good reason for setting off some or all of them in that way, it could be done by rule of court, or more simply by assigning cases to judges in such a way as to effect a practical segregation, which, however, could be changed or revoked later if experience or changed conditions made such action advisable."

45. Simes, Ten Probate Codes, supra n. 40.

46. See Table VI, summarizing totals in Tables II through V.

47. Table XI.

48. Tables IX and X.

49. Table XII.

50. Table VII.

51. Table VIII.

52. See Tables II through V.

53. 18 MRSA §7; Uniform Probate Code, supra n. 36, Part VI.

54. Table I

55. Simes & Basye, "The Organization of the Probate Court in America," supra n. 9 at 487. See also Uniform Probate Code, supra n. 36, Comment to §1 - 201.

56. Letters on file in the I.J.A. office from all Judges of Probate.

57. See Table XIII.

58. Adams v. Rubinow (Supreme Court of Conn., Nov. 26, 1968) 30 Conn. L.J. 3 (1968).

APPENDIX

Table I

Salaries of Judges in Proportion to Population

County	Judge's Salary	Population	Salary per 1000 of Population
Androscoggin	$ 5,400	86,312	$ 62.79
Aroostook	4,500	106,064	42.45
Cumberland	(8,000) *	182,751	43.70
Franklin	2,000	20,069	100.00
Hancock	4,500	32,293	140.62
Kennebec	6,000	89,150	67.42
Knox	(3,000)*	28,575	103.45
Lincoln	3,500	18,497	184.21
Oxford	4,200	44,345	95.45
Penobscot	6,028.61	126,346	47.85
Piscataquis	(3,200) *	17,379	188.23
Sagadahoc	3,500	22,793	152.17
Somerset	(4,700)*	39,749	117.50
Waldo	3,600	22,632	156.52
Washington	(3,000) *	32,908	90.91
York	(6,500) *	99,402	65.65

* 1966 salary

Table II

Wills Entered for Probate — 1962 - 1967

County	Code	1962	1963	1964	1965	1966	1967	Average
Androscoggin	(01)	274	300	310	289	266	310	291
Aroostook	(02)	118	136	135	137	123	126	129
Cumberland	(03)	644	669	667	683	677	689	672
Franklin	(04)	78	87	64	86	67	86	76
Hancock	(05)	186	185	155	178	184	197	181
Kennebec	(06)	282	257	286	280	323	286	285
Knox	(07)						160	160
Lincoln	(08)	116	104	106	113	129	138	114
Oxford	(09)	163	142	130	139	153	152	145
Penobscot	(10)		326		360	330		336
Piscataquis	(11)	72	94	77	89	79	91	82
Sagadahoc	(12)	76	89	78	89	64	98	79
Somerset	(13)	124	121	122	120	134	133	126
Waldo	(14)	95	95	105	78	94	101	95
Washington	(15)	75	92	68	77	88	85	80
York	(16)					338	308	323

Table III

Administrations

County	Code	1962	1963	1964	1965	1966	1967	Average
Androscoggin	(01)	126	143	114	114	122	104	121
Aroostook	(02)	80	83	70	86	88	79	81
Cumberland	(03)	269	280	280	261	289	254	272
Franklin	(04)	42	33	42	26	41	28	37
Hancock	(05)	64	74	82	63	59	58	67
Kennebec	(06)	140	124	117	121	115	129	124
Knox	(07)						60	60
Lincoln	(08)	53	37	51	42	42	37	45
Oxford	(09)	69	69	60	61	64	81	65
Penobscot	(10)				149	155		150
Piscataquis	(11)	36	45	40	54	45	35	44
Sagadahoc	(12)	32	31	38	39	35	27	35
Somerset	(13)	88	84	76	68	90	68	79
Waldo	(14)	85	64	67	67	52	44	63
Washington	(15)	55	50	54	54	58	72	54
York	(16)					159	141	150

Table IV

Adoptions

County	Code	1962	1963	1964	1965	1966	1967	Average
Androscoggin	(01)	80	83	80	72	64	110	82
Aroostook	(02)	91	70	79	59	62	74	73
Cumberland	(03)	196	183	219	250	234	267	225
Franklin	(04)	18	17	18	14	18	17	17
Hancock	(05)	58	46	27	49	41	44	44
Kennebec	(06)	88	69	87	74	71	82	78 +
Knox	(07)						46	46
Lincoln	(08)	16	24	19	14	21	8	19
Oxford	(09)	40	38	28	41	35	38	36
Penobscot	(10)		137	141	129	127		139
Piscataquis	(11)	15	19	20	10	5	21	14
Sagadahoc	(12)	34	40	30	18	38	38	32
Somerset	(13)	36	34	45	20	38	74	41
Waldo	(14)	29	24	28	19	21	22	24
Washington	(15)	24	27	32	41	27	26	30
York	(16)					123	125	

Table V

Guardians and Conservators Appointed

County	Code	1962	1963	1964	1965	1966	1967	Average
Androscoggin	(01)	83	73	101	78	85	82	84
Aroostook	(02)	42	46	44	40	46	41	43
Cumberland	(03)	218	181	187	171	183	162	180
Franklin	(04)	14	18	15	14	19	18	16
Hancock	(05)	42	45	33	36	14	30	33
Kennebec	(06)	76	88	110	90	93	91	91 +
Knox	(07)						46	46
Lincoln	(08)	32	18	35	37	34	25	31
Oxford	(09)	46	36	44	47	44	41	43
Penobscot	(10)			101	93	99		98
Piscataquis	(11)	27	28	18	33	23	23	26
Sagadahoc	(12)	28	15	21	18	24	32	21
Somerset	(13)	46	41	43	37	53	34	42
Waldo	(14)	42	35	55	46	32	24	39
Washington	(15)	30	30	30	32	19	28	28
York	(16)					74	78	76

Table VI

Average Number of Items of Judicial Business in Each County for Period from 1962 - 1967

County	Wills	Administrations	Adoptions	Guardians	Total
Androscoggin	291	121	82	84	578
Aroostook	129	81	73	43	326
Cumberland	672	272	225	180	1349
Franklin	76	37	17	16	146
Hancock	181	67	44	33	325
Kennebec	285	124	78	91	578
Knox	160	60	46	46	312
Lincoln	114	45	19	31	209
Oxford	145	65	36	43	289
Penobscot	336	150	139	98	723
Piscataquis	82	44	14	26	166
Sagadahoc	79	35	32	21	167
Somerset	126	79	41	42	288
Waldo	95	63	24	39	221
Washington	80	54	30	28	192
York	323	150	124	76	673

Table VII

Hours of Duty of Incumbent Probate Judges per Week
(As Estimated by the Judges)

County and Judge	On Bench	In Chambers	Office or Home
Androscoggin L. T. Raymond, Jr.	3 [a]	4 [a]	3 [a]
Aroostook James D. Carr	5	10	0
Cumberland N. M. Haskell	10 [b]	4 [b]	7 [b]
Franklin Earl L. Wing	3	3	1
Hancock Norman Shaw	6	2	6
Kennebec Lewis I. Naiman	10	4	2
Lincoln Harvey R. Pease	9	3	1 [c]
Knox A. Alan Grossman	2	5	5
Oxford John B. Roberts	2	—	2
Piscataquis F. Davis Clark	5	4	4

a. Judge Raymond reported: on bench 2-4; in chambers 3-6; and in office or home, 2-4 hours.

b. Judge Haskell indicated 14 hours in court house or in chambers. For the two week period from October 29 to November 12 (including two holidays) Judge Haskell kept detailed time records showing a total of 37 hours, 5 minutes.

c. Judge Pease replied almost nothing in office or home.

Table VII
(continued)

Hours of Duty of Incumbent Probate Judges per Week
(As Estimated by the Judges)

County and Judge	On Bench	In Chambers	Office or Home
Penobscot			
Allan Woodcock, Jr.	4 [d]	12 [d]	2 [d]
Sagadahoc			
G. R. Deering	3 [e]	2	2
Somerset			
George M. Davis	8	10	2
Waldo			
Edward G. Baird	6 - 8	---	3 [f]
Washington			
William F. Boardman	1 1/2	2	4
York			
John B. Roberts	5	5	5

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d. Judge Woodcock stated that for the two week period from October 28 to November 8 (including one holiday and one day at a conference of probate judges and registers) his detailed time record showed a total of 36 1/2 hours.

e. Judge Deering stated that most trial work was additional.

f. Judge Baird's comment was "sometimes little, sometimes much."

Table VIII

Estimated Percentage of Time of a Full-Time Judge Required for Each County

County	IJA Estimate	Estimate of Present Probate Judge for this County	Estimate of Probate Judge in Nearby Counties
Androscoggin	65%		60% (Wing) 35% (Naiman)
Aroostook	60%	50%	60% (Boardman)
Cumberland	100%	100%	
Franklin	20%	20%	20% (Naiman) 25% (Clark)
Hancock	30%	40%	
Kennebec	60%	50%	
Knox	30%	40%	
Lincoln	20%	20%	20% (Naiman)
Oxford	30%	20%	
Penobscot	75%	80%	
Piscataquis	25%	25%	25% (Davis) 20% (Woodcock)
Sagadahoc	20%	20%	30% (Naiman) 25% (Pease)
Somerset	35%	50%	30% (Naiman) 50% (Clark)
Waldo	25%	25%	40% (Grossman) 20% (Pease) 20% (Clark)
Washington	40%	40%	50% (Carr)
York	65%	80%	
	700%		
	(or seven probate judges at 100%)		

Table IX

Possible Grouping of Counties if Seven Probate Judges

	County	Population (1960 Census)	Average Number Items (See Table VI)	Distance Between County Seats	
1.	Cumberland	182,751	1349	Portland	
2.	York	99,402	673	Sanford	73 miles
	Oxford	44,345	289	Norway	
		143,747	962		
3.	Androscoggin	86,312	578	Auburn	46 mi.
	Franklin	20,069	146	Farmington	74 mi.
	Sagadahoc	22,793	167	Bath	
		129,174	891		
4.	Kennebec	89,150	578	Augusta	42 mi.
	Somerset	39,749	288	Skowhegan	
		128,899	866		
5.	Lincoln	18,497	209	Wiscasset	34 mi.
	Knox	28,575	312	Rockland	27 mi.
	Waldo	22,632	221	Belfast	38 mi.
	Hancock	32,293	325	Ellsworth	
		101,997	1067		
6.	Penobscot	126,346	723	Bangor	36 mi.
	Piscataquis	17,379	166	Dover-Foxcroft	
		143,725	889		
7.	Aroostook	106,064	326	Houlton	126 mi.
	Washington	32,908	192	Machias	
		138,972	518		

Table X

Alternate Grouping of Counties if Seven Probate Judges

	County	Population (1960 Census)	Average Number Items (See Table VI)	Distance Between County Seats
1.	Cumberland	182,751	1349	Portland
2.	York	99,402	673	Sanford — 73 miles
	Oxford	44,345	289	Norway
		143,747	962	
3.	Androscoggin	86,312	578	Auburn — 72 mi.
	Somerset	39,749	288	Skowhegan
		126,061	866	
4.	Kennebec	89,150	578	Augusta — 38 mi.
	Franklin	20,069	146	Farmington — 68 mi.
	Sagadahoc	22,793	167	Bath
		132,012	891	
5.	Lincoln	18,497	209	Wiscasset — 34 mi.
	Knox	28,575	312	Rockland — 27 mi.
	Waldo	22,632	221	Belfast — 38 mi.
	Hancock	32,293	325	Ellsworth
		101,997	1067	
6.	Penobscot	126,346	723	Bangor — 36 mi.
	Piscataquis	17,379	166	Dover-Foxcroft
		143,725	889	
7.	Aroostook	106,064	326	Houlton — 126 mi.
	Washington	32,908	192	Machias
		138,972	518	

Table XI
Possible Grouping of Counties if
Six Probate Judges

	County	Population (1960 Census)	Average Number Items (See Table VI)	Distance Between County Seats
1.	Cumberland	182,751	1349	Portland
2.	York	99,402	673	Sanford
				73 miles
	Oxford	44,345	289	Norway
				80 "
	Franklin	20,069	146	Farmington
		163,816	1108	
3.	Androscoggin	86,312	578	Auburn
				26 mi.
	Sagadahoc	22,793	170	Bath
				78 mi.
	Somerset	39,749	295	Skowhegan
		148,854	1033	
4.	Kennebec	89,150	578	Augusta
				102 mi.
	Piscataquis	17,379	166	Dover-Foxcroft
				120 mi.
	Lincoln	18,497	209	Wiscasset
		125,026	953	
5.	Penobscot	126,346	723	Bangor
				35 mi.
	Waldo	22,632	221	Belfast
				27 mi.
	Knox	28,575	312	Rockland
		177,553	1256	
6.	Aroostook	106,064	326	Houlton
				126 mi.
	Washington	32,908	192	Machias
				57 mi.
	Hancock	32,293	325	Ellsworth
		171,265	843	

Table XII
Possible Grouping of Counties if
Eight Probate Judges

	County	Population (1960 Census)	Average Number Items (See Table VI)	Distance Between County Seats
1.	Cumberland	182,751	1349	Portland
2.	York	99,402	673	Sanford
	Oxford	44,345	289	Norway — 73 miles
		143,747	962	
3.	Androscoggin	86,312	578	Auburn
	Sagadahoc	22,793	167	Bath — 26 mi.
		109,105	745	
4.	Kennebec	89,150	578	Augusta
	Lincoln	18,497	209	Wiscasset — 24 mi.
		107,647	787	
5.	Franklin	20,069	146	Farmington
	Somerset	39,749	288	Skowhegan — 28 mi.
	Piscataquis	17,379	166	Dover-Foxcroft — 45 mi.
		77,197	600	
6.	Knox	28,575	312	Rockland
	Waldo	22,632	221	Belfast — 27 mi.
	Hancock	32,293	325	Ellsworth — 38 mi.
		83,500	858	
7.	Penobscot	126,346	723	Bangor
8.	Aroostook	106,064	326	Houlton
	Washington	32,908	192	Machias — 126 mi.
		138,972	518	

Table XIII

Salaries of Registers - 1967

County	Present Salary	Incumbent Judge's Estimate of Salary Required for Full-time Register
Androscoggin	$ 5,200	$ 9,000
Aroostook	4,000	7,500
Cumberland	7,000 [1]	$ 8,500 - $ 9,500
Franklin	3,600	See footnote 2
Hancock	4,058.47	$ 4,058.47 [3]
Kennebeck	4,000	$ 6,500 - $ 7,000
Knox	3,000 [1]	$ 6,500
Lincoln	4,000	$ 6,000 - $ 7,500
Oxford	4,400	$ 7,500
Penobscot	4,915.04	12,500
Piscataquis	3,600 [1]	$ 5,500 - $ 6,500
Sagadahoc	3,400	$ 6,500
Somerset	4,700 [1]	$ 9,000 - $10,000
Waldo	3,600	5,000 - 6,000
Washington	3,600 [1]	$ 6,000 +
York	4,500 [1]	10,000

1 1966 Salary

2 Must be more than $4,500

3 Present salary