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# JUDICATURE

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# Modernizing the Administration of Justice

Joseph D. Tydings

It is a matter of common knowledge that the dockets of many courts across the nation—Federal courts, as well as State and local courts—are in a sorry condition. The propensity to litigate seems to have grown even faster than the population. Moreover, standards of criminal procedure have become more exacting, with the consequence that many cases must be processed with increasing care. Under this load of more and longer litigation the courts have themselves been put on trial, accused, not of incompetence, but of a vice that breeds its own kind of injustice—sluggishness.

In an article that appeared in the August-September, 1966, issue of this journal I cited statistics to illustrate the problem of court congestion and delay, and indicated that we have failed to cope with that problem simply by creating more judgeships. Instead, it is clear that we must overhaul the process by which courts handle this business. The article discussed briefly the role that management consultants and systems analysts might play in that overhaul by bringing to bear techniques similar to those that have been developed for business and industry. It is the purpose of this article to set out, in somewhat greater detail, a description of the type of court study that such experts could make.

## COURT ADMINISTRATION PROBLEM

The court administration problem involves the effective management, organization and operation of a court system. Management consultants and systems analysts would focus on three principal and related areas:

a. Descriptive analysis of the current operation of the court, and identification of significant bottlenecks in the processing of cases and related court business.

b. Recommendations for appropriate reforms in the processing of cases and court

business, and a transition program for working with judges and court administrators until the recommended reforms are implemented.

c. Suggestions for the proper organization of the courts within the system. This would include the possibility of realigning the jurisdictions of the various courts.

## LIMITS OF STUDY

There are certain areas that are outside the scope of study by management consultants and it is important that these be identified clearly at the outset. The rules of substantive law, the nature of the judge's own decision-making process, and the exercise of judicial discretion are the principal areas beyond the reach of the experts. A study should identify instead the steps required to present to a judge as expeditiously as possible and with a minimum of administrative detail any matter that needs his attention. Procedural rules designed to move the court's business should be examined to assess whether they do indeed serve their function, or whether there are better alternatives.

Experts might eventually examine alternatives to the adversary process. But initially it should be their purpose to devise ways of improving that process. Extra-judicial administrative procedures may be required, but only as a last resort.

Perhaps the single most important improvement a research effort should seek is the development of an orderly and steady flow of properly prepared cases. In order to prepare cases for judicial action, a number of preliminary steps must be taken with care and timeliness. The problem is not solely one of scheduling or even of "calendarizing," although both are vitally important. It is also one of exploring systems that will schedule and coordinate jury panels, minimize conflicts in court ap-

## Justice

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### STUDY

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pearances, store for prompt use relevant information to help evaluate the progress of cases and the necessity for continuances, and encourage judges to prepare their cases with dispatch. Additionally, a court study of a congested judicial system should evaluate the management aspects of pre-trial, trial and post-trial procedures related to the processing and disposition of litigation.

One of the critical requirements for a smooth and rapid flow of cases is the ability of the court to analyze its dockets accurately at regular intervals. Today courts are relatively unable to predict when any case will be ready for trial, or how long the trial will take. One research task of great potential profit would be a study of the differences in the time required to prepare various classes of cases in order to identify those elements of a case that significantly contribute to delay. Such a study might develop an information system to facilitate the analysis and monitoring of the dockets. Any such system should be designed to provide a continual flow of information about pending cases, thereby enabling timely calendar revisions that would reduce conflicts in the commitments of judges and lawyers. In this regard, the guidance of the bench and bar will be necessary to identify those delays that aid in the preparation and settlement of cases, as contrasted with those that interfere with proper case flow.

### "QUICK CALL" CALENDAR

Another important matter to be studied is the effect upon calendar control of cases withdrawn because of settlements or changes in plea. It may be possible to determine whether it is feasible to replace a removed case by another case of the same anticipated duration, rather than to move up the next scheduled case. The cases on such a "quick call" calendar

would presumably be simple ones where the parties, attorneys, and witnesses are readily available. It might prove not only unnecessary, but inefficient, to advance the entire calendar when a case is removed from the docket—the practice generally followed now. It also might be possible to identify certain types of cases that could be placed on a special "accelerated" calendar, which would move as a whole at a more rapid pace than the regular calendar.

### SCHEDULING SYSTEM

Another task worth pursuing is to determine whether requiring routine responses from attorneys would help prevent delays that are due to conflicts with other assignments for the same attorney, the unavailability of witnesses, insufficient time to prepare cases, delays in the discovery proceedings, and so on. The feasibility and desirability of an information system that would store all relevant data in this process should be explored. Management and systems experts suggest that the entire scheduling effort might be supported by such an information system that keeps track of all scheduling plans, prints all necessary notices, and receives all information bearing on the schedule. Moreover, data might be collected about the workload of attorneys to determine whether some of them are accepting more business than they can manage, or are regularly unable to prepare cases on time, marshal witnesses, etc. The attorneys responsible for cases should pursue the court's business diligently, and the information system should help the court ensure that the inefficiency of lawyers is not the cause of delay.

Additionally, there are a number of other important tasks that a properly run management study can contribute to improved court administration. These include analyzing the job requirements of the clerk of court and



other supporting personnel, examining the design and flow of documents and forms, assessing methods of compiling and preserving necessary records, recommending the optimum use of courtrooms and other facilities, and where needed, assisting the planning and design of new facilities.

In conducting a study, management consultants must be sensitive to the relationships between the procedures within the court, and those procedures and practices outside the court that are within the domain of the attorneys and parties. Some appreciation of the outside pressures that interfere with efforts to prepare cases must be acquired. In addition to the work of the lawyers directly related to the preparation of cases, office work and other counselling activities may conflict with their court preparation and appearances. It may be possible to identify areas where lawyers themselves can make a more adequate assessment of their own commitments and work distribution. Such a reduction of conflicting obligations would be of great economic advantage to the bar. Too long the judicial system has functioned without a complete understanding of all the pressures and interests that can prevent cases from proceeding expeditiously.

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#### SYSTEMS ANALYSIS

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There is good reason to believe that a management study of a court is best conducted in conjunction with a thorough systems analysis utilizing a computer model of the court's operations. What this means, essentially, is that all the factors and resources involved in the processing of cases are quantified and translated into mathematical formulae. This mathematical scheme is then programmed into a computer which, in operation, will represent the actual functioning of the court. The benefits of such a simulation are numerous, but per-

haps the most important one is that experiments in administration may be carried out in the computer without actually disrupting the day-to-day operations of the court.

Such a computer simulation on a limited scale has in fact been constructed in the District of Columbia on an experimental basis. In conjunction with the President's Commission on Law Enforcement and Administration of Justice, the Institute for Defense Analyses (IDA) has constructed a simulation of the felony docket of the U.S. District Court for the District of Columbia. Due to limited time and funds, the IDA computer model was based upon only those resources of the District Court allocated to the felony docket.

The IDA analysts ran several experiments with the computer, simulating operation of the District Court for periods varying from three to twelve months—and all in a matter of minutes of computer time.

The report of the President's Commission as to this one aspect of computer simulation was as follows:

To study the impact of alternative methods of alleviating the delay in the processing of felony cases, the task force developed a computer simulation of the court processing activity. The simulation permitted experimentation with the court operating procedures with no disruption to the actual court operation.

The model was validated by using the 1965 felony data cited above. In 1965, one grand jury was sitting and an average of five district court judges were assigned to the criminal part of the court. Under these conditions, the simulation faithfully reflected the actual court operation: In both there was a median time of approximately six weeks between initial presentment and the return of an indictment, and 14 weeks from arraignment to beginning of trial.

Most of the time prior to arraignment was spent waiting at the Grand Jury Division for indictment (five out of seven weeks). By simulating the system with a second grand jury sitting part of the time, the wait for indictment was reduced from 35 days

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to less than one day, resulting in a median time  
of approximately two weeks from initial present-  
ment to return of the indictment. Thus, it appears  
that for a cost of probably less than \$50,000  
per year for the additional grand jury and associ-  
ated support resources, the delay from presentment  
to return of indictment could be reduced by 70  
per cent.

Such a computer model can be used to plan,  
program and budget for future personnel and  
facility requirements, to decide how limited  
court resources are best allocated, and to eval-  
uate alternative operating procedures and  
court organization schemes. It can also serve  
as an operational tool to aid in the day-to-day  
scheduling of defendants, witnesses, and at-  
torneys. Moreover, it can be used to investi-  
gate and compare a variety of contemplated  
but untried court operating concepts, allowing  
court administrators to experiment with possi-  
ble changes before putting them into effect.  
Hopefully, the use of such computers can lead  
to a fuller understanding of how the entire  
court system operates and how its various ele-  
ments interact.

It should be emphasized that it is not neces-  
sary for a court to own a computer, in order  
to make use of the benefits of systems anal-  
ysis. Some very large court systems, such as  
those of New York, Chicago, Los Angeles or  
the District of Columbia, may find it economi-  
cal to have their own equipment. Smaller  
courts, however, can rent computer time in  
accord with their own needs.

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#### NATIONAL COURT ASSISTANCE ACT

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To help state and local courts mount an  
assault on out-moded judicial administration,  
I introduced the National Court Assistance  
Act during the 2nd Session of the 89th Con-  
gress (S. 3725), and again during the current  
session of the Congress (S. 1033). It is now

pending before the Subcommittee on Im-  
provements in Judicial Machinery, of which  
I am chairman. The Act would establish (1)  
an Office of Judicial Assistance to act as a  
national clearinghouse of information for  
state and local courts, and (2) a program of  
grants-in-aid to help the courts secure, among  
other things, the type of expert aid discussed  
above. The grants would also be available to  
foster educational and other programs for  
judges and court personnel. The Subcommit-  
tee also has before it S. 915, the President's  
proposal for a Federal Judicial Center which  
would, in large measure, provide the same  
services for Federal Courts.

The Subcommittee staff has been cooper-  
ating with the Judicial Council of the District  
of Columbia to secure a comprehensive man-  
agement and systems study for the courts of  
the District such as was outlined above. It is  
our hope that the study will develop tech-  
niques, and perhaps a prototype for judicial  
administration, that could be useful to courts  
across the land.

Other articles in this issue deal with related  
aspects of court administration and will pro-  
vide greater insight into the ways in which  
the courts can meet the challenges of the  
twentieth century, and prepare for those of the  
twenty-first. Certainly one thing is clear: if  
we are to preserve our judicial system as a  
cornerstone of our democratic society, we  
cannot hesitate to use every resource avail-  
able for modernizing the judicial process.