Western New England Law Review

Volume 7 *7 (1984-1985)*
Issue 2

Article 10

1-1-1984

Pellegrino v. O'Neill, 193 Conn. 670, 480 A.2d 476 (1984)

Walter E. Paulekas

PELLEGRINO v. O'NEILL

I. INTRODUCTION

The Connecticut Constitution states: "All courts shall be open, and every person, for an injury done him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."[1] Connecticut enjoys one of the highest per capita income levels but suffers from possibly the longest civil trial delays, and lowest ratio of trial judges available for trial, in the country.[2] Why one state encompasses both statistics is a complex question. The question formed the underlying basis for the claim asserted in *Pellegrino v. O'Neill*.[3]

In *Pellegrino*, thirteen plaintiffs awaiting trial on civil actions in the superior courts of the judicial districts of Hartford, New Haven, Bridgeport, and Stamford brought suit against Connecticut's Governor, treasurer, comptroller, chief court administrator, speaker of the House of Representatives, and President of the Senate.[4] They claimed that the delay in the specified districts[5] denied the citizens of the state of Connecticut an adequate means of redress for their civil claims.[6] They cited insufficient appropriations as the cause of the delays, sought a declaratory judgment finding the financing of the judicial sys-

---

1. CONN. CONST. art. I § 10.

2. In 1983 Connecticut ranked second among the states in per capital income. NEWSPAPER ENTERPRISE ASS'N, INC., THE WORLD ALMANAC AND BOOK OF FACTS 1985 168 (1984) (quoting statistics derived from the U.S. Dept. of Commerce, Bureau of Economic Analysis). At the same time it ranked 48 out of 50 in per capita expenditure on its judicial system. McCollum, *Court Backlog Termed One of the Nation's Worst*, Hartford Courant, Dec. 18, 1983, at A1, col. 1. Additionally, the state was third from the bottom in a survey of 19 states measuring the number of full time judges per capita. McCollum, *300 Cases Being Sent to Rural Courtrooms*, Hartford Courant, Oct. 18, 1983, at A1, col. 5. In 1983 delays approached 6 years in the civil system. Average delays in New Haven County were 5 years 9 months; in Bridgeport 4 years 9 months; in Stamford 5 years and 1 month; and in Hartford 5 years. McCollum, *Backlog Prompts Lawsuit*, Hartford Courant, June 17, 1983, at C1, col. 1. In comparison to counties of similar size, San Mateo County, California, and Hampton County, Massachusetts, delays lasted 5 ½ and 17 months respectively. *Id.*

3. 193 Conn. 670, 672-73, 480 A.2d 476, 478 (1984), *cert. denied and appeal dismissed*, 105 S. Ct. 236 (1984).

4. *Id.* at 672, 480 A.2d at 476.

5. The claimed average delays varied between 5 years 9 months and 5 days to 4 years 9 months and 9 days. *Id.* at 672-73, 480 A.2d at 478.

6. *Id.* at 673, 480 A.2d at 478.

tem unconstitutional under both the state and federal constitutions, and requested ancillary injunctive or equitable relief.[7] The trial court dismissed the claim as nonjusticiable. The state supreme court defined the issue as the adequacy of the number of superior court judges appointed by the legislature rather than the funding of the judiciary by the legislature.[8] The supreme court held that the trial court would have violated the doctrine of separation of powers had it directed the legislature to appoint additional trial judges and agreed that the issue was nonjusticiable.[9]

II. ANALYSIS

A. *The Power of the Court*

The Connecticut judiciary possesses the inherent power to direct governmental agencies to provide the funds necessary "for the reasonably efficient operation of the courts."[10] The court in *Pellegrino* aligned Connecticut with the states holding that their constitutions place a duty upon their judiciaries to insure that their legislatures do not infringe upon individual rights and liberties by refusing to appropriate necessary funds.[11] The courts base their reasoning on the premise that the legislative power to appropriate funds potentially can undermine the autonomy of the judiciary.[12] The judiciary, therefore, in order to insure individual rights and liberties, must possess the ability to appropriate adequate funding.

The power to appropriate is limited. If the judiciary overreaches its constitutional mandate, the judiciary itself violates the doctrine of separation of powers.[13] The rationale of the power lies in maintaining

---

7. *Id.*

8. *Id.*

9. See *id.* at 671, 678, 480 A.2d at 477, 481. The court, in finding that it possessed both inherent and statutory power to increase judicial funding in appropriate circumstances, concluded that the real issue concerned the adequacy of the number of judges appointed by the legislature. The court's deduction must have been premised either on the a perception that increased funding would not render the state judiciary more efficient or that the status quo did not warrant the use of emergency powers.

10. *Id.* at 675, 480 A.2d at 479.

11. *Id.* at 675-76, 480 A.2d at 479-80; State v. Staub, 61 Conn. 553, 23 A. 924, 926 (1892); Commonwealth ex. rel. Carroll v. Tate, 442 Pa. 45, 56, 272 A.2d 193, 199, *cert. denied* 402 U.S. 974 (1971). For a list of states with the position that the court possesses the inherent power to order payment of expense "necessary for its efficient and effective operation," see Annot., 59 ALR 3d. 569 (1974).

12. Comment, *The Court's Inherent Power to Compel Legislative Funding of Judicial Functions*, 81 MICH. L. REV. 1687, 1700 (1982-83).

13. "The failure to recognize [the court's] limit by continuing to disguise the ultimate

the viability of the judicial system, not in providing the most efficient system.

The *Pellegrino* court, in addition, found statutory authority for the judiciary to appropriate funds for a constitutionally adequate system of justice. The court specifically cited CONN. GEN. STAT. section 4-84, which limits the governor's use of emergency funds except those to be used "for the current expenses of any state court."[14] Other state statutes indicate that the judiciary may freely appoint its own clerical and administrative support personnel and that the executive must provide courts with convenient places to conduct the business of the judiciary.[15] The court concluded that the legislature recognized the court's inherent authority to require that the proper authorities furnish funds.[16] Additionally, the court's logic is consistent with *State v. Staub*, in which the court held in 1892 that the judiciary can compel the comptroller of public accounts to perform a public duty in distributing money that the General Assembly has allocated to a specific purpose.[17]

The doctrine of inherent power does not include the power for the judiciary to augment its numbers.[18] If the judiciary could control its numbers and funding, no limitation to its potential power would exist.[19] Placing the power to appoint with the legislature, therefore, remains a cornerstone of the constitutional scheme of separation of powers in Connecticut.[20]

---

issue can only erode both the constitutional system of separation of powers and the public's respect for judicial legitimacy." Comment, *supra* note 11, at 1701.

14. *Pellegrino*, 193 Conn. at 676-77, 480 A.2d at 480; CONN. GEN. STAT. § 4-84 (1983).

15. *Pellegrino*, 193 Conn. at 676-78, 480 A.2d at 480-81; CONN. GEN. STAT. §§ 51-51v, 27b, 27d (1983).

16. *Pellegrino*, 193 Conn. at 676-78, 480 A.2d at 480-81. Interestingly, the primary statute forming the basis for the court's decision speaks to emergency situations, yet the court barely discussed the statute in the context of an emergency. CONN. GEN. STAT. § 4-84 (1983).

17. State v. Staub, 61 Conn. 553, 569, 23 A. 924, 928 (1892).

18. *Pellegrino*, 193 Conn. at 678, 480 A.2d at 481.

19. Hazard, *Comment: Court Finance and Unitary Budgeting*, 81 YALE L.J. 1286, 1290 (1971-72); *see infra* note 24.

20. The *Pellegrino* court specifically referred to *Brown v. O'Connell* which held that:

> [T]he power to organize courts and appoint judges is conferred by special mandatory provisions, requiring direct action by the General Assembly, those powers cannot be delegated, and the appointment of judges, in all cases where the constitution has not been altered by amendment, can only be made by vote of the Assembly.

Pellegrino at 678-79, 480 A.2d at 481, citing Brown v. O'Connell, 36 Conn. 432, 448 (1870). *Pellegrino* thereby reaffirmed the *Brown* court's conclusion that the powers, being of pivotal importance, can never be delegated.

B. *Justiciability*

The *Pellegrino* court held that the trial court had not erred in holding the complaint nonjusticiable. The supreme court continued:

> Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant.[21]

The supreme court reasoned that the only solution that offered the plaintiffs practical relief would be the appointment of additional superior court judges. Additional appointments, however, would violate the third factor the court had delineated.[22]

The third factor flows from the doctrine of separation of powers.[23] The Connecticut constitution strictly reserves the power of judicial appointment to the legislature.[24] The appointment of additional superior court judges, therefore, is a political question. The *Pellegrino* analysis, therefore, never reached the fourth question since the judicial appointment of more judges represented the only practical relief.

---

21. *Pellegrino*, 193 Conn. at 674, 480 A.2d at 479 (citing State v. Nardini, 187 Conn. 109, 111-12, 455 A.2d 304 (1982)).

22. The majority cited many federal decisions in which the issue was held to be nonjusticiable because the only solution was additional judicial appointments. *Pellegrino*, 193 Conn. at 685, 480 A.2d at 484 (citing Ad Hoc Committee on Judicial Administration v. Massachusetts, 488 F.2d 1241 (1st Cir. 1973), *cert. denied*, 416 U.S. 986 (1974)); De Kosensko v. New York, 311 F. Supp. 126 (S.D.N.Y. 1969), *aff'd*, 427 F.2d 351 (2d Cir. 1970); Kail v. Rockefeller, 275 F. Supp. 937 (E.D.N.Y. 1967); New York State Ass'n of Trial Lawyers v. Rockefeller, 267 F. Supp. 148 (S.D.N.Y. 1967).

23. *See* Baker v. Carr, 369 U.S. 186, 208-14 (1962) (dicta that political questions are nonjusticiable; held that reapportionment may be justiciable under equal protection analysis). In Hardware Dealers Mut. Fire Ins. Co. v. Glidden Co., the court stated:

> The 14th Amendment neither implies that all trials must be by jury, nor guarantees any particular form or method of state procedure . . . In the exercise of that power and to satisfy a public need, a state may choose the remedy best adapted, in the legislative judgment, to protect the interests concerned, provided its choice is not unreasonable or arbitrary, and the procedure it adopts satisfies the constitutional requirements of reasonable notice and opportunity to be heard.

284 U.S. 151, 158 (1931).

24. The Connecticut constitution explicitly grants the judiciary the authority to create additional superior court judges. It provides:

> The judges of the supreme court and of the superior court shall, upon nomination by the governor, be appointed by the general assembly in such manner as shall be prescribed. They shall hold their offices for the term of eight years, but may be removed by impeachment. The governor shall also remove them on the address of two-thirds of each house of the general assembly.

CONN. CONST. art. V., § 2.

Once the court found a political question, the argument became circular, leaving no means of awarding practical relief.

Justice Peters, dissenting, relied heavily on *Horton v. Meskill*.[25] The Connecticut Supreme Court in *Horton* held that the legislation funding public schools was unconstitutional.[26] The *Horton* court did not force immediate legislative action on school funding but allowed time for the democratic process to provide a constitutionally acceptable solution.[27] The court also stated that declaratory judgments were "peculiarly well adapted for the judicial determination of controversies concerning constitutional rights and, as in these cases, the constitutionality of state legislative or executive action."[28] Justice Peters concluded that a declaratory judgment similar to that in *Horton* would appropriately settle the *Pellegrino* case.[29] Moreover, she expressed concern regarding the logical juxtaposition of *Horton* and *Pellegrino*; that a right to public education was fundamental and subject to strict scrutiny while a right to a civil trial "without sale, denial, or delay" did not enjoy the same status.[30]

In *Horton*, the court limited the use of declaratory judgments to cases involving threats to personal rights, justiciable controversies, adverse interests, actual or substantial questions, or notice.[31] The *Horton* rationale presented a practical form of relief under which the court could construe the matter to be justiciable. Given the broad nature of the Connecticut statute that authorizes the superior court to render declaratory judgments and the favorable reading normally given to the non-moving party in a summary action, support exists for the *Horton*

---

25. 172 Conn. 615, 376 A.2d 359 (1977). Subsequent to the *Pellegrino* decision, Governor O'Neill appointed Justice Peters, who wrote the *Pellegrino* dissent, Chief Justice of the Connecticut Supreme Court.

26. *Id.* The court subjected the legislation to strict scrutiny.

27. In *Horton* the court stated that:

> In a case such as the present one, this circumstance [school funding] is of special importance because the court, mindful of the proper limitations on judicial intervention, the problems inherent in the complexities of school financing and the presumption that other departments of our government will accede to this court's interpretation of the state constitution, may properly delay specific direction, affording time for corrective action and avoiding any serious interference with the performance of their respective instrumentalities, funds and property.

Id. at 627-28, 376 A.2d at 365 (quoting Block, *Suits Against Governmental Officers and the Sovereign Immunity Doctrine*, 59 HARV. L. REV. 1060, 1061 (1946)).

28. *Horton*, 172 Conn. at 626, 376 A.2d at 365.

29. *Pellegrino*, 193 Conn. at 689-95, 480 A.2d at 486-88.

30. *Id.* at 689, 480 A.2d at 486; CONN. CONST. art. I, § 10.

31. *Horton*, 172 Conn. at 627, 376 A.2d at 365.

approach.[32]

Justice Peters also focused on the concept of "emergency." She would not have read the complaint as strictly as did the majority.[33] She would instead have read the claim for relief narrowly to be for additional funding. She then would have agreed to hold, with the majority, that the power to fund inheres in the state judiciary when its ability to perform its constitutionally mandated duties were threatened.[34] Using this line of reasoning the court would have two forms of equitable relief in additional funding and a *Horton* style judgment.

C. *Alternatives to Judicial Appointment*

Substantial authority holds that the judiciary possesses no explicit or inherent power to appoint additional judges. The question then becomes whether any plausible alternatives exist to erode the *Pellegrino* holding. In reading the complaint "broadly," the majority found the problem caused by a shortage of superior court judges rather than a lack of money.[35] Impliedly, the court concluded that the financial support which the superior court system received maximized their efficiency. If additional funds could have helped, the logic of the majority opinion would have required the exercise of the inherent power of the court to force judicial appropriations.[36] The exercise would also have fulfilled the third and fourth justiciability requirements of having a matter that can be adjudicated and for which the possibility of practical relief exists.

The weakness of the assumption of efficiency makes the additional appropriation alternative plausible. The question is not whether money will solve the problem but whether additional funding will alleviate the congestion. Money alone will not suffice but in the larger cities "more money is plainly essential."[37]

Another alternative would be the adoption of a subsidiary system. In *Gentile v. Altermatt*,[38] the court recognized no-fault motor vehicle

---

32. *Id.* at 626, 376 A.2d at 365 (quoting Sigal v. Wise, 114 Conn. 297, 301, 158 A. 891, 892 (1932)).

33. *Pellegrino*, 193 Conn. at 692, 480 A.2d at 488.

34. *Id.* at 693-94, 480 A.2d at 488.

35. *Id.* at 678, 480 A.2d at 481.

36. *Id.* at 675, 480 A.2d at 479. The statement merely reflects the obverse of the majority's argument. Its extensive discussion of inherent power, however, strongly indicated that if the court found that a lack of appropriations interfered with its ability to perform its mandated functions, it would act promptly.

37. Hazard, *supra* note 19, at 1286.

38. 169 Conn. 267, 363 A.2d 1 (1975), *appeal dismissed*, 423 U.S. 1041 (1976).

insurance as an alternative remedy for the problems, "whether machinery of justice is so burdened that justice is, in fact, denied to many."[39] The *Pellegrino* court found such an alternative not appropriate since the complaint addressed "the need for increased judicial personnel."[40]

The *Pellegrino* court left unanswered the question of whether it could have issued a declaratory judgment to provoke a legislative response. The court stated as a "general rule that what [courts] cannot enforce they cannot decree."[41] A broader reading of the complaint to include all possible remedies, however, may have sharpened the focus of the alternatives. Indeed, the majority's interpretation of the complaint formed the basis of the dissent.

The *Horton* court broached the final alternative. It stated that if the legislature has failed in its "expressly mandated" constitutional duties, a court may properly attempt to provoke a legislative response. To accomplish the objective, the court may issue a declaratory judgment and then "stay its hand to give the legislature an opportunity to act."[42] The *Horton* approach resulted from its awareness that a court must minimize its intrusion into constitutionally mandated legislative functions. The *Horton* court specifically emphasized that courts should be extremely cognizant of the limitations of judicial intervention.[43]

---

39. *Id.* at 308, 363 A.2d at 21. The court specifically focused on the congested condition of the civil courts as the underlying factor that made dismissal reasonable. *Id.* at 308, 363 A.2d at 22. For a more complete discussion of the alternatives to the auto tort process see Bombaugh, *The Department of Transportation's Auto Insurance Study and Auto Accident Compensation Reform*, 71 Colum. L. Rev. 207 (1971).

40. *Pellegrino*, 193 Conn. at 682, 480 A.2d at 483. Neither the drafter of the complaint nor the local press read the complaint so narrowly. Wesley Horton, an attorney for the plaintiffs, said, "The whole system of financing our judicial system is unconstitutional . . . . The legislature hasn't passed a statute that adequately funds the judicial branch of government." *Legal Attack Begins to End Court Backlog*, Hartford Courant, August 23, 1983, at B3, col. 1.

41. *Pelegrino*, 193 Conn. at 683, 480 A.2d at 483 (quoting Clarkes Appeal from Probate, 70 Conn. 195, 209, 39 A. 155, 159 (1898)).

42. *Horton*, 172 Conn. at 651, 376 A.2d at 375.

43. The *Horton* court stated:

> [T]his circumstance is of special importance because the court, mindful of the proper limitations on judicial intervention, the problems inherent in the complexities of school financing and the presumption that other departments of our government will accede to this court's interpretation of the state constitution, may properly delay specific direction, affording time for corrective action.

Id. at 627-28, 376 A.2d at 365.

III. CONCLUSION

Connecticut faces a crisis in its judicial system. One of the wealthiest states should not have one of the most ineffective systems to redress grievances.[44]

Mere delay can transform the civil system "into a nightmare of inefficiency and inequity"[45] for the average plaintiff, who must "do without any compensation until the end of the trial."[46] In the meantime living expenses increase and earning power decrease due to the injury.[47] As a result, parties may not be operating at arm's length and insurers may be placed in a superior bargaining position.[48] "Extended delay may vitiate the relief finally obtained, especially if money is urgently needed and the prospective recovery is the victim's sole financial asset."[49] If delays affect negotiation of bodily injury claims, they also affect the substantive rights of the parties. The system that tolerates the delays is, therefore, perverting "business relations, labor management relations and international relations."[50] If the parties can manipulate the system so substantially, a true emergency exists because the courts are not fulfilling their constitutionally mandated duties.

In *Pellegrino* the court had an opportunity to comment and act on excessive civil trial delays. The court framed the issue so as to avoid alternative approaches such as the one taken in *Horton*. The

---

44. *See supra* note 2.

45. J.O'CONNELL, ENDING INSULT TO INJURY 49 (1975).

46. ROSS, SETTLED OUT OF COURT, THE SOCIAL PROCESS OF INSURANCE CLAIMS ADJUSTMENT 136 (1970); Franklin, Chanin and Mark, *Accidents, Money, and the Law: A Study of the Economics of Personal Injury Litigation*, 61 COLUM. L. REV. 1, 30 (1961). *Supra* note 45 at 140. Mary D. Pellegrino said of her seven year wait, "I don't understand the court system. . . . It just made me feel like my case was important to me and nobody else cared. . . . It makes you feel like the system only works for some people." McCollum, *Court Backlog Termed One of Nation's Worst*, Hartford Courant, December 18, 1983 at A1, 18, col. 1.

47. *See* authorities cited *supra* note 45.

48. Excessive delay may affect the insurers position in the litigation process. Delay impacts on accounting systems, for example, because loss reserves continue to earn interest prior to settlement. Another impact results in the decreased ability of plaintiffs to marshall their evidence as time passes. Conversely, insurers may argue that their file maintenance costs increase and that plaintiffs may use videotapes and depositions. Plaintiffs, of course, are caught between the concern about expense and the fact that they must prove their cases. Poor plaintiffs may have to accept a lower figure due to the cost of litigation, pressing medical bills, liens and pressure from collection agencies. Finn, *Our Uncivil Courts: Where You Need a Strong Case and a Strong Constitution*, Hartford Courant, January 29, 1984, at N.E., 10, col. 1; O'CONNELL, *supra* note 44; ROSS, *supra* note 45, at 139-40.

49. Franklin, Chanin and Mark, *supra* note 45, at 30.

50. ROSS, *supra* note 45, at 136.

court, therefore, placed the burden of developing a solution squarely on the back of the legislature. Since the problem is political, and the court placed it on the body expressly responsible for it, the court chose an eminently safe position.[51]

Walter E. Paulekas

51. In 1984, Connecticut courts' caseloads decreased slightly in part because the judiciary had spent considerable effort on its own and with the legislature to address the problem. Hansen, *On the Courthouse Steps*, Connecticut Law Tribune, November 5, 1984, at 1, col. 1; Smertanka, *State Courts Manage to Reduce Pending Court List*, Hartford Courant, July 18, 1984, at C1, col. 1; Gombossy, *Speziale Names Panel to Study Case Backlog*, Hartford Courant, October 26, 1984, at C2, col. 2.