

1971

## Judicial Removal in New York: A New Look

Edwin L. Gasperini

Arnold S. Anderson

Patrick W. McGinley

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### Recommended Citation

Edwin L. Gasperini, Arnold S. Anderson, and Patrick W. McGinley, *Judicial Removal in New York: A New Look*, 40 Fordham L. Rev. 1 (1971).

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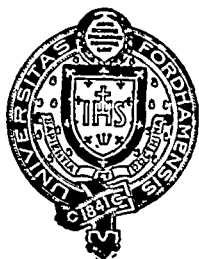
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## Judicial Removal in New York: A New Look

### Cover Page Footnote

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# FORDHAM LAW REVIEW



1971-1972  
VOLUME XL

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Published four times a year—October, December, March, and May—by the Heffernan Press Inc., at 35 New St., Worcester, Massachusetts. Second class postage paid at Worcester, Mass. Member, National Conference of Law Reviews.

SUBSCRIPTION PRICE \$7.50, SINGLE ISSUE \$3.50. Make checks payable to FORDHAM LAW REVIEW. Subscription renewed automatically unless notified to contrary.

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## ADDENDA

*Errata*

Page 203, line 11. For "whom" read "who."

Page 214, line 23. For "had" read "has."

Page 217, line 6. For "radical" read "racial."

Page 226, note 126, line 4. For "This" read "This."

For "today's high school students" read

"today's students in high school."

line 8. For "unobjectionable" read "unobjectionable." "

Page 565, note \*, line 3. For "Fullbright" read "Fulbright."

Page 672, note 6, line 3. For "1898" read "1959."

Page 714, note 6. For "1607" read "1606."

Page 759, running head. For "REVIEWED" read "RECEIVED."

*Subsequent Disposition of Case Noted*

Page 342, *Roth v. Board of Regents*, 446 F.2d 806 (7th Cir.), cert. granted, 404 U.S. 909 (1971). The Supreme Court heard oral argument on Jan. 17, 1972, at 40 U.S.L.W. 3348.

## DEDICATION

**T**HE Editors of the *Fordham Law Review* are especially proud to welcome Joseph M. McLaughlin, a former Editor-in-Chief of this *Review*, as the new Dean of Fordham Law School.

Notwithstanding Dean McLaughlin's highly acclaimed record for public service and leadership, as exemplified by his positions as Trustee of the Institute for the Advancement of Criminal Justice and Consultant to the New York Law Revision Commission and the New York Judicial Conference, what we, as law students and practitioners-to-be, appreciate most is his outstanding scholarship and pungent wit.

As lawyer, scholar and teacher, Joseph M. McLaughlin has gained the esteem of his peers and the admiration of his students. He now ascends to the office of Dean of the Fordham Law School, bringing to that position a unique combination of zeal and intellect which will serve to assure the School's continued growth and excellence.

As a tribute to him, the fortieth volume of the *Fordham Law Review* is respectfully dedicated to DEAN JOSEPH M. McLAUGHLIN.

# JUDICIAL REMOVAL IN NEW YORK: A NEW LOOK

EDWIN L. GASPERINI, ARNOLD S. ANDERSON, AND  
PATRICK W. MCGINLEY\*

## I. INTRODUCTION\*\*

IN 1948 the citizens of New York took a bold step forward in attempting to deal with the age-old problem of corrupt, inept or otherwise unfit judges by adopting a constitutional amendment which created a new judicial removal procedure. The adoption of this procedure, involving the creation of a special "Court on the Judiciary," was largely the result of the urging of Governor Thomas E. Dewey who, in his 1947 Annual Message to the Legislature, said:

Our present system has failed to produce always the highest type of judicial officer and no means has been proposed for removing the tyrannical or the incompetent. But we can and should, at least, provide more swift and more certain methods for the removal of the occasional individual who turns out to be dissolute or corrupt.<sup>1</sup>

Following the Governor's advice, the legislature and the people approved the new removal procedure<sup>2</sup> in the hope that it would end the perennial problems connected with the more traditional removal procedures then in effect.<sup>3</sup>

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The authors wish to express their sincere appreciation to David J. Ciminesi and Jay N. Mailman of the Fordham Law Review, and to Edward Buchholz of the Columbia Law School, for their invaluable research and drafting assistance in the preparation of this article.

\*\* The inspiration for this article derives from an article in volume 39 of the Fordham Law Review entitled: "Impeaching Federal Judges: A Study of the Constitutional Provisions" by John D. Feerick.

1. Annual Message of Governor, 1947 N.Y. Legis. Doc. No. 1, at 13.
2. The constitutional amendment creating the Court on the Judiciary was approved by the Legislature in 1946 and 1947 and by the voters in the general election of 1948 as required by N.Y. Const. art. XIX, § 1.
3. See notes 10-65 *infra* and accompanying text.

Implicit in the Governor's 1947 statement was a recognition of the serious defects in New York's method of selecting judges which remains unchanged since that date. Although it is generally recognized that the best insurance against corrupt, inept or otherwise unfit judges is the selection of well qualified ones, the unfortunate fact is that we have not yet fully secured that insurance. Thus, Governor Dewey's statement is as valid today as it was in 1947. Until the appointment of judges becomes more a matter of qualifications than of "other considerations,"<sup>4</sup> New York can expect to experience the same type of problems with judicial removal and discipline that have plagued it for the last 194 years.

Upon review, it is apparent that New York's present removal procedures would be highly inefficient given any substantial caseload, and, unless immediate improvements are forthcoming, these procedures may soon become as unworkable as those in effect prior to 1948. Thus, it is significant to note that within the first six months of 1971, the Court on the Judiciary of the State of New York has been convened twice to consider the charges imposed against two New York Supreme Court justices.<sup>5</sup> Furthermore, according to recent news reports, there may be still other instances requiring the further convening of this special constitutional court.<sup>6</sup> Indeed, according to statements made by Senator John Hughes,<sup>7</sup> chairman of New York's Joint Legislative Committee on Crime, there may be as many as six additional judges whose conduct requires a hearing by the Court on the Judiciary.<sup>8</sup>

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4. See Editorial, 57 A.B.A.J. 579 (1971).

5. On January 28, 1971, Chief Judge Stanley H. Fuld of the New York Court of Appeals announced that he would convene the Court on the Judiciary to investigate charges against Justice Mitchell D. Schweitzer of the Supreme Court of New York County. *N.Y. Times*, Jan. 29, 1971, at 16, col. 5. On July 29, 1971, Justice Schweitzer asked to be relieved of his official duties pending the conclusion of a court investigation into his judicial conduct. *Id.*, July 30, 1971, at 1, col. 1.

On March 31, 1971, Presiding Justice Samuel Rabin of the Second Department of the Appellate Division requested Chief Judge Fuld to convene the Court on the Judiciary "to take such action as it may deem appropriate with respect to the conduct of Mr. Justice Michael M. D'Auria" of the Supreme Court of Nassau County. *L.I. Press*, April 1, 1971, at 10, col. 1; see *Newsday*, April 1, 1971, at 7, col. 1. On April 18, 1971, Chief Judge Fuld convened the Court on the Judiciary and announced the appointment of counsel. 165 *N.Y.L.J.*, May 19, 1971, at 1, col. 6. On July 28, 1971, Justice D'Auria submitted his resignation to the Governor. *N.Y. Times*, July 30, 1971, at 37, col. 1.

6. See, e.g., *N.Y. Times*, Feb. 9, 1971, at 19, col. 1 (Justice Pfingst, Supreme Court, Suffolk County); *Id.*, Dec. 3, 1970, at 1, col. 5 (allegations of judges on payroll of underworld organization made before State Legislative Committee on Crime). On September 2, 1971 Justice Pfingst was indicted by a federal grand jury on charges of paying for his judicial nomination. Another federal grand jury had indicted him for bankruptcy fraud in February 1971. *Id.*, Sept. 3, 1971, at 1, col. 1.

7. *R.*, 45th Dist.

8. *N.Y. Sunday News*, July 25, 1971, § 1, at 5, cols. 3-5.

Of further importance is the fact that, prior to 1971, the Court had not been convened in nine years and that between 1948, when it was created, and 1970, it had been convened only three times. Accordingly, in just the first half of 1971 this Court has had before it only one case less than the total number of cases it had previously decided during the twenty three years of its existence.

The purpose of this article is to assess New York State's implementation of the 1948 constitutional amendment; in particular, to examine New York's experience with judicial removal prior and subsequent to 1948; to discuss the efficacy of the Court on the Judiciary as a means of trying charges against superior court judges,<sup>9</sup> especially in view of the possible increase in the volume of its caseload; to examine several judicial removal and disciplinary procedures adopted by other states; and to recommend changes which, it is believed, will carry forth the reforms sought to have been accomplished by the 1948 amendment.

## II. THE HISTORY OF NEW YORK'S JUDICIAL REMOVAL SYSTEM

### A. *In General*

Before the Court on the Judiciary was created, the exclusive procedures for removal of a superior court judge were impeachment, joint resolution of the legislature, and, at one time, a form of "address." The essential difference between removal by impeachment and joint resolution of the legislature on the one hand, and address on the other, is the requirement of "cause."<sup>10</sup> Address was a means of removal whereby the legislature could, by a vote of each house, simply remove a judge from office. "It could be employed for practically any reason whatsoever, which meant that its use depended on the conscience of [the legislature]."<sup>11</sup> Removal by impeachment or by joint resolution typically requires charges which, if established, constitute cause for removal. Under impeachment or joint resolution procedures, charges are usually presented by a majority resolution of the

9. As used here, "superior court judges" means those judges or justices who may be removed from office only by a Court on the Judiciary convened pursuant to N.Y. Const. art. VI, § 22. These are court of appeals judges, supreme court justices, court of claims judges, county court judges, surrogates and family court judges. "Inferior court judges" are those who may be constitutionally removed by the appellate division under N.Y. Judiciary Law § 429 (McKinney Supp. 1971), pursuant to N.Y. Const. art. VI, § 22. These include, e.g., judges of the district and civil courts. This article discusses only the procedures for removal of superior court judges because, in every case, their removal from office requires the convening of the Court on the Judiciary. For a discussion of the procedure for removing inferior court judges, see Note, Remedies for Judicial Misconduct and Disability: Removal and Discipline of Judges, 41 N.Y.U.L. Rev. 149, 188-89 (1966).

10. Feerick, *Impeaching Federal Judges: A Study of the Constitutional Provisions*, 39 Fordham L. Rev. 1, 9-12 (1970).

11. *Id.* at 11-12 (footnotes omitted).

lower house of the legislature, and are served upon the respondent who is given an opportunity to reply. The charges are then tried by the upper house sitting alone or with the presence of certain other state officials such as the Governor.<sup>12</sup>

While it is not the function of this article to define and trace the historical development of the concept of cause, some general comments will prove useful as a prelude to an examination of the history of New York's removal system.

Activities which, if performed by a judge, would constitute cause for purposes of impeachment or removal, are set forth in New York's constitution, statutes, and nonlegislative rules and regulations. For example, the state constitution prohibits the practice of law, the active engagement in any other business for profit, and the holding of certain political offices.<sup>13</sup> In addition, a judge may be removed for the commission of acts which by tradition have been held to constitute cause, such as "injudicious conduct,"<sup>14</sup> violations of the Canons of Judicial Ethics,<sup>15</sup> and the intentional obstruction of official inquiries and investigatory proceedings.<sup>16</sup> Furthermore, removal may result from violations of the penal law, or the rules of the Administrative Board of the Judicial Conference of the State of New York.<sup>17</sup>

12. E.g., N.Y. Const. art. VI, §§ 23 & 24.

13. *Id.* § 20(b). For recent discussions focusing on the meaning and history of cause see Feerick, *supra* note 10; Note, *supra* note 9.

14. See *In re Sobel & Leibowitz*, 8 N.Y.2d (a) (Ct. on the Jud. 1960) (public insults exchanged by county court judges).

15. See *Canons of Judicial Ethics*, in *N.Y. Judiciary Law* (McKinney App. 1968).

16. See *In re Osterman*, 13 N.Y.2d (a) (Ct. on the Jud. 1963), cert. denied, 376 U.S. 914 (1964); *In re Friedman*, 12 N.Y.2d (a) (Ct. on the Jud.), appeal dismissed, 375 U.S. 10 (1963).

17. See, e.g., *Rules of the Admin. Bd. of the Jud. Conf. of the State of N.Y.*, 22 N.Y. Codes, Rules & Regs. §§ 20.4 & 20.8 (1970). Some additional acts and conduct which have been the basis of judicial removal are: acting as a paid bill collector and using the position to coerce debtors to pay debts (*Voorhees v. Kopler*, 239 App. Div. 83, 265 N.Y.S. 532 (4th Dep't 1933)); improper discharge of a prisoner from a workhouse before completion of his sentence (*In re Droege*, 129 App. Div. 866, 114 N.Y.S. 375 (1st Dep't 1909)); forcing disclosure by the use of incarceration or other coercive means, inducing a guilty plea in a matter not pending before the judge, ordering the obliteration of docket entries directing a default judgment, and using "abusive and improper language" with respect to counsel and "bringing untoward pressure to bear" upon counsel (*In re Sarisohn*, 29 App. Div. 2d 91, 286 N.Y.S.2d 336 (2d Dep't 1967)); and undue access to litigants and cooperation with known perjurers (*Kane v. Rudich*, 256 App. Div. 586, 10 N.Y.S.2d 929 (2d Dep't 1939)).

On the other hand, cause has not been found in the following types of cases: denial of bail on misdemeanor charge (*In re Vreeland*, 48 Hun 617, 2 N.Y.S. 38 (Sup. Ct. 1888)); utterance of words slanderous of a public official (*In re King*, 6 N.Y.S. 420 (Sup. Ct. 1889). *Contra*, *In re Sobel & Leibowitz*, 8 N.Y.2d (a) (Ct. on the Jud. 1960)); reduction of felonious assault charge to misdemeanor without consent of the district attorney where

## B. *History Prior to the Court on the Judiciary*

In order to understand the fundamental departure from tradition involved in the creation of the Court on the Judiciary in 1948 and the reasons therefor it is important to trace, at least generally, the historical development of the power to remove judges in this state. Such an examination indicates why, after 170 years of experimentation, the power to remove superior court judges was vested in this Court, even in the face of the two existing removal options: impeachment and removal by joint resolution of the legislature.

### 1. Impeachment

New York's first constitution, adopted in 1777, is necessarily the starting point for any discussion of the various judicial removal procedures adopted by the state. This constitution established a Council of Appointment<sup>18</sup> which was presided over by either the Governor or the Lieutenant Governor and consisted of senators who were nominated and appointed by the Assembly. Although the Council had broad powers to appoint and remove officers of the state,<sup>19</sup> it could only appoint judges; it could not remove them.

Since the Council had the power to remove other state officers at will and was, by reason of its composition and nature, "subject to the annual partisan fluctuations" of the Assembly, the framers of the constitution decided to vest the power to remove judges in a separate and specially constituted body.<sup>20</sup> This body was known as the Court for the Trial of Impeachments and the removal of judges was conditioned upon the existence of cause.<sup>21</sup> The framers had hoped, by creating this special Court, to "establish the judiciary on a permanent foundation, free from partisan

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the reduction was based upon mistake rather than improper motive (*Murtagh v. Maglio*, 9 App. Div. 2d 515, 195 N.Y.S.2d 900 (2d Dep't 1960)).

The classic and frequently quoted definition of cause is "such conduct as satisfies the court that the magistrate has been actuated by unworthy or illegal motives in the exercise of his judicial duties; or has committed such acts as to justify the inference that either from ignorance or from a perverted character, or from a lack of judicial qualities, he has so administered the power conferred upon him as to show that he should not be continued in office." In *re Droege*, *supra*, at 882, 114 N.Y.S. at 386.

18. N.Y. Const. art. XXIII (1777). This section was abrogated and the Council was abolished by the second constitution in 1821. See generally Dougherty, *Constitutional History of New York State from the Colonial Period to the Present Time*, in 2 *The Legal and Judicial History of New York* 55-65 (A. Chester ed. 1911).

19. For a definition of the general powers of the Council see *People v. Foot*, 19 Johns. 58 (N.Y. Sup. Ct. 1821).

20. 4 C. Lincoln, *Constitutional History of New York* 555-56 (1906) [hereinafter cited as *Lincoln*].

21. See notes 13-17 *supra* and accompanying text.

interference or control, and subject to removal only by the process of impeachment."<sup>22</sup> Under the impeachment procedure,<sup>23</sup> it was required that the respondent initially be charged with "mal and corrupt conduct"<sup>24</sup> in his office by a bill of impeachment passed by the vote of two-thirds of the members of the Assembly.<sup>25</sup>

The constitution provided that the impeachment charges were to be tried by the Court for the Trial of Impeachments, which alone had the power to determine whether conviction and removal were warranted. The Court consisted of the president of the Senate, the Senators, the chancellor, and the justices of the supreme court.<sup>26</sup> However, the constitution did not detail the procedures to be followed by the Court. This function was left to the legislature which, seven years later, set forth by statute the trial procedures pursuant to which the Court would act upon passage of a resolution of impeachment by the Assembly.<sup>27</sup> Generally, once the impeachment resolution had been delivered to the president of the Senate, it became his function and responsibility to convene and summon the Court which, when assembled, "was required to cause the person impeached to appear or be brought before it to answer the charge against him. The person impeached was entitled to a copy of the impeachment and a reasonable time to plead or answer, and, on the joinder of issue, the court was required to fix a time for the trial."<sup>28</sup> Once impeached, the judge was automatically suspended from the exercise of his office until acquitted by the Court for the Trial of Impeachments.<sup>29</sup> Removal or conviction required approval of two-thirds of the members of the Court in attendance.<sup>30</sup> It is readily apparent that the convening of this Court was a monumental en-

22. Lincoln 555.

23. N.Y. Const. art. XXXIII (1777).

24. *Id.* This language has been changed to "wilful and corrupt misconduct in office." N.Y. Judiciary Law § 240 (McKinney Supp. 1971).

25. The adoption of the second constitution in 1821 altered the two-thirds vote requirement for a bill of impeachment to a simple majority of the Assembly. See N.Y. Const. art. V, § 2 (1821).

26. N.Y. Const. art. XXXII (1777).

27. Law of Nov. 23, 1784, ch. 11, [1784] N.Y. Laws 8th Sess. 149; see 2 N.Y. Rev. Stat. pt. III, ch. I, tit. I, art. 2 (1829). The procedures relating to the Court for the Trial of Impeachments are currently set forth in N.Y. Judiciary Law §§ 415-28 (McKinney Supp. 1971). For a general discussion and interpretation of some of these procedures see 2 N.Y. Att'y Gen. Ann. Rep. 538 (1913).

28. Lincoln 600. This statute also provided that if impeachment proceedings were brought against the president of the Senate, the Senate, upon notice from the Assembly, was to appoint another president. *Id.*

29. Law of Nov. 23, 1784, ch. 11, § VI, [1784] N.Y. Laws 8th Sess. 150; see 2 N.Y. Rev. Stat. pt. III, ch. I, tit. I, art. 2, § 21 (1829).

30. N.Y. Const. art. XXXIII (1777).



deavor, composed as it was of all the justices of the supreme court, the entire Senate, and the chancellor.

Under New York's first and second constitutions, the members of the Court for the Trial of Impeachments also constituted the Court for the Correction of Errors<sup>31</sup> which was the state's court of final review from a decree in equity or any judgment of the supreme court. Thus, this extremely large court functioned not only as a legislative impeachment tribunal but as a normal appellate court as well.

As might be expected with a court of this size, the Court for the Correction of Errors had, by 1846, become so unworkable that it was eliminated by the third constitution and replaced by the New York Court of Appeals.<sup>32</sup> At the same time, the Court for the Trial of Impeachments, although not regularly utilized, was, nevertheless, reconstituted. The eight judges of the court of appeals were substituted for the chancellor and the supreme court justices even in the face of a strong effort made at the constitutional convention to eliminate all judges from the Court, restricting it to the Senate alone as in federal impeachment proceedings.<sup>33</sup> The impeachment court was thus composed of the court of appeals judges, the president of the Senate and the Senators.

In 1853, after an inquiry and report of the Assembly's Judiciary Committee, the Assembly adopted a resolution<sup>34</sup> which limited the jurisdiction of the Court, excluded from its jurisdiction those whose terms of office had expired, and precluded removal for misconduct occurring in a previous term of office. The latter limitation, however, was subsequently determined to be unconstitutional.<sup>35</sup>

Between 1846 and the present time the impeachment procedure in New York has not undergone any substantial change. Under the present New York Constitution it remains one of the three alternative methods of removing superior court judges.<sup>36</sup> Perhaps the chief reason that this 174

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31. Id. art. XXXII; N.Y. Const. art. V, § 1 (1821); See Cannon, *The New York Court on the Judiciary: 1948 to 1963*, 28 Albany L. Rev. 1, 2 (1964).

32. N.Y. Const. art. VI, § 2 (1846).

33. Lincoln 602.

34. Id. at 603-04. This later became section 12 of New York's Code of Criminal Procedure, passed in 1881 (now N.Y. Judiciary Law § 240 (McKinney Supp. 1971)).

35. During the trial of the impeachment case against Governor Sulzer, the court of appeals voted 5-4 that Sulzer could be tried for wilful and corrupt misconduct prior to the time that he became Governor. This was interpreted in *People v. Berg*, 228 App. Div. 433, 239 N.Y.S. 670 (2d Dep't), aff'd mem., 254 N.Y. 544, 173 N.E. 858 (1930), as meaning that the limitation expressed in section 12 of the Code of Criminal Procedure (now section 240 of the Judiciary Law), was unconstitutional and that "impeachable offenses were not limited to those committed in office." 228 App. Div. at 440, 239 N.Y.S. at 677-78.

36. N.Y. Const. art. VI, §§ 22-24. Upon conviction by the Court for the Trial of Impeachments, the respondent may be disqualified by the Court from holding or enjoying

year old removal procedure has remained almost intact is that it has been largely ignored. Rarely used, it has been successful in a case of judicial removal only once. In 1872, George C. Barnard, a justice of the supreme court, was removed for "official misconduct,"<sup>37</sup> upon being convicted of conspiring to abuse his court's process in relation to the improper transfer of a railroad to unauthorized persons,<sup>38</sup> of accepting gifts from litigants who appeared before him,<sup>39</sup> and of lack of proper decorum, impoliteness and the use of vulgarity on the bench.<sup>40</sup> It is interesting to note that in the single instance wherein the impeachment procedure was even directed against a member of the judiciary, the charges resulted from an investigation conducted by the Assembly's Judiciary Committee itself.<sup>41</sup>

## 2. Legislative Removal

The Court for the Trial of Impeachments remained the exclusive means of removing a judge until 1821 when, as a result of the recommendation of the Committee on the Legislative Department of the Second Constitutional Convention, a constitutional proposal was adopted which provided for the separate removal of judges by the legislature alone.<sup>42</sup> While the impeachment provision provided that all officers might be removed for cause, the new procedure permitted removal by resolution if approved by two-thirds of the members of the Assembly and by a simple majority of the Senate.<sup>43</sup> This removal could be effected by the legislature

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"a particular office or class of offices, or any office of profit, trust or honor whatever under this state." N.Y. Judiciary Law § 425 (McKinney Supp. 1971). The present impeachment provision provides, in pertinent part: "The assembly shall have the power of impeachment by a vote of a majority of all the members elected thereto. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or the major part of them, and the judges of the court of appeals, or the major part of them. . . . No judicial officer shall exercise his office after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present." N.Y. Const. art. VI, § 24.

37. Lincoln 605. It should be noted that although this was the only impeachment trial, impeachment proceedings had previously been instituted in 1820 against Supreme Court Justice William W. Van Ness. However, after an investigation by the Assembly committee, the charges were dropped. *Id.* at 607.

38. 1 Trial of Barnard, 193-201, cited in N.Y. Code Crim. Proc. § 123, Notes of Decisions, n.1 at 235 (McKinney 1958).

39. *Id.* at 201-05.

40. *Id.* at 206-18, 512-36, cited in N.Y. Code Crim. Proc. § 12, Notes of Decisions, n.4 at 97 (McKinney 1958).

41. Lincoln 605.

42. *Id.* at 556.

43. N.Y. Const. art. I, § 13 (1821).

“without assigning any reason therefor, or giving [the respondent] any opportunity to be heard.”<sup>44</sup> In essence, this was New York State’s experiment with a system of address, which vested in the legislature the exclusive power “to determine when an alleged cause was sufficient to justify the removal of a judge . . . .”<sup>45</sup> Furthermore, there was no appeal from its determination.

This legislative removal procedure was presented to the constitutional convention by Mr. Rufus King, chairman of the Committee on the Legislative Department, who in support of the procedure, remarked that the people of the state had no direct control over the judiciary such as they had over the legislative and executive departments. He also noted that it “‘could not be concealed that the people of this state were dissatisfied with the existing means of enforcing the responsibility of the judges for the possible abuse of their great powers.’”<sup>46</sup> After a brief discussion, the convention adopted the proposal by a vote of 58 to 43.<sup>47</sup>

Despite its noble purpose, address was short-lived in New York. By constitutional amendment in 1845,<sup>48</sup> the respondent judge was granted the right to be notified of the charges against him and given an opportunity to be heard,<sup>49</sup> instantly converting address to merely a second form of impeachment. With the adoption in 1846 of the third constitution, the respondent was entitled to be served with a formal complaint.<sup>50</sup> In addition, this constitution for the first time drew a distinction between the procedures for removing superior court judges and inferior court judges. Thus, justices of the supreme court and judges of the court of appeals continued to be subject to removal by concurrent resolution of both houses of the legislature. All other judicial officers, “except justices of the peace and judges and justices of inferior courts, not of record,” became removable by the Senate upon the recommendation of the Governor.<sup>51</sup>

Twenty three years later, this procedure was again revised by the “Judiciary Article”<sup>52</sup> of 1869 pursuant to which the removal of inferior court judges required a two-thirds vote of the Senate.<sup>53</sup> A two-thirds vote

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44. Lincoln 562.

45. *Id.*

46. *Id.* at 558.

47. *Id.* at 561. “During the debate Mr. Munro, chairman of the judiciary committee, proposed to amend the pending section by vesting the power of removal in the governor, upon the address of the legislature, as recommended by the committee; but the plan received little attention.” *Id.* at 557.

48. See Con. Res. of Feb. 4, 1845, [1845] N.Y. Laws 68th Sess. 446.

49. Lincoln 563.

50. N.Y. Const. art. VI, § 11 (1846).

51. *Id.*

52. N.Y. Const. art. VI (1869).

53. Lincoln 565.

of the Assembly had already been required by the second constitution.<sup>54</sup> Under this article, the wording of the removal provision was changed so that the respondent was entitled to receive a statement of the charges against him. Finally, with the adoption of the constitution of 1894, the word "charges" was again changed so that the respondent was thereafter entitled to a "statement of the cause alleged."<sup>55</sup> The reason for this change in wording was explained to the constitutional convention by Elihu Root, chairman of the Judiciary Committee. He pointed out that in order to satisfy the requirement of a "charge" or "charges," it was required that the respondent judge be "branded with some malfeasance or misfeasance in office . . . ."<sup>56</sup> This prevented the removal of judges who had become unable to perform their duties because of incapacity or illness. On the other hand, he explained, "cause," as it had been construed by the court of appeals, permitted removal for any "incapacity to perform the duties of an office."<sup>57</sup>

Essentially, these superior and inferior court removal provisions have remained the same since their inception. They are still divided into two types, depending upon the court on which the respondent sits. Legislative removal of justices of the supreme court and judges of the court of appeals requires a two-thirds vote of both houses. Legislative removal of judges of the court of claims, the county courts, the family courts, the civil court of the City of New York, the district courts and the surrogate's courts may be effected upon a two-thirds vote of the Senate after the recommendation of the Governor.<sup>58</sup>

However, as with impeachment, legislative removal of superior court judges<sup>59</sup> has been attempted only infrequently and, in each case, unsuccessfully. One such attempt was made in 1905 to remove Justice Warren B. Hooker on the charge that he used his office to procure post office appointments and to procure an invalid judgment to protect his own property interests.<sup>60</sup> However, after a trial before a joint session of both houses of

54. See text accompanying note 43 supra.

55. N.Y. Const. art. VI, § 11 (1894).

56. Lincoln 566.

57. *Id.*

58. "No judge or justice shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard." N.Y. Const. art. VI, § 23(c):

59. Superior court judges as used in this particular context, i.e., removal by the legislature, includes only judges of the court of appeals and justices of the supreme court. See text following note 57 supra. This definition is not to be confused with the definition of superior court judges in the context of removal by the Court on the Judiciary. That definition is set forth in note 9 supra and is the one referred to in the remainder of this article.

60. Lincoln 571-72.

the legislature, a concurrent resolution to remove Justice Hooker failed to receive the two-thirds vote in the Assembly and was defeated.<sup>61</sup>

The removal procedure relating to inferior court judges<sup>62</sup> has been attempted on several occasions.<sup>63</sup> However, in only one case has removal actually resulted. In 1872, as a result of an investigation by the Judiciary Committee of the Assembly,<sup>64</sup> Governor Hoffman convened the Senate and recommended the removal of John H. McCunn, a justice of the Superior Court of the City of New York. Obtaining the necessary two-thirds vote of the Senate, the removal resolution was carried.<sup>65</sup>

### *C. The Events Leading to the Court on the Judiciary*

For nearly forty five years following the revisions made by the constitution of 1894,<sup>66</sup> no significant changes took place in removal procedures. Impeachment and legislative resolution were the exclusive methods of judicial removal in New York. However, although rarely used, these procedures were far from satisfactory; thus, alternative procedures were sought. In 1938, the constitutional convention adopted a proposed revision to the Judiciary Article authorizing the court of appeals to remove superior court judges for cause and to retire them for disability.<sup>67</sup> Although the entire article was defeated in the general election of 1938,<sup>68</sup> the work of the Constitutional Convention of 1938 was not totally wasted. It proved to be the first step leading to the creation of the Court on the Judiciary.

Ironically, at about the same time that the 1938 proposal was defeated by the voters, a situation developed which added significant impetus for a

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61. *Id.* at 574.

62. Inferior court judges as used in this particular context, i.e., removal by the legislature, means judges of those courts listed in the text accompanying note 58 *supra*. This definition is not to be confused with the definition of inferior court judges in the context of removal by the Court on the Judiciary. That definition is set forth in note 9 *supra* and is the one referred to in the remainder of this article.

63. E.g., attempts were made to remove George W. Smith, county judge of Oneida County, in 1866, Horace G. Prindle, county judge and surrogate of Chenango County, in 1872, and George M. Curtis, justice of the marine court of the City of New York, also in 1872. *Lincoln* 579-87.

64. This was the second time that this Committee's report resulted in the commencement of removal proceedings. For an account of the first time, see text accompanying notes 37-41 *supra*.

65. *Lincoln* 585-86. The vote was 28-0.

66. See text accompanying note 55 *supra*.

67. Cannon, *supra* note 31, at 2. This proposal applied to the removal of all superior court judges excluding the judges of the court of appeals. A concurrence of five elected court of appeals judges was necessary for removal. *Id.*; see 1 N.Y. Const. Conv. 260 (rev. rec. 1938). See also 1938 N.Y. Const. Conv., Journals and Documents, Doc. No. 16, art. VI, § 10, at 70 (1938), for the actual proposal.

68. Cannon, *supra* note 31, at 2.

"nonlegislative" method of judicial removal. In late 1938 Governor Lehman recommended to the Senate the removal of Justice George Martin of the Kings County Supreme Court.<sup>69</sup> Governor Lehman's recommendation was based upon consultations with John H. Amen, a special prosecutor whom Lehman had previously appointed to investigate Martin.<sup>70</sup> Earlier in 1938, Martin had been indicted for accepting a bribe and improperly dismissing an abortion charge against a physician.<sup>71</sup> Martin vigorously denied accepting the bribe,<sup>72</sup> and after a highly publicized trial, was acquitted.<sup>73</sup> Not satisfied with the acquittal, Prosecutor Amen sent the data which he had accumulated concerning Martin's activities to the Governor,<sup>74</sup> who promptly ordered a hearing to determine if any further proceedings were warranted.<sup>75</sup> As a result of this hearing, the Governor recommended to the Senate that Martin be removed.<sup>76</sup> Essentially, he was charged with six major acts of impropriety: (1) using his official position to promote questionable speculations; (2) having defects in character which made him unfit to be a judge; (3) violating the law himself and condoning its violation by others; (4) using his office and patronage to repay personal obligations; (5) receiving gifts and money from attorneys practicing before him; and (6) having strong personal interests in cases before him.<sup>77</sup>

For two long months during the fall of 1939,<sup>78</sup> the Senate heard the evidence against Martin. This burdensome trial, which cost the state more than \$100,000,<sup>79</sup> concluded in Martin's acquittal and retention on the bench.<sup>80</sup> This was the *coup de grâce*; certainly the legislature would long remember its ordeal. The Senate, whose volume of business had increased substantially over that of the previous 170 years, had no desire to try judges during the months it was not in session. The painful experience with Justice Martin caused the legislators to focus on a nonlegislative method for removing judges. One serious trial was enough to prove to the

69. *Id.* at 2-3.

70. N.Y. Times, April 9, 1939, § 1, at 6, col. 1.

71. *Id.*, April 11, 1939, at 1, col. 1 (Mayor LaGuardia urged that the legislature immediately remove Martin).

72. *Id.*, June 2, 1939, at 1, col. 2.

73. *Id.*, June 4, 1939, § 1, at 1, col. 6.

74. *Id.*, July 16, 1939, § 1, at 27, col. 2.

75. *Id.*, July 22, 1939, at 1, col. 2.

76. *Id.*, Sept. 7, 1939, at 1, col. 1.

77. See *id.*, at 20, col. 3, for preface and official text of the charges leveled against Justice Martin.

78. The trial ran from September 6 to November 16, 1939. It thus consumed much of the Senate's time and "provided an added spur to the search for some other method of retiring for disability and removing for cause judges of major courts." Cannon, *supra* note 31, at 3.

79. N.Y. Times, Nov. 17, 1939, at 1, col. 8.

80. *Id.* The vote was 28 against removal and 19 for removal, thus failing of the required two-thirds vote.

legislature that it had neither the time nor the inclination to perform this chore. Various proposals promptly took shape and were considered, although nothing conclusive developed.

The final impetus for a new removal procedure came in 1944, when a special grand jury was empaneled to investigate crime in Albany. The grand jury focused its investigation on Justice Gilbert V. Schenck<sup>81</sup> of the appellate division, and soon thereafter was joined in its inquiry by a special committee of the state bar association<sup>82</sup> which ultimately recommended that Governor Dewey submit charges against Schenck to the legislature.<sup>83</sup> As a result of this investigation, Justice Schenck was accused of discussing pending court matters with Albany Democratic leader Daniel P. O'Connell,<sup>84</sup> and of attempting to induce his fellow jurists to reach a decision favorable to the county Democratic organization.<sup>85</sup> The Governor accepted the recommendation of the bar association and an Assembly committee was appointed to investigate Schenck and to make further recommendations to the Assembly.

Frustrated by the difficulty inherent in the judicial removal procedures then in effect, Governor Dewey sought a faster and more effective method of removing corrupt judges. On January 3, 1945, in his annual message to the Legislature, the Governor referred to the Schenck incident as "a shocking example of judicial misfeasance" and implored the Legislature to study new methods of selecting and removing members of the judiciary.<sup>86</sup> Thereafter, Harry A. Reoux, chairman of the Judiciary Committee of the Assembly, proposed an amendment to the constitution which would have vested the power to remove judges in a specially constituted judicial tribunal.<sup>87</sup> This same bill was thereafter introduced in the Senate

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81. *Id.*, Nov. 16, 1944, at 1, col. 1. In a subsequent unprecedented action, the appellate division informed Justice Schenck that he could reveal past deliberations of that body to the grand jury. *Id.*, Nov. 21, 1944, at 27, col. 6.

82. *Id.*, Dec. 12, 1944, at 25, col. 8. Shortly thereafter, Judge Samuel Seabury, formerly of the court of appeals, suggested a change in the method of judicial appointment whereby a supreme court justice would be appointed by the Governor and approved by the electorate. *Id.*, Dec. 13, 1944, at 19, col. 1. In the legislature, Senator Thomas Desmond proposed a new removal procedure which would have maintained the existing provision, and, in addition, allowed the court of appeals to remove a judge on its own motion or on a petition by the appellate division of the department in which the judge sat. Also the appellate division would have been permitted to remove lower court judges. *Id.*, Jan. 18, 1945, at 17, col. 2. However, this proposal was never reported out by the Assembly committee.

83. *Id.*, Jan. 19, 1945, at 21, col. 8.

84. *Id.*, Nov. 16, 1944, at 1, col. 1.

85. *Id.*, Nov. 14, 1944, at 1, col. 1. The case actually involved misappropriation of funds by a member of the Democratic organization.

86. *Public Papers of Governor Thomas E. Dewey 22-23 (1945)*. Studies were also conducted by the Judicial Council of the State of New York, of which Leonard S. Saxe was executive secretary.

87. 1 *N.Y.A. Jour.*, 168th Sess. 827 (1945).

by Pliny W. Williamson,<sup>88</sup> and on March 21, 1945, was adopted by the Senate by a vote of 31-19.<sup>89</sup> Three days later, the Williamson plan was approved by the Assembly in an 83-56 vote.<sup>90</sup>

Basically, this proposal provided that an inferior court judge might "also be removed on the recommendation of the governor to the chief judge of the court of appeals by a court to be convened in each case by such chief judge . . ." <sup>91</sup> The judge could be removed only for cause, and only after having been provided with an opportunity to defend himself. Five members of the convened court would have been required to vote in favor of removal in order for it to be effected.<sup>92</sup> However, this proposal was abandoned in the 1946 legislative session in favor of a more comprehensive scheme.<sup>93</sup>

Meanwhile, in January 1946, the special Assembly committee rendered its report on the Schenck case, calling his actions "highly improper, inexcusable and unjustifiable,"<sup>94</sup> but recommending a severe reprimand rather than removal. As a result, the Assembly censured Schenck by a vote of 121-2.<sup>95</sup> The legislature, already "overburdened with constantly arising important social and economic problems, [had once again] demonstrated its inability adequately to discipline the judiciary."<sup>96</sup>

Early in the 1946 session of the legislature, Assemblyman Reoux introduced another removal procedure; one which would establish a "Court on the Judiciary." This proposal, unlike its immediate predecessor, included a provision for the retirement of judges as well as removal for cause. The Reoux bill was referred to the Assembly's Judiciary Committee,<sup>97</sup> and was subsequently sent to the Attorney General for his opinion.<sup>98</sup> Attorney General Nathaniel Goldstein advised the legislature that the proposal

88. 1 N.Y.S. Jour., 168 Sess. 589 (1945).

89. 2 *id.* at 1503-05.

90. 3 N.Y.A. Jour., 168th Sess. 2797-99 (1945).

91. Con. Res. of March 24, 1945, App., [1945] N.Y. Laws 168th Sess. 2157 (abandoned 1946 Con. Res. of March 25, 1946, App., [1946] N.Y. Laws 169th Sess. 2033-35). The court was to be composed of the Chief Judge of the court of appeals (or judges in lieu thereof), and the Presiding Judge and Senior Associate Justice of each appellate division of the supreme court, except the one in which the accused judge was sitting.

92. *Id.*

93. In New York State, before a constitutional amendment can be submitted to the people in a general election, it must first be passed by two successive legislatures. N.Y. Const. art. XIX, § 1.

94. 1 N.Y.A. Jour., 169th Sess. 78 (1946); see N.Y. Times, Jan. 16, 1946, at 42, col. 2.

95. 1 N.Y.A. Jour., 169th Sess. 80-81 (1946). The only two dissenting assemblymen were associated with the Albany County Democratic organization.

96. N.Y. Times, Feb. 6, 1946, at 22, col. 2 (editorial).

97. 1 N.Y.A. Jour., 169th Sess. 24 (1946).

98. *Id.* at 91.



would exist in addition to the other removal procedures.<sup>99</sup> After some modification of the resolution in committee, the Assembly unanimously approved it.<sup>100</sup> Shortly thereafter the Senate, also by unanimous vote, adopted the resolution.<sup>101</sup>

Prior to the opening of the 1947 session of the legislature, Governor Dewey strongly urged re adoption of the 1946 Reoux bill.<sup>102</sup> The proposal was reintroduced by Assemblyman Reoux early in the session, and was passed by the Assembly on February 4, 1947.<sup>103</sup> Only six days later the Senate approved the bill.<sup>104</sup> In the general election of 1947, the people of the State of New York approved the constitutional amendment which became effective on January 1, 1948.<sup>105</sup>

### III. THE COURT ON THE JUDICIARY

Since 1948, judges of all courts of superior jurisdiction in New York State have been subject to removal by a vote of four members of the Court on the Judiciary.<sup>106</sup> The Court is composed of the Chief Judge and the Senior Associate Judge of the court of appeals, and four justices of the appellate division, one from each judicial department. The justices representing the appellate divisions are designated by the concurrence of a majority of the justices of their respective appellate divisions.<sup>107</sup>

Although impeachment and legislative removal may still be employed to remove members of the judiciary,<sup>108</sup> their use is unlikely in view of the legislature's unpleasant experience with those procedures. Thus, for all intents and purposes, removal of superior court judges at the present time will be effected only by the Court on the Judiciary which acts as both a trial court and the court of last resort. Although no appeal lies from the Court to any of the appellate divisions, or to the court of appeals,<sup>109</sup> a writ

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99. *Id.* at 117.

100. 3 *id.* at 2594-96.

101. 2 N.Y.S. Jour., 169th Sess. 1825-27 (1946).

102. Public Papers of Governor Thomas E. Dewey 23 (1947). See text accompanying note 1 *supra*.

103. The bill was entitled "Concurrent resolution of the Senate and Assembly proposing an amendment to article six of the constitution, in relation to the removal or retirement of judges and justices." 1 N.Y.A. Jour., 170th Sess. 331 (1947).

104. 1 N.Y.S. Jour., 170th Sess. 373-75 (1947).

105. N.Y. Const. art. VI, § 9-a. By amendment in 1961, the Court on the Judiciary provision was renumbered from section 9-a to section 22. Other minor changes, such as conforming court names, have also been made.

106. N.Y. Const. art. VI, §§ 22(a) & (c).

107. *Id.* § 22(b). For the provision of the New York State Constitution which created the Court on the Judiciary see App. A.

108. If the legislature decides to use either of these two removal procedures, its action has priority over removal by the Court on the Judiciary. N.Y. Const. art. VI, §§ 23 & 24.

109. *Friedman v. New York*, 24 N.Y.2d 528, 535-36, 249 N.E.2d 369, 374, 301 N.Y.S.2d 484, 490 (1969).

of certiorari to the Supreme Court of the United States may be available. However, in the two instances in which it was sought, the writ was denied.<sup>110</sup>

### A. *The Cases Decided by the Court*

A discussion of the three cases decided by the Court on the Judiciary is helpful in spotlighting the deficiencies in New York's removal procedures.

#### 1. The Sobel & Leibowitz Case

In its first removal case, *In re Sobel & Leibowitz*,<sup>111</sup> the Court considered charges relating to "injudicious conduct" on the part of two Kings County Court judges who had hurled public accusations and insults at each other from the bench. The Court terminated the proceeding on motion, but issued a strong censure to both respondents. However, before closing the proceeding, the Court held at least two and perhaps as many as five meetings, even though no actual trial took place.

The Court was convened on December 19, 1959 by Chief Judge Conway<sup>112</sup> and was composed of Chief Judge Desmond, Senior Associate Judge Dye, Justice Rabin of the first department, and Presiding Justices Beldock of the second department, Bergan of the third department, and Williams of the fourth department. The Court had its first meeting on February 26, 1960 at which time it sent the required notification<sup>113</sup> to the Governor, the Senate, and the Assembly, adopted eleven rules, appointed its clerk, and designated counsel to conduct the proceedings.<sup>114</sup>

The rules of the Court provided in principal part that five of its six members would constitute a quorum, but that the concurrence of at least four members was necessary to remove or retire a judge.<sup>115</sup> The rules further provided that all proceedings were to be held in Albany at the Court of Appeals Hall, and that upon convening, the Court had to make an initial determination as to whether the charges stated facts sufficient to constitute cause, and whether the charges were in a form fairly permitting an answer. If the Court determined that these requisites were met, it had to issue an order that the charges be served upon the respon-

110. *Osterman v. New York Ct. on the Jud.*, 376 U.S. 914 (1964), denying cert. to 13 N.Y.2d (a) (Ct. on the Jud. 1963); *Friedman v. New York Ct. on the Jud.*, 375 U.S. 10, dismissing appeal from 12 N.Y.2d (a) (Ct. on the Jud. 1963).

111. 8 N.Y.2d (a) (Ct. on the Jud. 1960).

112. Shortly after the Court was convened, Judge Conway retired as Chief Judge.

113. N.Y. Const. art. VI, § 22(e).

114. 8 N.Y.2d at (a)-(c), (e). Raymond J. Cannon, clerk of the court of appeals, was appointed clerk and John R. Davison, Esq., of Albany and William R. Brennan, Esq., of Buffalo were appointed counsel. *Id.* at (b).

115. Rule I, *id.* at (c).

dent who was given twenty days to answer. If the charges were not in proper form, the Court would order that they be properly written.<sup>116</sup> If the charges would, if proved, fail to constitute cause, the proceeding would be dismissed by the Court with appropriate notice to the Governor, the Senate, and the Assembly.<sup>117</sup> The rules also provided that motions could be made with respect to the charges<sup>118</sup> and that the Court might try an issue of fact or direct that a hearing be held before one or more members of the Court, or before an official referee of the court of appeals or of the supreme court, who would report to the Court.<sup>119</sup>

## 2. The Friedman Case

In its next case, *In re Friedman*,<sup>120</sup> the Court considered charges against a supreme court justice relating primarily to his obstruction of an official inquiry by the Second Judicial Department into the conduct of his brother who was an attorney. The Court, composed of Chief Judge Desmond, Senior Associate Judge Dye and Justices Rabin of the first department, Brennan of the second department, Coon of the third department and Bastow of the fourth department, was convened on August 15, 1962, at which time the respondent was served with the charges. Although not reported, it appears that on that date the Court adopted the *Sobel & Leibowitz* Rules, appointed counsel, gave the appropriate notices, reviewed and ordered the charges served, and established a trial date.

On October 5, 1962, the respondent denied the charges, and the trial, originally scheduled for October 17, 1962, was held in January and February 1963, presumably before at least five of the judges. On February 26, 1963, the Court rendered a 4 to 2 verdict removing the respondent.

Thereafter, the respondent moved to vacate the decision on the ground that when the Court had been convened on August 15, 1962, it had lacked a quorum because only four members had been present.<sup>121</sup> Rule I, adopted by the Court in *Sobel & Leibowitz*, required the presence of five members to constitute a quorum.<sup>122</sup> On April 3, 1963, the Court denied the motion, holding that there had been sufficient members present at all sessions to constitute a quorum.<sup>123</sup>

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116. Rules V & VI(a)-(b), *id.* at (c)-(d).

117. Rule VI(c), *id.* at (d).

118. Rule IX, *id.* at (e).

119. Rule X, *id.*

120. 12 N.Y.2d (a) (Ct. on the Jud.), appeal dismissed, 375 U.S. 10 (1963).

121. *Id.* at (e).

122. See note 115 *supra* and accompanying text.

123. 12 N.Y.2d at (e). Justice Friedman's appeal of the decision was dismissed. *In re Friedman*, 19 App. Div. 120, 241 N.Y.S.2d 793 (3d Dep't 1963). His appeal to the United States Supreme Court was also dismissed. *Friedman v. New York Ct. on the Jud.*, 375 U.S. 10 (1963).

### 3. The Osterman Case

In *In re Osterman*,<sup>124</sup> the last case tried by the Court to date, charges were brought against a court of claims judge as a result of his refusal to sign a full waiver of immunity in connection with his proposed appearance before a New York County Grand Jury. The grand jury was investigating the possible commission of crimes in relation to the administration of the New York State Liquor Authority.

Having convened the Court on April 29, 1963, Chief Judge Desmond was joined by Senior Associate Judge Dye and Justices Botein of the first department, Ughetta of the second department, Gibson of the third department, and Goldman of the fourth department. At their first meeting on May 25, 1963, rules were adopted, a clerk appointed, and counsel designated.<sup>125</sup>

The rules adopted by the Court differed in certain respects from the *Sobel & Leibowitz* Rules. The quorum requirement was reduced to four members, apparently as a result of the motion made by the respondent in *Friedman*.<sup>126</sup> In addition, Rule XI, which previously dealt with witnesses' mileage fees, was renumbered, and a new Rule XI was adopted dealing with the granting of testimonial immunity to witnesses pursuant to the Court's powers under the constitution.<sup>127</sup>

On June 3, 1963, the respondent filed his answer, and on September 9, 1963, counsel entered into a stipulation limiting the forthcoming hearing to the question of whether one specific provision of the eight charges lodged against the respondent was sufficient for removal. Counsel also stipulated to the accuracy of certain material before the Court in connection with that limited portion of the charges. On September 9, 1963, counsel moved the Court for a judgment ordering removal on the basis of the stipulation. By cross-motion made several days later, respondent's counsel moved to dismiss the charge covered by the stipulation as insufficient in law. Argument was held on September 23, 1963, and the Court rendered its opinion removing the respondent on October 8, 1963.

#### B. *The Circumstances Which Have Preceded the Convening of the Court*

Illustrative of the diverse paths which may lead to the Court on the Judiciary are the ways in which the three cases already decided by the Court and the two 1971 matters arose.

124. 13 N.Y.2d (a) (Ct. on the Jud. 1963), cert. denied, 376 U.S. 914 (1964).

125. *Id.* at (a)-(c). Once again, Raymond J. Cannon was appointed clerk of the Court. The Hon. Bruce Bromley of New York City, former judge of the court of appeals, was designated counsel.

126. *Id.* at (c); see text accompanying note 121 *supra*.

127. 13 N.Y.2d at (e). The pertinent provision of the constitution is N.Y. Const. art. VI, § 22(f).

*Sobel & Leibowitz* came to the attention of Chief Judge Conway by reason of a resolution adopted by the Judicial Conference of the State of New York with respect to certain public statements and insults exchanged by the two respondents.<sup>128</sup>

*Friedman* had its origin in an inquiry and investigation conducted by Justice Bernard S. Meyer in January 1957, on behalf of the Appellate Division of the Second Department, into the affairs of the respondent's brother.<sup>129</sup> Justice Meyer's report to the appellate division contained certain statements relating to the respondent's conduct in relation to Meyer's inquiry. Within a month after the appellate division's order based upon the inquiry was entered, the Presiding Justice apparently requested the Chief Judge to convene the Court on the Judiciary with respect to the respondent's conduct.

*Osterman* arose as a result of a request by Governor Nelson A. Rockefeller, on April 16, 1963, to Chief Judge Desmond to convene the Court with respect to Judge Osterman who refused to sign a full waiver of immunity before testifying before a grand jury. The Governor's request was based upon a report made to him by the District Attorney of New York County on April 15, 1963. The Governor had requested the judge's resignation on that day, but the judge had refused to submit it.<sup>130</sup>

Both of the 1971 cases<sup>131</sup> arose from requests made by the Presiding Justices of the appellate divisions in which the justices involved were sitting. The basis of the request with respect to the justice from the first department was testimony given at hearings conducted by the State Joint Legislative Committee on Crime early in 1970. Subsequently, additional testimony was given before the United States Senate Permanent Investigations Subcommittee of the Senate Government Operations Committee in July 1971, relating to similar charges.<sup>132</sup> The basis of the request with respect to the justice from the second department was a report following a special inquiry into alleged improprieties committed by the respondent. This inquiry was conducted by retired Court of Appeals Judge Charles W. Froessel as Designee of the Presiding Justice of the second department.<sup>133</sup>

### C. *Preliminary Judicial Investigation*

Prior to requesting the Chief Judge of the court of appeals to convene the Court on the Judiciary,<sup>134</sup> an investigation is usually conducted by the

128. 8 N.Y.2d at (b), (h)-(j).

129. 12 N.Y.2d at (a)-(c); see *In re Friedman*, 17 App. Div. 2d 644 (2d Dep't 1962) (mem.).

130. 13 N.Y.2d at (b).

131. Involving Justices Schweitzer and D'Auria. See note 5 supra.

132. N.Y. Times, July 23, 1971, at 1, col. 2; id., July 22, 1971, at 1, col. 2.

133. 165 N.Y.L.J., July 30, 1971, at 1, col. 3.

134. The Court on the Judiciary must be convened upon the request of any of the

appropriate appellate division, and various procedures are utilized to review complaints directed against judges.

Under New York's Judiciary Law, the Administrative Board of the Judicial Conference of the State of New York is vested with the power to investigate "criticisms, complaints and recommendations with regard to the administration of justice in . . . [New York's] court system and the disposition of such complaints, criticisms and recommendations."<sup>135</sup> It also has the power to hold hearings and conduct investigations with respect to virtually any matter having to do with the administration of the courts.<sup>136</sup> The four appellate divisions have also been vested, under the Judiciary Law, with broad authority and power to administer the courts within their respective departments, consistent with and for the purposes of effectuating the standards and policies established by the Administrative Board of the Judicial Conference.<sup>137</sup> Rather than exercising its own authority to investigate complaints about judges, the Administrative Board has delegated to the four appellate divisions the function of "screening and initial review of complaints of judicial misconduct."<sup>138</sup>

### 1. The First Department

Pursuant to the authority delegated to it, and as a result of severe criticism directed at New York's removal procedure in 1967,<sup>139</sup> the justices of the first department adopted rules in 1968 which established a standing Judiciary Relations Committee to "process and take action" upon complaints received with respect to the "qualifications, conduct, or fitness to perform or the performance of the official duties" of any judicial officer serving in that department.<sup>140</sup>

Prior to 1968, complaints in the first department were handled on an ad hoc basis, usually in cooperation with the Administrative Judge of the particular court whose judge was the subject of the complaint. Complaints were also processed by the appropriate committees of The Association of the Bar of the City of New York.<sup>141</sup> Because of the shortcomings of this approach, the Departmental Committee for Court Administration in 1967

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Presiding Justices of the appellate divisions, the Governor, or by a majority of the executive committee of the state bar association. Of course, the Chief Judge of the court of appeals may convene the Court *sua sponte*. N.Y. Const. art. VI, § 22(d).

135. N.Y. Judiciary Law § 212.6 (McKinney 1968).

136. *Id.* § 213.4.

137. *Id.* § 216.1.

138. 14 Ann. Rep. N.Y. Jud. Conf. 49 (1969).

139. See authorities cited in notes 161 & 170 *infra*.

140. Rules of Practice of the Appellate Division, First Department, 22 N.Y. Codes, Rules & Regs. § 607.1-11 (1970) [hereinafter cited as Rules of First Dep't].

141. *Id.*; see note 170 *infra*.

authorized Presiding Justice Bernard Botwin to appoint a subcommittee to study the inadequacy of the ad hoc method. The subcommittee was of the view that formalizing the complaint procedure by the establishment of an independent and continuing committee would enhance public confidence in judicial integrity.<sup>142</sup> Thus, the Judiciary Relations Committee was formed.

This Committee consists of five judges, including two justices of the supreme court, one judge of the family court, one judge of the civil court, and one judge of the criminal court, and a member of the bar who is not himself a judge.<sup>143</sup> All of the members are appointed to the Committee by the Presiding Justice of the first department with the approval of the other justices. In order to be eligible for such appointment, the nonjudicial representative must be an attorney and a member of the Departmental Committee on Court Administration.<sup>144</sup> The members and chairman<sup>145</sup> of the Judiciary Relations Committee serve without compensation for a term determined by the Presiding Justice.<sup>146</sup>

The Committee functions not only to identify and investigate instances of judicial misconduct, but also to screen the complaints it receives in order to protect judicial officers against unfounded charges. It is thus designed to serve as an important vehicle in safeguarding the reputation of judges who have been falsely accused of misconduct.<sup>147</sup> All complaints received by the Committee are investigated by the staff under the direction of the executive secretary, who is the director of administration of the courts in the first department.<sup>148</sup>

Once a complaint is received, the staff interviews the complainant and anyone else having knowledge relevant to the inquiry. If the staff finds that the complaint has merit, it is referred to the full Committee, whereupon a detailed and formal investigation takes place.<sup>149</sup> At this time, the Committee may make suggestions and recommendations to the judicial officer under investigation if the complaint deals with his department as a judge.<sup>150</sup>

Finally, the Committee determines whether to dismiss the complaint or

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142. 14 Ann. Rep. N.Y. Jud. Conf. 50 (1969).

143. Rules of First Dep't § 607.2(a).

144. The rules also require that one of the judicial members must be designated from the membership of the Departmental Committee. *Id.*

145. The chairman is appointed by the Presiding Justice of the appellate division. *Id.* § 607.2(b).

146. *Id.*

147. 15 Ann. Rep. N.Y. Jud. Conf. 77 (1970).

148. Rules of First Dep't §§ 607.3(a) & 607.6(a).

149. *Id.* § 607.6(c).

150. *Id.*

to proceed.<sup>151</sup> If it elects the latter course, it may hold a hearing which, under its rules, is closed to the public unless the judicial officer elects otherwise. At the hearing, tangible evidence including sworn testimony of witnesses is received by the Committee.<sup>152</sup> The respondent has a right to be represented by counsel, to cross-examine witnesses, and to present evidence in his own behalf. After the hearing, the Committee may either dismiss the complaint or, if it determines that the complaint is meritorious, take further action. Further action with respect to a civil or criminal court judge may be a referral to the appellate division.<sup>153</sup> With respect to a supreme court justice, surrogate's court or family court judge, the case may be referred to the Presiding Justice who, in turn, may request the convening of the Court on the Judiciary.<sup>154</sup>

Although it has been indicated that this Committee has functioned effectively, there are no statistics or reports available by which this can be demonstrated.

## 2. The Second, Third and Fourth Departments

The second, third and fourth departments have not adopted any formal procedures for the handling of judicial complaints such as those adopted by the first department.

In the second department, complaints are handled by the Presiding Justice or the Administrative Justice. If the charges are serious enough to warrant an inquiry or investigation, the Presiding Justice orders one. In 1969 and 1970, two such inquiries were conducted by order of the Presiding Justice of the second department. The first inquiry was conducted by a member of the bar who acted as both investigator and factfinder. This inquiry terminated in a report which was adopted by the Presiding Justice recommending no further action.<sup>155</sup> The second inquiry was conducted by Hon. Charles W. Froessel as Designee, and by three members of the bar who acted as counsel.<sup>156</sup> This inquiry resulted in a report by Judge Froessel to the Presiding Justice who, acting thereon, requested the Chief Judge of the court of appeals to convene the Court on the Judiciary.<sup>157</sup>

In the third and fourth departments ad hoc inquiries similar to those employed by the Presiding Justice of the second department may be conducted.

151. *Id.*

152. *Id.* § 607.6(d). The Committee has the power to apply to the clerk of the appellate division for subpoenas to be issued for the "attendance of witnesses and the production of books and papers . . ." before the Committee. *Id.* § 607.9.

153. *Id.* § 607.6(g).

154. *Id.* § 607.6(h).

155. *Newsday*, July 2, 1970, at 5, cols. 1-3.

156. *L.I. Press*, April 1, 1971, at 10, cols. 1-2.

157. *Newsday*, April 1, 1971, at 7, col. 1.



#### IV. THE DEFICIENCIES IN NEW YORK'S REMOVAL PROCEDURES

The present New York State superior court removal and discipline procedures are cumbersome, inordinately time consuming and inefficient. They lack uniformity and require substantial revision. Nevertheless, the present procedures represent a substantial improvement over those in effect prior to their adoption in 1948. Although there has not yet been a public outcry for change,<sup>158</sup> the present system may tend to suppress complaints about judges because the processing procedures require that such complaints be initiated or reviewed with other judges—persons whom a complainant may fear to be too favorably disposed toward the respondent. On the other hand, if the removal machinery and procedures were utilized more frequently, and if multiple trials were required—a possibility suggested by recent newspaper reports<sup>159</sup>—the present system might well collapse of its own weight. Thus, it is the conclusion of the authors that the Court on the Judiciary, under the existing procedures and as presently constituted, cannot be New York State's final answer to the problem of judicial removal.

Interestingly, a special committee of The Association of the Bar of the City of New York on the state constitutional convention concluded in 1967 that New York's judicial removal procedures were working well as evidenced by the paucity of cases that had been brought before the Court on the Judiciary since its inception.<sup>160</sup> Yet, one might also consider whether more cases would have been brought before the Court under a less cumbersome system staffed by nonjudicial personnel and requiring fewer preliminary steps to initiate the appropriate action. Indeed, the rare invocation of the Court on the Judiciary has been cited to demonstrate that complicated and diffuse preliminary procedures and duplicative inquiries may tend to stifle complaints.<sup>161</sup> The validity of either contention probably cannot be determined with any degree of certainty. However, it should be pointed out that the fact that only one justice of the supreme court and only one judge of the court of claims have been removed, and that only two justices have been officially censured in twenty three years, does not prove

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158. There have been serious and responsible complaints about the system by respected members of the bar and professional groups charged with the responsibility of overseeing judicial performance. See [1967] *Y.B. Ass'n of the Bar of the City of N.Y.* 266, 279-81; text accompanying note 161 *infra*.

159. See notes 6 & 8 *supra* and accompanying text.

160. Special Comm. on the Constitutional Convention, *Ass'n of the Bar of the City of N.Y., Removal of Judges 1-2* (March 1967).

161. Committee on State Courts of Superior Jurisdiction, *Ass'n of the Bar of the City of N.Y., Removal of Judges for Disability and Misconduct v-vii* (April 1966), as supplemented, *Addendum viii-ix* (Feb. 1967).

that the remaining jurists have been uniformly fit or qualified to hold their positions during that time.

A comparison of New York's experience with that of California, a state of similar size, reflects that in contrast to New York's three removal cases in twenty three years, California, under a permanent commission system,<sup>162</sup> had 344 complaints and 118 investigations, resulting in the retirement or resignation of twenty six judges in just the first four years following its inception.<sup>163</sup> Absent evidence of an overly aroused California citizenry, or an unusually unfit judiciary, the only plausible distinction is the availability in California of more functional and efficient machinery with which to discipline its judiciary.

Furthermore, unlike California, there is no way of knowing the effectiveness of persuasion, professional or judicial, in retiring unfit judges in New York. There is no public information about such cases in New York, and those in the profession, charged with the responsibility of handling these matters, have necessarily and properly maintained confidentiality. The result is that judicial removal effected without the use of the Court on the Judiciary has become a private matter. In the absence of any publicly available information, the public will assume, perhaps unfairly, that such removals do not occur and that "problem" judges are handled in a "friendly" way. It is clear that a central source for removal activities and statistics is an essential requirement in New York.

Focusing on the Court on the Judiciary itself, it is readily observable that with a slight increase in the caseload of the Court, the demands of extra time upon its members will create difficulties for that Court as well as for the appellate courts from which its members are recruited. With a caseload of just four matters a year, not an inconceivable situation, and with each matter requiring a one week trial, perhaps an overly conservative estimate, each appellate division will lose one full week's participation in its everyday appellate business by as many as four of its justices. The court of appeals will, under those circumstances, lose a full month of participation in regular appellate matters by the Chief Judge and Senior Associate Judge. Furthermore, the Chief Judge's administrative duties will be adversely affected. If one considers the very real possibility that these important trials by the Court may last three or four weeks, the loss of appellate time to the court of appeals and the appellate divisions could be staggering.

It is not sufficient to point to the possible procedure under Rule X of the Court on the Judiciary, which permits the Court to appoint one of its members or a referee of the supreme court or court of appeals to hear

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162. See notes 186-207 *infra* and accompanying text.

163. Committee on State Courts of Superior Jurisdiction, *supra* note 161, at ix.

evidence and render a report.<sup>164</sup> The provision of the state constitution which established the Court on the Judiciary contemplates a trial by the Court, not a review by the Court of a cold record. Certainly where live testimony is or may be involved it can be argued that the procedure provided for in Rule X would, in effect, deprive the respondent of the right to a trial. A full trial by the Court should not be sacrificed because of the anticipated workload of any given case or group of cases. It is far preferable to change the system before the workload becomes a burden.

In addition to the actual trial time before the Court on the Judiciary, each case normally involves an inquiry conducted by, or reviewed by, a Presiding Justice. In the case of the first department, such review may also include the time of five superior court justices as well as the Presiding Justice, thereby compounding the loss of judicial time which should be devoted to the normal duties of those judges.

Furthermore, the present procedures may involve a double inquiry, one by or for the Presiding Justice, or other convening authority, who obviously does not wish to have a Court convened on insubstantial or wholly unfounded charges, and another by the attorneys appointed by the Court on the Judiciary as counsel.

From the point of view of the judge or justice against whom the charges are made, the existing procedures may be unfair as well as unduly burdensome. In the first place, he may suffer from adverse publicity if a preliminary inquiry is ordered by the Presiding Justice or other convening authority. Should the inquiry result in a finding of nonculpability, the judge, as well as the Presiding Justice and the attorneys who conducted the inquiry, may be accused of "whitewashing" the matter.<sup>165</sup>

If the charges are not dismissed and the Court is thereafter convened, the judge involved may be suspended during the period of the proceedings.<sup>166</sup> Since it can be expected that the proceeding before the Court will progress slowly, especially with the required coordination of all the work

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164. See note 119 *supra* and accompanying text. This rule was adopted by the Court in *In re Sobel & Leibowitz*, 8 N.Y.2d (a) (Ct. on the Jud. 1960).

165. For example, it was stated in a recent editorial: "In making [the] decision [that New York State Supreme Court Justice Arthur Cromarty violated neither judicial ethics nor the law in his real estate dealings in the Town of Babylon], the court offers the public only a three-page mimeographed statement that tells nothing of how or why this startling conclusion was reached. Furthermore, the court has sealed all records and documents pertaining to the case and declared it forever closed. This action is patently unreasonable and raises far more questions than it answers. . . .

. . . . Cromarty is getting what amounts to a star chamber whitewash. He is being exonerated on the basis of undisclosed evidence and undisclosed testimony." *Newsday*, July 2, 1970, at 1B, cols. 1-2.

166. N.Y. Const. art. VI, § 22(d).

schedules of the members of the Court, it would not be surprising for the judge involved to remain in a state of suspension for a year or more. This is not a desirable situation either from the judge's point of view or from the public's, since the respondent may collect his salary during his suspension. If the caseload of the Court on the Judiciary increases, it would not be inconceivable for this period of suspension to extend for as long as two years, a wholly unacceptable situation. It is obviously unfair to the judge involved to require him to remain inactive and under a cloud of doubt for so long a period of time. Similarly, it is unfair to the other members of the court on which the suspended judge sits since they must bear a greater workload to make up the judicial time lost by that court as a result of the suspension.

All this loss of judges' time, on the part of both the triers and the tried, can have no useful purpose or beneficial effect on New York's court system. Nor can it improve the image of judges or the judicial system in the eyes of the public. New York should not entertain a system which places judges under suspicion for long periods of time, during which they may be paid their full judicial salaries, and which places serious burdens on the judges who are charged with exercising removal functions. While New York's present procedure for removal of superior court judges has great merit in assuring a fair removal hearing by experienced judges whose qualifications and honesty are beyond reproach, the price it exacts is too great. This is especially true when one considers that equally fair removal procedures can be devised at a greatly reduced price to the participants and the public.<sup>167</sup>

Another factor to be considered is the absence from the present procedure of the right to appellate review. As indicated previously,<sup>168</sup> the Court on the Judiciary is both the trial court and the court of last resort. There appears to be no reason why an equally fair but different hearing procedure should not be devised, which would permit the respondent to appeal to the state's highest court. Such a procedure would guarantee the respondent the right of review, and yet not require the members of that court to sit as trial judges.

Finally, except for the three reported cases discussed above<sup>169</sup> and newspaper reports of inquiries, there is no means by which it can be determined how the removal procedures are working in New York, particularly with respect to matters that may be handled formally by the first department, or informally by a Presiding Justice in the second, third or fourth departments, or by the various bar associations. At best, one can glean from

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167. See text accompanying notes 209-216 *infra* for the authors' suggestions and recommendations.

168. See text accompanying note 109 *supra*.

169. See notes 111-127 *supra* and accompanying text.

occasional carefully worded statements that, because of the difficulties inherent in the present system, certain bar associations are actively attempting to bring pressure to bear upon judges of questionable rectitude.<sup>170</sup>

### V. JUDICIAL REMOVAL SYSTEMS

A brief description of some of the judicial removal systems currently in use in other states may be helpful in developing an alternative system for New York.<sup>171</sup> These systems may be broadly classified into three cate-

170. Thus, in the 1967 Report of the President of The Association of the Bar of the City of New York, it was stated:

"One of the most important responsibilities entrusted to Committees having jurisdiction over the various courts is that of investigating complaints as to the conduct of judges. This is an unpleasant responsibility for all concerned and one which must be carried out quietly and confidentially. Therefore the Chairman of the Committee on State Courts of Superior Jurisdiction has not mentioned in his annual report such an investigation carried to a successful conclusion by his Committee. The conduct of the judge complained of was investigated with the utmost care and diligence by the Committee. Naturally those lawyers having the most intimate information as to the conduct of the judge in question were reluctant to disclose that information. They were reluctant, not so much because they feared retribution from the judge, but because they thought they might be participating in what might turn out to be a feckless undertaking. The unfortunate truth is that some such investigations do result in frustration and futility. However, the investigation which the Committee conducted came to a salutary conclusion. Unfortunately the details of the investigation and its conclusion cannot be revealed here. The Committee could not even reveal to those lawyers who gave valuable confidential information the results of the investigation. It is the hope that those lawyers reading between the lines here will know that their stalwart defense of the dignity of the courts was not in vain.

The investigation confirmed the Committee in its belief that there should be a better procedure for the removal of judges for disability and misconduct than presently exists in the State. The Committee published a careful report recommending the adoption in New York of a modification of the California Commission for the removal of judges. This report of course was carefully considered by the Association's Special Committee on the Constitutional Convention which was studying the same problem with a view to recommending constitutional provisions. The special Committee, however, finally came to the conclusion that the present Court on the Judiciary was functioning satisfactorily and recommended against change. As was its right and its duty the Special Committee on State Courts of Superior Jurisdiction went before the Annual Meeting to urge that the Association overrule its Special Committee on the Constitutional Convention and advocate before the Convention that a commission be established by constitutional amendment to recommend the removal of judges. The Committee's view prevailed over that of the Special Committee and such a commission was recommended to the Constitutional Convention. At this writing, there appears very little likelihood that such a commission will be approved by the Convention." [1967] Y.B. Ass'n of the Bar of the City of N.Y. 266, 279-81.

The Committee on State Courts of Superior Jurisdiction, chaired by William W. Karatz, which was responsible for effecting the "removal" suggested "between the lines," was convinced by its experience in the matter that New York's system was not working satisfactorily. See authority cited in note 161 supra.

171. A detailed bibliography of materials on other removal procedures appears in ABA Section of Judicial Administration, *The Improvement of the Administration of Justice* 60 (1971).

gories: A special court—New York's procedure is the prototype; the state's highest court—New Jersey and Wisconsin are examples; and a separate Commission—California is the outstanding example whose lead has been followed by at least 18 other states.<sup>172</sup>

### A. *The State's Highest Court*

#### 1. New Jersey

Lower court judges in New Jersey may, under the state constitution, be removed from office for causes provided by law.<sup>173</sup> However, no specific causes have been enumerated by the legislature. Consequently, two alternate procedures have been developed to oust judges guilty of misconduct.<sup>174</sup> The first method is disbarment which results in removal since a judge must be a member of the bar to hold judicial office.<sup>175</sup> The second method is holding the judge in contempt of the state supreme court for violating the Canons of Judicial Ethics.

The procedure under the New Jersey State Constitution for initiating disciplinary proceedings allows any person to complain to the state court administrator, who functions under the authority of the Chief Justice.<sup>176</sup> Any form of complaint is acceptable, and the complainant's name is kept confidential. The administrator renders a written reply to all complainants, so that all objections may properly be presented.<sup>177</sup> When the administrator receives a complaint that is apparently valid he may elect to investigate it himself or delegate that duty to any one of twelve assignment judges, each of whom has a geographical area within which he functions.<sup>178</sup> The assignment judges are empowered to enforce directives issued by the Supreme Court of New Jersey as well as the state court administrator, and may act directly on a complaint without conferring with the administrator,<sup>179</sup> even to the point of reprimanding a judge.

172. Alas., Ariz., Colo., Fla., Idaho, Ill., La., Md., Mich., Mo., Neb., N.M., Ohio, Ors., Pa., Tex., Utah and Vt. Braithwaite, *Judicial Misconduct and How Four States Deal with It*, 35 *Law & Contemp. Prob.* 151, 155 (1970) [hereinafter cited as Braithwaite]; see Burke, *Judicial Discipline and Removal: The California Story*, 48 *J. Am. Jud. Soc'y* 167, 168 (1965) [hereinafter cited as Burke]. See also *N.Y. Times*, Feb. 26, 1971, at 39, col. 2. For the removal procedures in the fifty states see App. B.

173. N.J. Const. art. VI, § 6, ¶ 4.

174. See generally Note, *supra* note 9, at 191-93.

175. For examples of some states that have used this method to remove judges see, e.g., *State ex rel. Nebraska State Bar Ass'n v. Conover*, 166 Neb. 132, 88 N.W.2d 135 (1958); *Mahoning County Bar Ass'n v. Franko*, 168 Ohio St. 17, 151 N.E.2d 17 (1958), cert. denied, 358 U.S. 932 (1959).

176. N.J. Const. art. VI, § 7, ¶ 1. See also Frankel, *Judicial Discipline and Removal*, 44 *Texas L. Rev.* 1117, 1124-25 (1966); Note, *supra* note 9, at 191-92.

177. Note, *supra* note 9, at 192.

178. *Id.*

179. *Id.*

If the evidence shows that the complaint is valid, the administrator submits it to the Chief Justice for disposition of the case. The Chief Justice is granted broad discretion; he may have the offending judge called before the supreme court for an informal discussion *in camera*,<sup>180</sup> or order a form of trial with a prosecutor and witnesses. The court then hears the evidence and determines what disciplinary action, if any, should follow. The court may ask for the offending judge's resignation or issue an order to show cause why a disbarment or contempt trial should not take place in another court. Lesser disciplinary measures are also available.

This system's use of a "backdoor" approach, *i.e.*, disbarment in lieu of direct removal, makes it undesirable. The position of the judiciary in New York requires a more direct method for testing a judge's fitness. Informal procedures, while helpful on occasion,<sup>181</sup> do not go to the heart of the problem and do not appear to have any overall preventive effect.

## 2. Wisconsin

The Wisconsin Supreme Court is charged with supervising the state's judiciary in a manner similar to that of the New Jersey Supreme Court.<sup>182</sup> As in New Jersey, the court administrator is responsible for investigating charges of misconduct. However, this informal process has not functioned as well in Wisconsin as in New Jersey because of a lack of implementation.<sup>183</sup> Judges throughout Wisconsin are elected, and the supreme court may either fear political reprisals or view the burden of discipline as having been shifted to the electorate. On the other hand, judges in New Jersey are largely appointed and can secure life tenure; therefore, discipline remains a function of the courts themselves and is not achieved via the electoral process. Disbarment has never been employed in Wisconsin and there has been a reluctance to use any kind of disciplinary proceedings except in the most blatant cases.

Another formal mechanism existing in Wisconsin is the power given to the state bar association to make recommendations to the board of governors of the state bar.<sup>184</sup> These recommendations are made pursuant to the bar association's power to receive complaints and investigate their substance. This procedure has never been used,<sup>185</sup> and appears to be about as effective as New York's impeachment and legislative removal procedures. Therefore, the Wisconsin system does not present itself as a suitable model for New York to emulate.

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180. *Id.*

181. See note 170 *supra* and accompanying text.

182. Wis. Const. art. VII, § 3. See generally Note, *supra* note 9, at 193-94.

183. See Note, *supra* note 9, at 193-94.

184. *Id.* at 166-67.

185. *Id.*

### B. *A Separate Commission*

In 1960, California amended its constitution to provide for a "commission system" of removing judges.<sup>186</sup> This system, known as the Commission on Judicial Qualifications, together with the California Supreme Court, has the power to determine whether or not a judge may remain on the bench.

The Commission is composed of nine members, five of whom are members of the judiciary<sup>187</sup> appointed to the Commission by the supreme court. The state bar association appoints two lawyers and the Governor, with Senate approval, appoints two laymen.<sup>188</sup> The Commission is administered by the executive secretary and his staff, who handle everyday functions. The Commission's objective is to "recommend to the Supreme Court for removal from judicial office any judge found by the Commission to be guilty of willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, or disability of a permanent character seriously interfering with the performance of his duties."<sup>189</sup>

The Commission operates basically in the following manner. First it receives complaints which generally come from "litigants, lawyers, judges, public officials, and bar associations."<sup>190</sup> Over half of the complaints received are found to be unwarranted or beyond the jurisdiction of the Commission and accordingly are not pursued.<sup>191</sup> Other complaints which appear to have prima facie validity, but are not of great significance, may be disposed of at this stage if the accused judge satisfactorily explains the circumstances.<sup>192</sup> If, however, the complaint is apparently genuine and of substance, and if the judge cannot offer a plausible explanation, the next stage, the "preliminary investigation," commences. The judge must be formally notified that a proceeding against him is pending. The notice sets forth "the practice, impropriety or incapacity charged and requests a reply."<sup>193</sup> The Commission may then launch an investigation to determine whether the next step, the "formal hearing," is warranted.<sup>194</sup>

If the Commission decides that a formal hearing is warranted, "charges

186. Cal. Const. art. VI, § 1(b) (1960), as amended, § 8 (1966); see Burke 169-70.

187. Cal. Const. art. VI, § 8; Braithwaite 162-64; Burke 170.

188. Cal. Const. art. VI, § 8; see Braithwaite 162; Buckley, *The Commission on Judicial Qualifications: An Attempt to Deal with Judicial Misconduct*, 3 U. San Francisco L. Rev. 244, 251-52 (1969) [hereinafter cited as Buckley].

189. Committee on State Courts of Superior Jurisdiction, *supra* note 161, at iv; see Cal. Const. art. VI, § 18(c).

190. Braithwaite 163; see Buckley 253.

191. Buckley 253.

192. Braithwaite 163.

193. Buckley 254.

194. *Id.*



are drawn and served on the judge, counsel selected and the case proceeds to trial either before the commission or special masters."<sup>195</sup> The Commission has broad powers which include the right to subpoena witnesses, take evidence, conduct investigations and make findings of fact.<sup>196</sup> The judge is given the "right to counsel, and the right to introduce evidence in his own behalf, and [to] examine and cross-examine witnesses."<sup>197</sup> At the conclusion of the hearing, the Commission makes its determination. It will either dismiss the case or recommend disciplinary action in the form of removal, censure or possible retirement for incapacity.<sup>198</sup> If disciplinary action is recommended, the case then proceeds to the Supreme Court of California for review.

The supreme court acts in an appellate capacity and conducts its own review of the case both as to questions of fact and law. It may also permit the introduction of additional evidence.<sup>199</sup> In rendering its final judgment, the supreme court may have the judge removed or retired, or completely reject the Commission's recommendation and exonerate him.<sup>200</sup>

The important element of confidentiality, once found in the state constitution,<sup>201</sup> is one of the foundations of California's Commission system.<sup>202</sup> Confidentiality "protects the innocent judge from irreparable damage by publicity resulting from the filing of a complaint which an investigation proves to be groundless . . ." <sup>203</sup> and also enables the Commission to use its influence to correct a judge's behavior before his public reputation has been damaged.<sup>204</sup> In practice, confidentiality is perhaps the primary reason why few cases reach the Supreme Court of California since judges often resign after an investigation at the Commission level to avoid any notoriety.<sup>205</sup>

The Commission system appears to be a viable and effective method of removing judges. According to Jack E. Frankel, executive secretary of the Commission: "The evidence is unmistakable that the very existence of the Commission procedure has led to better standards of ethics and per-

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195. *Id.* (footnote omitted).

196. *Burke* 170.

197. *Buckley* 254 (footnote omitted).

198. *Braithwaite* 163; *Buckley* 254-55.

199. Committee on State Courts of Superior Jurisdiction, *supra* note 161, at iv.

200. *Buckley* 255; *Burke* 172; see *Braithwaite* 164 for a review of two cases which went as far as the Supreme Court of California.

201. Cal. Const. art. VI, § 10(b) (repealed 1966).

202. *Buckley* 255-56.

203. *Burke* 172; see *Buckley* 255 for a letter on confidentiality by the Commission's executive secretary.

204. *Buckley* 255.

205. *Braithwaite* 163-64; see *Frankel*, *supra* note 176, at 1128.

formance among the California judges."<sup>206</sup> In addition, the Commission provides a convenient and accessible forum for those with grievances against judges.<sup>207</sup>

## VI. SUGGESTIONS AND RECOMMENDATIONS

While the California system would be an improvement over that of New York, its adoption is unlikely in view of the fact that it was rejected by the 1967 Constitutional Convention.<sup>208</sup> In any event, it is our belief that a workable system can be devised within the general framework of New York's Court on the Judiciary by making the changes set forth below.

### A. *The Recommended Trial Court and Appeal Procedure*

Although we believe that the overall administration of the Court on the Judiciary, including the power to convene the Court, establish its rules and select its members, should remain the responsibility of the Chief Judge of the court of appeals, no compelling reason exists for requiring a judge of the court of appeals or a justice of an appellate division to be a member of the trial court. It would be substantially more efficient, less cumbersome and less time consuming if the Court on the Judiciary had as its members three respected, impartial trial court justices selected from judicial departments other than the one in which the respondent sits. Removal in such a case would be effected by a vote of two of the three members.

A trial court so composed would eliminate the enormous time demands upon appellate court judges endemic to the present system, since no appellate judge need be involved in any trial. Such a trial court could with equal fairness conduct a removal trial of a superior court judge, and would insure the independence of New York's judiciary from outside interference. Furthermore, since under the proposed system there could be as many trial courts as there are respondents without any overlapping of personnel, two or more removal trials could be conducted simultaneously. Obviously, this procedure would substantially reduce the period during which a respondent may be under suspension.

The respondent should have the right to appeal his removal by the trial court directly to the court of appeals where he could obtain a review of

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206. Frankel, *Removal of Judges—Federal and State*, 48 *J. Am. Jud. Soc'y* 177, 182 (1965).

207. Buckley 257.

208. See note 170 *supra*. Such a system was recommended by The Association of the Bar of the City of New York several years ago.

both the facts and the law.<sup>209</sup> This would provide the respondent with an important right and a substantial safeguard not presently accorded him. It would be available to the respondent in the same manner that such a review is presently available following the removal of a public administrative employee. Such review should also be available at the request of the counsel charged with prosecuting the removal. Of course, removal would be effective as of the date that the trial court orders the respondent removed. In the event of reversal, reinstatement would be retroactive.

In our opinion, such a procedure as that outlined above would be incalculably more efficient and, while retaining the benefits of the present system, would reduce its weaknesses. The workload of the four appellate divisions would be unaffected by removal trials, as would the work schedules and workloads of the judges of the court of appeals. Moreover, the overall time delay in trying a removal case would be greatly reduced.

### B. *The Investigating and Prosecuting Office*

Equally important to a fair and efficient trial is the need for a central state-wide investigating and prosecuting office to handle all complaints involving judges. Such a group could be created under present law<sup>210</sup> as a separate part, but under the general supervision, of the Administrative Board of the Judicial Conference. To accomplish this the Administrative Board would merely have to withdraw its delegation of the duty to investigate judicial complaints from the appellate divisions.<sup>211</sup>

The proposed office, composed of an independent counsel and such other legal assistance as required, would be empowered to receive and investigate complaints against all judges on a state-wide basis. It would be authorized to obtain investigators, accountants, stenographers and such other professional help as required, by either hiring them, or when they are available, borrowing them. As under present law, the power of subpoena would be granted to this office.<sup>212</sup> Of course, its activities would be wholly confidential until a court was convened to try the removal charges.

The members of this staff would be engaged on a full time basis and would not be able to practice law while so engaged. Statistical reports

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209. It may be noted that the proposed system would not encounter any difficulty even in the case where a respondent is himself a judge of the court of appeals. Assuming that his colleagues are unable or unwilling to act as judges, the court of appeals "may designate any justice of the supreme court to serve as associate judge of the court during such absence or inability to act" and so preserve the right to appeal. N.Y. Const. art. VI, § 2(a).

210. It should be noted, however, that the trial court and appeal procedure recommended above (see section VI.A. supra) would require a constitutional amendment.

211. See text accompanying notes 135-38 supra.

212. See note 136 supra and accompanying text.

would be made to the Administrative Board periodically, summarizing the work of the office. Investigative details would not be reported, thus preserving confidentiality. Similar statistical reports would be issued by the Administrative Board informing the public, on a numerical basis at least, of the group's effectiveness. There would be no difficulty, with such a central office, in initiating a complaint, nor any slavish adherence to form. Nor would there be any concern by either the lawyer or layman complainant that he might be speaking to a "friend" of the respondent.

Because of the importance of the judicial position and the respect accorded to it, no effort should be spared to make available to the public the machinery of judicial discipline. An office to which grievances might be brought, with the knowledge that they would be confidentially investigated, would aid immeasurably in achieving the goals expressed by Governor Dewey in 1947,<sup>213</sup> and in increasing the public's faith in the integrity of an independent and forceful removal procedure. Furthermore, a permanent investigative office could have a salutary effect on the judicial selection process which, after all, is the root cause of New York's removal problems.

After the group has finished its investigatory work, it would then prepare a confidential written report for the Presiding Justice of the appellate division in which the respondent sits, the Chief Judge of the court of appeals, and the Governor, with its recommendations as to future action.<sup>214</sup> In the case of superior court judges, the report would include a recommendation as to whether the Court on the Judiciary should be convened. After reviewing the report, the Presiding Justice, the Chief Judge and the Governor would communicate to the group their decisions as to further action. As under present law, either a Presiding Justice, the Chief Judge, or the Governor would have the power to compel the convening of the Court on the Judiciary.<sup>215</sup> If the decision of these three officials is that no further action should be taken, the matter would be closed, the file sealed, and a letter written by the group to the complainant, if any, explaining the reasons for such action.

Publicity, of course, would be avoided at all stages prior to the convening of the Court, unless necessary to remove suspicion caused by earlier news reports. However, such matters would be left to the discretion of the Presiding Justice, the Chief Judge and the Governor. The staff would avoid all publicity and refuse to make any public comment at all times. However, as indicated above,<sup>216</sup> annual statistical reports reflecting

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213. See text accompanying note 1 *supra*.

214. N.Y. Const. art. VI, § 22(d) places responsibility for convening the Court on the Judiciary on each of these individuals.

215. See note 134 *supra*.

216. See text following note 212 *supra*.

the activities of the central office and the results thereof would be published by the Administrative Board.

Finally, in the event that the Court on the Judiciary is convened, the same group would handle the presentation of the case before the Court, avoiding a duplicative "education" process with a correspondingly unnecessary waste of time. Under such a procedure, trial could commence within a month after the Court is convened.

The central state-wide office and the procedure described herein will result in a single group of persons with adequate training and developed expertise in handling judicial inquiries and removal trials. They will have the capabilities, experience and resources to handle complaints intelligently and with dispatch and efficiency.

Ad hoc inquiries, which require in each case the obtaining of space, facilities, staff and cooperation of others would be eliminated. Similarly, the process of staff education in the proper procedures to be followed and the matters to be investigated would be eliminated, as would publicity and the attendant delay occasioned by such inquiries. Moreover, this system, in its preliminary stages, would not involve members of the judiciary.

Finally, with permanency comes respectability and prestige, and a viable prestigious office for handling matters of judicial complaints and removal can only inure to the benefit of the judiciary and the state's system of justice. It can only help to restore public faith in the ability and integrity of our judiciary.

### C. Conclusion

The last great reform in New York's system of judicial removal came about by constitutional amendment in 1948. Subsequent experience has demonstrated the need for substantial improvement and modification. The challenge to improve the procedures for removal of superior court judges in New York, in order to better serve the public and the judiciary, is immediate. It is in response to this challenge that we offer the suggestions and recommendations contained in this article.

#### APPENDIX A *The Constitutional Provision Which Created the Court on the Judiciary<sup>a</sup>*

"[Removal for cause or forced retirement of judge or justice; court on the judiciary]

a. Any judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of the county court, judge of the surrogate's court or judge of the family court may be removed for cause or retired for mental or physical disability preventing the proper performance of his judicial duties after due notice and hearing by a court on the judiciary.

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a. N.Y. Const. art. VI, § 22.

b. The court on the judiciary shall be composed of the chief judge of the court of appeals, the senior associate judge of the court of appeals and one justice of the appellate division of the supreme court in each judicial department designated by concurrence of a majority of the justices of each such appellate division of the supreme court. In the absence, inability or disqualification of the chief judge of the court of appeals or of the senior associate judge of the court of appeals, the court of appeals shall designate a judge or judges from the court of appeals to act in his or their stead. The chief judge of the court of appeals shall act as the presiding officer of the court but in the absence, inability or disqualification of the chief judge, the senior associate judge of the court of appeals sitting on the court shall act as the presiding officer.

c. The affirmative concurrence of not less than four members of the court shall be necessary for removal or retirement and the court may disqualify a judge or justice removed from office from again holding any public office of this state. Proceedings to remove or the removal of a judge or justice from office shall not prevent his indictment and punishment according to law. A judge or justice retired for disability in accordance with this section shall thereafter receive such compensation as may be provided by law.

d. The chief judge of the court of appeals may convene the court on the judiciary upon his own motion and shall convene the court upon written request by the governor or by a presiding justice of the appellate division of the supreme court or by a majority of the executive committee of the New York State Bar Association thereunto duly authorized. The court in its discretion may suspend the judge or justice from the exercise of his office pending the determination of the removal or retirement proceedings before the court.

e. After the court on the judiciary has been convened and charges of removal or retirement have been preferred against a judge or justice, the presiding officer of the court on the judiciary shall, before a hearing on charges of removal for cause commences, give written notice to the governor, the temporary president of the senate and the speaker of the assembly of the name of the judge or justice against whom charges have been preferred, the nature of the charges and the date set for hearing these charges, which shall not be less than sixty days after the giving of such notice. Immediately upon receipt of such notice, the legislature shall be deemed to be in session for the purpose of this proceeding. If any member of the legislature prefers the same charges against the judge or justice concerned within thirty days after receipt of such notice and if such charges are entertained by a majority vote of the assembly, proceedings before the court on the judiciary shall be stayed pending the determination of the legislature which shall be exclusive and final. But a proceeding by the court on the judiciary for the retirement of a judge or justice for mental or physical disability preventing the proper performance of his judicial duties shall not be stayed.

f. The court on the judiciary shall have power to designate an attorney or attorneys at law to act as counsel to conduct the proceeding, to summon witnesses to appear and testify under oath and to compel the production of books, papers, documents and records before such counsel in advance of the trial and before the court upon the trial, to grant immunity from prosecution or punishment when the court deems it necessary and proper in order to compel the giving of testimony under oath and the production of books, papers, documents and records, and to make its own rules and procedures for the investigation and trial.

g. The court on the judiciary shall have such further powers and duties as may be provided by law.

h. The judges or justices while exercising the powers of a court on the judiciary shall serve without additional compensation but the legislature shall provide moneys by appropriation to meet the expenses of the court.

i. A judge of the courts for the city of New York established pursuant to section

fifteen of this article, of the district court or of a town, village or city court outside the city of New York may, in the manner provided by law, be removed for cause or retired for disability after due notice and hearing by the appellate division of the supreme court of the judicial department of his residence."

### APPENDIX B

#### *Judicial Removal Procedures Presently in Effect in Each State*

State	Removal Procedure	Source
Alabama	Impeachment of Supreme Court Justices. All other judges can be removed from office by the Supreme Court under its regulations	Ala. Const. art. VII, §§ 173 & 174.
Alaska	Impeachment	Alaska Const. art. IV, § 12; Alaska Stat. §§ 22.05.120 & 22.10.170 (1962).
	Commission on Judicial Qualifications	Alaska Stat. § 22.30.010 (Supp. 1969).
Arizona	Impeachment	Ariz. Const. art. VIII, pt. 2, § 1.
	Recall	Ariz. Const. art. VIII, pt. 1, § 1.
	Commission on Judicial Qualifications	Ariz. Const. art. VI.1, § 1.
Arkansas	Impeachment and address	Ark. Const. art. 15; Ark. Stat. § 12-201 to 12-2223.
California	Commission	Cal. Const. art. VI, § 8.
	Impeachment	Cal. Const. art. IV, § 18.
Colorado	Impeachment (except county judges and justices of the peace)	Colo. Const. art. XIII.
	Commission on Judicial Qualifications	Colo. Const. art. VI, § 23(3)(a).
	Supreme Court can order removal upon felony or offense of moral turpitude	Colo. Const. art. VI, § 23(2).
Connecticut	Impeachment	Conn. Const. art. 5, § 2 & art. 9.
	Judicial Review Council recommends impeachment	Conn. Gen. Stat. Ann. § 51-51a (Supp. 1971).
Delaware	Impeachment	Del. Const. art. VI, §§ 1 & 2.
	Court on the Judiciary	Del. Const. art. IV, § 37.
	Removal by Governor	Del. Const. art. III, § 13.
Florida	Impeachment	Fla. Const. art. III, § 17 & art. V, § 17(3).
	Judicial Qualifications Commission	Fla. Const. art. V, § 17A.
Georgia	Impeachment	Ga. Const. art. III, §§ 2-1703 to -1705, 2-1803; Ga. Code Ann § 24-103 (1971).

## APPENDIX B (Continued)

State	Removal Procedure	Source
Hawaii	Impeachment Board of Judicial Removal	Hawaii Const. art. III, § 20. Hawaii Const. art. V, § 3; Hawaii Rev. Laws, § 610-11-16 (Supp. 1969).
	Commission for Judicial Qualifica- tions	Hawaii Rev. Laws § 610-1-3 (Supp. 1969).
Idaho	Impeachment Judicial Council Commission	Idaho Const. art. V, §§ 3 & 4. Idaho Code Ann. §§ 1.2101 & 1.2103 (Supp. 1969).
Illinois	Impeachment Removal	Ill. Const. art. IV, § 24. Ill. Const. art. VI, § 18.
	Courts Commission	Ill. Ann. Stat. ch. 110A, § 71 (Smith- Hurd 1971).
Indiana	Impeachment by Supreme Court	Ind. Const. art. 7, § 12; Ind. Ann. Stat. §§ 49-819 & -820 (1964).
Iowa	Impeachment Special court	Iowa Const. art. III, §§ 19 & 20. Iowa Code Ann. § 605.28 (Supp. 1971).
Kansas	Impeachment	Kan. Const. art. II, §§ 27 & 28; Kan. Stat. Ann. § 37-101 et seq. (1964).
	Removal	Kan. Const. art. III, § 15.
Kentucky	Impeachment Address	Ky. Const. §§ 66-68. Ky. Const. § 112; Ky. Rev. Stat. Ann. §§ 14.060, 63.020 & .035 (1971).
	Removal	Ky. Const. § 227.
Louisiana	Impeachment Address	La. Const. art. IX, §§ 1 & 2. La. Const. art. IX, § 3.
	Removal by the Supreme Court	La. Const. art. IX, § 4; La. Rev. Stat. Ann. § 13:5001 et seq. (1968).
	Judiciary Commission	La. Const. art. IX, § 4.
Maine	Impeachment and address	Me. Const. art. VI, § 4 & art. IX, § 5.
Maryland	Removal by governor upon convic- tion of high crime or upon impeach- ment	Md. Const. art. IV, § 4.
	Commission with removal by the state assembly	Md. Const. art. IV, §§ 4A & 4B.
Massachusetts	Impeachment and address	Mass. Const. pt. 2, ch. 3, art. I.
Michigan	Impeachment	Mich. Const. art. 6, § 25 & art. 11, § 7.
	Removal by Supreme Court upon recommendation of Judicial Tenure Commission	Mich. Const. art. 6, § 30.



## APPENDIX B (Continued)

State	Removal Procedure	Source
Minnesota	Impeachment	Minn. Const. art. IV, § 14.
	Removal by the governor	Minn. Const. art. XIII, §§ 2 & 3; Minn. Stat. Ann. § 351.03 (1957).
Mississippi	Impeachment	Miss. Const. art. 4, §§ 49 & 50.
	Removal	Miss. Const. art. 4, § 53.
Missouri	Impeachment	Mo. Const. art. VII, §§ 1 & 2; Mo. Ann. Stat. § 106.020 (1966).
	Commission on Retirement, Removal and Discipline	Mo. Const. art. V, § 27.
Montana	Impeachment	Mont. Const. art. V, §§ 16 & 17; Mont. Rev. Codes Ann. § 94-5401 (Supp. vol. 4, 1969).
Nebraska	Impeachment	Neb. Rev. Stat. § 24-101 (1965).
	Commission	Neb. Const. art. V, § 28; Neb. Rev. Stat § 24-715 et seq. (Supp. 1969).
Nevada	Impeachment	Nev. Const. art. 7, §§ 2 & 3; Nev. Rev. Stat. § 283.140 (1967).
New Hampshire	Address	N.H. Const. pt. 2, arts. 17, 38, 39 & 73.
New Jersey	Removal by Supreme Court	N.J. Rev. Stat. §§ 2A:1B-2 & -3 (Supp. 1971).
	Impeachment	N.J. Const. art. VI, § 6, ¶ 4 & art. VII, § 3.
New Mexico	Impeachment	N.M. Const. art. IV, §§ 35 & 36.
	Judicial Standards Commission	N.M. Const. art. VI, § 32.
New York	Impeachment	N.Y. Const. art. VI, § 24.
	Court on the Judiciary	N.Y. Const. art. VI, § 22; N.Y. Judiciary Law § 25-a (McKinney 1968).
	Removal by resolution of the legis- lature	N.Y. Const. art. VI, § 23.
North Carolina	Impeachment	N.C. Const. art. IV, § 4.
	Removal	N.C. Const. art. XIV, § 17.
	Inferior court judges can be removed by Superior Court	N.C. Gen. Stat. § 128-16 (1964).
North Dakota	Impeachment and removal	N.D. Const. art. XIV.
	Removal by impeachment	N.D. Cent. Code §§ 44-09-01 to -27 (1960).
	Removal by judicial proceedings	N.D. Cent. Code §§ 44-10-01 to -21 (1960).
	Removal by governor	N.D. Cent. Code §§ 44-11-01 to -14 (1960).
Ohio	Impeachment	Ohio Const. art. II, §§ 23 & 24, & art. IV, § 17.

## APPENDIX B (Continued)

State	Removal Procedure	Source
Oklahoma	Court on the Judiciary Impeachment	Okla. Const. art. VII-A, § 1. Okla. Const. art. VIII, § 1; Okla. Stat. Ann. tit. 51, § 51 (1962).
Oregon	Removal Commission on Judicial Fitness	Ore. Const. art. VII, § 8. Ore. Rev. Stat. § 1.410 (1968).
Pennsylvania	Impeachment	Pa. Const. art. VI, §§ 4 & 6.
Rhode Island	Impeachment	R.I. Const. art. X, § 4 & art. XI.
South Carolina	Impeachment	S.C. Const. art. XV, § 3.
South Dakota	Impeachment (except county judges who are subject to removal by the governor)	S.D. Const. art. XVI, §§ 1-5, 7 & 8; S.D. Compiled Laws Ann. § 3-17-1 (1967).
Tennessee	Impeachment	Tenn. Const. art. V; Tenn. Code Ann. § 8-2601 (1955).
Texas	Impeachment  Address  Judicial Qualifications Commission Removal of district judges by Supreme Court	Tex. Const. art. XV, § 2; Tex. Rev. Civ. Stat. art. 5961 (1962). Tex. Const. art. XV, § 8; Tex. Rev. Civ. Stat. Ann. art. 5964 (1962). Tex. Const. art. V, § 1-a. Tex. Const. art. XV, § 6.
Utah	Impeachment Commission on Judicial Qualifications Board of Commissioners of the state bar association Removal	Utah Const. art. VI, § 19. Utah Code Ann. § 49-7-8 (1970). Utah Code Ann. § 78-51-12 (1953). Utah Const. art. VIII, §§ 11 & 28.
Vermont	Impeachment Committee of the Judiciary (commission)	Vt. Const. ch. II, § 54. Vt. Stat. Ann. tit. 4, § 2a (Supp. 1971).
Virginia	Impeachment Judicial Inquiry and Review Commission	Va. Const. art. IV, § 17. Va. Code Ann. § 2.1-37.3 & 4 (Supp. 1971).
Washington	Impeachment Removal	Wash. Const. art. V. Wash. Const. art. IV, § 9.
West Virginia	Impeachment	W. Va. Const. art. IV, § 9 & art. VIII, § 17; W. Va. Code Ann. § 6-6-3 (1966).
Wisconsin	Impeachment Address	Wis. Const. art. VII, § 1. Wis. Const. art. VII, § 13.
Wyoming	Impeachment Removal	Wyo. Const. art. 3, § 18. Wyo. Const. art. 3, § 19.