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The Work of the New York Law Society

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ON MAY 2, 1932, fourteen lawyers in New York City interested in improving and promoting the administration of justice grouped themselves under the leadership of Dr. Herman Oliphant into an organization called The New York Law Society.

There is, of course, nothing startling in a number of lawyers forming themselves into a group for such a purpose; rather, that appears to be a usual characteristic of the profession. Yet somehow this group differed from others. Its charter members were banded together not because they had achieved high attainments at the bar and success in the practice of law, but because they had participated in an interesting experiment calling for cooperation between the bar and an academic institution applying a new technique for studying the processes of litigation.

In 1929 the Institute of Law of Johns Hopkins University struck out along a new path by conducting a quantitative study of litigation in New York City. For this experiment it had the able direction of Dr. Oliphant and the assistance of the fourteen lawyers. From lawyers and from court records, it gathered a mass of material required for formulating and studying the crucial problems concerning civil actions in the courts of New York City. This material consisted of three main bodies of data:

1. Facts as to 69,000 calendar entries in the Supreme Court and 35,500 calendar entries in the Municipal Court.
2. 5,500 detailed reports of cases from lawyers.
3. Basic information gathered from court records as to each of 8,500 cases in the Supreme Court, 5,500 cases in the City Court and 77,700 cases in the Municipal Court.

*This article is based upon a paper read before the Round Table on Remedies at the meeting of the Association of American Law Schools on December 29, 1938.
†B.A., Yale University (1925), LL.B., id. (1928), Member of Connecticut State and New Haven County Bar Associations, Professor of Law, Yale University; Director of Research, The New York Law Society; Co-author, Cases on Trials, Judgments and Appeals (1936).
††A.B., Cornell (1930), LL.B., Harvard University (1933), Member of American Bar Association, National Lawyer’s Guild, New York State Bar Association, Association of the Bar of the City of New York, and New York County Lawyer’s Association; Research Assistant for The New York Law Society; Co-author, A Proposal to Minimize Calendar Delay (1936); Collaborator, An Historical Analysis of the Judiciary Article, IX Problems Relating to Judicial Administration and Organization (New York State Constitutional Convention, 1938).
Some conclusions reached from this material were published. The net cost of civil litigation in New York City to the taxpayers during 1930 was investigated by two members of the Institute's staff, Stuart Chase and Ida Klaus. This study covered both expenditures and receipts of public funds in the administration of civil justice and attempted some comparison with the cost to taxpayers of other community tasks somewhat comparable. It was published in 1932. In order to bring to bear on the problems in New York the benefit of foreign thought and experience, a member of the cooperating group of practicing lawyers, Edward S. Greenbaum, Esq., with L. I. Reade, Barrister, wrote *The King's Bench Masters and English Interlocutory Practice.* Special attention was given in this study to the “summons for directions” and “settlement of issues.”

Unfortunately, in 1932, the Johns Hopkins University was forced by lack of funds to discontinue this meritorious, but costly venture. So The New York Law Society was formed to continue the work of the Institute in New York and apply its methods in studying the administration of the law. The Society, as the Institute before it, aimed to help in providing a serviceable system of administering justice cheaply, quickly, and with certainty in the midst of the increasing complexity of American life. The administration of justice had not kept pace with the needs of society. The problem was no longer merely a technical legal one, but a social question of the first importance. The task of improvement was conceived to be a twofold one: first, there was the need for facts, and, secondly, the need for a definite program for the adoption of changes which the facts showed to be necessary.

For the achievement of these ends, the form of the organization of The New York Law Society was peculiarly adapted. The founders of the Society were in a position, as lawyers and law professors, to provide or secure some realistic material, not found in records, yet indispensable for fruitful study; to afford a guidance in the choice of the important areas for study, and to subject the results obtained to criticism from

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1. Oliphant, *Study of Civil Justice in New York* (1931); and Oliphant and Hope, *A Study of Day Calendars* (1932). The first of these outlined the need for the New York study and its objectives and methods. The second involved an analysis of 69,901 calendar entries on both jury and non-jury dockets, which contributed to the complete reorganization of the calendar system in Trial Term of the Supreme Court of New York County.


3. Published in 1932.
the standpoint of current reality. On the other hand, a trained research
staff, however small, was necessary to give the work the broad factual
basis so much desired, and the accuracy and objectivity of scholarly
craftsmanship. Combining as it did these two points of view, The New
York Law Society constituted a new conjunction of forces for the study
of law and its administration, which, it was believed, would be of grow-
ing importance as an agency of social well-being.

The work of the Society may, for convenience, be divided into two
periods, 1932 to 1935, and 1935 to the present day. The division is
arbitrary, but it roughly corresponds with changes in the way the work
was financed, and in the personnel and directorship of the organization.
In 1934, moreover, the Judicial Council of the State of New York was
created.

During the earlier period the Society, though hampered by lack of
funds, was able to continue for a time under Dr. Oliphant’s leadership
and, later, with a research assistant of the Institute’s staff carrying on
as director. No collection of additional field data was undertaken, and
most of the work was quite naturally concerned with the material made
available to the Society by the Survey of Litigation. The first study
of this kind was Some Aspects of Appeals.4 It involved an analysis of
every appeal taken from a money judgment in the Supreme Court of
New York County during 1930, and an extended compilation on the
printing costs of briefs and records which partially supplements the
earlier study of public expenditures in the administration of justice.5
The processing and tabulation of the material of the Survey continued
along other lines also during this period. The Work of the Supreme
Court6 was a statistical analysis of every other case in which a “note of
issue” was filed in this court (in New York County) during the year
1930, which tabulated the types of cases, their duration, the amount of
the judgment rendered, and the court costs in each case. The Work of
the City Court7 was a similar statistical analysis of every alternate judg-
ment entered in the City Court, New York County, during 1930. The
Work of the Municipal Court8 was a like analysis of every fifth action
and summary proceeding (i.e., a proceeding to dispossess a tenant from
the premises) instituted in the nine Municipal Court districts of Man-

4Published in 1934.
5Note 2, supra.
6This is the highest court of original civil jurisdiction in New York County.
7The intermediate court of original civil jurisdiction in New York County.
8The lowest court of original civil jurisdiction in New York County.
hattan during 1929. Unfortunately, funds were never made available for publishing these very pertinent statistics and they lie today in the Society's files in manuscript form. From time to time official requests have been made to the Society for data on specific matters, and frequently the Society has drawn on these tabulations and the material bequeathed it by the Institute to prepare special and confidential reports. Some of them are set out in a footnote.  

The first phase of the Society's history was thus devoted largely to developing the data gathered by the Institute of Law. It was inevitable that the research policies should also reflect those of the Institute. Attention was focused on relatively broad exploratory studies dealing with basic data. There was little disposition to enter into controversial matters or to make studies aimed at the solution of isolated particular problems. In 1935, however, the Society lost the active leadership of Dr. Oliphant who went to Washington eventually to become General Counsel for the Treasury Department. Further, the New York Judicial Council had come into being charged with the functions of gathering, analyzing and publishing judicial statistics and recommending improvements in procedure and the administration of civil and criminal justice. This occupied some of the field which the Law Society, as the successor of the Institute, had been engaged in. Consequently, the Society re-examined its policy in the field of law reform to avoid duplicating the work of the Council. To this end it was concluded not to follow the exact footsteps of the Institute and its Survey of Litigation nor to bring that material up to date by later studies, but rather to use a similar technique in attacking

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*The Work of the Judges in the City Court in Relation to Pending Legislation to Increase their Number; Some Suggestions as to the Central Jury Part of the Municipal Court; Some Figures and Observations on Accident Litigation in the Supreme Court; A Comparison of the Work of the Trial Term, Supreme Court, New York County, During the First Three Months of 1930, 1931 and 1932; Some Preliminary Figures on the Duration of Litigation in the Supreme Court, New York County, During 1930; Some General Considerations as to the Policy and Organization of the Municipal Court; Some Figures and Observations on Jury Trials Without a Jury in the Municipal Court; Memorandum in Support of the Senate Bill in Respect to Appeals from Motions Denying Summary Judgment; Memorandum on the Assignment of Justices in the Municipal Court; Memorandum on Broadening the Scope of Examination Before Trial in the Municipal Court of New York.

*2N. Y. LAWS (1934) c. 128, §§ 40-48; N. Y. LAWS (1936) c. 231, § 1. The State Constitution has, since 1925, required the legislature to provide for the compilation of judicial statistics. Art. VI, § 22. But the command was completely ignored until the creation of the Judicial Council, except that the Supreme Court in the First Department did publish annually general statistics of its work.
specific problems which were not being handled by the Judicial Council, or to cooperate with the Council in pushing specific measures of common interest to both organizations.\textsuperscript{11}

Shortly after the creation of the Judicial Council, the writers became associated with the Society. From about the same time its work has been financed by the generosity of individuals and of two foundations, at first, the New York Foundation, and later, the Carnegie Corporation of New York.\textsuperscript{11a}

Today the Society is an organization of twenty-four practicing lawyers and law professors,\textsuperscript{12} most of them with records of public service, and an advisory group of three members.\textsuperscript{13} It is in close relationship with the Yale Law School and its director of research is a member of that faculty. The Society has an office in the Bar Building, New York City, next to the Association of the Bar of the City of New York and, at present, employs three research assistants and secretarial aid. All reasonable requests for special reports and findings coming from those

\textsuperscript{12}For obvious reasons the Council is not free to campaign for its proposals while the Society is, both as a group and as individuals.

\textsuperscript{11a}Neither of these foundations is to be understood as approving, by virtue of their grants, any of the statements made or views expressed in this article or any other publication of the Society.

\textsuperscript{13}Present active members are: Robert M. Benjamin of Parker & Duryee; Thomas W. Chrystie of Chrystie & Chrystie; Porter R. Chandler of Davis, Polk, Wardwell, Gardiner & Reed; Kenneth Dayton, Budget Director of the City of New York; Eli Whitney Debevoise, of Debevoise, Stevenson, Plimpton & Page; Robert L. Finley of Parker & Duryee; Walter Gellhorn, Professor of Law, Columbia University; Edward S. Greenbaum of Greenbaum, Wolff & Ernst; Francis H. Horan, Special Assistant to the Attorney General of the United States; Nicholas Kelley of Larkin, Rathbone & Perry; André Maximov of Spence, Windels, Walser, Hotchkiss & Angell; Harold R. Medina of Medina & Sherpick, Professor of Law, Columbia University; Charles Poletti, Lieutenant-Governor of the State of New York; Whitney North Seymour of Simpson, Thacher & Bartlett; Kenneth M. Spence of Spence, Windels, Walser, Hotchkiss & Angell; David Teitelbaum of Donovan, Leisure, Newton & Lombard; Bethuel M. Webster of Webster & Garside; Herbert Wechsler, Professor of Law, Columbia University; Roswell Magill, Professor of Law, Columbia University.

Certain members, while retaining their membership, are inactive because of their official positions. They are: Mr. Justice Douglas, of the Supreme Court of the United States, recently Chairman of the Securities Exchange Commission; Herman Oliphant, General Counsel, Treasury Department; Clarence V. Opper, member of the Board of Tax Appeals; Jerome N. Frank, member of the Securities Exchange Commission; Thomas E. Dewey, District Attorney of the County of New York.

\textsuperscript{12}Charles C. Burlingham; Charles E. Clark, Dean of the School of Law, Yale University; Robert P. Patterson, Judge of the District Court of the United States for the Southern District of New York.
actually engaged in official or unofficial efforts to effect particular improvements are considered. They are complied with if they are at all possible with the means available and with the program of research under way. Requests have often come from the bar associations in New York, or particular committees of those organizations, and the Society has at all times cooperated with such groups. Upon any question selected for investigation by the Society, all of the members sit as a committee of the whole. From the give and take of discussion, the efforts of the research staff are directed towards a reasonably attainable goal. The attention of the Society is not diffused through numberless committees and numerous projects, but it concentrates upon a few things at a time.

We shall treat next some of the specific projects undertaken by the Society during the second period.

EXAMINATION BEFORE TRIAL PROCEDURE

The provisions of the New York Civil Practice Act under this head are fearfully and wonderfully complicated.14 Yet on the whole, as construed by the courts at any rate, they are quite illiberal and unsatisfactory.15 Professor Edson S. Sunderland and Mr. Ragland, who was his pupil, have thoroughly explored the possibilities of examination before trial as a useful procedural device and have canvassed experience in Anglo-American jurisdictions under every type of provision.16 Their conclusions may well be accepted as sound. They found that oral examination is more satisfactory than written interrogatories and answers; that full oral examination is in practice a great aid in the search for truth; that it is a very effective way of preserving testimony; that it promotes settlement by showing to each party his own and his opponent's strength and weakness; that it indicates what the real issues are and what facts may as well be admitted, and in this way goes much further than the pleadings do to get a case in shape for trial. The new Federal Rules have reaped the full benefit of these studies,17 but the Law Society realized that so complete a reform in the state procedure would be altogether unpalatable to the legislature. The principal shortcomings in the New York scheme are these: in the First Department (New York and Bronx Counties) at least, it was unavailable for the important issues.

14N. V. C. P. A. (Gilbert Bliss, 1926) §§ 288-309.
15Ragland, Discovery Before Trial (1932) 337.
17Rules of Civil Procedure for the District Courts of the United States, Rules 26 et seq.
in negligence cases and was limited in all cases to facts which the movant had the burden of proving; in all departments it was limited to parties, their employees, and witnesses who were aged, infirm, out of state, or the like.\(^{18}\) In 1934 the Commission on the Administration of Justice in New York proposed a measure which was calculated to remedy many of these defects.\(^{19}\) This measure was introduced in the 1934 legislature as the Buckley Bill, but never reported out of committee. The Judicial Council held a public hearing in December, 1934, largely attended by lawyers, at which considerable opposition to the Buckley Bill was voiced. Judge Pound suggested that views and recommendations be submitted by interested groups. The Society, through a sub-committee, carefully combed the Buckley Bill and proposed a number of changes. Some of these related to objections expressed at the hearing, particularly a device to penalize one invoking the machinery in bad faith (e.g., to blackmail his adversary) while preserving the full legitimate scope of discovery. There were a great many other changes, most of which sought to secure a more practicable operation of the machinery. These suggestions were almost all approved by the Judicial Council, which also felt it necessary to limit the scope of examination procedure to parties and present and past employees of parties in order to head off attacks on the bill as too sweeping.\(^{20}\) The final proposal thus resulted from a combined effort.\(^{21}\)

**PRE-TRIAL PROCEDURE**

In the metropolitan area, calendar delay of eighteen months to two years in the supreme court is the rule in jury cases, and this spells real human hardship. A fuller examination before trial might contribute something towards reducing the congestion, but other procedures attack this particular problem more directly. Great strides along this line were made in Cleveland, Detroit, and Boston in the early thirties. In 1936, the Society decided to study these accomplishments at first hand with a view to drawing some conclusions that might have validity for New York. Mr. Stockman, therefore, visited these cities and spent about a week in each, closely observed the procedures at work, questioned at length the judges

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\(^{19}\) *Report of the Commission on the Administration of Justice in New York State* (1934) 276-284, 332-342.


\(^{21}\) This bill has not yet been enacted.
and clerks charged with their administration, interviewed a number of representative lawyers and claim men, and ascertained what statistical sources were available by which to measure the effectiveness of the various devices. What was found, in brief, was this. In Detroit every case must go through a pre-trial hearing before it is tried. There is a separate call for chancery and law cases, each presided over by a single judge. On this call court and counsel consider (1) whether the pleadings must be amended, (2) what facts, if any, can be settled by agreement, and (3) whether the case can be settled without trial. Amendments are rarely allowed after a case has passed from the pre-trial docket. Stipulations commonly cover such issues as agency, control of premises, place of accident, and the like and often dispense with formalities in the introduction of pictures, maps, and documentary evidence. The judge does not try aggressively to settle the case, but the possibility is explored and the setting made favorable to compromise. "A case which cannot be settled is kept on the pre-trial docket until the court is assured that all of the necessary amendments have been filed, all the requisite depositions taken, and that no continuances are likely to be asked for."22 The case then goes on the trial docket and is reached for trial within a month or two.23 Before the inauguration of pre-trial procedure the lapse of time between closing of issue and trial in Wayne County (Detroit) was about four years. This had been reduced to about 15 months, in 1936. Other factors materially aided in reducing this delay, yet there can be little doubt that the pre-trial procedure had played a most significant part. Trial lawyers in Detroit pretty uniformly felt that it was well designed to benefit both plaintiffs and defendants.

In Cleveland there was found a very informal procedure for settling cases. The key to it is the undivided effort of a single judge who handles the "call list" and "settlement list". As each case appears on the calendar this judge takes the initiative in finding out whether it can possibly be settled. If it can, it appears on the settlement list, but does not lose its place on the regular calendar. The same judge also uses his good offices to bring together counsel, in cases on the settlement list, and to launch settlement negotiations. If these fail the case is returned to the trial calendar. This system has not escaped a good share of criticism by the local bar. Yet it is an important part of a procedural machine which

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22 ANNUAL REPORT, MICHIGAN JUDICIAL COUNCIL (1936) 73.
23 The authority for this whole procedure is found in three court rules. Rules of the Circuit Court for the Third Judicial Circuit of Michigan, Rule 4 of Div. I, Rules 2 and 6 of Div. II (as revised to Sept. 1, 1933).
has produced an enviable calendar situation in Cleveland. In 1936 Mr. Stockman found that "A case started six months ago can be tried today."

A pre-trial call was inaugurated in Boston in 1935, based largely on the Detroit experience. By 1936 this had already had measurable success. According to one judge who ably administered this procedure, the Superior Court in Suffolk County (Boston) disposed of three times as many cases during the quarter beginning December 1, 1935, as in the same quarter of prior years. Massachusetts has also taken another line of attack on calendar congestion by adopting the auditor system, not only in Suffolk but in other counties where the need existed. A Massachusetts statute permits a reference of cases, involving difficult questions of fact or long accounts, to auditors whose findings of fact may be used as prima facie evidence if either of the parties still insists on a jury trial. For a year (1932-3) this statute was applied to motor vehicle tort cases in Essex County, which includes the cities of Lynn and Salem and rural towns. The success of this experiment led to a demand by the bar for a revival of the system, and its extension to other counties. In 1935 the court acceded to these demands. A panel of auditors was selected by the justices in cooperation with the local bar associations. In Boston any pending automobile tort case was referred on motion of either party. In Essex County, all cases pending for a certain length of time were automatically referred and, later, any case might be referred on motion. Hearings before auditors involved the testimony of witnesses and were conducted with dignity. The auditor made findings and an award. Either party was free to reject the award and insist on a trial, to the jury if he wished, though the findings and award of the auditor were admissible in evidence upon such trial. Theoretically, of course, the auditor system might duplicate trials and increase delay and expense. In practice, it was found to do just the opposite. About 90% of the referred cases were settled or withdrawn after the auditor's report without further trial. Calendar delay (in Boston) dropped from 5 years to 3 years and 8 months during the first year and a half the system was in effect. There was a slight additional expense to the counties for the period during which the accumulation of cases on the docket was being cut down (when the judicial system was in effect doing double duty). But the saving that will result when the

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25In February, 1938, the delay was two years and nine months. Pinanski, The Superior Court—Jury Pooling, Auditors, Pre-Trial (1938) 136 Boston Bar Bulletin, May, p. 3, at p. 17.
courts have caught up with the calendar is apparent from this, that an 
auditor's hearing costs about $30 a day as compared to $400 a day 
for a jury trial.

After these studies were made the Law Society considered and dis-
cussed them at length and finally printed and circulated among the 
members of the bar a report of its studies and its proposals for New 
York City. These were addressed to tort jury cases which account for 
three quarters of the jury litigation and form the crux of calendar delay. 
Such cases should go through a pre-trial call. As to the time of this call, 
however, the Society proposed an innovation, namely, that it should 
occur shortly after issue joined. Disposition of the case at this time 
would be even more advantageous to the parties and the public than 
disposition shortly before trial. That seems obvious, but its accomplish-
ment presented one very serious difficulty. The imminence of trial 
makes the question of settlement a real and pressing one. The removal of 
this pressure from the pre-trial call might take away an essential in-
gredient of a successful procedure. The Society, therefore, proposed 
that the pre-trial judge be empowered to order a prompt reference of 
any case that could not be settled. This combination of an early pre-
trial call and an auditor system is believed to comprise as effective a 
formula for reducing calendar congestion in urban centers as can be de-
vised within our constitutional framework.

The proposal of the Society caused a great deal of discussion among 
members of the bar. Committees of both bar associations in the city 
considered it. It was debated at an open meeting of the Association of 
the Bar of the City of New York. It brought forth a host of letters 
from lawyers—some of praise, some of criticism. It was taken up by 
Mr. Stockman with representatives of the Association of Casualty and 
Surety Underwriters and the chief claim men of several individual com-
panies. As a result of these conferences it is probable that the inaugu-
ration of pre-trial procedure would encounter no serious opposition from 
insurance companies. Perhaps one of the most immediate and important 
achievements of the proposal was its influence upon the report of the 
Advisory Committee on the Federal Rules, which led to the incorpora-

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26* Cf. Ex parte Peterson, 253 U. S. 300 (1920). Incidentally the hearing before the 
auditor would afford a complete examination before trial with all its attendant advantages.
27* The final Report of the Advisory Committee on Rules for Civil Procedure (1937) 
contained a draft of rules which had most of the essential features of the Society's pro-
posal, except that references could be ordered only where the issues were complicated. The
tion of very progressive provisions for pre-trial procedure in the Rules finally adopted by the Supreme Court.28

When this general interest in pre-trial procedure was at its height, the Judicial Council recommended the adoption of a rule of court in the first department (New York and Bronx counties) which would have set up a machinery essentially like that in Detroit—a proposal which finally won the support of one of the metropolitan bar associations.29 None of these schemes has yet been adopted, but the Society has not relaxed its efforts to further the final success of the one among them for which general support can be mustered. Nor has the interest which was aroused died down. The adoption of the Federal Rules and the report of the Committee on Pre-Trial Procedure of the Section of Judicial Administration of the American Bar Association has given it an impetus. The Society through its representatives presented the whole matter of examination before trial and pre-trial procedure before the general meeting of the New York State Bar Association in January, 1939. This will no doubt be the forerunner of further consideration by local bar associations.

STUDY OF THE CUSTOMS PROCESS

On October 5, 1934, Mr. Herman Oliphant, General Counsel of the Treasury Department, wrote the Society:

"There is an accumulation of over 200,000 cases in the Customs Court . . . with a consequent delay of serious proportions to cases being currently filed. This whole situation needs to be carefully studied by an agency that can bring to the work two things, first, the skill and patience for a really accurate statistical analysis of the various phases of the problem; and second, a thorough practical knowledge of the actual operation of our legal practice and procedural mechanisms."

The Society and a committee of the Yale Law School Faculty,30 therefore, undertook this study. They were fortunate enough to secure the full-time services of Mr. Charles U. Samenow, of New Haven, a lawyer and graduate of the Yale Law School, to conduct the statistical and

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supporting note cites the Society’s publication. Former drafts of the rules contained no analogous provisions. See proposed rules 16 and 53, and notes.


30 This committee consisted of Dean Charles E. Clark, and Fleming James, Jr.
observational part of the work. Mr. Samenow made a systematic study of the customs process and customs litigation for a period of some two years along both qualitative and quantitative lines. The study was made at the Port of New York where between 80% and 90% of all protests originate. The results of this work were collected by Mr. Samenow in a voluminous report which indicated the need for procedural changes. Committees of the Society and the Yale Law School studied this report intensively. The Society and the Law School committee then made their report, with detailed and specific recommendations for changes of administrative and customs court procedure. Some of the former have been adopted. The rest are still under official consideration.

THE CONSTITUTIONAL CONVENTION

A Constitutional Convention was held in New York in 1938. The year before the Society concluded that it could make a valuable contribution to the work of the Convention if it could prepare for the delegates a summary of the history and background of each section of the existing judiciary article. This work was undertaken. In the course of it unforeseen difficulties were encountered. There is a fine constitutional history of New York written in 1905, but nothing of note had appeared since then. There were also printed reports of the Constitutional Conventions, most of them containing transcripts of the debates. But there was no printed report of the Judiciary Convention of 1921 which framed the present article. At this time Mr. Leon Frechtel, who had just graduated from the Yale Law School, was working with the writers as research assistant. Largely through his persistent and resourceful efforts the original transcript of the minutes of the debates at this Convention was found and edited. But diligent search failed to unearth any copy of the proposals submitted to the Convention by its Executive Committee. In order to clarify the debates it was necessary to reconstruct laboriously the wording of each proposal from the debates themselves and the final measures adopted.

The results of this research were (1) a history of the Judiciary Article, section by section, which set forth all the antecedents of the existing provisions showing what changes had occurred, together with the reasons advanced for and against them, in committee (where that could be found) and in the Conventions, and which also gave all the proposals that had been unsuccessfully advanced and a summary of the debates

LINCOLN, THE CONSTITUTIONAL HISTORY OF NEW YORK (1906).
upon them; (2) an edited report of the debates in the Judiciary Convention of 1921. When the New York State Constitutional Convention Committee prepared the officially printed material for the constitutional delegates, it incorporated these works in their entirety in the volume entitled Problems Relating to Judicial Administration and Organization. Together they comprise over seven hundred pages of this volume. It is believed that they are useful not only for help they afforded the delegates but also as a distinct addition to the available material on the constitutional history of the state.

COLLECTION PROCEDURE

The Society has long had an interest in studying the effectiveness of procedures for the collection of money judgments. Devices designed for this end have several aspects: (1) they may be viewed as machinery for getting at the assets of recalcitrant debtors—or of salvaging as much as possible from insolvent debtors; (2) they may also be judged in the light of their tendency to discourage or encourage unsound methods of granting credit; (3) finally, they may be evaluated as methods of rehabilitating debtors who find themselves in an embarrassed plight—without regard to the causes of such embarrassment. Of course these various aims are by no means mutually exclusive and a procedure could conceivably be efficient in all three directions. Indeed it is probable that a too single-minded pursuit of the first objective has generally defeated the others.

In 1935 the New York Civil Practice Act was amended so as to make supplementary proceedings more effective as a device for reaching assets. It sought to do this by extending the historic weapons of equity—the in personam order and punishment for contempt—into fields from which they had always been withheld, most notably, perhaps, that of future-accruing income. When these amendments had been in force

\[^{31}\]IX New York State Constitutional Convention Committee (1938).

\[^{32}\]The judiciary article proposed by the Convention of 1938 failed of adoption by the people. There has been considerable agitation for another convention solely to frame a judiciary article. If such a convention is called the historical materials prepared by the Society should again prove of value.


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for something more than a year, the Society decided to study the experience under them. This study was made in the City Court of the City of New York where most proceedings supplemental to judgment are pursued. It revealed that the changes had been moderately successful in subjecting to process various kinds of wealth and income which could not have been reached before. The study did not point unequivocally to the necessity of any specific changes in supplementary proceedings—viewed solely as a collection device—and was never published. It succeeded, however, in arousing the Society's interest in the broader social aspects of collection procedure. This was more or less of a pioneer field, though some notable work had been done in it by men like William O. Douglas,44 Wesley A. Sturges of Yale,45 Thomas D. Thacher46 as Solicitor General, William L. Garrison,47 and Roger C. Minahan48 of Wisconsin. A good deal of this had been directed to the rehabilitation of debtors—particularly wage-earners—through new bankruptcy procedure. One plan, however, is primarily aimed at bringing about sounder credit methods, that of underfiling, which is in effect in one form or another in Colorado, Delaware, Idaho, Indiana, New Jersey, Pennsylvania, British Columbia, and Ontario.49 Where this is in effect attachment, garnishment or execution by one creditor enures to the benefit of all who file their claims in the same proceedings—and all existing creditors are given the privilege to file

Mills, 224 Mass. 193, 112 N. E. 879 (1916); Bowman v. Breyfogle, 145 Ky. 443. 140 S. W. 694 (1911). There was one exception to this rule, viz., equity would reach and apply future accruing income from a trust fund (if it was not a spendthrift trust). Bryan v. Knickerbacker, 1 Barb. Ch. 409 (N. Y. 1846); Sillick v. Mason, 2 Barb. Ch. 79 (N. Y. 1847); Wetmore v. Wetmore, 149 N. Y. 520, 44 N. E. 169 (1896).


45Sturges & Cooper, Credit Administration and Wage Earner Bankruptcies (1933) 42 YALE L. J. 487; Sturges, A Proposed State Collection Act (1934) 43 YALE L. J. 1055.


49Sturges & Cooper, op. cit. supra, note 35, at 520 (Note 123).
and prove claims. The debtor must furnish a list of creditors, who are notified, and anyone may contest any claim. All assets reached by any process are paid into court and distributed. There is no discharge. Of course, there is no compulsion upon other creditors to underfile except that if they do not they lose the opportunity to share in the proceeds of the assets which have been subjected to process in the proceeding. Such a scheme eliminates the opportunity to gain advantage by racing to collection—a race in which the swift have never been predominantly the deserving. This in turn tends to make creditors recognize the common interest they have in their common debtor and to prevent prospective creditors from relying on high pressure collection methods instead of taking care in the extension of credit. The personal receivership is more or less fashioned to the same end. The Society was seriously considering studies of some of these procedures in operation when the Chandler Act was passed in June, 1938, with its provisions for the liquidation of wage earner debts by installments. The practical effect of this upon our plans was discussed at several committee meetings. The wage-earner provisions of the Chandler Act are concerned primarily with the rehabilitation of the embarrassed but honest debtor who invokes them. They may succeed fairly well in doing this and yet leave two problems unsolved: (1) Can rehabilitation be done better in the state or federal courts? (2) Does the Act discourage unsound overextension of credit? The answer to the second question probably depends on how freely debtors will invoke the Act when they are beset with garnishment, wage-assignments, and supplementary proceedings under state statutes. If wage-earners are as loath to resort to the new provisions as they were to go into "straight bankruptcy", grave abuses will remain. After all, the debtor has always been able to end the race for his assets by voluntary bankruptcy if he was willing to take this step and the stigma that went with it. No doubt one aim of the Chandler Act is to remove this stigma and perhaps it will. At any rate the Society concluded that this year is not the time to embark on the study of further changes. Rather, it is going to do everything it can to help the Chandler Act succeed and study its actual operation in New York to see how well it succeeds, and in how many directions.


41 See Douglas, Wage Earner Bankruptcies—State v. Federal Control, supra, note 34.

42 See Symposium (1933) 42 Yale L. J. 473-642.
STUDY OF REGISTRATION OF TITLE TO LAND

In 1937 there was urged upon the Carnegie Corporation the need for an impartial examination of the facts concerning title registration in New York. This corporation agreed to finance such a study and chose The New York Law Society to supervise it. The survey and report of the subject were made by Professor Richard R. Powell of the Columbia Law School, who consulted from time to time with a committee of the Society. The results of this study were recently published and constitute a valuable addition to the literature on the subject. Not only is the legislation and practice in New York thoroughly analyzed, but there is also a detailed treatment of the situation in other jurisdictions where land titles are registered.

ECONOMICS OF THE LEGAL PROFESSION

In 1937 sub-committees of the committees on legal education of the two bar associations in New York City approached the Society in connection with the problem of numerical limitation of admission to the bar. The staff of the Society canvassed at great length the possible ways in which it could bring its research facilities to bear on the question. The methods of approaching this general subject have been so well described in detail in recent publications that no useful purpose would be served by rehearsing them here. Suffice it to say that the Society's interest in the matter has during this past year led to its cooperation with the Joint Conference on Legal Education of the State of New York in setting up a tentative plan for a survey of the public and the bar in certain selected communities in the state, including New York City. If the funds for undertaking this study are forthcoming—and it seems likely that they will be—the Society and its staff will play an important part in conducting this study.

STUDY OF ADOLESCENT DELINQUENCY

About six months ago an interesting book on adolescent delinquents entitled *Youth in the Toils* was written by Leonard V. Harrison and Pryor McNeill Grant under the auspices of the Delinquency Committee of the Boys' Bureau, which was a department of two outstanding welfare agencies in New York City,—the Association for Improving the Condi-

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4Powell, REGISTRATION OF THE TITLE TO LAND IN THE STATE OF NEW YORK (1938).
4A reference to and analysis of all of these surveys is contained in THE ECONOMICS OF THE LEGAL PROFESSION (1938), prepared by the American Bar Association's special committee on the economic condition of the bar.
tion of the Poor and the Charity Organization Society. The authors painted a sordid picture of the effect of the criminal procedure upon delinquent boys, 16 to 21 years of age, who ran foul of the law and whose treatment by the law was in no way differentiated from that of older hardened criminals.

This book reached its mark so far as the Society was concerned, for the interest of one of its members led to the appointment of a committee and their meeting with the research staff, the Commissioner of Correction of New York City, and the Director of the Citizens' Committee on the Control of Crime in New York, Inc., to consider the problem and lay plans for its study.

Of the various aspects of the problem posed by Youth in the Toils, the Society chose for its task an investigation of the existing legal procedure between the time of arrest and of commitment as it affected boys of the age in question.

Fortunately, at this time, the Citizens' Committee on the Control of Crime, an organization formed "to study and seek means of dealing with the problems existing in connection with the prosecution, suppression and punishment of crime, and to educate the public with respect to such problems", had completed the gathering of field material and possessed complete case histories on every felony and serious misdemeanor for which an arrest was made from July 1, 1937, to June 30, 1938. This material was thought to be a convenient place to start, and the Society is cooperating with the Citizens' Committee in a specific study of adolescents.

At present the data are being processed and tabulated with a view to finding out the number of the different types of crimes committed by adolescents, according to their ages, the dispositions of cases through the procedural stages (commonly known as a "mortality" analysis), their duration, and, most important of all, an analysis of the frequency and duration of incarceration pending the disposition of their cases. This last, of course, is related to the problem of bail. When it has finished these tabulations the Society's staff will make observational studies of the handling of adolescents in places where this is reputed to be done well and will canvass what has been written on the subject. From all this it is hoped that some real contribution can be made towards a more intelligent and less wasteful treatment of adolescent delinquents in the period between their arrest and final disposition of their cases.

45Twelve Months of Crime in New York City. A report by the Citizens' Committee on the Control of Crime, Inc. (1938).