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CONNECTICUT STRIKES AT A COURT "RACKET"

Victor A. Rapport¹

Two years ago the State of Connecticut set out to correct a "racket" which existed in the enforcement of motor vehicle laws. Involved in the asserted improprieties were the local courts and both organized and unorganized police forces. It is the purpose of this article to present statistical material to indicate some of the background leading up to legislative changes and other material which tends to show certain results achieved by the new laws. Before presenting these data, however, it is desirable to state briefly the nature of the law which made possible an unsavory situation, one which received considerable unfavorable publicity both in Connecticut and in neighboring states.

The minor courts of Connecticut were composed of a number of differing types, some created by special action of the General Assembly (the legislature) but most coming under the constitutional provision creating justices of the peace.² The original constitution provided for annual appointments of the justices of the peace by the General Assembly, "with such jurisdiction in

civil and criminal cases as the General Assembly may prescribe;" the Amendment changed the appointment to election by the towns. The present term of office is set at two years³ and the number of justices elected in each town varies from 5 to 56.⁴ No general statement of the powers of justices of the peace exists; a large number of laws specify the powers of the justices in particular matters. In general, their jurisdiction was limited under the old laws⁵ to offenses carrying a penalty of not more than \$25.00 fine or jail sentence of not more than 30 days or both. Exceptions existed, however, as in the case of the penalty for non-support where the justice might impose a jail sentence of 60 days,⁶ and in reference to the motor vehicle statutes where the justice could impose penalties up to \$100.00 but not more than 10 days in jail.⁷ It was not required that justices of the peace be lawyers; the vast majority of them were, in fact, not members of the bar.

The prosecuting official in these courts was the grand juror. Each town elects from two to six men to this

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² *Constitution of Connecticut*, Article Fifth, Sections 2-3, Amendment Article X.

³ *General Statutes of Connecticut* (Revision of 1930), Section 5292. (In the future this title will be abbreviated to G. S.)

⁴ The method of arriving at the number of justices is roundabout. G. S. Sec. 5293 states that the number of justices of the peace shall be

equal to one-third of the number of jurors to which the town is entitled. The number of jurors is stipulated for each town individually in G. S. Sec. 5579, based on a revision in 1909. How the number of jurors as arrived at by the General Assembly must remain something of a mystery since it bears no direct relation to population.

⁵ G. S. Sec. 6392.

⁶ G. S. Sec. 6268.

⁷ G. S. Sec. 1615.

office;⁸ their term being for either one or two years depending on the election laws of the town in which they are elected. The same statutory provision covers constables who serve as the police officials of the town which has no organized police force. They must stand for election annually or biennially, their number is seven.

These three officials constituted the court of original jurisdiction in most of the small Connecticut towns. Whereas any duly qualified justice of the peace could hear a case, and whereas any duly qualified grand juror could prosecute under the old laws, the common practice was for only one of these officials to function in the majority of the criminal trials which occurred in a town. The arresting officer selected the grand juror who was to prosecute, and the grand juror in turn selected the justice of the peace before whom he would present the accused. This relation of officials is important to remember in view of the following.

A basic factor leading to the growth of court rackets was the fee system upon which these courts were operated. For each case in which costs of court were assessed (and it will be seen later that this occurred in most cases), the justice of the peace received three dollars⁹ for sitting as judge, but in motor vehicle cases he received an additional two dollars for forwarding an abstract of the case to the Commissioner of Motor Vehicles.¹⁰ The fee of the grand

juror was fixed¹¹ at two dollars plus six cents a mile travel to court. Section 2280 of the General Statutes provides a number of fees which the constable may receive: one dollar for arrest, twenty-five cents a mile for travel with his prisoner to court, and so forth; in general, the fee of a constable for arrest in a motor vehicle case amounted to approximately three dollars. In 1937, the median costs of court in all motor vehicle cases in the State of Connecticut in which costs were assessed amounted to \$11.83; in 1938, they were \$11.80; and in the first six months of 1939, fell to \$10.95. Thus a person frequently found that the fine for a minor offense might be considerably less than half of the costs of court.

The matter of costs of court is further complicated by the provisions dealing with the payment of costs where they are not assessed against the accused. Under the old laws, the town received none of the fines in motor vehicle cases; these were all turned over to the state.¹² Thus the town (in the case of salaried courts) or the court could derive revenue only from the costs of court. Provision was made, however, for the court to receive its fees if the accused was acquitted or if charges were not levied. Where trial was before a justice of the peace in such a case, the town was directed to reimburse the court,¹³ or, if the arrest had been made by a state policeman, the State was called upon to pay the costs

⁸ G. S. Sec. 274.

⁹ G. S. Sec. 2268.

¹⁰ G. S. Sec. 1617.

¹¹ G. S. Sec. 2273.

¹² G. S. Sec. 1629.

¹³ G. S. Sec. 6527.

of court.¹⁴ While this claim upon the town existed on the statute books, the problem of collecting the fees was quite another thing. Most towns made no provision for such payments in their budget, and no order upon the town treasurer could be honored if there were no budgetary allotment. The result was that courts were far more anxious to collect the costs of court than to assess fines, since the former guaranteed their own fees while the latter merely went forward to the State. Where an arrest had been made in which the evidence was somewhat inadequate, or where a "fix" had been arranged, it was, of course, possible for the prosecutor to enter a *nolle prosequi*. In either of these cases, it was far more usual for the *nolle* to be entered upon payment of costs of court than for the accused to be completely dismissed. How frequent this occurred is shown in Table I.

It will be seen that in 1937 and 1938 the number of cases *nolled* on payment of costs was 256% of the number *nolled* without costs; in the first half of 1939, it was 229%, but fell to 156% in the

latter half of 1939. Since the new laws went into effect on July 1, 1939, this is a significant set of figures. Additional reference will be had later to Table I.

Besides the mere matter of the tendency of courts to collect fees is the more important fact of where the arrests were made. Theoretically, only one fact determines whether a motor vehicle arrest will be made, i.e., the manner of operation. Actually, a large number of other considerations enter; namely, such things as the volume of traffic, which in turn is a function of the number of miles of improved roads or main highways, the population of a community, the number of police, the vigilance of the police, the attitude of local courts to motor vehicle violations, the nature of the highways, and so on. One would expect that the larger number of arrests would occur in the principal cities, and the figures bear this out. But when over one-fourth of all the arrests in a county occur in a town whose population comprises only one-third of one per cent of the county's population, speculation may well arise.

TABLE I
Disposition of Motor Vehicle Cases in Connecticut, 1937-1939, by Counties*

Counties	1937			1938			Jan.-June, 1939			July-Dec., 1939		
	A	B	C	A	B	C	A	B	C	A	B	C
Fairfield	12,404	4,030	1,718	12,745	4,098	1,608	5,485	1,587	659	6,123	1,301	819
Hartford	6,698	1,749	427	5,237	1,047	365	2,007	338	180	2,348	237	196
New Haven	7,540	1,869	855	7,431	1,699	756	2,925	757	339	3,152	650	359
New London	2,077	137	56	1,831	121	91	721	70	38	601	32	32
Middlesex	888	59	18	783	43	5	438	14	15	306	2	5
Litchfield	1,075	99	30	1,163	278	26	384	82	16	524	52	37
Tolland	744	3	9	588	18	2	402	12	1	441	3	8
Windham	523	28	4	444	20	13	188	8	7	354	4	10
TOTALS	31,949	7,974	3,117	30,222	7,324	2,866	12,550	2,868	1,255	13,849	2,281	1,466

* The data in this table, and the basic data used hereafter, are all derived from original material published by the Commissioner of Motor Vehicles, State of Connecticut.

In this table, the columns have the following titles:

A--Total number of cases. B--Number of cases *nolled* on payment of costs of court. C--Number of cases *nolled* without payment of costs of court.

¹⁴ G. S. Sec. 1619.

Information regarding the location of arrests in Connecticut over the three-year period which is being considered may be found in the published reports of the Commissioner of Motor Vehicles of the State of Connecticut.

The three periods from 1937 through June, 1939, represent the situation under the old laws. The new laws, effective July 1, 1939, resulted, as has been indicated, from dissatisfaction with the manner in which motor vehicle laws were being enforced throughout the State. While most of the criticism was directed against those towns which were operating on the justice of the peace-constable basis, towns which had either a regularly constituted minor court or an organized police force or both did not escape opprobrium. In the latter groups, town revenues were often swelled by the costs of court. An extreme case is that of a town of 1,500 population which annually added \$18,000.00 to its income by this practice. It should be remembered that the fines did not go to the town, but only the costs of court. The only fines which the town received would come from violations of local ordinances; parking offenses being the most common.

The new laws struck at the racket by three principal means. The first of these was the fixing of a maximum fee of \$5.00 (exclusive of witness and interpreter charges) for costs of court in motor vehicle cases.¹⁵ Together with this was a repeal¹⁶ of the two dollar abstract fee to the justice of the peace sitting in these cases. The second means

of attacking the situation was through a revision of the court system. A group of laws¹⁷ called upon the selectmen of the respective towns to appoint a trial justice and an alternate trial justice from the qualified justices of the peace, these officials to have exclusive jurisdiction in criminal cases. The trial justice, in turn, was to select a prosecuting grand juror and an alternate prosecuting grand juror to have exclusive prosecuting authority in criminal cases. These officials were to be placed on salaries fixed by the selectmen and paid by the town. The old method of returning all fines to the State was amended¹⁸ so that now half of the fines in motor vehicle cases goes to the town, presumably to help defray the costs of maintaining the new court. The costs of court still remain with the town. It was stated earlier that the custom existed for only one justice to hear cases in most of the towns. Thus, it would appear that there is no significant change under the present law. The key to the situation, however, lies in the appointing power of the selectmen. If any trial justice gives indication of improperly conducting his office, he may be removed at the conclusion of his term. Under the old laws, the arresting officer together with the grand juror made the decision, and as long as a justice of the peace was elected, there was no way of preventing his hearing cases. A type of collusion thereby became possible.

The third means was by implication. By providing that the costs of court

¹⁵ *Cumulative Supplement to the General Statutes, 1939, Sec. 534e.* (In the future this title will be abbreviated to *Cum. Sup.*)

¹⁶ *Cum. Sup., 1939, Sec. 539e.*

¹⁷ *Cum. Sup., 1939, Sections 1530e-1536e.*

¹⁸ *Cum. Sup., 1939, Sec. 541e.*

were to go to the town, the laws thereby excluded the arresting constable from his former fees. Thus, unless he was placed on salary by the town, he might still make arrests but would receive no remuneration.

How desirable it was that the old method be changed may be seen by consulting Table II. The volume of cases *rolled* without costs is shown in Table I by counties, and roughly represents 10% of all cases. What has happened, in certain selected towns in those cases where costs were paid is shown here. It is particularly interesting to observe on one hand the relation of the population of a town to that of the county in which it is located, and on the other hand, the relation of "costs assessed cases" in the town in question to such cases in the county as a whole. While it would be unreasonable to expect that the two ratios would be identical, there is good reason to question those cases in which a wide disparity exists. This is particularly true if the geography and high-

way structure of the State are known. For example, a main highway between Springfield, Massachusetts, and Hartford runs through the Towns of Suffield and Windsor. Windsor has twice the population of Suffield but four times as many cases. Windsor Locks, a town located between these two, has approximately the same population as Suffield, but has roughly one-thirtieth as many arrests as Windsor. Much the same comparison might be made for Milford and Orange in New Haven County or between Woodbury in Litchfield and Southbury in New Haven County.

A strong indication of the way in which the new laws have affected abuses becomes apparent in studying the performance of certain towns during the period from 1937 to June, 1939, and then during the latter half of 1939. Of special interest are such towns as Trumbull, Berlin, South Windsor, North Branford, Orange, East Lyme, Old Lyme, Old Saybrook, Bolton, and North Grosvenordale.

TABLE II—MOTOR VEHICLE ARRESTS AND COSTS OF COURT, IN SELECTED TOWNS

Town	% County Popu- lation	Total No. of Cases				Costs Paid; % of Total County Cases				Average Costs per Case			
		1937	Ja-Je Jy-De			1937	Ja-Je Jy-De			1937	Ja-Je Jy-De		
			1938	1939	1939		1938	1939	1939		1938	1939	1939
Berlin	1.2	804	292	122	114	12.9	6.0	6.5	4.8	5.77	6.03	6.76	4.30
Bolton	1.8	116	69	44	6	15.7	11.8	11.0	1.4	8.68	8.50	11.76	7.56
East Lyme	2.2	146	113	44	18	7.1	6.6	6.1	3.2	12.27	12.05	11.55	8.59
Milford	2.7	350	550	148	301	4.2	7.2	4.9	9.5	9.29	8.30	7.94	3.59
North Branford.	0.3	450	631	163	29	6.8	9.7	6.3	1.1	13.60	14.14	13.84	8.02
No. Grosvenor- dale	9.2	49	37	11	13	9.6	8.6	6.4	3.8	12.30	12.95	12.99	5.32
Old Lyme	1.1	235	151	70	32	11.7	8.8	10.3	5.7	11.24	11.47	11.97	6.26
Old Saybrook ..	3.2	244	300	159	49	27.8	38.7	39.7	16.1	12.16	11.73	12.10	7.38
Orange	0.3	1,653	1,715	824	517	25.0	26.1	32.0	18.2	11.01	11.00	10.75	5.26
Southbury	0.2	30	29	14	28	0.5	0.4	0.5	1.0	16.57	14.38	12.91	4.11
South Windsor .	0.6	237	294	147	64	3.8	6.1	8.1	3.0	12.92	11.21	10.60	5.45
Suffield	1.0	160	144	63	56	2.4	2.6	3.2	2.3	12.54	9.67	6.66	4.31
Trumbull	0.9	800	772	368	216	7.4	6.7	7.1	3.6	12.60	11.95	11.36	4.57
Windsor	2.0	610	525	219	150	9.8	10.9	12.1	7.0	12.59	11.38	8.87	5.28
Windsor Locks .	1.0	16	22	7	7	0.3	0.5	0.4	0.3	13.39	14.94	13.14	6.14
Woodbury	2.1	309	275	47	111	30.1	24.4	13.0	22.6	14.31	14.08	14.24	4.88

Another tendency of interest is the custom of collecting costs of court. Reference to this was made earlier, and Table I was presented to show the differing manner of disposing of cases. When this is studied town by town the general conclusion is inevitable that the smaller towns show a far greater tendency not to dismiss without collecting costs of court than do the larger communities. Fairfield, Hartford, and New Haven Counties may be designated as the "urban" counties; the remaining five are more characteristically "rural." It will be noted that the percentage of cases *nolled* without payment of costs of court is considerably greater in the urban than in the rural counties. This situation is even more apparent in the records of the individual towns; the small towns collect in almost every case.

The effect of the new laws is immediately apparent in the average cost of court. Throughout the State they have been more than cut in half; in certain towns, the reduction has been even greater. The importance of this to the arrested motorist is, of course, quite evident, but of more significance is the change in attitude toward the courts which should result from this procedure. It is highly unlikely that one can feel friendly toward a court in which he is presented on a minor offense, fined five dollars, and released on a payment of costs totaling, say, \$17.83 or some similar amount. Some courts recognized the unfairness of this and instituted the custom of having the

offender post a bond of five dollars and then fail to appear. That the court itself was fostering illegal action was not considered; a more proper justice was apparently being dispensed.

A possible weakness of the new laws is the danger that towns, being committed to salaries for the court officials and, possibly, for a constable, may try to raise the necessary funds through costs of court and the town's share of the fines in motor vehicle cases. Such reasoning would follow this line; "here is a new expense to the town, therefore, a new source of revenue must be created." Whether this will occur cannot be ascertained until the courts have been in operation for a longer period.

No law can be perfect nor can it attain its goal by the mere writing on the statute books. The State of Connecticut recognized this in enacting the legislation described above. To assist in efficient administration, a council of the trial justices was created. This group meets from time to time with the Chief Justice of the Supreme Court of Connecticut who advises them and serves as head of the group. These meetings serve to answer problems which have arisen in the courts, but more particularly they create in the minds of the trial justices a feeling of being a part of an established judicial system.

From the preceding materials it appears that the new laws are accomplishing their objectives. The evidence indicates that towns which formerly were housing a court racket have been, to some extent, "reformed."