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Improving Archaic Judicial Machinery

by Joseph D. Tydings

The reluctance of most of our courts to abandon antiquated judicial practices and to make speedy, efficient justice more than an illusion is producing a serious impact on society at large. The National Court Assistance Act is designed to aid in the important task of upgrading and improving the courts of our nation.

HISTORY TEACHES US that at the meadows of Runnymede in thirteenth century England, the barons compelled King John to pledge as part of Magna Charta that "To no one will we sell, to no one will we deny, or delay right of justice." One familiar with the archaic judicial machinery many of our courts employ today might surmise that we have mistakenly enshrined King John's judicial techniques rather than the important legal principle he endorsed. In twentieth century America the principle of swift and certain justice remains more theory than fact.

The long-standing reluctance of most of our courts to abandon antiquated judicial practices, to eliminate the logjams and to make speedy, efficient justice more than an illusion is producing a serious impact on society at large. The effectiveness of our system of criminal justice is being compromised. The faith of our people in the legal process is being undermined. And the mandates of our Constitution, especially the Sixth Amendment right to a speedy trial, are left unsatisfied. As Chief Justice Warren observed, "Interminable and unjustifiable delays in our court are . . . corroding the very foundation of constitutional government in the United States." The staff of the National Commission on the Causes and Prevention of Violence assesses the problem in an even more sobering manner: "Delays resulting from poor court management . . . help to create conditions of disrespect for law and legal institutions, which in turn can increase the chances for violence in society."

Congress has not been unmindful of the compelling need to make our courts swift, certain and smooth-running vehicles of justice. In the last few years it has enacted a number of importa measures, such as the omnibus judg ship bills of 1967 and 1969, the Fed eral Jury Selection and Service Ac the Federal Magistrates Act and th Federal Judicial Center Act, all o which are designed to help our feder courts reach this objective. In addi tion, there were two bills before th Senate in the last session of Congres which would have further cleared th rust and cobwebs from our federal ju dicial system. One bill was designed t place court management experts at th operating levels of the federal judici system, while the other required fe eral district courts to reform their m chinery so as to assure that crimi defendants can be tried within six days after indictment.

The Subcommittee on Improvemen in Judicial Machinery, of which I w chairman, held hearings on, evalua and tailored for enactment most o these federal court reform measur However, with a veritable flood of li gation engulfing our courts, we can afford to rest upon even yesterday's so lutions.

Problems Are Not Peculiar to Federal System

To date, national court reform le lation has been directed primarily deficiencies in the federal courts. H ever, the serious problems of co congestion and unjustifiable trial de are not peculiar to the federal judi system. Indeed, they are contag that have affected our state and lo courts with even more severity. A here these deficiencies are in g greater need of correction.

In our state civil courts, instance delays of two, three or even five y between the time when a case is and when it is finally tried are

mon. Today the average waiting period for personal injury suits in civil courts in major metropolitan areas is twenty-one months and in counties having a population of more than 750,000, exceeds twenty-nine months. In the Supreme Court of Rockland County, New York, the time from service of answer to trial is 64.6 months. In the Circuit Court of Cook County, Illinois, 60.7 months. In the Court of Common Pleas of Philadelphia, 47.7 months. In the Circuit Court of Wayne County, Michigan, 34.4 months.

The situation in many of our state criminal courts is equally distressing. The President's Commission on Law Enforcement and Administration of Justice has stated that the period between the arrest of a person accused of a serious crime to the trial should be no more than four months. However, very few of our local criminal courts are satisfying this standard, and it is not uncommon to find that more than two years have passed before a criminal case is tried. For instance, in New Jersey as of August 31, 1969, 175 active criminal cases had been waiting between two and three years for trial. In Kansas, 178 criminal cases had been pending for more than one and up to two years. In Michigan, 664 cases were pending more than two years at the end of 1968. In New Mexico at the end of 1969, 722 criminal cases were awaiting trial for more than twelve months.

The full catalogue of the disturbing details of lagging justice in the civil and criminal courts of our states would serve only to clutter this article. Suffice it to say that the problem is not confined to the courts of any one state or to one area or section of the country. It is truly a national problem demanding national attention. And the need for positive action is immediate.

To help state and local courts meet this problem, I introduced a bill entitled the National Court Assistance Act. The bill is fashioned after the Federal Judicial Center Act, which, under the able direction of Justice Tom C. Clark and Judge Alfred P. Murrah, is helping to solve the problem of court congestion and delay on the federal level. Both Chief Justice Burger and the National Commission on the Causes and Prevention of Violence, headed by Milton Eisenhower, have praised the Federal Judicial Center, calling it one of the bright spots in the entire picture of judicial reform.

How the Act Can Help

The National Court Assistance Act establishes an Institute for Judicial Studies and Assistance, which would do two things. First, the institute would administer a grant-in-aid program to encourage and financially assist state and local courts to modernize and improve their judicial machinery. Second, the institute would serve as a national clearinghouse of up-to-date information on studies, projects and techniques to make courts operate with optimum speed, fairness and efficiency.

Under the grant-in-aid program, our state and local courts could obtain financial aid to study and evaluate their judicial systems, the end of which would be to determine what organizational and administrative changes are necessary to achieve a maximum utilization of available manpower with a minimum expenditure of time and money. Part of this process of self-evaluation can be a utilization of management consultants and other experts who can bring their knowledge to bear upon the problems of court administration. Although judges and other court personnel rarely have administrative training, our courts have been hesitant to make use of *expertise* in meeting problems of judicial administration. Federal assistance would encourage judges to overcome that hesitancy. Grants would be made to help implement the recommendations resulting from these studies and evaluations. In most states and municipalities legislative ties to status quo make funds for court reform studies a political impossibility.

As a comprehensive repository to collect and evaluate data and service the informational needs of all the courts across the nation, the institute also would serve as a center for the nationwide exchange of information about new methods that have been tested in individual courts. For example, what has been successfully accomplished in Pittsburgh, and the techniques employed, could be made available to other court systems with similar problems. The institute would also present seminars and other educational programs for judges and personnel of local and state courts and establish in accredited universities and colleges programs of instruction in court administration and management.

Many Outstanding People Have Endorsed the Bill

At hearings which have been conducted by the Subcommittee on Improvements in Judicial Machinery, many outstanding members of the Bench, the Bar and the academic community have testified in support of the bill. Justice Clark, Judge Robert C. Finley, Chief Justice of the Washington State Supreme Court, Judge G. Joseph Tauro, Chief Justice of the Massachusetts Superior Court, J. Dudley Digges of the Court of Appeals of Maryland, Professor Maurice Rosenberg of Columbia Law School, Professor Hans Zeisel of the University of Chicago Law School, Edward Bennett Williams of the District of Columbia Bar and Eli Frank of the Maryland Bar are among those who are urging passage of the bill. In addition, the bill has been endorsed by the Institute of Judicial Administration, the North American Judges Association and by the staff of the National Commission on the Causes and Prevention of Violence.

On the other hand, in the August, 1970, issue of this *Journal* (page 755) there appeared an article by Frank M. Armstrong, Senior Judge of the North Carolina General Court of Justice, which was highly critical of the National Court Assistance Act. In essence, Judge Armstrong attacks the bill on two grounds. First, he claims that the legislation would trespass on the independence and autonomy of state and local courts and "constitutes a long step toward dismantling our dual system of courts". Second, he says the bill is unnecessary, especially from the standpoint of law enforcement.

Former United States Senator Joseph D. Tydings is a graduate of the University of Maryland (B.A. 1950, LL.B. 1953). Son of the late Senator Millard Tydings, he was admitted to the Maryland Bar in 1952 and was United States Attorney for the District of Maryland from 1961-1964.

Like Judge Armstrong, I am deeply concerned with preserving the autonomy and vigor of state and local courts, and I deplore the intrusion of the Federal Government into the domain of state government. It has long been my opinion that the primary reason the Federal Government has moved into many areas that have been exclusively within the province of the states is that the states, generally speaking, have not been sensitive to the demands of today's society and have failed to meet modern needs with modern government. If we are to stem the entrance of the Federal Government into areas where it cannot operate as efficiently as state and municipal governments, it is essential to revitalize local government and make it equal to the task that must be performed.

The National Court Assistance Act is a means to stimulate judicial reform at a local level by encouraging state and local courts to re-evaluate the way they deal with their judicial problems and to find and implement their own up-to-date solutions. The act is intended to help state and municipal courts help themselves, thereby obviating any pressure for federal involvement in the local administration of justice. It is a self-help program that would strengthen, not weaken, our system of creative federalism.

Bill Protects Independence and Autonomy of Courts

The bill contains a number of specific provisions to protect the independence and autonomy of state and local courts. The first of these statutory safeguards provides that the activities and policies of the institute will be supervised by a board of directors composed primarily of *state* court officers. The board will be composed of two state appellate judges, two active state trial judges, two state court administrative officers and one lawyer engaged in the private practice of law. Thus, all major policy decisions of the institute will be made by persons active in and sensitive to the needs and problems of our state and local courts.

A second safeguard provides that the institute shall make no grant without the permission of the highest judicial authority of the state whose courts would be affected by or involved in the grant. Thus, the decision-making process is divided, requiring the concurrence of both the institute and the court system involved before any program may be undertaken under the aegis of the act. The decision makers at both ends will be state and local court officials.

Finally, a third section contains a blanket prohibition against the institute's exerting any control or influence over state or local courts. The provision states:

> Nothing in this Act shall be construed as authorizing the Institute, the Board, or the Director, thereof, to supervise or control in any manner or to any extent the administration, organization of any local or State court, or to conduct or to cause to be conducted any study of evaluation of any local or State court without the prior approval of the highest judicial authority of the State in which such study or evaluation is to be conducted.

These provisions, taken together, assure that the initiative for implementing reforms would remain with the judges of the state and local courts. The safeguards guarantee that t stitute will be of, by and fo officials of state and local courts.

Judge Armstrong says that safeguards are meaningless. In same breath, he says that no m what safeguards were placed in th he is "unalterably opposed" to i cause of its "basic philosophic and icy thrust". I suggest that the cri own words evidence his inabilit evaluate these safeguards objecti because of his dogmatic opposition any federal assistance in this area.

When Justice Clark, who was t the Director of the Federal Judi Center, testified before my Subcom tee on Improvements in Judicial M chinery, I asked him whether thought the National Court Assista Act would permit federal intrusi upon the independence and autono of state and local courts of the nat He replied: "That is a bugaboo. Th is no substance to it. I have been w ing in this field for twenty years there is not a day that passes that s state judge, perhaps a chief judge calls upon me to see if I could h them. They do not say anything a about the Federal Government g bling them up."

Judge Armstrong also attacks National Court Assistance Act as b "unnecessary" on several grou First, he asserts that congestion delay in our criminal courts "is n significant element" in the proble law enforcement. In any event, he c tinues, congestion and delay can cured only by more judges, court sonnel and courtrooms, not by provements in management efficiency as envisioned by the act. ond, he claims that the need for bill is obviated by the Omnibus Cr Control and Safe Streets Act, u which federal anticrime grants made to states. And third, he cl that all the things that are to be d under the bill are already being d by public and private bodies wor on the local level.

Reforms Are Essential for Crime Control

Contrary to Judge Armstrong's

derstanding, every recognized authority on the subject of law enforcement, including the President's Commission on Law Enforcement and Administration of Justice and the National Commission on the Causes and Prevention of Violence, has stated that major reforms in the machinery and operation of our criminal courts are absolutely essential to bringing crime under control.

Judge Charles Moylan, a former state's attorney of Baltimore City and one who is eminently qualified to speak on this subject, has well summarized the problem:

> The law and order crisis has moved out of the streets and into the courthouse. . . . The criminal courts and the prosecuting officers have for decades been the neglected and forgotten children of the law enforcement system. We now represent the bottleneck that could cause that system to collapse.

Judge Armstrong should know that judicial delay obstructs law enforcement in multiple ways. It serves to increase the time during which additional crimes may be committed by criminals who remain at liberty while awaiting their trials. Delay works to deteriorate evidence, dull the memories of important witnesses and diminish their interest in seeing justice done, as its cost to them in time, effort and anxiety increases. The prosecutor, seeing his case gradually disintegrating and feeling the pressure of an increased workload, often dismisses the case or accepts a plea of guilty to a lesser offense. Logjams and delays clearly increase a criminal's chances that either he will go completely unpunished for his offense or he will receive a punishment not commensurate with the seriousness of his crime. To those who consider careers in criminality, the percentages begin to appear more favorable as the certainty of punishment for criminal misconduct becomes increasingly less demonstrable.

We No Longer Live in the Horse-and-Buggy Days

Contrary to the understanding of Judge Armstrong, more judges and court personnel are not the ultimate answer to the problem of court congestion and delay. Every knowledgeable authority on the subject of judicial administration understands that an efficient judicial system is dependent on much more than manpower alone. We are no longer living in the horse-and-buggy days. Chief Justice Burger in his 1970 state of the judiciary address referred to this point, when he said:

> More money and more judges alone are not the primary solution. Some of what is wrong is due to the failure to apply the techniques of modern business to the administration or management of the purely mechanical operation of the courts—of modern record keeping and systems planning for handling the movement of cases. Some is also due to antiquated, rigid procedures which not only permit delay but often encourage it.

Judge Armstrong is correct in asserting that some state and local criminal courts already get some federal assistance under the Omnibus Crime Control and Safe Streets Act. However, this does not obviate the need for the National Court Assistance Act. The reason is that Safe Streets Act money cannot reach state and local civil courts, where most of our citizens are involved and where the need for comprehensive improvements in judicial machinery is immediate. Moreover, this federal money has trouble even reaching our state and local criminal courts because state and local police forces and correctional facilities and personnel are competing for the same federal dollars.

The Judicial Research Foundation in its *Report on Neglect and Crisis in the Lower Courts* concludes that:

> Provisions of the Safe Streets and Crime Control Act of 1968 are insufficient to permit emergency measures going directly to the acute problems in the lower courts. Such courts are left in the same position they are now—subjugated to the continuing local and state attitudes which assure that these courts will be the last to be improved, if they are ever reached. The need is for prompt enactment of a broad National Court Assistance Act, and appropriation of funds to implement it.

With regard to Judge Armstrong's final ground for asserting that the National Court Assistance Act is unnecessary, it is indeed significant that representatives of the very agencies which Judge Armstrong cites by name as already satisfying the need for judicial reform, the National College of State Trial Judges and the Institute of Judicial Administration, testified before my subcommittee as being solidly in favor of the National Court Assistance Act.

We must get on with the important task of making both our state and federal judicial systems responsive to today's legitimate demand for justice that is swift, certain and fair. The ways of our judicial ancestors were not even suitable to meet yesterday's problems. They surely will not begin to meet the problems of our children.

The late Arthur T. Vanderbilt said, "Judicial reform is no sport for the short winded." The National Court Assistance Act is designed to provide the breath and life blood to enable all on the state and local level, including the short winded, to participate in the important task of upgrading the courts of our nation.